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

Second Reading

Resumed from 8 November.

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [2.45 pm]: When we were last debating the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, I was coming to the end of my contribution. I want to recap some of my comments on this bill, given the debate was a few weeks ago. I indicate that the Nationals WA will support this bill. Some of the issues members had with the bill have already been raised, and I am sure there will be some answers from the minister in her reply to the second reading debate or as we go into the Committee of the Whole.

As we know, the bill seeks to restrict the right of return of officers in the senior executive service and health executive service to the first two years of their initial executive contract and to reduce the maximum amount of compensation payable in the event of the early termination of their employment. Two things were of concern to me. One has also been raised by other members of the house. The public sector is exceptionally important to any government. A government needs to seek a structure in the public sector that assists it to make strategic decisions and create transparency and clarity in the way it operates. If restrictions are placed on employees at senior levels of government, even considering their current positions, they may seek employment elsewhere. That happens in the natural course of attrition anyway; however, it may be a direct result of this bill. A new government requires all the experience it can gather, but it needs to balance that with community expectations about compensation payouts for senior executives and the way they move between departments. I think there is a public expectation that contracts are managed, which is why I support the bill, and that they are in line with the corporate and private sectors. I have no objection, except to say that with machinery-of-government changes already occurring, there are major concerns about the experience left in the public sector, which may in turn create a negative reflection on the sector due to no fault of its own. Restrictions, public sector reform and machinery-of-government changes are big changes to deal with in their own right, and it is very difficult to deal with them all at the same time.

The other issue I briefly touched on in my previous contribution was the expectation that once a contract is signed, its terms should be fulfilled. I would like to hear how the government will justify that decision-making in the legislation. If this was someone in the retail sector, the corporate sector or the resources industry—you name it—once the terms of agreement of their contract are reached, the contract is signed and that employee operates in good faith under the terms of that contract, and they would expect those terms and conditions to be carried through. I think that would be the fundamental expectation of people when they enter employment contracts. That is a bit of a concern for the people who will be affected by this bill. I am sure that they will not be happy about having the terms of their contract renegotiated seemingly without much consultation.

Those two issues have been raised by other members, and I raised them in my prior contribution. I think we need some answers from the government on the record about how we can manage to continue to operate in good faith, with genuine intent for those employees who will be affected by this legislation. It is difficult to balance the expectations of the community around the public sector. There is no doubt that the government has a difficult job managing contracts and compensation payments within the public sector. Potentially, there is no right answer. The government seeks to put one of its answers on the table. I support the bill, as will my National Party colleagues, but I look forward to the other contributions and the answers to some of the issues raised by other members during the debate.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.51 pm]: To the extent that the government wants to manipulate the employment contracts with public sector officers into the future, that is a matter for it. I am concerned about the increasingly apparent encroachment of politicisation into the public sector, and I deplore that. But that is for another day. I do not intend to address that part in particular. We will address those issues.

Hon Alannah MacTiernan interjected.

Hon MICHAEL MISCHIN: I know that Hon Alannah MacTiernan is quite happy to politicise the public service when she is in government. I do not propose to address that particular issue. To the extent that the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 interferes with current employment contracts that have been entered into in good faith and jeopardises the livelihoods, careers and income of these public officers in these difficult times, I cannot support the legislation.

I note with some comfort that Hon Alison Xamon will introduce what might be called a preservation or grandfathering clause into the legislation, and I will be supporting that. Having regard to the philosophy expressed by members of the Labor Party in the past, I hope that we will hear from other members of the Labor Party who hold employment contracts sacrosanct and who have been members of unions that have fought for adherence to contracts. For example, Hon Dr Sally Talbot waxed lyrical during debate on the workforce reform legislation back

in 2013 about the importance of preserving good faith and employment contracts, as did Hon Sue Ellery. I will quote her on the Workforce Reform Bill 2013. That bill introduced some modest provisions to deal with public sector officers who could not be placed or retrained and were surplus to requirements. It was opposed every step of the way by the then Labor opposition. Every member of the Labor opposition back then got on their feet and started to tell us how terrible it was to interfere with employment contracts.

Hon Sue Ellery: Calm down.

