POLICE AMENDMENT BILL 2002

Second Reading

Resumed from an earlier stage of the sitting.

MS S.E. WALKER (Nedlands) [2.47 pm]: Before the break for question time I was considering what this Bill is all about, in particular clause 4, which refers to section 8 of the Act.

[Interruption from the gallery.]

The SPEAKER: I remind people in the public gallery that they are not permitted to participate in the debate. Any further comments from the gallery will force me to clear those people from the gallery.

Ms S.E. WALKER: I was referring to the New South Wales legislation of November 1996, which dealt with similar provisions as a result of the Wood Royal Commission into Corruption in the New South Wales Police Service . I got part way through the statement by the then Minister for Police, the member for Ashfield, Mr Whelan, who said that the Bill provided the police commissioner with the authority to remove from the police service any officer in whom he ceases to have confidence. I was interested in the New South Wales Bill because I wanted to see whether it differed to any extent from our Bill. I note that under the provisions of our Bill, the Commissioner of Police cannot revoke an officer's commission unless the Minister for Police approves that decision. It is not entirely clear from looking at the provisions of section 8 as they currently stand and the provisions that are on foot whether they are in synchronisation. I am sure that we can come to that during the third reading.

When I left off, I was referring to what the New South Wales Minister for Police said. He said -

> The vast majority of police are of course hard working and honest. They are constantly let down by the corrupt and incompetent. It is essential that these undesirable elements are removed to allow talent to blossom and performance improve. The Government recognises that the authority to terminate employment under the commissioner's confidence provisions vests considerable power in the commissioner. It also recognises that this means that checks and balances are required to ensure that it is only used as it is meant to be, and is neither exceeded nor abused.

The Opposition has already given notice through various members today that it supports the legislation. We support it because we say that there should be checks and balances on the power of the Commissioner of Police. Because the Bill is about confidence in the Police Service, I raised before question time the issue of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. I raised it because it falls directly in line with the purpose of this Bill. The mission of the commission, as contained in its report of 21 January 2002 to 30 June 2002, states that it is to inquire into and report on whether there has been since 1 January 1985 any corrupt or criminal conduct by Western Australian police officers. That is relevant, because we are looking at a policy of the Government that is incorporated into the Bill. We need to look at how the commission is determining whether there has been any corrupt or criminal conduct by officers of the Western Australia Police Service. I note that the desired outcome of the commission in its report is for increased public confidence in the Western Australia Police Service. That is what the commission is being resourced to do. It would complement clause 8 of the Bill, which deals with the removal from the Police Service of officers in whom the commissioner has lost confidence.

Prior to the 2001 election the Premier promised the Western Australian public that there would be a pursuit of certain matters through the police royal commission. In a press release he accused the Opposition of being soft on police corruption. He promised he would pursue particular matters. As an example, one is the Argyle Diamonds matter. I raise that today because of comments made by the Attorney General about the whistleblowers legislation. That is another policy initiative brought to this Parliament. I raise this because clause 8 of this Bill is concerned with the integrity of the Police Service and the dismissal of police officers when the Commissioner of Police loses confidence in them in matters concerning integrity, honesty, competence, performance or conduct. In his press release the Premier mentioned the Argyle Diamonds matter. He said that the royal commission would investigate and report on specific allegations of police corruption, including the Argyle Diamonds affair. Concerning the policy initiative of the Government in bringing a number of Bills before this Parliament, it has been clearly expressed that the Government wants to root out corrupt, illegal or improper conduct. The second reading speech of the Whistleblowers Protection Bill was made by the Attorney General in this House on 20 March. In speaking to the Bill, he stated -

> Corrupt, illegal or improper conduct must be exposed and prevented. There will be no improvement so long as potential whistleblowers who are aware of such conduct and want to report it, remain silent.

I have been contacted by police officers who were involved in the investigation of the Argyle Diamonds matter. They are concerned that the resources given to the police royal commission to investigate police corruption are not sufficient. They are being fobbed off by the royal commission because of a lack of resources. They have been told that it is only one of a list of matters and that it is too large. They were told it was one issue involved in the fight for limited time and resources and that it could not be tackled in its entirety. This issue is important because those officers strongly believe that an investigation into Argyle Diamonds would demonstrate that corrupt officers totally manipulated the officers of the Director of Public Prosecutions by providing half briefs of evidence and giving the impression of a competent and honest investigation by withholding evidence of corruption. Evidence was withheld that allowed the corrupt officers to resign with full superannuation. That is relevant to this Bill because we are talking about the right of police officers to resign with full superannuation. That is something with which I agree. The officers say the system allows time for corrupt officers to promote their replacements into positions that allow their ongoing protection. I am glad the minister is here; I hope she is taking this on board. This is coming from her police officers who have been talking to me. They say that briefs and investigations were manipulated against honest officers by the refusal to take statements from witnesses who had evidence contrary to their intended brief. The manipulated versions were presented to the DPP for decisions about the quantity of evidence. The corrupt officers instigated and published totally false internal charges discrediting honest officers, only to withdraw those charges once there was a chance of independent scrutiny. They refused to assist the honest officers with funding to defend civil writs issued once the corruption charges were withdrawn. The officers are also concerned - I hope the minister is listening - that the Argyle Diamonds brief is about endemic corruption and not isolated instances of corruption, as are the issues they have seen investigated by the commission to date. It is their view that failure by the commission to properly investigate this issue would be to abandon all those officers who made a strong stand against corruption in the face of endemic corruption and make a mockery of any whistleblowers' protection. They say that the Argyle Diamonds brief strikes at the very heart of the current policing model, demonstrating the need for sweeping changes to the promotional system, the internal investigation system and the control of resources for investigations. They say that a proper investigation into the matter, which was promised by this Government, will show that when corrupt individuals are promoted into positions of power, they promote their corrupt friends into positions from which they can be protected, such as the internal inquiry system. They can control investigations by starving them of resources. They can control and stop investigations by transferring honest staff from sensitive areas and replacing them with corrupt officers they can control. I am talking about police officers who are telling me what is going on inside the Police Service and asking me to stand in Parliament and say something about it. They have asked me to put forward the fact that they are willing to go to the police royal commission, speak on the matter and provide evidence. They say that the system sets the poorest example and promotes corruption by demonstrating the willingness to promote officers who protect corrupt officers. It puts many corrupt officers beyond reach simply on the basis of, "If I go down, I'm taking the rest of you with me." It also suppresses honest police officers in the process. The officers are concerned that senior people promoted into positions of power by other corrupt officers have continued to practise their corruption and have received regular comment from subjects examined by the commission to date.

