WORKFORCE REFORM BILL 2013

Committee

Resumed from 3 April 2014. The Deputy Chair of Committees (Hon Liz Behjat) in the chair; the Minister for Commerce in charge of the bill.

Clause14: Sections 95A and 95B inserted —

Progress was reported on the following amendment moved by Hon Kate Doust —

> Page 10, after line 23 — To delete "whether made before,"

Hon SUE ELLERY: Before we finished our last debate on this section of the Workforce Reform Bill 2013, I had asked the minister a question. We are dealing with clause 14 of the bill which amends sections 95A and 95B of the Public Sector Management Act 1994. In particular, section 95B defines an industrial instrument as —

> … an award, industrial agreement or order made under the Industrial Relations Act 1979 … whether made before, on or after …

Hon Kate Doust's amendment is to delete the words "whether made before". In an earlier stage of the debate the minister made the point that in other jurisdictions, despite having the power to override other industrial instruments, some of them had chosen not to exercise the policy. At that time there was an exchange between the minister and myself—I cannot remember if Hansard captured it—about whether or not that would have to be done by legislative change and the minister made the point that it could be a policy decision not to apply the provisions despite the fact that they exist in the act. Late last Thursday afternoon, I asked the minister what the government's intention is about honouring existing agreements that have provisions within them that preclude forced redundancies. My question to the minister was and is: Given what the minister said earlier about other jurisdictions choosing not to exercise this policy, what is the Western Australian government's view about whether it intends to apply these provisions to those employees who are covered by existing agreements that prevent forced redundancies?

Hon MICHAEL MISCHIN: 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. When I say that it is open to any government in the future not to utilise these provisions, I do not have in mind this government—this government intends to use the facilities available to it to ensure efficiencies in the public sector. It is open to any future Labor government to do what it wishes in this regard, but I think we have made our policy clear.

Hon SUE ELLERY: I appreciate that the Minister for Commerce recognises that the next government will be Labor—that is a good thing.

Hon Michael Mischin: Future Labor government, if there is one.

Hon SUE ELLERY: Yes—the next one. I thank the minister for making that abundantly clear.

This government has had a number of choices. The first was whether to accept advice from agencies—the Department of Commerce, for example—that it ought to consider transitional provisions so that the government could honour the commitments it entered into before the last state election. This government chose to not consider transitional provisions and to put the provisions in the Workforce Reform Bill 2013 that we are now debating. The second choice this government had was to put the provisions in the bill, but exercise the choice that the minister advised the chamber some other jurisdictions have adopted; that is, despite having the power in the legislation, they chose to not exercise it for those groups of employees who entered into agreements in good faith, which prevented forced redundancies. It is good that the minister has made the position abundantly clear, in that given two choices about whether to override agreements the government entered into in good faith, it will override those agreements. I think it is good that the minister made that abundantly clear.

Hon MICHAEL MISCHIN: I do not propose to get into an argument about it, but I did not say there was advice from Commerce to insert transitional provisions. What I have said is that after there was approval to draft the bill, Commerce discussed with the Public Sector Commissioner and others a variety of issues, including the matter of transition. But given the government's policy and the difficulty of drafting appropriate transitional arrangements, they were not canvassed. There was no advice that that be done. Otherwise, as to policy changes generally, 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.

Hon SALLY TALBOT: I rely on you, Madam Deputy Chair (Hon Liz Behjat), to keep the flow of this debate going. As you well know, it has gone over several days now and a number of members have points they want to make. I am going to make mine, knowing that I am in your hands as far as being in the right place on the page and keeping my remarks focused. I am talking about amendment 11/14.

The DEPUTY CHAIR: Yes, you are.

Hon SALLY TALBOT: Thank you, Madam Deputy Chair.

I think Hon Kate Doust, who spoke in my absence, although this amendment stands in my name, was sufficiently well briefed to be able to talk in some detail about this amendment; I appreciate that fact. I want to add a couple of other things that arise out of the observations I made during that lengthy committee inquiry and the conclusions I drew as a result of the hearings—particularly the hearings the committee undertook during the early part of this year. Obviously, amendments 11/14 and 12/14 stand together, and this is an attempt to ensure that existing agreements retain their validity. It is directly related to the point the Leader of the Opposition made just now about the absence of transition provisions in the bill.

During a public hearing with the Public Sector Commission, I asked a question about which public sector employees—bearing in mind there are 139 000—were likely to be affected by the new arrangements that will be brought into effect by this bill. I do not have the exact quote in front of me, but the response was quite surprising, because the witness started the response by saying that some GESB employees had particular provisions relating to redundancy, redeployment and retraining in their award that were felt to be problematic; I quickly noted "some GESB employees". The witness went on to say, "Oh, and people covered by their GA." I said, "Hang on; just wait right there. Isn't the GA the general agreement?" He said, "Yes, it is the general agreement." There was an understanding right from the beginning that these new arrangements were to apply to an enormous section of the public service—it would not be just a few employees here and there. That is really what led me and Hon Amber-Jade Sanderson, who was my Labor Party colleague on that inquiry, to put in this amendment to introduce transitional provisions.

