Division 26: Registrar, Western Australian Industrial Relations Commission, $9 685 000 -

Ms J.A. Radisich, Chairman.

Mr J.C. Kobelke, Minister for Consumer and Employment Protection.

Mr A. Watt, Acting Chief Executive.

Mrs S.A. Godfrey, Finance and Administration Services Manager.

Ms S. Bastian, Deputy Registrar.

Mrs C.L. EDWARDES: I refer to the output performance measures on page 434, and in particular to the employer-employee agreement applications. The minister has identified that only approximately 250 will be registered in 2003-04, whereas 1 000 were estimated in the budget. In 2002-03 only 501 were registered, but it was estimated that 3 600 would be registered that year. The target for 2004-05 is 500. Will the minister now agree that EEAs have been an absolute failure, particularly when an increasing number of Western Australian employees are taking up Australian workplace agreements? At the moment Western Australia has a 33 per cent share of AWAs approved in the past couple of years compared with only a 10 per cent share for the Australian working population.

Mr J.C. KOBELKE: The fact that EEAs have had a low take-up rate does not mean they are a failure. We have always said that our preference is for the collective approach but that we would provide choice, and that is what we did. There are many reasons for the lower than anticipated take-up rate. One factor is that no organisation, such as the Chamber of Commerce and Industry of Western Australia, has been pushing them and trying to get employers to take them up. Clearly there are advocates of Australian workplace agreements. Different bodies are funded to promote and push them. That is one reason there is a preference for AWAs over Western Australian employer-employee agreements.

With regard to very low pay areas, clearly some employers wish to undercut the established standards for minimum wages. However, they cannot do that with employer-employee agreements. Employer-employee agreements contain protections to ensure that people get the required minimum standards. AWAs have an unfair advantage in that area, because AWAs are being registered, on my legal advice, in an unlawful way. They are a breach of the Workplace Relations Act. Only this week in Sydney I made it very clear to the federal minister, Kevin Andrews, who was sitting across the table from me, that he had no credibility when he said that people should obey the law, when he, as a federal minister, his own agency and the Employment Advocate are failing to uphold very clear black-and-white law in the Workplace Relations Act. It is a matter that I will continue to pursue with the federal minister. Federal government agencies should not be failing in their duty to uphold the law. I know that I and the member for Kingsley believe in the rule of law. It is a travesty for a federal Government and a federal government agency to throw the rule of law out the window. I sought legal advice to determine whether I could take to the High Court the way the area is being administered by the Employment Advocate. I was told that I have no standing. I cannot pursue the matter to get justice for those whose rights are being reduced by the actions of the Employment Advocate in undercutting community standards by the bogus way in which he applies the no-disadvantage test to AWAs. Clearly those who wish to exploit their employees will use AWAs because they will not be able to do so through employer-employee agreements. That is another reason for the low number of EEAs.

[12.10 pm]

Mrs C.L. EDWARDES: To some extent, I take issue with the minister about the no-disadvantage test that applies to AWAs. I do not understand why the minister picked on a particular case - he did so in Parliament earlier this year or at the end of last year - in which an employee approached his employer and asked whether he could take Wednesday mornings off and work Wednesday nights so that he could read with his daughter at her school. The minister's Government presumably supports flexible family arrangements, which is what the employee wanted. From the point of view of both the employee and his employer, there was no disadvantage. The employee wanted time off when his daughter was at school and he was prepared to work Wednesday nights. There was no disadvantage to the employer or the employee and yet the minister publicly said that was a breach of the law. Clearly it was not.

I refer back to my point about AWAs. At the end of March this year, 63 000 employees were on approved AWAs from Western Australia, with another 12 000 awaiting approval. We can compare that with the miserable 750-odd EEAs over the same period. EEAs would have to be considered an absolute failure. Will the minister admit that the level of bureaucracy surrounding EEAs and the way they are implemented does not support businesses? It certainly does not support employees. When I was in Bunbury on Monday, people were talking about the end of Sunday brunch. There will be no more Sunday brunches in Bunbury because the cafes cannot afford to be open. The employees are on awards, so the owners are bringing in family members to work and

opening later in the day. It is an absolute disgrace that the Government does not provide flexible arrangements for employers and employees.

Mr J.C. KOBELKE: The member's statement is clearly a misrepresentation of the facts. Her example involved having the flexibility to allow an employee to work later in the day so that he could have time off to read with his daughter earlier in the day. That is something the Government certainly seeks to support. In fact, we are in negotiations with the Civil Service Association, and that kind of flexibility is one of the things we are seeking to include in its award. However, the union has a different point of view. We are quite happy to support that.

Mrs C.L. EDWARDES: Why did the minister last year criticise AWAs over that example?

Mr J.C. KOBELKE: The member for Kingsley is skilfully misrepresenting the issue. The issue is not about flexibility; it is about undercutting minimum standards. The issue of a worker wishing to read with his daughter is a total red herring. If people want their employees to work extended hours and the community standard requires a penalty rate for working Sundays or nights, they must pay the penalty rate. If people want flexibility, which means a more standard rate, the collective agreements in both the state and federal jurisdictions allow them to have a simple hourly rate. However, employers cannot pay people the standard minimum wage of about $13 an hour and work them all hours of the day and night. That is what is being done through the application of a bogus no-disadvantage test by the Employment Advocate. It is totally bogus. It is in breach of the federal Government's own no-disadvantage test.

Mrs C.L. EDWARDES: The minister is out of touch with the community and what people need.