The situation is very disappointing. I have written to the royal commission and asked it for an explanation as to why it is not pursuing this investigation. I have also asked the Premier why he is not pursuing something he promised to do before the election. The Opposition supports this Bill because it is important that the commissioner can remove officers he does not trust. That is important for the diamond industry in this State. Rio Tinto Ltd owns the Argyle Diamonds mine, which represents the largest diamond venture in Australia. By volume, it is the largest single source of diamond production in the world. Figures show that in 2000, the Argyle Diamonds mine produced $752 million worth of the $768 million worth of diamonds produced in Australia that year. In 2000, Argyle Diamonds paid $91 million in royalties and $110 million in taxes to the Western Australian Government. It can be seen that any theft from that company represents significant and profound economic loss to Western Australia. That is why it should be pursued. The Australian Institute of Criminology has stated recently in several papers that the diamond industry is very vulnerable to theft from organised crime and terrorist groups. It is a cash commodity and is quite small. I understand, from speaking to police officers, that people can carry diamonds and they are not picked up at airports. Diamonds are easily disguised and moved. I was involved with the Argyle Diamonds trial. One of the accused, who pleaded guilty and was convicted, was the chief security officer at the mine. He was a former police officer.

In respect of this Bill, it is important that Argyle Diamonds and other diamond miners have confidence in the Western Australia Police Service and that they see this Government supporting the royal commission in carrying out its promise to pursue the Argyle Diamonds matter. They would want, I am sure, to make sure that officers who have something to say about police corruption are allowed to say it. That is because, at its most basic level, relations between diamond miners and the police must be vital and close. The theft of diamonds to support terrorism and organised crime requires a reliance on local criminals. The organisation with the most knowledge

of who's who in local criminal circles is the Western Australia Police Service. Ongoing suspicion about the integrity of the Police Service concerning a major income earner and producer in Western Australia - the diamond industry - weakens the overall defensive structure of the diamond industry. This matter should be fully and properly investigated, as was promised by this Government prior to the last election. I raise this also because of the comments on the Whistleblowers Protection Bill by the Attorney General when he said we should seek out police corruption.

Those are the reasons the Opposition supports this Bill. Under part 9, division 1B of the New South Wales Police Service Act - the minister could probably tell me whether this is still on foot - the commissioner may remove police officers. That part of the legislation is different from the relevant provision in this Bill, and I hope the minister can tell me why. Section 181D of the New South Wales legislation states -

> (1) The Commissioner may, by order in writing, remove a police officer from the Police Service if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct.

[Leave granted for the member's time to be extended.]

Ms S.E. WALKER: This is the interesting part -

> (2) Action may not be taken under subsection (1) in relation to a Deputy Commissioner or Assistant Commissioner except with the approval of the Minister.

It appears that under proposed section 33L, the part of this legislation that relates to the removal of members, the Commissioner of Police can remove any member. Proposed section 33L(1) states -

> If the Commissioner of Police does not have confidence in a member's suitability to continue as a member, having regard to the member's integrity, honesty, competence, performance or conduct, the Commissioner may give the member a written notice setting out the grounds on which the Commissioner does not have confidence . . .

Section 8 of the Act states -

> . . . the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable;

That is different from the relevant provision in the New South Wales legislation. Why is that the case, when the minister indicated that this legislation was consistent with the need identified by Justice Wood - she used his name - and the New South Wales police royal commission? Under section 8 of the Police Act, the Governor can remove any commissioned officer of police. The power of the commissioner relates only to non-commissioned officers or constables; yet, under proposed section 33L, the commissioner will have the power to remove a member. According to proposed section 33K, the definitions section, a member includes a commissioned officer, a non-commissioned officer, a constable and an Aboriginal aide. I do not have an objection to this, but I ask whether the commissioner will now be able to start proceedings to remove commissioned officers. If that will be the case, the proposed section does not sit with the current Police Act. Of course, proposed section 33L prescribes a set of criteria that the commissioner will be able to take into account when considering a member's performance. I will not go into the appeal provisions. That is a seven-step procedure, some of which is taken from the New South Wales Act.

Another issue that will be debated during the consideration in detail stage is the part of proposed section 33L(1) that states that "the Commissioner may give the member a written notice". I presume that if the commissioner does not give the member a written notice, he could tell the member verbally. The further proposed subsections would then come into operation. A classic situation in which the commissioner could have used this legislation would have been in relation to the Minister for Health, if he were still an assistant commissioner, and his role in the Lewandowski affidavit. If the Minister for Health were still an assistant commissioner, he would fall squarely within the provisions of section 8 of the Act as a result of the ramifications of the statements contained in the Lewandowski affidavit and the evidence given by the then assistant commissioner in the 1998 appeal.

Mrs M.H. Roberts: Why don't you try saying that outside the House?

Ms S.E. WALKER: It is factual. I am talking factually. It has been said outside the House, and I will say it again.

Several members interjected.

Ms S.E. WALKER: Members should read the evidence. This legislation talks about a police officer's integrity, honesty, competence, performance or conduct. It draws into question the evidence given by then Assistant Commissioner Kucera in the Mickelberg appeal.

Withdrawal of Remark

Mr J.C. KOBELKE: The member for Nedlands may be experienced in a lot of things but she is clearly inexperienced in the forms of the House. She is making accusations against the Minister for Health and she used his name. This can be done only by way of a formal motion. Therefore, I ask that you, Mr Acting Speaker (Mr A.D. McRae) request that the member for Nedlands withdraw her statement and get back to discussing the Bill before the House rather than making accusations against the minister without a substantive motion.

Ms S.E. WALKER: I am talking about proposed section 33L(1), which states -

> If the Commissioner of Police does not have confidence in a member's suitability to continue as a member, having regard to the member's integrity, honesty, competence, performance or conduct, the Commissioner may give the member a written notice . . .

I am using the case of the Minister for Health to illustrate the operation of this proposed section. I think it is valid and relevant. It is entirely the sort of conduct that would be called into question if this proposed section operated now.

Mrs M.H. ROBERTS: I distinctly heard the member for Nedlands suggest that section 8 of the Police Act could be used against the Minister for Health in matters related to Lewandowski. Section 8 relates to officers who warrant dismissal from the Police Service. The Minister for Health has an impeccable and distinguished record with the Western Australia Police Service. The member's comments imply that he may have taken some actions as an officer that would warrant his dismissal. That is a clear slur on the minister, and something that I doubt the member would be able to say outside the House without having defamation damages awarded against her.

Mr J.L. BRADSHAW: The member for Nedlands is citing an example of what could happen in certain circumstances. It is relevant to the legislation before the House. The point of order is irrelevant.

The ACTING SPEAKER (Mr A.D. McRae): I have considered this and referred to Standing Orders Nos 92 and 94. I find that the member for Nedlands is misusing her capacity to debate the question before the House by drawing in the Minister for Health in a manner that does not relate to either the content of this Bill or his role in the Chamber today. I ask the member to direct her comments to the question.

Debate Resumed

Ms S.E. WALKER: Proposed section 33L relates to police officers who have lost the confidence of the commissioner because, for instance, they went to the Supreme Court or other courts in this State and committed perjury and the like. Under this legislation, they will be given notice, written or otherwise, that they are not suitable to continue as a member. Another example may be that of an officer who verbals someone. A person might make a confession after he is taken to a police station in isolated circumstances. In days gone by, the police officer had a typewriter in the interview room. The officer might ask the person whether he had made a bomb. It might be that the person does not answer, so the officer types a made-up answer. It is verbal. In the days before video recording, such police officers would go to court in their uniforms, swear on the Bible and give evidence under oath. They would fit up innocent people. Those sort of corrupt officers would be caught by proposed section 33L.

