POLICE AMENDMENT BILL 2002

Second Reading

Resumed from 5 December 2002.

HON DERRICK TOMLINSON (East Metropolitan) [8.18 pm]: In some respects this debate is premature. At the moment a royal commission is looking into whether there has been any corrupt or improper practice in the Western Australia Police Service. It has reached what I would describe as a rather entertaining stage in its revelations of the conduct of some police officers. I anticipate that one of the matters that the royal commission might entertain in a report is how to deal with police officers who have been the subject of criticism or even criminal charge as a result of their conduct. That was in fact the situation with the Wood royal commission. In its second interim report it made certain recommendations about how the Commissioner of Police might deal with police officers who had been found not necessarily guilty of misconduct, but whose suitability for continuation as police officers had been found suspect. It made certain recommendations that led to the New South Wales Government amending the New South Wales equivalent of the Police Act to enable the Commissioner of Police to dismiss a police officer on the grounds that the commissioner had lost confidence in him or her. Having set in train this very important royal commission, in spite of any undertaking the Government made during the election campaign to legislate in respect of section 8 of the Police Act, I anticipated that the Government might have delayed its decision until such time as the royal commission had the opportunity to report either in an interim report or its final report. However, be that as it may, the Government has decided, perhaps nine months prematurely, to bring this Bill forward. It has already passed through the Legislative Assembly and we are being asked now to endorse it in the Legislative Council.

I have two speeches. One is my brief speech and the other is my long speech. Having been mellowed by the seafood of the Minister for Agriculture, Forestry and Fisheries, I will give my short speech, because this is a simple Bill that is not controversial. However, there are a few positions in this simple Bill that I want to explain without unnecessarily delaying the debate, because it is a simple Bill and should not be controversial.

I will start first with an understanding of the role of the police constable. The police constable is an employee - this is a non-commissioned officer - of the Commissioner of Police. Section 7 of the Police Act states -

> (1) The Commissioner of Police may appoint so many non-commissioned officers and constables of different grades as he shall deem necessary for preservation of peace and order throughout the said State . . .

Commissioned officers are appointments made by the Governor. They are, in effect, royal commissions. However, a constable is essentially an employee of the Commissioner of Police. The Act provides for two procedures to discipline police officers, whether they be commissioned or non-commissioned officers. Section 8, which is the section with which this Bill essentially deals, states -

> The Governor may, from time to time as he shall see fit, remove any commissioned officer of police, and upon any vacancy . . . appoint some other . . .

A commissioned officer may be dismissed only by the Governor, as it is a royal commission. When it comes to a non-commissioned officer, 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; . . .

The Act goes on to say that the commissioner may fill such a vacancy. The commissioner may as he thinks fit remove any non-commissioned officer. This has been characterised as the loss of confidence decision. If, as he thinks fit, the Commissioner of Police has lost confidence in a police officer to carry out his duties, he may dismiss that officer. That is a power that some people would characterise as a unique power. I want to explore that a little further.

The second form of discipline of a police officer is contained in section 23(1), inquiries into misconduct and penalties, under the heading "Disciplinary measures", which states -

> The Commissioner, or an officer appointed by the Commissioner for the purpose, may examine on oath any member of the Police Force and any police cadet upon a charge of an offence against the discipline of the Police Force being made against any member of the Force or cadet.

This is a charge, and the commissioner or a superior officer must sit in a disciplinary board and hear the charge, and may call for witnesses and take evidence under oath to get to the merits of the case. Then, the disciplinary board - it might be a single commissioned officer or a single officer - may make decisions about a fine not exceeding $200, reduction to a lower rank, reduction in salary, suspension from duty or even discharge or dismissal from the force. The important point is that before a decision is made, there must be a hearing of a

charge. The hearing is, shall I say, quasi-judicial in its procedure; that is, evidence is taken, evidence is tested, evidence is heard under oath, witnesses are called, witnesses may be subpoenaed, and the defendant may be represented by counsel. If an adverse finding is made, there is a procedure for appeal under sections 33A to 33J. That procedure of appeal is a judicial hearing, because the board consists of a stipendiary magistrate appointed by the Governor as the chairman, a person appointed by the Commissioner of Police and a member of the Police Force elected by the members of the Police Force in a manner prescribed. That tribunal hears evidence in a judicial process to get to the merits of the case.