Hon MICHAEL MISCHIN: I thank the Leader of the Government for telling me to calm down. As I recall, at one stage during that debate, when I was at the committee table, Hon Ken Travers leant across and screamed at me, "I hate you people!" Some of the appalling behaviour we saw and self-righteous indignation we heard from members of the now government was astonishing. I look forward to Hon Dr Sally Talbot getting up to say how important it is to preserve employment contracts in good faith and Hon Sue Ellery getting up to say she cannot support this bill because it is contrary to Labor principles. Hon Matthew Swinbourn is involved in the union movement, so he knows the importance. I am sure that Hon Kyle McGinn will have something to say about the sacrosanct nature of employment contracts and how it shows bad faith on the part of those who have bargaining power over others to suddenly change contracts in retrospect and abandon the promises that they had made, which might jeopardise careers and the like. I am sure Hon Martin Pritchard, with his union background, will have a lot to say about that and preserving the interests of employees. I look forward also to hearing Hon Samantha Rowe and Hon Darren West, who we know is a great champion of the working class. He would never dream of doing the same thing with an employment contract with one of his staff at his ranch out in the wilds. I am sure that he would never dream of saying, "You've been acting in a position that is giving you a greater income and now I am going to remove the possibility of you going back down to whatever job you had before at a lesser income. You'll have to elect what you do and I am changing the employment contract." I am sure that will be anathema to him! I know it is anathema to Hon Sue Ellery. On 20 March 2014, when talking about employment agreements and the like and how terrible changing them is, she stated that a proposed change —

> … is in effect a retrospective provision because this bill strips away arrangements entered into before the amended law came into place. When the people involved reached their agreement, they did so under another law. They entered that agreement and made whatever trades-offs and accepted whatever wages on the basis that certain terms were locked in for them for the duration of the agreement. That is the terms that cover whether or not their employment can be terminated due to redundancy, and how they are to be treated with regard to redeployment.

She went on to state that it was not fair or reasonable that terms and conditions negotiated by government should be suddenly changed arbitrarily and thrown away. How quickly attitudes change when people are in a position of power! This government has already interfered with an independent tribunal that was set up to depoliticise the remuneration process for members of Parliament, senior public servants and the like. It was set up specifically to depoliticise the process—to put it in the hands of an independent tribunal—but for political gain and a few headlines this government decided to interfere with the discretion of the Salaries and Allowances Tribunal. That was all for a few headlines! So much for principle! An appointment has already been made of a commissioner to the Western Australian Industrial Relations Commission without advertising that position or revelation of the selection criteria or who was involved in that process. In opposition, members of this government complained that we were imposing the mere requirement that the Salaries and Allowances Tribunal have regard to wages policy; it was not an instruction that it had to follow it. We asked the tribunal to have regard for it. That was considered to be too much of an interference in its independence. So much for the high principles and the self-righteous indignation of the Labor Party! I can see that Hon Sue Ellery is mocking the whole idea. I will remind members of what the Premier said when he was in opposition. Talking about workplace reform and agreements that were being modified for the small group of public servants who were redundant to requirements and could not be used otherwise, he stated —

> They were the clauses in the two agreements. The government might not like those clauses, it might think they are wrong, and it might think they do not fit with whatever standard it wants to adhere to, but they form part of an agreement, and guess who the agreement was with? It was with the government; the government signed it. These are the government's agreements, so if the government did not want those clauses in the agreements, it should not have put them in …

We now have a new government, so it can change things how it likes. He goes on, with regard to state agreements —

> That should not be done with state agreement acts. State agreement acts are sacrosanct.

Yes, the acts are. I know there is some contemplation about changing one now, and we will get on to the merits of that in due course. The sanctity of contract that he talks about is particularly interesting. He says —

> … the sanctity of the contract came through and the government thought that perhaps it should not rip up those contracts. It should not do that to householders or with state agreement acts, but the government is doing it with this bill. How is that right?

He was talking about the Workforce Reform Bill. We know this government's attitude to contracts; it said before it got into government and afterwards that it was going to rip up contracts it did not like. Look at what it is doing now. It is picking on a small group of public servants who had relied on some security due to their ability to go back into their jobs in due course. Now the government is saying, "No; you have to elect to get out because we don't want you." Here is another contribution from Dr Tony Buti, the member for Armadale, talking about —

> … the sanctity of the doctrine of freedom of contract, and would see it as quite dangerous that any contract freely entered into between two parties could be changed or abolished at the whim of any government.