I put to the minister and the chamber that in any sort of negotiation there has to be, either implicitly or explicitly, an assumption about good faith. There has to be what is called in industrial relations "good-faith bargaining". That simply means that people come to the table, no matter how far apart their positions might be—there might be one party arguing that something is black and the other that it is white—and when the layers of the onion skin are peeled away, they are not used as a negotiating tactic; those points of view are put in good faith. I see the Minister for Commerce is concentrating very hard on what I am saying, but I wonder what the effect of the government's claim to have engaged in good-faith bargaining will be. When I say "the government", I know it is not the Premier and the Minister for Commerce who go to the Industrial Relations Commissions; I know that that is a duty discharged by public servants, or sometimes, of course, by third parties engaged from outside. I recall a very complex series of negotiations being undertaken by the Labor health minister soon after we took government in 2001, when outside lawyers were engaged to advocate a particular position. But how will the government claim that its views are part of a process that involves good-faith bargaining if, by, metaphorically, a single stroke of a pen, the government will effectively trash the employment terms and conditions of thousands and thousands of public sector employees? It simply does not make sense. If we consider clause 14 in isolation from the rest of the bill, we might be tempted to argue that we are going to do this, the Parliament has made a decision and it is the will of the chamber that such an act should be gazetted. These are important changes and we are reforming the public sector, so let us just do it, get the pain over and move on. But the reality is that when we take this part of the bill in context with all the other clauses, we can see that that is far from the case. This is going to be a very long process of cultural change, and, indeed, the minister has argued that in some detail in relation to, for example, clause 4. Will the Minister for Commerce reject this amendment because of some kind of concrete and tangible negative effect on the government's bottom line or because the government is ramming a position that is purely ideological and that does not have any practical implications for the state? Is this legislation simply a piece of government ideological pride? Is it trying to change the employment terms and conditions of thousands of public sector employees simply because it can?

Hon MICHAEL MISCHIN: Actually, it is neither. 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 "single stroke of a pen" theory is nonsense; there has been no single stroke of a pen. Rather, this issue has been a matter of considerable debate and it has occupied argument and debate on the part of most, if not all, members of the opposition over several weeks to debate the policy considerations involved. No single stroke of a pen was involved. I highlight the manner in which these proposals have been undertaken, the way they are structured and the way they will be applied and compare them with those of the "temporary reduction in remuneration of public servants act", which was passed by the Burke government, a Labor government, in 1984. I would be interested to hear at some stage—it is not particularly relevant to this legislation—how legislating to deny public servants an increase in their salary if they earned above a certain amount can be reconciled with the idea of good faith in employment contracts and holding a compact with public servants.

Hon Sue Ellery: The only way you can defend your position is by attacking someone else's.

Hon MICHAEL MISCHIN: No, I do not have to. I am just pointing out the hypocrisy, once again, in the opposition's comments.

These agreements are out of kilter with the structure of the legislation, which will provide an opportunity for the public sector and the government to dispense with the services of the few employees who are not able to provide a public service for which the public, through the government, is paying. It is appropriate that the same principles apply to every public servant captured by this legislation with no exceptions—that is a policy position. It is not unlike decisions of, for example, previous state Labor governments when they changed employment conditions through legislation and the manner in which matters have been dealt with or federal Labor governments, for that matter, in the Fair Work Commission legislation. As far as good faith and keeping a compact in employment contracts, where does that fit with industrial action in which people will not work and do the job for which they are paid unless they are paid more or provided with some benefit? That does not strike me as being consistent with an employment contract. I have explained at length the policy considerations underlying this bill and the reason for these provisions. I accept that there will be a difference in philosophy, but I really cannot go any further with this.

Hon SALLY TALBOT: I point out to the minister that I am sure that you, Madam Deputy Chair (Hon Liz Behjat), would be very quick to rule me out of order if I were to go into lengthy considerations about a piece of legislation from the last century and try to draw comparisons with what we are doing here. I will not do that; I will leave those remarks unanswered. The Leader of the Opposition was exactly right when she pointed out that it is a standard piece of rhetorical trickery to simply cite examples of other legislation without any intent to defend the measure that is being contemplated. I leave that to one side, perhaps for another occasion. It is not worth answering.

A number of things trouble me about the minister's answer. First, I am not sure that he understands the basic concept of good faith bargaining. As other members in this chamber have pointed out, some of these agreements were entered into as recently as seven months ago, when presumably government negotiators agreed—not under coercion, but as part of the negotiating process in the Western Australian Industrial Relations Commission—to certain provisions. Of course terms of employment and employment conditions can be changed; the fact that an agreement is in place does not mean that that agreement cannot be altered until it expires. Can the minister provide any examples of terms and conditions being changed other than by mutual agreement? That is the whole point. The minister's side of politics has recently covered the front pages of national newspapers arguing in the case of the car industry and saying that unions were partly to blame for the demise of the Australian industry because they refused to go back to the commissions and negotiate different terms and conditions. That argument has been addressed by both sides of politics with the unions saying that they have engaged in the process and that the companies pulled the rug from under their feet et cetera. I know that all honourable members are familiar with that argument. But the point I am making is that, of course, one can change the terms and conditions of employment if an agreement is in place, but it must be done with a degree of mutuality. It must be done by going back to the commission to re-present the arguments. Nobody is suggesting for one moment that either side of the argument—the employer or employee in the public sector—is incapable of making an argument that can persuade the other party that a change has to be made. There are provisions and avenues for doing that within the existing act. Why are we going down this track? I know that the minister does not like my metaphorical expression "single stroke of a pen". Why are we sitting in this Parliament debating a clause that cuts out the terms and conditions of existing employment contracts, some of which were entered into by mutual agreement only a matter of months ago? Can the minister find me an example of this having happened in the past?