The Opposition welcomes this Bill because it does not want corrupt officers in the Western Australia Police Force. There are many decent police in the Western Australia Police Force. However, many police officers whose characters are questionable have risen to high rank. Many police officers have said that they have evidence of corruption that pertains to the Argyle Diamonds affair and they want to be given the opportunity to provide it. I have seen police officers in court dressed up in uniform. They are trained to give evidence; they are practised witnesses. They swear on the Bible to tell the truth. It is very important that we do not have police officers in this State who are corrupt or who are able to corrupt other officers because of their positions.

I welcome the fact that the Commissioner of Police will retain power under section 8. The Bill clearly spells out qualities that police officers should have such as integrity, honesty and competence. They are important qualities that police must have to enable the Western Australian public to have confidence in them. Sadly, the Western Australian public lacks confidence in the Government on several police corruption issues. The first issue was the Lewandowski affidavit. According to a news poll conducted at that time, that affidavit should not have been passed on by the Attorney General to the Minister for Health. Secondly, it is important that the police officers who are honest and hard working with relatively little pay are acknowledged. I have worked with them

so I know how hard they work and the matters they must deal with, some of which people in this Chamber would find incomprehensible.

Mr R.C. Kucera: They don't take sickies.

Ms S.E. WALKER: I know what the Western Australian public thinks of the Minister for Health; that is what matters in this Chamber.

It is important that Governments that have the power to create legislation and make policy do not just window-dress. When this Government came to power it promised that it would investigate serious matters concerning young men - for example, Andrew Petrelis and Stephen Wardle - who died in very suspicious circumstances, and the Terry Maller issue. It is shameful that this Government has not provided the full resources to the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers so that the deaths of those young men can be properly investigated. The Opposition supports this Bill and I will raise further matters in consideration in detail.

MRS C.L. EDWARDES (Kingsley) [3.14 pm]: I also support the legislation. Given that I was Minister for Labour Relations when a protocol was established between the Commissioner of Police, the Minister for Police, the Minister for Labour Relations and the Industrial Relations Commission, I thought it appropriate to comment on the similarities between the legislation and the protocol and a couple of the differences, not that I have any objection to those differences. However, I will seek an explanation for a couple of the differences.

In her second reading speech the minister referred to a recent Supreme Court case, reference 2002 WASC 139. The judge was Justice McKechnie and the case was re Michelle Roberts, Honourable Minister for Police and Emergency Services and others ex parte Reilly and others. I draw the correct reference to the Parliament because it is important to reflect on how the protocol operated and to understand the terms of the protocol. Justice McKechnie outlined parts A and B of the protocol. It was developed between the Commissioner of Police and the Police Union of Workers and was endorsed by the Government on 10 August 1998. Part A provides for -

> . . . a notice of intention to recommend to the Minister the removal of an officer, the opportunity for the officer to respond, and a requirement that the Commissioner consider the response and advise the officer his decision.

Part B is, essentially, the new element of the administrative arrangement. Section 8 of the Police Act, provides -

> . . . the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable;

There is no provision for appeal against that decision by the police commissioner and it caused some angst in the Police Service. From a policy point of view it was very important to ensure that an appeal mechanism could be implemented to enable that process to occur. Although it may have been of an administrative nature without any legal force, it operated effectively. No-one has indicated to the contrary. Nonetheless, the Opposition is pleased to see it put into the statutes.

Part B of the protocol allows for -

> . . . an appeal to the WAIRC which, after hearing, may recommend the confirmation or recommend the reversal of any recommendation made pursuant to s8.

The protocol is silent on whether the commissioner must accept the recommendation.

Under the Industrial Relations Act the Minister for Labour Relations could refer a matter to the Industrial Relations Commission for advice and it would report back to the minister. That was the tool that allowed the appeal mechanism to operate. An inquiry was conducted by the Industrial Relations Commissioner, who reported back to the Minister for Labour Relations. I would then immediately forward it on to the Minister for Police and I am sure that process operates today.

Mrs M.H. Roberts interjected.

Mrs C.L. EDWARDES: Yes, the Reillys. The WASC 139 case also highlights the cabinet summary sheet. The annotation endorsed by Cabinet on 10 August 1998 reads -

> The appeal is heard by the WAIRC convened under Section 80ZE of the *Industrial Relations Act 1979*. Section 80ZE allows the Minister for Labour Relations to refer to the WAIRC a matter for enquiry and report which in the opinion of the Minister may affect industrial relations. These enquiries can only deal with issues that are not industrial matters. In that respect the process can be distinguished from procedures and matters normally dealt with by the WAIRC.

> The WAIRC reports to the Minister for Labour Relations who in turn will refer the report to the Minister for Police for his consideration. The report is not binding on either Minister.

That would not have been an issue for the Minister for Labour Relations, but the advice of the Commissioner of Police to the Minister for Police was not binding on the Minister for Police in the light of the report of the Industrial Relations Commission. The case also goes into great detail about the role of the Industrial Relations Commission.

Section 80ZE of the Industrial Relations Act contemplates that a matter referred for an inquiry is not otherwise a matter within the jurisdiction of the Western Australian Industrial Relations Commission but one that, in the opinion of the minister, affects or may affect industrial relations. The Western Australian Industrial Relations Commission had no adjudicative role in the matters that came before it. Essentially, it examined the issues, evidence and the reasons for the commissioner's decisions and scrutinised that process. Mr Justice McKechnie said that it seemed plain to him that the protocol cannot confer any jurisdiction on the Western Australian Industrial Relations Commission. The Industrial Relation Commission's powers in the present cases are limited to inquiry and report. The protocol purports to determine a process by which appeals are to be heard. That is the essential element of what was being provided. It was a short-term mechanism to enable those officers that were being subjected to a section 8 determination by the Commissioner of Police an opportunity to appeal. The critical difference between holding an inquiry under section 80ZE and holding an inquiry and dealing with an industrial matter is that in the latter case, the Western Australian Industrial Relations Commission could usually determine rights and make enforceable orders. In contrast, under section 80ZE, the WAIRC has the power to inquire and to report only into matters that are not industrial matters.

Mrs M.H. Roberts: A corollary to that is that having engaged the Industrial Relations Commission in the process, it does put a fairly firm onus on the commissioner and the minister to consider the advice of the WAIRC.

Mrs C.L. EDWARDES: It would obviously have opened their processes to scrutiny by the WAIRC, including any documentation that was used in the reasons for making their decisions. Under the protocol, the duty of the WAIRC was to look at the papers. Therefore, the WAIRC is involved in the decision-making process.

The Bill before the House provides for new evidence to be brought before the WAIRC. The protocol provides discretion for the WAIRC to allow new evidence to be heard. I am not sure whether that was well recognised. The WAIRC did not need to make a decision on the validity or otherwise of the protocol as it operated. The essential basis for the case to which I have referred was that the officers had not been called or sworn before the WAIRC and they believed that the Commissioner of Police had not provided some documentation to them by way of discovery. It was not for the judge to make a decision on the validity or otherwise of the protocol. However, we expressed grave doubts about the validity of most of the terms of the protocol. Justice McKechnie proceeded on the basis that the terms of the protocol were valid. He continued -

> In any event, any finding of invalidity of the appeal process would not advantage the Applicants in the present proceedings. On that assumption, after examination of the factual matters put in evidence, I conclude that no arguable case exists to grant an order *nisi* for a prerogative writ and that each application must therefore be discharged.