I do not know which government he was talking about then; obviously not this one. Maybe his views have changed, too. I do not know whether he spoke against this legislation in the other place. I doubt it.

Hon Nick Goiran: I think, in fairness to him, he is not part of United Voice, so he does not get a voice.

Hon MICHAEL MISCHIN: Yes. You have to be part of United Voice to have a voice in this Parliament. Dave Kelly, the member for Bassendean says —

> … the government to override a contract of employment. Premier, I find that remarkable.

The current Minister for Commerce and Industrial Relations, talking about workplace agreements and the sanctity of the contract, says —

> I am not trying to put words in the Premier's mouth but I understand that he said last night that a piece of law will, in a technical sense, override an enterprise bargaining agreement. He went on to say that it has happened under Labor and Liberal administrations. I make the point that that is not correct. I pointed out earlier, but the Premier did not explain himself on this issue, that when the Labor Party cancelled workplace agreements, there was a specific provision in that legislation to ensure that the contract of employment continued with the conditions that existed in the workplace agreement.

Obviously, that does not apply when one is not part of a union and people's contracts of employment can be overridden simply because the government can do that. That is what is being done in this place. Before it is thought that this is simply academic, I will read into the record an email I received from someone whom this affects. I can provide a redacted copy so as not to identify the person concerned because I think that would be unfortunate, knowing the way this government operates. The email is dated 3 September 2018, and the subject is Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, and it states —

> Dear Mr Mischin
>
> I am writing to seek your assistance in speaking against the PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018 as it proceeds through Parliament. My husband, a long serving public servant, is caught in the net of the policy and its killing him. At his age he is and will always find it impossible to compete on an even surface with younger applicants.
>
> The Government plans, through the Bill, to amend the Public Sector Management Act 1994 and the Health Services Act 2016 in order to restrict the "right of return" for officers in the senior executive service and the health executive service to the first two years of their initial executive contract, and to reduce the maximum amount of compensation which these officers may be eligible to receive in the event of the early cessation of their contract of employment.
>
> Firstly, the current legislation provides for a "right of return". This condition of the legislation provides for a public service officer, having been successful in a merit selection process and having entered an employment contract in a designated senior executive service position, to return to their previous level when the contract expires or is terminated.
>
> The Bill largely removes the original provision, except in the first two years of a first contract. But the Bill also includes a 6 months window for existing contracted senior executive service officers during which they may elect to exercise their existing right of return. This retrospective application of a new policy is both unjust and unfair, it cannot be right and must be opposed vigorously.
>
> New senior executive service employment contracts will be entered into by officers, or not, in the full knowledge of the provisions and features of the conditions available at that time, which is reasonable. The intended retrospectivity however is unjust and unfair and must be overturned.
>
> The Bill is unjust as it is changing the conditions offered by the employer, which informed the officer's ambition to seek advancement and successfully enter the senior executive service. The Bill is unfair as the existing group of loyal senior public officers caught in its … net are being treated worse than the

> officers who preceded them and those who follow. It is unjust and unfair and cannot therefore be the right thing for the Parliament to do.
>
> Secondly, and less pressing than my husband's treatment, as a consequence of the removal of the "right of return" the Bill, if passed, will see the Western Australian public sector's senior executive service cease to be a meritocracy and become a service populated by itinerant and transient employees who, by dent of the uncertainty of their employment, will be in a constant state of nervous insecurity and constantly seeking other, more stable opportunities.

Yes, like employers that will actually fulfil their employment contracts. The email continues —

> Appointment on merit is a foundation stone of the modern Westminster system of public administration through a professional public service and follows the British government's Northcote-Trevelyan report of 1854. A permanent, meritocratic Public Service, based on the guiding principles of integrity, honesty, objectivity and political impartiality that we see and adhere to today will be lost if the bill is passed.
>
> The senior executive service will cease to be a committed and professional body of public servants and become simply a reflection of the commercial world, with personal benefit and profit the key characteristic. This is clearly not in the interest of retaining corporate knowledge, strategic thinking and action nor in the interest of stability in the services provided to the Western Australian Community.
>
> As a direct and foreseeable consequence the Western Australian public sector will be in a constant state of flux and will fail in its duty to provide frank and fearless advice to Ministers. This advice is necessary if our ministers are to be properly informed and accountable to the community through their Parliament, the key feature of our system of parliamentary democracy. The provisions of the Bill must be vigorously opposed.