Hon SALLY TALBOT: I assume that the minister is not seeking the call, so presumably he cannot cite any examples of precedent.

Hon Michael Mischin: Don't presume.

Hon SALLY TALBOT: Would the minister like to take the call and provide an answer?

Hon Michael Mischin: I could presume that you're being mischievous and trying to drag out the debate. I could, but I won't.

Hon SALLY TALBOT: I assure the minister that nobody is keener than I to get on to the Taxi Drivers Licensing Bill. I am looking forward to that, because I want to make a contribution. I can think of a number of different things that I would rather be doing at half past three on a Tuesday afternoon than debating clause 14 of this bill with this particular minister. Nevertheless, that is my job so here I am. If the minister cannot do his job to furnish the chamber with information that is requested of him, that is his problem—not mine.

I will ask the minister a different question. Madam Deputy Chair, you might want to ask me to defer my comments to when we consider the second part of my amendment, but I would like to keep going because, as I pointed out, the next two amendments sit together. I am attempting to delete words to insert others later on. Amendment 11/14 proposes to delete the words in line 23 "whether made before," which is the degree of retrospectivity. We will then try to insert the words contained in amendment 12/14, which reads —"

> (2) Any existing award, industrial agreement or order made under the *Industrial Relations Act 1979*, including a General Order made under section 50 of that Act, before the commencement of the *Workforce Reform Act 2013* section 14, will continue in force, as negotiated, until such time as it would ordinarily expire by the passage of time, or otherwise by mutual agreement between the parties.

Does the minister have any idea how many awards, industrial agreements or orders proposed section 95B will affect? I have referred to the fact that the committee heard evidence that it would affect a few people in the Government Employees Superannuation Board and presumably everybody who is employed under a general order. Can the minister give the chamber an idea of the number involved? Am I wrong in thinking that a significant number of the total 139 000 public servants will be affected by this provision?

Hon MICHAEL MISCHIN: I am advised that in early 2013, three agreements covering 22 330 employees were registered, incorporating no-forced-redundancy provisions. The three agreements were the WA Health–United Voice–Hospital Support Workers Industrial Agreement 2012, which is due to expire on 31 July 2015; the Department of Education–United Voice—Education Assistants' (Government) General Agreement 2013, which expires on 31 December 2015; and the Government Services (Miscellaneous) General Agreement 2013, which expires on 31 December 2015. I understand that GESB employees have not so much industrial agreements but contracts that arguably provide for redundancy processes that will be inconsistent with those that are provided for in the bill.

Hon SALLY TALBOT: I ask for a point of clarification before we continue. The minister advised that 22 330 people are covered by those three agreements. Are they employed under the contracts in addition to, or part of, the figure of 22 330?

Hon MICHAEL MISCHIN: They are in addition.

Hon SALLY TALBOT: Can the minister give any indication how many people that might be?

Hon MICHAEL MISCHIN: I am afraid I do not know the figure, but we can make some inquiries and find out, if it is of importance to the member.

Hon SALLY TALBOT: On a back-of-the-envelope calculation, out of 139 000 public sector employees, 22 330 are affected under those three agreements. I would appreciate an indication from the minister, just in round figures, whether he is talking about another 1 000, 10 000 or 100 000 employees. I would have expected that the minister could give the chamber some idea of that. Let me ask the minister about a piece of information he might have at his fingertips—or at least at his advisers' fingertips. I am pretty clear about those three existing awards, and I will come back to those in a moment, but what sort of jobs or positions are we looking at for these other contracts? Are they high-level consultants or people acting as government drivers? What sort of positions is the minister talking about?

Hon MICHAEL MISCHIN: We do not have precise information. I can speculate, but I will not do that. I understand GESB has something like 150 or 200 employees and that for a period of time there has been a process of contracting, through individual work contracts, of some form, so it would be a subset of that. I do not know how far that process has gone, but I will make some inquiries and get back to the member. I will find the information, if not during the course of dealing with the bill, at some stage.

Hon SALLY TALBOT: Clearly, this is the sort of information the chamber ought to be made aware of. It is one thing not to have transitional provisions; it is another thing entirely to have absolutely no idea how many people will be affected by not having transitional arrangements in place. I find it quite extraordinary that the

government cannot produce this information, so I ask the minister as a matter of some urgency to furnish the chamber with an idea about the number and the sort of jobs that he is talking about.