In this instance whether the protocols were valid or not did not disadvantage the applicants. The validity of the protocol was not argued before the court. It was important that once that matter had been raised, it gave the opportunity for future matters to advance and for the case to be argued further. We do not want to see the process put into disrepute. It is important that this legislation is passed through Parliament to ensure that a proper process is put in place to appeal a section 8 decision.

There is some discussion on the exercise of the power of a section 8 notice. Again, Mr Justice McKechnie refers to the fact that the exercise of the power under section 8 was thought by Mr Justice Anderson, in the case of Menner & Ors v Commissioner of Police, to be an exercise of the prerogative, or as a statutory power as the Full Court considered in Parker & Ors v Miller & Ors. One was an industrial relations matter and the other was a Supreme Court decision. Therefore, there was no doubting the fact that the commissioner had the power under section 8, which is referred to as a very wide power. It is also important to ensure that the scrutiny of the decision-making process is protected during an appeal.

Earlier, I mentioned that there were a couple of differences between the protocol and the Bill before us. One of those differences is that, in the past, the appeals under the protocol were conducted in private. Under this Bill, future appeals will generally be held in public. I do not have an issue with that because it puts everything out into the open. However, the Bill also clarifies that the Commissioner of Police is entitled to take action against an officer irrespective of whether the officer has been charged with or acquitted of a criminal offence. The

officer can seek to adjourn an appeal, pending the outcome of the relevant criminal proceedings. An officer who has been charged with a matter that is still before the court but has not yet been determined might want to appeal the section 8 decision. If the appeal is then conducted in the public arena, it will raise issues concerning the officer. I wonder how that matter will be resolved in the legislation.

Mrs M.H. Roberts: I am not sure what you are asking.

Mrs C.L. EDWARDES: If a criminal proceeding and a section 8 appeal are afoot, it would not matter whether the hearing was being conducted in private. However, if the criminal proceedings were conducted in public, there would be an opportunity to influence the jury if the matter went before a jury. That issue must be addressed. Does the commission have the power -

Mrs M.H. Roberts: Part of the rationale behind this is that matters that come out in public in the Industrial Relations Commission could affect the court proceeding. That is why there is the potential for the hearing to be adjourned for 12 months, and there is the potential for that to be extended even further.

Mrs C.L. EDWARDES: Only up to 12 months.

Mrs M.H. Roberts: No, beyond 12 months.

Mrs C.L. EDWARDES: I thought it was restricted to a maximum 12-month period.

Mrs M.H. Roberts: There is some discretion. I will find the relevant part for the member.

Mrs C.L. EDWARDES: In some instances, a matter might not be able to be heard for a couple of years; therefore, a question of fairness to the officer would arise. It is very important that the court have the discretion to extend the adjournment further if the officer seeks it.

Another aspect that is different but which had nothing to do with the protocol is the change to the penalties. The change is not just to the dollar amount, but to the percentage of the individual officer's salary. There is a question of equity. It has been argued that if an officer is to be disciplined for an offence related to his work environment, the more senior the officer, the better that he should have known the consequences of his actions. Therefore, there may very well be an argument that a percentage of the officer's salary is relevant. The other side of the coin is the question of equity. If an offence has been committed by an officer at one level and the same offence has been committed by an officer at another level, the penalty should be the same. The same offence should not attract a higher penalty purely because one officer is at a higher level or on a higher salary than another officer who may also be subject to disciplinary proceedings, particularly when that other officer may also be the person who is regarded as the ringleader.

I have gone back over some old newspaper cuttings and have tried to find an offence that was subject to disciplinary proceedings but was not work related. I remembered an example last year but I could not track it down. Is there an example of conduct by a police officer that was subject to disciplinary proceedings but was outside the work environment of the officer?

Mrs M.H. Roberts: A police officer is a police officer 24 hours a day as an officer of the Crown, so arguably he is on duty for 24 hours a day.

Mrs C.L. EDWARDES: Then I would argue that if the offence is unrelated to the work of the police officer, it is unfair that the penalty be a percentage of the salary. I understand that we have a hierarchy of police officers. If the offence is related to the work of the police officer, we may want to set a higher standard for those who have been in the Police Service for a longer time, therefore the penalty will be higher by virtue of its being a percentage of the salary -

Mrs M.H. Roberts: That will be the maximum fine.

Mrs C.L. EDWARDES: Yes, but it will still be a percentage of the salary. Regardless of whether the officer earns $50 000 or $90 000, it will still be three per cent of the salary.

Mrs M.H. Roberts: It will be a maximum of three per cent of salary. The Commissioner of Police will have a discretion. Therefore, if the offence was committed outside of work hours, that can be taken into account.

[Leave granted for the member's time to be extended.]

Mrs C.L. EDWARDES: I understand that it is a maximum. However, if the same offence has been committed by two officers, one of whom is senior to the other, and it is determined that the maximum penalty will be one per cent of salary, then the senior officer will attract a higher penalty for the same offence. I can understand the rationale for that if it is work related, but I cannot understand the rationale for that if it is totally unrelated to work.

Mrs M.H. Roberts: It is arguable that the same rationale should apply. Obviously a more senior officer should be in a position to know better.

Mrs C.L. EDWARDES: I still cannot understand the rationale if it is not work related. I would like the minister to argue why the penalty should be the same if the offence is totally unrelated to work, and also to give some examples of what those instances may be, because the minister has confirmed that there are disciplinary offences that are unrelated to work and that have been the subject of disciplinary proceedings. It is unfair and inequitable that an offence that is not related to the work of the officer will attract the same penalty regardless of whether it has been committed by a senior officer or a less senior officer.

Given those comments, we support the legislation and I look forward to its progressing through this Parliament.

MRS M.H. ROBERTS (Midland - Minister for Police and Emergency Services) [3.33 pm]: I thank members for their support for this legislation, in particular the members who have participated in the debate. I also thank the members on this side of the House who have chosen not to participate in the debate in the hope that we can deal with this legislation expeditiously.

Mr M.J. Birney: Who are they?

Mrs M.H. ROBERTS: The member for Girrawheen and others were very keen to speak in support of this legislation.

Mrs C.L. Edwardes: I think they should have been allowed to speak!

Mrs M.H. ROBERTS: We have two sitting days left in this House. It is important that we get this legislation through this House in the next two days.

A number of interesting points were raised by the members who have participated in the debate. The member for Kalgoorlie asked me to explain what would constitute an extraordinary circumstance that would cause an officer to lose his salary for up to six months, and whether this could be challenged. It does not serve us too well to dwell on what those extraordinary circumstances may be, because that will probably encourage people to focus on those circumstances. We want to have in place an ability for the minister to assess each case on its merits. I believe this would be rarely, if ever, used. If people think through the general politics of this, it is very serious thing for a police officer to be subject to a section 8 proceeding and to lose the confidence of the Commissioner of Police. These kinds of things are often reported in the media and become known publicly. I think most people in the community would be very supportive of the Commissioner of Police and would believe that he would not enter into such a circumstance lightly. Further to that, as a general rule I do not think most people in the community would like to have a situation in which officers who have been subject to a disciplinary proceeding continue to be paid. In those circumstances, I do not think a Minister for Police would want to interfere too readily to sustain the salary of a person whose integrity was in question. My advice is that it is highly unlikely to be challenged. The Minister for Police has pretty much an unfettered power in this regard, and an officer who had been denied payment for six months would have very little ground on which to take an action against the minister.