I expressed some acknowledgement of this lady's concern for her and her husband's prospects, and she wrote back to me on 17 September —

> Dear Mr Mischin,
>
> Thank you for acknowledging my earlier correspondence regarding the unfair and unjust nature of the Government's intentions as detailed in the Bill. I am writing to you again to seek your assistance in speaking against the PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018 as it proceeds through Parliament.
>
> I have previously detailed my objections to the removal of this important Western Australian public service statutory employment condition, and its inevitable adverse consequences. Further to those earlier objections to the Bill I'd like to raise three other matters concerning this unfair and unjust Bill.
>
> Firstly, the Government's intentions concerning the removal of the right of return for permanent public servants in the senior roles targeted by the Bill is in stark contrast, indeed a direct reverse of its concurrent intention to offer permanency to existing non-permanent public service officers.

That is quite an irony, is it not? The email continues —

> The Premier, in a media statement dated 9 August 2018, announced arrangements whereby all employees with more than two years of service, in fixed-term or casual roles, will have their contracts reviewed and if they comply with the criteria, they will be offered permanency. The Public Sector Commission is to issue instructions for eligibility criteria including:
>
> - The job is correctly defined as a fixed-term position;
> - The person has been employed in the same or similar role for at least two years;
> - There is ongoing funding for the position into the future;
> - The person is not facing formal disciplinary or substandard performance action; and
> - The process complies with the Public Sector Management Acts requirements.
>
> The statement goes on to say that the Government expects the changes will allow departments and agencies to better retain quality staff, making the public sector more efficient, improving services to the community and reducing expensive outsourcing and consultancies. Comments attributed to Premier Mark McGowan include:
>
> > *"I'm very pleased my Government is able to offer stable jobs and improved services for Western Australia.*

I interrupt to say: stable jobs for some. He continues —

> > *"Despite the fact that they may have been employed in their role for a number of years, fixed-term employees often face uncertainty, which makes it difficult to plan for the future. Being employed on a fixed-term basis can also create roadblocks when applying for home loans.*
>
> In media on its website, a major public sector representative organisation, the CPSU/CSA, quotes its Assistant Branch Secretary Rikki Hendon who said:
>
> > *"We are pleased that the McGowan Government has listened to us, has listened to our members and is delivering on its election commitment to bring fair, decent work back to people who deliver our public services.*
> >
> > *"Creating a pathway to permanency will genuinely change lives for the better, and enable the public sector to retain talented staff, who are too valuable to lose."*

That is in contrast with this particular proposal. The correspondence continues —

> On one hand, on 9 August 2018, the Premier is pleased to offer permanency to officers who have voluntarily entered into non-permanent arrangements and served two years in public sector positions, contracts without any offer of permanency, while almost in the same breath, his 15 August 2018 media statement advises his introduction of this Bill into the Legislative Assembly, a Bill which unilaterally removes public service officers' permanency.
>
> Secondly, I bring to your attention that the explanatory memorandum, published on the Parliament's website, states that the principal purpose of the bill is to amend the *Public Sector Management Act 1994* and the *Health Services Act 2016* to restrict the right of return for officers in the Senior Executive Service … and the Health Executive Service … to the first two years of their initial executive contract, and to reduce the maximum amount of compensation which these officers may be eligible to receive in the event of the early cessation of their contract of employment.
>
> In the 15 August 2018 media statement advising his introduction of the bill into the Legislative Assembly I referred to above, the Premier advised that the change enabled the public sector to better prepare for workforce planning and to bring about more efficiencies. As the right of return does not impact on the cost of the Public Sector negatively, indeed saving recruitment costs through the return of effective officers to vacancies and avoiding compensatory payments, or impact on its efficiency as the practice prevents loss of corporate knowledge, the change must be designed to assist workforce planning. According to the Western Australian Public Sector Commission's 2017 *State of the sectors* report the Western Australian public service includes more than 110,000 positions. It is beyond reason to claim that the return of officers to the sector impairs workforce planning when, even were all 400 —

I think that means of the SES —

> to elect to return at once, the total proportion of those officers is less than 0.4% of the sector! Hardly a planning challenge.