Having drawn a blank there, I ask the minister whether I understood him correctly and that the three agreements he referred to covering the 22 330 people expire somewhere between 31 July and 31 December 2015?

Hon MICHAEL MISCHIN: I have already given that information.

Hon SALLY TALBOT: I am checking that I wrote that down correctly.

Hon MICHAEL MISCHIN: One expires on 31 July 2015 and the other two expire on 31 December 2015.

Hon SALLY TALBOT: The government has brought a number of quite controversial pieces of legislation before members in this place in which we have had considerable debate around timelines. In this case, it is my clear understanding that the drafting of the regulations has not even commenced yet. The regulations are going to be substantial and I would imagine, from having had some experience of these processes in the past, that the drafting of these regulations will take some considerable time. We have just been informed by the minister that all the agreements covering people who will have their existing contracts or agreements changed to remove the existing provision about no forced redundancy will have expired by the end of next year. Why has consideration not been given to accepting transitional arrangements, because this seems to be eminently solvable? I must admit to the chamber that had I realised during the committee inquiry that the whole problem would be over in 18 months, I might have arrived at a different conclusion about transitional arrangements. It is not as though we are talking about a change that will take five or 10 years to wash out of the system because by Christmas next year, which will be upon us before we can blink, there will be no public sector employees who have a provision in their contract for no forced redundancy. Given that is the time frame involved and given the reality that we are unlikely to see this legislation in effect for more than a matter of months, can the minister explain to me why he will not accept that those employees' existing agreements could be allowed to run their course? What is going to happen? What is the government's time line for these changes that such an unusual measure could be forced upon these employees?

Hon MICHAEL MISCHIN: Firstly, I do not think 18 months is a matter of months; it is a year and a half. Secondly, I have already explained —

Hon Sally Talbot: Yes, minister, if you would just take an interjection. It is not a matter of months —

Hon MICHAEL MISCHIN: I have already explained the philosophy behind the provisions and the reasons for it being done. I would have thought that if it took 18 months to draft the regulations, no harm would be done anyway because the current provisions will continue in operation until such time as the new regime is put into effect. So I do not really understand what the problem is.

Hon SALLY TALBOT: But the minister cannot possibly be working on the assumption that an acceptable way to legislate is to put a provision in a bill to change existing employment agreements and contracts and then say, "It's not going to matter anyway because it's going to take us that long to draft the regs."

Hon Michael Mischin: You're the one that's saying it's not going to matter.

The DEPUTY CHAIR (Hon Liz Behjat): Members!

Hon SALLY TALBOT: If the minister were in a position to tell me that it will definitely take 18 months to draft the regulations and therefore no employee will have their terms and conditions of employment changed, we would be in a completely different place. I am assuming that the minister is not going to stand and say that. However, it reinforces my point that this is just a piece of political posturing if the government is working on the assumption that no employee will have their terms and conditions of employment changed because it will take that long to draft the regulations and get them in place.

Hon Michael Mischin: That's not what I said.

Hon SALLY TALBOT: It is such a dishonest way of legislating. It is a way of creating fear and uncertainty among thousands of public sector employees, and now the minister is saying, "If it takes that long to draft the regs, nobody is going to be affected." This is the most appalling trick being played on public sector employees.

Hon Michael Mischin: What's the trick?

Hon SALLY TALBOT: Maybe I could ask the minister —

Hon Michael Mischin: I presume that you just made that up, because you can't give me an answer. What's the trick?

The DEPUTY CHAIR: Minister!

Hon SALLY TALBOT: The trick—I am taking the minister's interjection now as he is asking me —

Point of Order

Hon KATE DOUST: It is a little difficult to follow this debate when the minister is interjecting from his chair. If he wants to have a say, he knows the rules: he should rise to his feet and seek the call.

The DEPUTY CHAIR: Thank you, Deputy Leader of the Opposition. There is no point of order on that. But I would just ask both members who are engaged in this very interesting debate on clause 14 to take it in turns. I think the turn is with Hon Sally Talbot at the moment.

Committee Resumed

Hon SALLY TALBOT: Thank you for the call, Madam Deputy Chair.

I will respond to the minister's question about what the trick is. I have just said that this is a cruel trick being played on public sector employees. I make that comment because what I heard the minister say in response to my original point on this issue —

The DEPUTY CHAIR: I am sorry, can I just interrupt you there, member? I do apologise. Members, I am interested in the clause 14 debate, as are others in the chamber. For those of you not interested in the clause 14 debate who insist on having conversations while the Chair is actually speaking, I would appreciate it if you could take them outside the chamber. The call is with Hon Sally Talbot.

Hon SALLY TALBOT: Thank you, Madam Deputy Chair.