The member for Kalgoorlie asked also whether an appeal could be about the process rather than the merits of the case. That will be up to the Industrial Relations Commission. The member for Kalgoorlie essentially answered his own question later in his speech when he talked about the three words that the IRC must take into account; namely, harsh, oppressive and unfair. A person who wanted to take up the issue of the process, for example, would have to demonstrate that the Commissioner of Police had acted in a harsh, oppressive or unfair manner. Therefore, a person who could not demonstrate that the process was harsh, oppressive or unfair would not have much of a case to mount.

Mr J.H.D. Day: Is there not a full review of the merits under section 8?

Mrs M.H. ROBERTS: The three relevant words are whether the process was harsh, oppressive or unfair. Those are the criteria that the Industrial Relations Commission is required to consider, regardless of whether what is being questioned is the merits of the case or the process.

Mr J.H.D. Day: A person may question the merits.

Mrs M.H. ROBERTS: Yes.

I also thank other members for their general support of the legislation, including the members for Yokine, Darling Range, Innaloo, Roe, Nedlands and Kingsley. The member for Kingsley raised a number of issues. I have skipped one issue that the member for Kalgoorlie and other members raised - the two-year review clause - and I now return to that.. Although some members welcomed the two-year review clause, the member for

Kalgoorlie questioned whether two years was too long. Although he could not see anything in the legislation that he thought was unworkable or would not be satisfactory, he said that if a clause or an aspect of the legislation proved to be unsatisfactory, in his view two years would be too long to wait to remedy it. This legislation requires the minister to report after two years. However, there is nothing to stop the minister or any other member of this House from bringing forward amending legislation before then. From my perspective as minister, if I felt that the legislation was not operating in a satisfactory way, I would have no hesitation in presenting a report and/or amendments before that two-year period had expired. Nothing in the legislation would prevent the minister or any other member of the House from doing that.

Mr M.J. Birney: The only way we could really find out whether the Act was working would be to conduct a full review, and nobody will do that until two years has passed.

Mrs M.H. ROBERTS: The point the member makes is a good one. That is why two years was set as the period. Two years is a reasonable period in which to look at the way in which, and how satisfactorily, a number of aspects have operated. Like the member, I do not anticipate that there will be major difficulties with this. This issue has been around for a long time. As the member for Kingsley mentioned in detail, a protocol was put in place by the former Government. These issues have been worked through in other jurisdictions; and New South Wales has been referred to today. These issues have been the subject of ongoing discussions in Western Australia since at least 1997, to which the members for Darling Range and Kingsley alluded. That has meant that the various ministers, the Western Australian Police Union and the Western Australia Police Service have been in steady and constant consultations on these matters during that time.

The provisions in the legislation were not arrived at lightly. We wanted to be able to present legislation which was not contentious and which had the broad agreement of the affected parties. After a series of extensive meetings, I was very pleased that the Police Service, headed by the Commissioner of Police and Assistant Commissioner Graeme Lienert; the Crown Solicitor's Office, represented by Mr Alan Sefton; the Police Union, represented by Mr Mike Dean, and its members; and my office, which was largely represented by Ms Robyn Barrow at the time, were able to conduct negotiations and discussions about this legislation in a responsible way. Given everything that had gone before in Western Australia, and having had the issues canvassed fairly widely and adjudicated upon in New South Wales, I believe that it put us in a good position to reach some workable conclusions. My firm belief is that the proposed legislation will be workable. It certainly has the support of all the parties, and by that I mean the Government, the Police Union and the Western Australia Police Service. I note too that it clearly has the support of the Opposition.

The matters raised by the member for Kingsley really indicate what has brought the legislation forward on this timetable. Had the protocol continued to work as it had been working, without any criticism, it may have been able to remain in place potentially until after the royal commission. However, given Justice McKechnie's comments, the Commissioner of Police advised me that he did not feel we could continue to use the protocol and that we should proceed with legislation. I took that advice from the Commissioner of Police, and that is why we started the negotiating process. I believe we have a workable framework.

I thank members for their constructive comments on this legislation. I do not think there is a lot of political dispute on these kinds of matters. On behalf of the whole community of Western Australia, we have a responsibility to ensure that the proper checks and balances are in place for our police officers - ones that ensure the integrity of our Police Service and the officers within it, and at the same time provide them with the basic rights that workers in other areas have. I certainly commend the legislation to the House.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 8 amended -

Mr M.J. BIRNEY: I draw the minister's attention to clause 4 and to proposed subsection (4), which states -

> Subsection (2) does not apply to the removal of a police probationary constable.

It follows that this legislation, in the main, does not apply to a police probationary constable but, rather, to only a fully fledged police officer. Proposed subsection (2), which is referred to in clause 4, states -

> The powers of removal referred to in subsection (1) can only be exercised if the Commissioner of Police has complied with section 33L . . .

Proposed section 33L refers to the need for the Commissioner of Police to give a police officer his reasons, in writing, for his view that that officer is not the kind of officer the commissioner wants on his Police Force. Proposed section 33L(2) allows that officer some redress in terms of his view of the commissioner's view of his actions. I think that is a fairly reasonable way to go. If the commissioner had concerns about a police officer, be he a probationary police officer or a fully fledged police officer, the commissioner would first want to set out in writing the nature of his concerns, and he would then want the respondent to respond and address all those concerns that he, the commissioner, had.

For the life of me, I cannot understand why a probationary officer would be treated any differently, particularly with regard to that one simple right; that is, the right to be given, in writing, the nature of the commissioner's concerns and the right to respond to those concerns. I understand that a probationary officer is in fact just that; he is on probation. Therefore, any breaches would be dealt with fairly harshly, I imagine. However, that is just a basic, fundamental right and a basic courtesy that I thought the minister would want the commissioner to extend, regardless of whether the person was a probationary constable or a fully sworn officer. I am interested to know the minister's view about why that basic right would not apply to a probationary constable.

Mrs M.H. ROBERTS: The rights of probationary constables are not set out in this legislation; they are set out in the police regulations, and separate procedures apply. The procedures of natural justice apply to probationary constables, and they are set out separately in the regulations, because during the first couple of years, the commissioner needs to have a broader discretion to remove people who are not appropriate as police officers. It is appropriate that people must demonstrate in their first couple of years in the Police Service that they have very high standards and that they are the kind of people that the commissioner wants to keep in the Police Force. The Commissioner of Police does have to get the approval of the Minister for Police to remove a probationary officer. The minister can insist upon whatever procedures are necessary, including any information that should be put forward or any matters of procedural fairness or natural justice that the minister did not think were being followed. It is beholden on the Minister for Police to deal with those people appropriately under the principles of natural justice, and the procedures for dealing with them are set out in separate regulations and not in this legislation. This legislation does not serve to indicate that they have no rights.