I have to agree. It continues —

> Thirdly, a consequence of the Bill and the new two-year window for senior executive officers to return to their earlier permanent position is to provide the senior executive officers appointed recently and those appointed in the future, a two-year window to make an election to return. In stark contrast, the Bill limits existing permanent public servants, in existing senior executive officers' contracts, to no more than 6 months from the date of the change. This Bill treats these two categories of public servant officers is demonstrably inequitable.
>
> If the Parliament determines that the current right of return is to be discarded, the fairest and most just decision of the Parliament would be to amend the Bill to provide for at least the grandfathering of the existing, contracted right of return for those public service officers who entered contracts on this basis, allowing those public service officers considering taking up senior executive officer contracts in the future, to make that decision on the basis of the statutory arrangements which exist at that time.
>
> Members of Parliament should be an appalled with the obvious double standards and conflicting logic proposed by the Government in this Bill's singling out of one category of permanent public service officers and reject its offending elements.

I wonder what the government's motive really is. Is the government trying to have a transient public service in which people can be appointed from outside as whim arises, last one term of government, and then disappear, to allow for the politicisation and opportunistic manipulation of the expertise in the public service by engaging only those who are sympathetic to the Labor government of the day? I at least am holding firm with the principle that if these sorts of arrangements are to be changed, it should not be done retrospectively. We are not dealing with

a small sector that is not serving its purpose or is redundant to requirements and for which every attempt that has been made to redeploy the employees in some fashion has been unsuccessful. This is not a last-resort piece of legislation to address a problem; it is a deliberate denial—an abrogation—of contractual rights solemnly entered into that will affect the careers and livelihoods of these officers. I was invited by this correspondent to speak against the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018. I have fulfilled her faith; I only hope that the government can be persuaded to be faithful to its public servants, particularly having regard to the very high and large talk we have heard from Labor members in the past about the importance of good faith in employment contracts, and the importance of governments holding faith with their public servants. I have not to date seen that. I do not expect to, but at least this lady can be reassured that someone is speaking up for her, her husband and her family. I will be supporting Hon Alison Xamon's amendment, and I will be opposing the bill if it remains in its current form.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.16 pm] — in reply: I thank members for their contributions to the debate on the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018. I will go through the issues raised by members, and we will deal with the series of amendments on the supplementary notice paper in the name of Hon Alison Xamon during Committee of the Whole House.

Hon Tjorn Sibma asked about the figures paid out to a range of senior executive service officers. Between 1 March 2017 and 25 September 2018, 68 compensation payments were made to SES officers under section 59 of the Public Sector Management Act at a total cost of $14 179 923. A further 30 SES officers elected to exercise their right of return to access a voluntary separation payment at a further cost of approximately $6 million. The member raised the issue that the SES cohort had been reduced from around 500 to something over 350 or thereabouts. Those figures are approximately correct. As at 25 September 2018, there were 370 SES officers and 35 health executives. At that date, the number of executives who possessed a right of return was 281. Prior to the government's SES reduction strategy and machinery-of-government reforms, the SES consisted of 521 members and 646 funded positions. A number of SES positions remain vacant, and the current expected maximum number of SES officers following the 20 per cent reduction is 417; the expected maximum number of health executives is 72.

The honourable member and others put the proposition of the potential for mixed signals about which industrial rights the government is prepared to defend. I have some comments to make on the points made by Hon Michael Mischin, so I might incorporate those in this response. The comparison drawn between these two groups does not reflect the fundamental differences between these roles. The conversion of fixed-term contract and casual employees to permanency aims to provide job security to thousands of workers, the majority of whom occupy lower classification levels and provide vital frontline services to the community. These conversions relate to positions that, for a variety of reasons, had been filled on an incorrect basis as fixed-term appointments. In contrast, fixed-term tenure has been a feature of SES employment since the Public Sector Management Act was first passed. Fixed-term tenure also supports a mobile executive group, supporting the objectives of the SES.