Mr F.M. LOGAN: I refer the minister to the first dot point under significant issues and trends on page 431 of the *Budget Statements*. The reallocation of staff and other resources has enabled the appointment of three additional deputy registrars and, as a result, from July 2003, 92 per cent of applicants have had their first meeting within 90 days of application. For many years the fact that unfair dismissal applications have taken 90 days to deal with has been a criticism of the Western Australian Industrial Relations Commission, because that is an extensive amount of time after which a person has lost his or her job. Ninety days is three months after a person has lost his job. That puts people in a very difficult position because bills have to be paid and they are not earning an income. They might not have found another job in that 90 days. This has come up from time to time. There has been criticism of the speed with which not only the WAIRC deals with unfair dismissals, but also notifications of disputes are drawn to its attention. In my personal experience of many years as an advocate before the WAIRC, if I put in a notification of a dispute with an employer, it always took within 48 to 72 hours or more to be dealt with. However, if the Chamber of Commerce and Industry put in a notification of dispute between an employee and his or her organisation, it was dealt with in a matter of hours. I bring to the minister's attention the fact that it is acknowledged that it is unacceptable that a dismissed worker has to wait up to 90 days to have his or her case dealt with.

Mr J.C. KOBELKE: The member has touched on an important point because, as the adage goes, justice delayed is justice denied. Timing is a big issue. These figures are overwhelmingly positive, but that does not mean that we do not need to do better and that we cannot do better. The figures can be presented in a range of ways. I will take two from the data I have with me. I will read them from a graph so the figures will not be absolutely accurate. In the December 2001 quarter, the percentage of all applications - that is, not only unfair dismissals but also all applications to the commission - taking more than 90 days was over 40 per cent. By the June 2003 quarter that figure decreased to just over 30 per cent. The latest figures - March 2004 - show that seven per cent are taking more than 90 days. We have gone from over 40 per cent of cases taking more than 90 days to seven per cent. At the other end, in December 2001, in the order of four or five per cent of cases had been concluded within 30 days. I am reading off the graph; it was well under 10 per cent. The most recent figures from March 2004 reveal that over 20 per cent of cases are finalised within 30 days. It is all moving in the right direction. The evidence is that the use of the deputy registrars in unfair dismissal cases is working very well. Cases are getting through the system more quickly. The agency, both as a department and commission, will continue to look at how it can ensure that people and organisations have their matters dealt with in a timely way.

Mr F.M. LOGAN: I thank the minister for providing and putting on the record that detailed information. There has been a reduction to the point that only seven per cent of cases have gone beyond that period of 90 days. I congratulate the department for that achievement because, as the minister said, it is a matter of equity for people who have lost their jobs, have no income and are trying to seek redress. I also bring to the minister's attention another point I made; that is, I hope the success that the department has achieved in addressing the period in which cases come to the commission for unfair dismissals can also work for notifications of dispute, particularly when we compare the time before which a registrar deals with notifications put forward to the WAIRC by unions with the time taken to deal with notifications given to the WAIRC by the Chamber of Commerce and Industry or other employer organisations. There is a disparity. It has always caused a lot of trouble within the industrial relations community of Western Australia.

[12.20 pm]

Mr J.C. KOBELKE: As far as what has been possible administratively, things are certainly moving in the right direction. In relation to the question I was asked when we were dealing with the last division, I indicate that we are looking at legislative changes, so that there will be even further efficiencies, and we can make sure that people get the service they request and deserve from the commission. Clearly, the commission must work under the statutes as they exist currently. Very good efforts have been made to use the current legislative framework and the resources available to improve the outcomes. We will continue to push that administratively. However, we are also looking at how we can make improvements legislatively.

Mrs C.L. EDWARDES: I refer the minister to page 435, and to the appropriation for the delivery of output 2, which deals with conciliation and arbitration by the Western Australian Industrial Relations Commission. Can the minister tell me what is the cost of a commissioner, and how many commissioners are there currently?

Mr J.C. KOBELKE: There are nine commissioners. The cost for each commissioner is about $330 000 to $350 000, which covers their salary and direct staff costs; that is, things in their office. On top of that is an apportionment of the costs of their office space and all the other support facilities around them. That is not included in that $330 000 to $350 000.

Mrs C.L. EDWARDES: I refer to the specialist tribunal for the occupational safety and health legislation. Is the minister looking at appointing one of those commissioners to carry out that function, or is he looking at appointing a new one? Rumours abound that Stephanie Mayman will be the next industrial relations commissioner and that she will get the hat of the specialist tribunal member.

Mr J.C. KOBELKE: I have been approached by a number of people who have suggested that we need another commissioner. I have indicated that I currently do not see the demand for another commissioner, but I will continue to monitor it. That is still my view. Therefore, I am not thinking of increasing the number of commissioners from nine. That means that one of the existing commissioners would have to meet the requirement of having experience or training in occupational health and safety to be able to take up that position of a tribunal member. Of course, over time, commissioners will leave and replacements will be found, if it is judged that that is the number required. If the Commonwealth got its legislation up to strike out our rights on unfair dismissal, we would not need nine commissioners. We would have to judge it at the time, because, if the commonwealth legislation went through, we would not even replace people who leave.

Mrs C.L. EDWARDES: Further to that, are any retirements from the commission pending in the next year?

Mr J.C. KOBELKE: I have not been notified of those. However, from general discussions, people are aware of the ages of certain people at the commission. There is a statutory age at which they are not able to continue. However, that is not this year.

The appropriation was recommended.