Mr M.J. BIRNEY: I agree with at least one thing that the minister has just said, and that is that the Commissioner of Police should be afforded a broader right of dismissal for those officers who are on probation, because that is why they are on probation. However, I was specifically referring to their fundamental right. If the commissioner had some concern with a probationary officer, he should be required to set out those concerns in writing; the probationary officer should then be afforded a right to respond. The minister said that the dismissal procedures for probationary officers were contained in regulations. Is that fundamental right to be advised of the commissioner's concerns and the right to respond contained in those regulations?

Mrs M.H. ROBERTS: I am advised that during their time as probationary officers, they are under the command of a supervising officer. If that officer believes that a person is not performing to a satisfactory level, the officer should advise him pursuant to the appropriate protocols as set out in the regulations about how he is not performing or where he is failing in his duties. The regulations contain a whole range of obligations, and they are complemented by the general principles of natural justice. A probationary constable would not be summarily dismissed without being told why that was the case. Under the protocols that are in place, the supervisory officer has a whole series of obligations to the officer under his supervision.

Ms S.E. WALKER: Clause 4 deals with the amendment of section 8 of the Police Act. Does section 8 still stand?

Mrs M.H. Roberts: It still stands, subject to those amendments.

Ms S.E. WALKER: Section 8 delineates the power of the Governor from the power of the Commissioner of Police and distinguishes between commissioned and non-commissioned officers, yet proposed new subsection (2) refers to what the Commissioner of Police can do relating to commissioned and non-commissioned officers, as well as constables and Aboriginal aides. Importantly, the commissioner's power is now extended to instigate removal of a commissioned officer. How does that sit with this legislation?

Mrs M.H. ROBERTS: Yes, the commissioner would instigate the action leading to the removal of any officer, and that is currently the case. I will clarify this matter a little further following some of the remarks the member made during the second reading debate. Commissioned officers are all appointed by the Governor on the recommendation of the Government of the day. At the level of commissioned officers they are signed off by the Governor. Removal of those officers also requires signing-off by the Governor. That is essentially the difference between a commissioned officer and a non-commissioned officer. The commissioned officer holds an office that is vested in him by the Governor of Western Australia. The only person who can remove him from

office is the Governor. The commissioner would instigate any action to remove any officer, be they a commissioned officer or not.

Ms S.E. WALKER: How does that work in this Bill? How can the Commissioner of Police start the process of removal; how is it then hived off to the minister and the Governor? Is that stated anywhere in the Bill, or is it just taken as read?

Mrs M.H. ROBERTS: I draw the attention of the member to proposed new section 33K on page 4 of the Bill referring to removal action. That is the process.

Ms S.E. WALKER: When the minister was formulating these amendment to the Act, why did she not follow the line in New South Wales where the minister has the power to intervene only in relation to the commissioner and the assistant commissioner? Why have we retained the power of the minister to veto all non-commissioned officers?

Mrs M.H. ROBERTS: What is contained in the legislation reflects the status quo in Western Australia. I suppose it is an additional safeguard for commissioned officers. That is why we have retained it.

Ms S.E. WALKER: At the Wood royal commission - I am not for one moment suggesting this about the minister - was there any suggestion that that could be used as political interference?

Mrs M.H. ROBERTS: I am advised that in New South Wales, the minister signs off; it does not go to the Governor. In Western Australia it would be signed off by the Governor on the recommendation of the Government, which would obviously come through the minister.

Ms S.E. WALKER: Whereabouts in the New South Wales legislation is that referred to? I did look at the New South Wales *Hansard*.

Mrs M.H. ROBERTS: The section the member has referred to in respect of New South Wales applies to the position of assistant commissioner and above. What is referred to here is all about commissioned officers, not just the deputy commissioner and assistant commissioner. It would also include our superintendents and the like.

Ms S.E. WALKER: From my reading of the New South Wales *Hansard* and its Bill, the only time a minister has a say is when dealing with the assistant commissioner or the commissioner. The situation is much broader in Western Australia. I thought I understood the minister to say that I was wrong in what I said. I was asking the minister for the relevant section, not to be smart, so that I can understand whether there has been a change.

Mrs M.H. ROBERTS: Potentially either I have misled the member or she has misunderstood me. We are proposing to maintain the same power of veto that has consistently been in place in Western Australia and not move to the New South Wales system fully. It is not a direct lift of the New South Wales system. My view is that this simply affords an additional protection for police officers as they go through the process of removal.

From a political point of view, it would be a very brave or a very strange minister who, in the light of a recommendation from the Commissioner of Police indicating that he had lost confidence in an officer for the reasons specified, stood the commissioner up and said that that person will continue in the Police Service. I do not think it would ever come to pass. However, I am advised that police officers believe that this system offers them some form of protection from any completely irresponsible actions of the police commissioner. I do not anticipate that happening with the current police commissioner, nor with any future commissioners. However, I understand that it gives the Western Australian Police Union and police officers further confidence. In reality, I do not think it affords them much protection at all. In reality, politics is such that if the police commissioner makes a strong recommendation that someone requires removal, any police minister is highly unlikely to stand the commissioner up on that. The minister will have to be publicly accountable for those actions. I believe that that event will potentially never occur.

Ms S.E. WALKER: The reason I raised the issue, and I wondered why the minister had not followed the New South Wales line, is that there is potential for political interference. The minister might think that it may not happen, but this is about maintaining the level of integrity and honesty of people who serve in the criminal justice system. It is very important that the public has confidence in the criminal justice system. There is no way that the Director of Public Prosecutions, whose office must maintain the highest level of integrity in criminal prosecutions, would defer or ask the minister whether he could remove an employee. I raised the issue only because it does not appear that the New South Wales minister has kept such a wide-ranging power after the Wood royal commission. Other agencies in the criminal justice system do not have that power at all, and I do not see the need for it.

Mrs M.H. ROBERTS: A couple of points need to be made. First, as far as I am aware, this has not been an issue in Western Australia. Because there has been no problem with the system, I do not see any good reason to

change it. Secondly, the member is speculating on potential political interference. My view is that that is incredibly unlikely. In any event, if there were any incentive for political interference, my presumption is that that would more likely occur at the highest level of the Police Service. I note that New South Wales has maintained the involvement of the minister when dealing with assistant commissioners and above, but not with lower level officers. I find it highly unlikely that any police minister would want to politically interfere in appointment or dismissal processes for junior officers in the Police Service. Again, it is the status quo. We are proposing to leave the system as it is. We think it is commonsense. Generally, this position has been agreed by the Police Service, the Police Union and the Government.

Ms S.E. WALKER: It may be highly unlikely, but I refer the minister to the O'Connor case, in which former Attorney General Joe Berinson was said to have interfered politically. As a result of that, we had the statutory independent office of the Director of Public Prosecutions -

Mrs M.H. Roberts: What is the O'Connor case to which you are referring?

Ms S.E. WALKER: It was a union case in the 1980s.

Mr R.C. Kucera: What does that have to do with this Bill?

Ms S.E. WALKER: I am referring to criminal justice agencies, the fact that a minister can veto who can and cannot come and go in the Police Service and the proper maintenance of integrity to see that it is above board.