I will turn particularly to the point about overriding contracts and some of the issues raised by Hon Michael Mischin. Importantly, this bill provides for a transition to the new arrangements by giving individuals six months to choose to remain on existing contracts, exercise their right of return or take compensation in lieu of exercising that right. Under the existing provisions of the act, an individual can exercise their right of return at any point. The argument that the bill should not override existing contracts, despite the member's reliance on the *Hansard* transcript of the debate at the time, is in clear contrast to the previous government's approach in managing the passage of the Workforce Reform Bill 2013. That bill amended the Public Sector Management Act 1994 to provide for the introduction of involuntary severance. Specifically, it inserted a new section 95B(3) into the Public Sector Management Act, which relevantly provides —

> Regulations referred to in section 94 or 95A prevail, to the extent of any inconsistency, over the terms and conditions applying to an employee's employment under a contract of employment, whether entered into or renewed before, on or after the commencement of the *Workforce Reform Act 2014* section 14.

At the time of the passage of that bill, the then Minister for Commerce, Hon Michael Mischin, explained and defended the approach as follows —

> As I think I made apparent, the reason the government is introducing these provisions is to ensure that all public servants are dealt with in a uniform fashion, and it will apply the policy stated in the Workforce Reform Bill 2013 in respect of all agreements, whether current or future.
>
> …
>
> … every government has a responsibility to deal with matters affecting the peace, order and good government of the state according to its policies and views on an appropriate means of addressing such issues. Labor governments in the past have made certain policy decisions and those have overwritten employment contracts. I suspect that if there is ever a Labor government in this state in the future, it will likewise take a particular philosophical and policy view according to the issues of the day that face it and

> make such decisions. In this case, certain provisions, which one might say are extraordinary in this day and age—that no-one can ever lose their job—are thought by government to be inappropriate in the light of the needs facing the state and the need for public sector reform, and it is acting accordingly and readjusting those matters by way of legislation, as it has done in the past, as other governments of other political persuasions have done in the past, and as, presumably, governments will do in the future.
>
> …
>
> After an assessment of the need for reform in the public sector, it has been determined that one of the deficiencies in the current regime is the inability to discharge employees who are not able to perform a worthwhile function in the public sector. That is the basis for the amendments that have been proposed. As for the idea that there is a lack of good faith in bargaining, there seems to be confusion about the role of Parliament and the role of government in proposing legislation as opposed to the manner in which negotiations are conducted. It lies ill in the mouth of the opposition to suggest that we cannot change employment contracts.

The approach in this bill is similarly grounded. It seeks to override contracts as necessary to place all existing senior executive service members on a similar and consistent footing as soon as reasonably practicable. As I referred to earlier, the difference is that the transition to the new arrangements will give individuals a period of some six months to choose to remain on an existing contact, exercise their right of return or take compensation in lieu of exercising their right.

Hon Michael Mischin interjected.

Hon SUE ELLERY: I am not taking interjections, honourable member.

I will go back to the comments made by Hon Tjorn Sibma. He made the point that there is effectively a 50–50 split in which jurisdictions have a right of return. If this bill is passed, the number of jurisdictions without a right of return will be double the number of jurisdictions that do provide the entitlement. He made the point about the process through which natural justice is conferred and contractual rights respected. For SES and health executive service officers with an existing right of return, the bill provides a transitional period of six months or longer for officers who are within the first two years of the initial executive contract. Within that time, they may choose to exercise that right of return to permanent employment, after which it lapses. Six months was chosen as a fair and reasonable transition period, ensuring that a balance was struck between allowing sufficient time for affected officers to make an informed decision, while at the same time ensuring an efficient and smooth transition to the new regime that is not overly protracted. Those officers who elect not to transition remain eligible for compensation under section 59 of the Public Sector Management Act. Notwithstanding the intended legislative changes contemplated by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, it is implicit that employment contracts need to be made within the law as it stands at the time. It is unreasonable to expect that recruitment activity across the entire cohort could simply be paused while awaiting these changes. The proposed changes were also clearly conveyed to affected parties through a range of announcements and information sessions to advise of the changes.