My original point on this amendment was to ask the minister: which public sector employees will be affected by the part of clause 14 that includes a degree of retrospectivity so that existing agreements can be changed by this bill? I have asked the minister how many people will be affected, and the minister in answering that question has given me the expiry dates of those existing agreements. I have pointed out that all those agreements will expire in roughly 18 months—that is, by the end of next year, 31 December 2015. I asked the minister, given that drafting the regulations has not started yet, why he is insisting on this clause being in place to make these retrospective changes when it is likely that the legislation will be effective for only a matter of a few months before those agreements have expired. The minister's response, as I heard it was, "If it takes that long to draft the regulations, these employees are not going to be affected anyway, so what is your problem?" I do not think he actually added "so what is your problem" but that was the tenor of his comment.

All I am asking the minister is: if that is the way the government has planned this amendment, so that it will never be implemented as there will be no retrospectivity because those agreements will have already expired by the time the act takes force, why have this clause in the first place? That is the cruel trick. If the government is saying, "We just want to be able to make a statement about the fact that we can amend existing contracts without mutual agreement, unlike for any private sector employee, and not have to go back to the Industrial Relations Commission and we can simply legislate to change those terms and conditions," yet it is not the government's intention to do that, why is it there in the first place? I do not expect the minister to respond to this, but I put it to honourable members that it is a cruel trick to introduce that degree of uncertainty, fear, worry and insecurity into the working lives of public sector employees when in fact, because of the way the government has timed this state legislation and the drafting of the amendments, the minister himself is saying that it may never take effect.

Hon Michael Mischin: I didn't say that. Don't mislead the house.

Hon SALLY TALBOT: I am not misleading the house. The minister has the opportunity —

Hon Michael Mischin: When did I say that?

Hon SALLY TALBOT: The minister has the opportunity to seek the call, just as I have. So, if he wants to contribute to the debate, he should just seek the call and I am sure the Chair will catch his eye.

The DEPUTY CHAIR: Thank you, Hon Sally Talbot. I will be the one to direct from this position here who is going to get the call. You can continue.

Hon SALLY TALBOT: Thank you, Madam Deputy Chair. That was merely a vote of confidence in your ability to do that. I am not misleading the house. I am not going to make the point again, because I am sure that a reading of *Hansard* will make absolutely clear the point I am drawing to the attention of honourable members. Let me ask one final question on this part of the bill, as I know that we have a lot more to do.

I would like information on a point that has been made in connection with a number of different clauses. It is about the assurance that we received from the government—the government has been consistent in this aspect of its rhetoric on this bill—that the forced redundancy provisions will apply to only a very small cohort of people. Only a matter of minutes ago the minister referred to the fact that they will apply to a handful of public servants who cannot or will not be accommodated elsewhere in the public sector. I will therefore again ask the minister about the compulsory redundancy provisions of the bill. If they apply to only a small number of people, why do

we need this retrospective provision? Another way of couching the question is: how many of those 22 330 people, and the unspecified number who are covered by other forms of agreements that the minister has not been able to provide information on at the moment, does the government imagine will have had the compulsory redundancy provisions applied to them by 31 December 2015?

Hon MICHAEL MISCHIN: Thank you, Madam Deputy Chair. I have already been through all of this in other clauses.

Division

Amendment put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the noes, with the following result —

Ayes (10)

Hon Robin Chapple	Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Samantha Rowe *(Teller)*
Hon Alanna Clohesy	Hon Sue Ellery	Hon Sally Talbot	
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Ken Travers	

Noes (19)

Hon Martin Aldridge	Hon Peter Collier	Hon Alyssa Hayden	Hon Michael Mischin
Hon Ken Baston	Hon Brian Ellis	Hon Col Holt	Hon Helen Morton
Hon Liz Behjat	Hon Donna Faragher	Hon Mark Lewis	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Dave Grills	Hon Rick Mazza	Hon Phil Edman *(Teller)*
Hon Paul Brown	Hon Nigel Hallett	Hon Robyn McSweeney	

Pairs

Hon Adele Farina	Hon Peter Katsambanis
Hon Darren West	Hon Nick Goiran
Hon Amber-Jade Sanderson	Hon Jim Chown

Amendment thus negatived.

The DEPUTY CHAIR: Hon Sally Talbot, on the basis of the debate we had previously and the way that we were treating those amendments, I now assume that your amendment at 12/14 falls away.

Hon Sally Talbot: Yes.

Hon MICHAEL MISCHIN: I move —

Page 10, after line 25 — To insert —

(2A) The provisions of this Part prevail, to the extent of any inconsistency, over any other provision of this Act other than section 7, 8 or 9.

Currently in the bill proposed subsection (2) provides that the provisions of this part of the bill and the regulations referred to in sections 94 and 95A would prevail to the extent of any inconsistency over any other provision of the act if it was passed other than section 7, 8 or 9. This provision, once inserted, will make it plain that the provisions of this part of the act will prevail to the extent of any inconsistency over any other provision of the act other than sections 7, 8 or 9. The purpose of it is to eliminate what was seen by the committee, I think, as a potential Henry VIII clause that allowed for regulations to override specific provisions of the Workforce Reform Bill were it to become an act and part of the substantive legislation, being the Public Sector Management Act 1994, and achieve the same end. Once this new section 95A(2A) is inserted, I will move, in accordance with the next amendment in my name, to delete the potential Henry VIII clause in proposed section 95A(2).