Mrs M.H. Roberts: That is why police officers want the minister involved. They want to ensure that the process is appropriate and that there is a further check and balance in the system.

Ms S.E. WALKER: I understand that that is what the minister is saying. However, I am saying that that power was removed from the former Attorney General because of the O'Connor case, and the statutorily independent Office of the Director of Public Prosecutions was created because it was alleged that the former Attorney General had interfered politically in a criminal prosecution matter. I do not know whether the minister was around then, but it has been an issue in the criminal justice system. I raise that issue and put it on the record.

Mr M.J. BIRNEY: I will briefly pick up on a point that the minister made earlier. The mechanism whereby the police minister is the final person to sign off on removal action for a police officer is in place to protect a police officer from a future police commissioner who might be hopelessly incompetent. How will the minister arrive at her decision were that circumstance to arise, given that the Police Act specifically prohibits a police officer from contacting the office of the police minister? It follows that the police minister would have only the evidence and recommendations of the police commissioner before deciding whether to sign off on it. It seems to me that if the minister were serious about this mechanism, she would also have a mechanism whereby she could hear the alternative side of the story from the aggrieved officer. This seems to be a Clayton's mechanism. In fact, it is little more than a rubber stamp. We need to see it for what it is. Either it is a rubber stamp or it is a mechanism that will work. Currently under the Police Act, a police officer is prohibited from approaching the police minister, which means that there is no way known that this can work. Either we leave this provision out of the legislation or we provide a mechanism whereby the police officer can put his or her case to the police minister. I am interested in the minister's view.

Mrs M.H. ROBERTS: I am happy to answer the questions from the member for Kalgoorlie. The first point at which a police officer can make his case is in the Western Australian Industrial Relations Commission, and he would present his side of the case. Part of the papers that would come to the police minister would be the review of the Industrial Relations Commission hearing and the evidence that had been presented. Further than that, the Police Union routinely writes to the police minister and also makes deputations on occasions to the police minister to present the case of its members. That would not be prohibited. I do not see anything that would prohibit the police minister from meeting with the aggrieved person and/or his lawyer.

Mr M.J. BIRNEY: That is certainly not my interpretation of the Police Act. As I understand it, a police officer is prohibited from canvassing the Minister for Police or the Commissioner of Police. Perhaps the minister might like to take some advice from her advisers as to whether that may be the case.

Mrs M.H. ROBERTS: I think there is a definition issue with the word "canvassing". It is one thing to canvass something with the minister; it is quite another to have the matter raised appropriately through the chain of command, which could quite easily be organised.

Mr M.J. BIRNEY: Would the minister be happy for a police officer to approach her office if he or she felt aggrieved by the decision of the Commissioner of Police to issue a section 8 notice?

Mrs M.H. Roberts: Through the chain of command or through their union.

Mr M.J. BIRNEY: If the police officer had exhausted that chain of command and still felt aggrieved, would the minister be happy for that police officer to approach her office and advise her of the circumstances surrounding that?

Mrs M.H. ROBERTS: That would depend on the circumstances. It would depend on whether the minister of the day felt it was a worthwhile activity. It may be a very clear-cut case before the Industrial Relations Commission. I or a future minister might deem it a complete waste of time to meet the person. If it were felt worthwhile, I would have no difficulty with it at all.

Mr M.J. BIRNEY: In some circumstances, the minister would be happy, would she, for a police officer to approach her office because the police officer felt aggrieved?

Mrs M.H. Roberts: Yes.

Mr M.J. BIRNEY: That means that the minister must change the Police Act, because the Police Act prohibits that from happening at the moment.

Mrs M.H. Roberts: My advice is that the Police Act does not prohibit that from happening.

Ms S.E. WALKER: The minister said that the Western Australian Police Union and police officers want her to retain the power that she has to veto any removal of an officer from office. The power was in place prior to their having the ability to appeal. Now that they have the ability to appeal, I do not see why the minister's involvement is necessary. The New South Wales minister does not have the power. I could understand the power being available for the Assistant Commissioner of Police and the Commissioner of Police, because it is similar to appointing the Director of Public Prosecutions -

Mrs M.H. Roberts: The previous Government maintained it under its protocol.

Ms S.E. WALKER: I am talking to the minister about her legislation.

Mrs M.H. Roberts: I am supporting the protocol that your Government supported. Perhaps you would have done well to listen to the member for Kingsley's measured comments.

Ms S.E. WALKER: I am asking the minister to be responsible and to listen to me, because the minister is putting forward the view that police officers want her to maintain the power so that they will be safer. The minister is saying that police officers do not have any confidence in the new appeal process. The minister is giving them an appeal process and retaining the power to veto every decision that the Commissioner of Police makes. After the Wood Royal Commission into New South Wales Police Corruption, the only power that the minister had was the power to veto the decision of the Assistant Commissioner of Police or the Commissioner of Police.

Clause put and passed.

Clause 5: Section 23 amended -

Mr M.J. BIRNEY: The clause refers to section 23 of the Police Act, which of course is the parallel provision to section 8, which also allows the Commissioner of Police to instigate removal action should a breach of discipline occur. The current situation is that following an allegation of breach of discipline, a member of the Police Service is required to conduct an inquiry into the alleged breach of discipline. That is dealt with in section 23(2), which states -

> Where the member of the Force against whom the charge is alleged is an officer, an examination under this section shall be conducted by an officer of the rank of Chief Superintendent or above.

We know that the rank of chief superintendent no longer exists. I wonder how that provision would sit legally, given that the rank of chief superintendent no longer exists.

Mrs M.H. Roberts: It would be a commander or above.

Mr M.J. BIRNEY: I do not see where that has been changed in the Bill. I thought the minister might have taken the opportunity with this Bill to change that outdated terminology in order to be consistent.

Mrs M.H. Roberts: I have been told that it is not of much import whether it is done. There is of course the potential to have chief superintendents in the future instead of a commander. It is merely a label.

Mr M.J. BIRNEY: We are dealing with the law of Western Australia. One would think that given that the minister has the Police Amendment Bill before her, she would have taken the opportunity to change that outdated reference. As I see it, if people wanted to get technical - far be it from me to get technical - I believe that they could mount a fairly serious case that the review was not conducted by an individual of the rank of chief superintendent or above because the rank of chief superintendent does not exist.

Mrs M.H. ROBERTS: I understand that rank is referred to in the current Police Act. Therefore, if we are defining that rank or above, it applies to all ranks above that. The advice to me is that it is clear; it would apply to a commander or a rank above commander. I note that there has been a long-promised review of the whole Police Act. It was promised by the former Government on many occasions; in fact, it was an election promise an election or two back. For a variety of reasons, it was not brought forward. We will await the outcome of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers before we move ahead with a complete overhaul of the Police Act. It is important to have the royal commission's findings before we do that. It was therefore not seen as important to change the wording at this time.

Mr M.J. BIRNEY: The minister said that the rank of chief superintendent still technically exists in the Police Service even though it is not utilised. If that were the case, it would indicate that a superintendent would be prohibited from undertaking a review, given that a chief superintendent holds a superior rank to a superintendent. It would seem that the appropriate person to undertake such a review would be a superintendent, given that the superintendent is the senior person in a district. If the minister is submitting to the House that the rank of chief superintendent does still exist, even though it is not utilised, would a superintendent be prohibited from undertaking that review?