Hon Alison Xamon raised concerns about what will be on offer for future SES officers and whether it will be good enough to attract and retain accomplished, professional and committed people of integrity. Chief executive officers and other executives play a vital role in leading change. This government is committed to ensuring that the leadership cohort is provided with targeted and tangible professional development and other supports to assist with the demands of being public sector leaders. The public sector reform program also includes a range of broader initiatives to support and develop the public sector leadership cohort. The independence of the public sector was also raised. The independence of the public sector is protected by a number of sections of the Public Sector Management Act, which are not diminished by this bill. Firstly, the act precludes ministers from having involvement in the appointment or termination of public sector officers, apart from CEOs, for whom the act provides a legitimate role for the responsible minister to be consulted. Secondly, the act provides an ethical framework within which all public sector officers, including executive officers, must operate. The key principles of conduct for all public sector officers set out in section 9 of the act include a requirement to act with integrity in the performance of their official duties. This is further supplemented by the code of ethics, which requires that all employees act with care and diligence; make decisions that are honest, fair, impartial and timely; and consider all relevant information. Further, the role and purpose of the SES, as set out in section 42 of the Public Sector Management Act, which is to provide high-level policy advice and undertake managerial responsibilities in agencies, remain unchanged. The retention of a two-year right of return provides an opportunity for aspiring leaders to test an executive role to see whether it accords with their intended career objectives. This period of minimum security will be unique amongst comparative jurisdictions.

Hon Jacqui Boydell made some comments about the machinery-of-government changes. I make the point that the machinery-of-government changes and this bill are a small part of the government's public sector reform agenda

to build a more collaborative, capable and high-performing public sector workforce that will include a renewed focus on talent management and workforce planning.

I think that canvasses the issues raised, but if there are further questions, we can deal with those matters in Committee of the Whole. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon TJORN SIBMA: I do not wish to make an elongated contribution; I might save my remarks until clause 8. However, I would like to get an indication—I thought the minister foreshadowed this in her second reading reply speech—of the government's impressions or likely position on Hon Alison Xamon's amendments, particularly as I advised the minister behind the Chair that the Liberal opposition will be supporting those amendments. I seek an indication about whether the minister will be proceeding with them, in a desire to facilitate the passage of this bill, if we can.

Hon SUE ELLERY: I am not sure that I did, but, in any event, the government will not be supporting the amendments.

Hon TJORN SIBMA: In my second reading contribution I referred to the fact that I had received a document from the Premier's office.

Hon Michael Mischin: Did you rely on it?

Hon TJORN SIBMA: No, I did not rely on it. I inferred from this document that there was a set of proposed amendments that have not been put on the supplementary notice paper. They are similar to the amendments to be moved by Hon Alison Xamon, which is the only set of amendments that have been put on the supplementary notice paper. I am trying to determine whether the government has a philosophical problem with the substance of the amendments that have been put on the notice paper, since I am given to understand, and I have documentary evidence, that the government considered amendments that seemed to be very similar to Hon Alison Xamon's amendments. I think that it behoves the government to clarify its position and provide an overview of why it gave consideration to amendments of this sort but is choosing not to support amendments to be moved by Hon Alison Xamon that I would say are about 90 to 95 per cent similar to those amendments.

Hon SUE ELLERY: I want to get this clear, because it is not clear to me. Is the honourable member saying that he has something from the government that indicates we had a set of amendments that we were going to move?

Hon TJORN SIBMA: Yes, I do. I tabled this document previously on 6 November, I think. If not, I have a copy right here. I am not doing this to throw the cat among the pigeons, if I am allowed to use that phrase, but I have it.

Hon SUE ELLERY: I am not clear on what the member is talking about. If he could table it, that would be helpful.

Hon TJORN SIBMA: I seek leave to table the document I just referred to.

Leave granted. [See paper 2314.]

Hon SUE ELLERY: The advisers have something that the member sent them on the twenty-fifth, but it does not refer to amendments.

Hon Tjorn Sibma: I am happy to get clarification.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Sue Ellery (Leader of the House).

Hon SUE ELLERY: Deputy President, I ask that you leave the chair until the ringing of the bells and I will have some discussions with people. My proposition is that we go now to question time.

The DEPUTY PRESIDENT: You wish me to leave the chair?

Hon SUE ELLERY: It is just so that I can get that organised.

The DEPUTY PRESIDENT: Members, I shall leave the chair until the ringing of the bells.

Sitting suspended from 3.37 to 3.49 pm