Hon KATE DOUST: I just have a technical question. When the minister inserts those new words after line 25 and then at a later stage seeks to delete lines 29 and 30, section 95B(2) will still be there, which states —

The provisions of this Part and regulations …

What happens with those lines? Will they just sit there after these new ones have been inserted? How will that work?

Hon MICHAEL MISCHIN: They will remain because they will be referrable to the passage referring to any industrial instrument, which currently appears in paragraph (b).

Amendment put and passed.

Hon MICHAEL MISCHIN: I move —

Page 10, lines 29 and 30 — To delete the lines.

Page 10, lines 29 and 30 — To delete the lines.

The first amendment is a committee recommendation, reflecting recommendation 4 of the committee's report, the latter being in my name. They achieve the same end, which is to delete what is currently paragraph (a) in proposed subsection (2) of proposed section 95B.

Amendments put and passed.

Hon SUE ELLERY: I indicate that although we appreciate some of the amendments that have been made to this clause, this clause is still offensive. This clause includes the retrospective provisions of this bill. It also dishonours the agreements that the government entered into seven months before it introduced this legislation. Therefore, this is a bad clause, and, for the reasons that we have already outlined, we will be opposing it.

Division

Clause, as amended, put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the ayes, with the following result —

Ayes (19)

Hon Martin Aldridge	Hon Peter Collier	Hon Alyssa Hayden	Hon Michael Mischin
Hon Ken Baston	Hon Brian Ellis	Hon Col Holt	Hon Helen Morton
Hon Liz Behjat	Hon Donna Faragher	Hon Mark Lewis	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Dave Grills	Hon Rick Mazza	Hon Phil Edman *(Teller)*
Hon Paul Brown	Hon Nigel Hallett	Hon Robyn McSweeney	

Noes (10)

Hon Robin Chapple	Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Samantha Rowe *(Teller)*
Hon Alanna Clohesy	Hon Sue Ellery	Hon Sally Talbot	
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Ken Travers	

Pairs

Hon Nick Goiran	Hon Adele Farina
Hon Peter Katsambanis	Hon Darren West
Hon Jim Chown	Hon Amber-Jade Sanderson

Clause, as amended, thus passed.

Clause 15: Section 95 replaced —

Hon MICHAEL MISCHIN: I note from the supplementary notice paper that there is a committee recommendation at amendment 7/15 to provide for a review of this part of the proposed act. Hon Sally Talbot has also proposed a review clause at amendment 10/15, which is rather longer. I also have an amendment standing in my name at 20/15, which is also a review clause. I invite comment about whether the review clause that stands in my name is to be opposed or preferred to the ones that appear on the supplementary notice paper under the names of other members. If we can cut to the chase with my amendment, I would prefer that; but, otherwise, I am happy to have that debate.

Hon SALLY TALBOT: It seems to me to be sensible to consider these three amendments together. The fact that the minister is measuring the column inches of each of these amendments shows what the problem is. Of course we can all count, so we know that this bill will become law sooner or later. However, the view has been expressed by many people that the problematic measures that are contained in this bill could be mitigated in part by requiring that there be a substantive review of this bill after a certain period. As honourable members know, a review clause is standard practice for legislation. It is not a controversial thing to do. There is no attempt in the amendment to hijack the bill or impose an unnecessary amount of work on any committee or body. In fact, there is no sinister intent in any of the amendments that we have proposed to this bill. This amendment is simply a mechanism to give Parliament the opportunity to see whether the measures contained in this bill match, in both scope and degree, the rhetoric of the government in introducing the bill and during the second reading debate. We all know that it is easy to have a Clayton's review—that is, to have a review that is not really a review. I put it to honourable members that the amendment that stands in the minister's name at 20/15 is exactly that—it is a Clayton's review.

The amendment that stands in my name at 10/15 is a review that will give the Parliament something to chew on at the end of a four-year period. Honourable members will notice that the amendment that was agreed to unanimously by the committee, and the amendment that stands in my name, both provide that a review be carried out at four-year intervals. That will mean that once per Parliament, honourable members will get the chance to look at the effect of particularly the compulsory redundancy provisions of the bill. I inform the house that the opposition will be supporting amendment 10/15. However, the view of members on this side of the house is that any review is better than no review. Therefore, should the amendment at 10/15 fail, we will support

the amendment at 7/15. If we get to the point at which the only amendment for review is the minister's amendment, we will support that amendment as being better than nothing.

Hon MICHAEL MISCHIN: Madam Deputy Chair, I presume that as no-one has moved the committee recommendation, that will fall away and I do not need to address that question?

The DEPUTY CHAIR (Hon Liz Behjat): No-one from the committee has indicated that they intend to move that amendment. Therefore, in the absence of anyone from the committee moving the committee amendment at 7/15, we will deal with Hon Sally Talbot's amendment at 10/15, and then, if we need to, with the minister's amendment at 20/15.