Mrs M.H. Roberts: The answer is yes. Commander or above obviously means commander, Assistant Commissioner of Police, Deputy Commissioner of Police or Commissioner of Police.

Clause put and passed.

Clause 6: Part IIB inserted -

Mr M.J. BIRNEY: Proposed section 33L(4) reads -

> The Commissioner of Police shall not decide to take removal action unless the Commissioner -
>
> (a) has taken into account any written submissions received from the member under subsection (2) . . .

How would that clause stand if a member chose not to make a written submission?

Mrs M.H. ROBERTS: Proposed subsection (4)(a) refers to "any written submissions received". If there are no submissions, there are no submissions. That is the simple answer.

I take this opportunity to correct something that I said earlier with regard to the minister receiving submissions from police officers and their not going through the chain of command or the union. Because the process will involve the minister ahead of the Industrial Relations Commission, the minister will not have the submissions that are sent to the Industrial Relations Commission. The minister will have the submissions that are made to the Commissioner of Police. There would be nothing stopping submissions being made to the minister through the chain of command, the Police Union or the officer's lawyer.

Mr M.J. Birney: Or directly from the officer?

Mrs M.H. ROBERTS: It should not come directly from the officer under the police regulations.

Ms S.E. WALKER: Under proposed section 33L, in relation to the integrity of a commissioned officer or a non-commissioned officer, will the Commissioner of Police require proof of his behaviour, or will he be able to act on a whiff? What standards would be applicable?

Mrs M.H. Roberts: It would be a managerial decision based on his experience.

Ms S.E. WALKER: If an officer were suspected of committing perjury or verballing someone, would that come within that clause?

Mrs M.H. ROBERTS: As I pointed out, a managerial decision would be made by the Commissioner of Police on the information before him.

Ms S.E. WALKER: What about if a corrupt officer said he had committed perjury over a number of years and implicated another officer? Would that come within the description of integrity, honesty, competent performance and conduct of an officer?

Mrs M.H. ROBERTS: All of those criteria would apply. It would be up to the Commissioner of Police to make that determination.

Mr M.J. BIRNEY: I draw the minister's attention to proposed section 33L(5). In short, it provides that within seven days the commissioner will make available to the aggrieved police officer all the information he took into

account before arriving at his decision. I am marginally concerned about the first line of subsection (b), which reads -

except to the extent that the regulations otherwise provide,

Under what circumstances would the regulations provide that the police commissioner would not be required to set out all of those documents and information made available to him before he arrived at his decision?

Mrs M.H. ROBERTS: It would be matters that are potentially legally privileged or, alternatively, that are of public interest.

Ms S.E. WALKER: With regard to the matters that would come before the commissioner for removal of an officer, I refer to a newspaper report in *The West Australian* of 10 August about a person who testified during his trial that a police officer would ask a question while typing it, wait for a response and, if the person did not give an answer, write an answer himself. Would that behaviour of a police officer warrant the Commissioner of Police considering him no longer suitable to be a member of the Police Force?

Mrs M.H. ROBERTS: That kind of information would be analysed, tested, evaluated and reviewed by the Commissioner of Police.

Ms S.E. WALKER: It is fortunate that the Commissioner of Police would take action in relation to these matters and not the minister.

Mr M.J. Birney: The minister writes the legislation; she should surely have some idea.

Ms S.E. WALKER: Of course she should. We must ask about -

Mrs M.H. Roberts: The member is wasting time.

Ms S.E. WALKER: No; this is about police corruption in this State.

Ms M.M. Quirk interjected.

Ms S.E. WALKER: I want to know that this Government is doing the right thing. The member for Girrawheen should get on with her computer games rather than interject.

Ms A.J. MacTiernan: Don't get stressed!

Ms S.E. WALKER: I am not stressed, dear. If I were stressed, the Minister for Planning and Infrastructure would know, because I would look like her. I would look like a nightmare - like a nightmare on Elm Street.

Several members interjected.

The ACTING SPEAKER (Mr A.J. Dean): Order, members!

Ms S.E. WALKER: If a person said that he was isolated in a police station and that the officer who was taking the alleged confession would ask a question, type it while he asked it, wait for a response, and, if he did not get an answer, write one himself -

Points of Order

Mr A.D. McRAE: The member is introducing new material into this debate. I understand that the standing orders do not provide for that at consideration in detail.

Mr R.F. JOHNSON: We are dealing with the Police Bill. Most things to do with the police are relevant. The member for Nedlands had hardly said two words before the member for Riverton wanted to gag her; that is unreasonable. He should hear what the member has to say and you should rule accordingly, Mr Acting Speaker.

Mr M.J. BIRNEY: I have not been a member of Parliament for very long, but I understand that it is at the third reading that we are prohibited from introducing new material. If we are prohibited from introducing new material during debate on each clause of the Bill, it will make it very difficult to debate each clause. The member for Nedlands was being particularly relevant. She was talking about section 8 notices. The Bill deals specifically with them.

The ACTING SPEAKER: It is not a point of order. This clause is fairly wide ranging and is covered on pages 3 to 20. I do not think the question of relevance arises at this stage.

Debate Resumed

Ms S.E. WALKER: Thank you, Mr Acting Speaker. If the minister does not know whether that behaviour would warrant the Commissioner of Police having a bit of a look at the issue, we have cause to worry.

I have another scenario: what about if a couple of police officers took a young man into a police station, stripped him naked and handcuffed him to the chair?

Mrs M.H. Roberts: Are you going to ask about this clause or are you having your own little fantasy?

Ms S.E. WALKER: Would the police commissioner be concerned if he found out about that?

Mrs M.H. Roberts: You should sit down and stop embarrassing yourself.

Ms S.E. WALKER: If, after the poor young man was stripped naked and beaten, he had asked another police officer for help and that police officer did not give him help, would the Commissioner of Police be concerned about keeping that other officer on the Police Force?

Mrs M.H. ROBERTS: The comments by the member for Nedlands are both nasty and irrelevant. She has not directed her comments to the clause. Any reasonable person would understand that section 8 is a provision for the police commissioner to use if he loses confidence in one of his officers. The legislation prescribes that he could lose confidence in an officer due to that officer's lack of integrity, honesty, good conduct or good performance. That is very clear. It provides very wide discretion for the commissioner. He has managerial responsibility to determine whether he has lost confidence in his police officers for any of those reasons. No amount of nastiness, bullying or harassment in this place will make me get into the gutter with the member for Nedlands.

Ms S.E. WALKER: I did not get in the gutter; I did not strip a person naked in a police room or manacle him to a chair or refuse to help him in the course of my duty when I had a duty to perform. Neither would I do that now. Other members have got into the gutter, but not me.

Mrs M.H. Roberts: Everything about you is nasty.

Ms S.E. WALKER: I do not know why the minister thinks I am being nasty. I do not know to whom she thinks I am referring and I do not know why she has got so tetchy. The minister can read all about it in the paper.

Debate interrupted, pursuant to standing orders.