Hon SALLY TALBOT: I move —

Page 13, after line 18 — To insert —

96B. Review of Part

(1) The Public Sector Commissioner is to carry out a review of the operation and effectiveness of this Part of the Act as soon as is practicable on or before —

(a) the fourth anniversary of the commencement of this section; and

(b) the expiry of each 4 year interval after that anniversary.

(2) In the course of a review under subsection (1) the Public Sector Commission is to consider and have regard to —

(a) whether there is a need for this Part to continue; and

(b) how the processes contained within this Part have operated in practice, including numbers and categories of registered public sector employees whose employment has been terminated pursuant to section 95A; and

(c) whether individual employing authorities should have a separate role in exercising the powers and applying the processes of this Part, or, in the alternative, the Public Sector Commission should centrally exercise the powers and apply the processes of this Part to the exclusion of individual employing authorities; and

(d) whether the impact of any exercise of the powers provided in this Part have generated measurable managerial, economic or cultural change within the Public Sector; and

(e) any other matters that appear to the Public Sector Commission to be relevant to the operation and effectiveness of this Part.

(3) The Public Sector Commissioner may advise the Minister of the findings of any review under subsection (1) not more than 28 days prior to tabling a report under subsection (4).

(4) The Public Sector Commissioner shall cause a report of the findings of any review under subsection (1) to be tabled in both Houses of Parliament.

Hon MICHAEL MISCHIN: I note that Hon Sally Talbot made a reference to column inches. As she has demonstrated on more than one occasion, brevity is not one of her strong suits, nor is economy of words to make a point. That is why I prefer the amendment standing in my name, which provides for a review of the operation and effectiveness of this part of the act to be carried out as soon as practicable after four years of its operation. To most intents and purposes, with one small exception, my amendment reflects the substance of what the committee, as a majority, recommended, which is a review of the operation and effectiveness of that part of the act. The only material difference is that under my amendment there would be no rolling review every four years. The effectiveness of the operation of the act and any deficiencies in it, apart from being able to be addressed, should they come up in the course of that four years, by the relevant minister, can also be addressed at the conclusion of four years. New policy considerations may apply and amendments initiated to address those deficiencies. If it is thought fit that any of those amendments require a review, that can be done at that time. Therefore, a rolling review every four years is thought to be unnecessary.

The second consideration is that Hon Sally Talbot's amendment assigns the responsibility of carrying out a review to the Public Sector Commissioner rather than the minister who is responsible for the oversight of this statute, and the government does not consider that that is appropriate. Therefore, we do not support the amendment standing in Hon Sally Talbot's name.

Hon SUE ELLERY: I will ask two questions, if I may. Given that the Public Sector Commissioner is not like an ordinary director general in that he is a parliamentary officer with a degree of independence, why does the minister not think it is acceptable in this case to give the responsibility of carrying out the review to him? Secondly, what does the minister object to the review examining in proposed section 96B(2)(a) through to (e)?

Hon MICHAEL MISCHIN: There are a number of fundamentals to it. Firstly, the Public Sector Commissioner is charged with the responsibility of administering the act and not for the oversight of it. He does not create policy; the minister determines policy. At least some of those matters contained in proposed section 96B(2) as advanced by Hon Sally Talbot determine matters of policy, such as whether there is a need for this part to continue. Those things are peculiarly within the responsibility of the minister who is responsible for that statute.

Hon SUE ELLERY: If we leave aside the question of whether it is the Public Sector Commissioner or the minister with responsibility, what does the minister object to the minister requiring the review to examine in proposed section 96B(2)(a) through to (e)?

Hon Michael Mischin: It does not.

Hon SUE ELLERY: Does not what?

Hon MICHAEL MISCHIN: The amendment is framed in terms of the Public Sector Commissioner carrying out a review and to consider and have regard to policy considerations, such as whether there is a need for the part to continue and whether certain things should be done as a matter of policy. Those are matters that the minister ordinarily has done as part of a review, and he or she can invite submissions on particular aspects that have been the subject of concern over those four years. Furthermore, it is restrictive. It states that he is to consider and have regard to specified matters. In the government's view, it is not an appropriate or prudent way of going about a review. The government prefers leaving the responsibility with the minister who is responsible for the administration of the legislation to prepare a report and lay a copy of the report on the table of each house of Parliament. I accept that the opposition may have a different view on how these things can and should be done, but the government disagrees.

Hon SALLY TALBOT: I make a brief point. I think the minister is wrong about proposed section 96B(2)(a) being a policy consideration. Presumably, four years down the track there simply will not be public sector agreements that contain clauses relating to no forced redundancy. In that case, in four years a whole section of the act may be totally redundant. I ask the minister why, with an eye to history, he would not want to put in terms of reference for a review that would enable part of an act that is entirely redundant to be removed. If the minister cannot anticipate that happening, I wonder what we have been talking about for the past two dozen hours in this place.

Hon MICHAEL MISCHIN: Frankly, I do not know what Hon Sally Talbot has been talking about, but I understand what I have been talking about, and that is that this part does not simply render inconsistent agreements invalid to the extent of that inconsistency. It comprises a regime of dealing with public sector employees who, after all the career management facilities are provided and exercised, are still redundant to the public sector's requirements and cannot be placed in appropriate positions. It deals with that small number of people at the end. It is more than simply dealing with a number of agreements in respect of a relatively small number of public servants. A process has been put in place and that will be reviewed and its operation considered.

General functions are already assigned to the Public Sector Commissioner under section 21A of the Public Sector Management Act to review processes and to give advice and the like. This would only supplement what he can do anyway. In the government's opinion, it is appropriate that this review of a statute be the responsibility of the minister who is responsible for that statute and for any policy decisions that may arise from that, such as the introduction of further legislation to address issues that come up from time to time, and certainly after four years.

Division

Amendment put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the noes, with the following result —

Ayes (10)

Hon Robin Chapple	Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Samantha Rowe *(Teller)*
Hon Alanna Clohesy	Hon Sue Ellery	Hon Sally Talbot	
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Ken Travers	

Noes (19)

Hon Martin Aldridge	Hon Peter Collier	Hon Alyssa Hayden	Hon Michael Mischin
Hon Ken Baston	Hon Brian Ellis	Hon Col Holt	Hon Helen Morton
Hon Liz Behjat	Hon Donna Faragher	Hon Mark Lewis	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Dave Grills	Hon Rick Mazza	Hon Phil Edman *(Teller)*
Hon Paul Brown	Hon Nigel Hallett	Hon Robyn McSweeney	

Pairs

Hon Adele Farina	Hon Nick Goiran
Hon Darren West	Hon Peter Katsambanis
Hon Amber-Jade Sanderson	Hon Jim Chown

Amendment thus negatived.

Hon MICHAEL MISCHIN: I move —

Page 13, after line 18 — To insert —

96B. Review of this Part

(1) The Minister must cause a review of the operation and effectiveness of this Part to be carried out as soon as is practicable after the 4th anniversary of the day on which the *Workforce Reform Act 2013* section 15 comes into operation.

(2) The Minister must —

(a) prepare a report based on the review; and

(b) cause a copy of the report to be laid before each House of Parliament.

I have already indicated that the government is content to have a review of the legislation, as suggested by the standing committee, and is sufficiently confident of its viability, appropriateness and effectiveness that it will be content to have a review after four years' operation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 16 and 17 put and passed.

Clause 18: Act amended —

Hon SALLY TALBOT: I will give a brief explanation for why the minority of the committee—that is, Hon Amber-Jade Sanderson and I—opposes the clause. It really boils down to the fact that we regard this as being another piece of theatre in which the government is indulging, and I will explain why. I do not have the section of the Salaries and Allowances Act or the recent determinations in front of me, but I am sure if I refer to this in general, every honourable member in this place will understand what I am talking about. The salaries of members of Parliament and office-bearers in the Parliament are calculated on the basis of a backbencher's salary. If a backbencher's salary is X, the salary of the Premier is X plus a certain per cent—I think it might be 85 per cent. I now have information in front of me to share with honourable members. We have base remuneration, and we then add a percentage to the base remuneration. The salary of the Premier is an additional 132 per cent, which means it is the base remuneration of a backbencher plus an additional $196 202—this is the most recent determination—making a total of $344 840. I know we all peruse this at length so I will not go into it in detail, but a minister of the Crown is paid 80 per cent on top of the base salary—I can see all members opposite agreeing with me by grinning.

Hon Jim Chown: What does a parliament secretary get?

Hon SALLY TALBOT: Hon Jim Chown can look it up for himself!

The per cent of additional base remuneration is 132 per cent for the Premier, going down to 80 per cent for a minister, 66 per cent for the President of the Legislative Council, 45 per cent for the Deputy Leader of the Opposition in the Legislative Assembly, right down to a lowly member of a standing committee who gets base remuneration plus seven per cent. This proposed section looks as if it is actually putting a curb on the salaries of ministers; that is the way it reads. It took me many, many readings of this proposed section before I could get to

the heart of what was troubling me. What is troubling me is that backbenchers, of course, are exempt from this proposed section—if I am wrong, I am sure the Minister for Commerce will put me right. What we read here is that there are certain exemptions, and because of the way the Salaries and Allowances Tribunal works, backbenchers are not included in this provision. But of course exempting the salaries of backbenchers does not mean that a curb or cap is placed in line with consumer price index rises, which is what the government is doing to the rest of the public sector, on ministers' salaries. If a backbencher's salary goes up 10 per cent, the Premier's salary will automatically go up that much because it includes the base component plus 132 per cent of that base component. Our decision, at the end of considering the exact implications of clause 18, was not to move an amendment to alter the way things go at the moment because the provisions in place now will continue absolutely the same after this act is gazetted. That is, every time the salary of backbenchers is increased, ministers and parliamentary secretaries will also get an increase in their salary. It will not matter whether it is in line with the consumer price index. The government is doing a bit of trickery by turning to public servants who are paid at community standard rates and saying, "Ah, but we are included in the provisions of this act". That will absolutely not happen! The way around this issue is to simply delete the clause.

Committee interrupted, pursuant to standing orders.

[Continued on page 2173.]