These points are important because section 8, as it now stands, allows for summary dismissal because the Commissioner of Police has lost confidence. Remember, the Commissioner of Police is the employer. If the employer loses confidence in the employee, under the bare Act as it now stands and without embellishment by political decisions that have been made from time to time, the Commissioner of Police has the power to summarily dismiss as he thinks fit. It is a fairly substantial power; whereas disciplinary procedures require hearings, evidence to be taken, a decision to be made, an appeal in which evidence is taken and a decision to be finally made. The section 8 provision is important given the role of a constable. In all respects, it is a unique position in our society. We rely upon our Police Force for public safety. It is a police force, despite the tendency in contemporary society to refer to it as the Police Service, serving the interests of the community. It is a force with the power to do whatever is necessary to protect the safety of citizens. It is a force with those powers, and each constable, as a sworn member of that force, exercises those powers. We rely upon that force and every constable in that force for our protection and safety. We therefore confer upon those constables powers that are unique: the power to deny us our liberty; the authority to apprehend us if we refuse to give identifying information such as our name, address and our date of birth; and the power to enter premises. It is rather interesting to examine the powers of the constable. Among them are the power to enter premises, to shoot rabid dogs and to detain us, and the authority to shoot to kill without appeal to anyone. We entrust those people with unique powers - that is very important. We therefore expect in return that they will honour that trust. Police officers must reciprocate that trust by achieving and maintaining high standards of integrity, professionalism and performance. It is nothing more than a trust. We expect police officers to carry out their roles in a manner that meets the requirements of integrity of the community that has given them that thrust. On the one hand the office of constable carries with it considerable powers, which are unique to the office of constable and can deny us, by a decision of the constable, our civil liberties, or even our life. That constable may exercise that power against any person. The constable may arrest and detain the Commissioner of Police.

Hon Peter Foss: Not a good idea.

Hon DERRICK TOMLINSON: I would applaud the constable who stopped the Commissioner of Police and asked him to blow in the bag and then detained him because his blood alcohol level was above 0.05 or 0.08 per cent. The constable holds a very important position. The concomitant to that position of authority is trust. Constables are entrusted with those powers and we trust them to exercise those powers with integrity. If the Commissioner of Police lost confidence in a constable to conduct himself or to exercise his authority in a manner that was commensurate with the trust given to him by the community, the Commissioner of Police would have the power to dismiss that police officer. That does not necessarily mean any process of criminal charge. It is a loss of confidence. Clearly, a loss-of-confidence power - the power to summarily dismiss because the Commissioner of Police no longer has confidence in a police officer - may be subject to abuse. If I as Commissioner of Police do not happen to like Constable Plod, or he has offended me because he dared to ask me to blow in the bag, I could abuse my power under section 8 to carpet Constable Plod by dismissing him on the basis that I no longer had confidence in him. That would be construed as an abuse of power.

In this exercise of summary dismissal due to loss of confidence, we should ask: to what extent should the rights of the employee be protected, even though in this instance the employee is a unique individual with unique powers holding a unique position of trust and is, therefore, subject to moral and professional judgments that might not necessarily be easily defined by statute or regulation?

I think this is the nub of the Bill before us. The question is not a legal issue. I return to the proposition that the Police Act provides for a section 8 dismissal which is "a loss of confidence" dismissal and to a section 23-33 dismissal, which is a quasi-judicial process for determining guilt. It is guilt on the part of an officer against some regulation or procedure of the Police Service. We will leave it at that. The distinction between those two decisions is that one is administrative and the other is quasi-judicial. The quasi-judicial decision has in train all the protections of appeal and the processes of just hearings; the other is the relationship between employer and employee. If an employer no longer has confidence in the employee, the employer has the right to dismiss the employee. It is simply a matter of judgment about the best interests of the employer and the employee, and their function in society. Under contemporary procedures, the employee has a right of due process - a right to challenge the decision of the employer about whether there is a just dismissal. Under the current provisions of section 8 of the Police Act, there is no right for those protections of just processes.

This Bill attempts to set in train just processes. If we look at the question of just processes, should a judgment about administrative decisions go to the merits of the case, or should it look at whether the processes for a dismissal were just, whether the employee was given a fair opportunity to defend himself or herself, whether the employer gave the employee fair explanation of why he or she had lost confidence, and whether due process had been observed? In other words, it is a procedural question as opposed to whether the employee was or was not guilty - two quite different decisions.

This Bill is interesting. We will be asked whether we should be looking at fair process versus the merits of the case. I refer to an example in 1993 when the Western Australian Industrial Relations Commission heard the appeal of a Desmond John Smith. Sergeant Smith was in charge of the Fremantle Police Station on a particular evening when a youth was apprehended. The youth's companion entered the police station and, in trying to protect the interests of his friend, became, in the opinion of some of the police officers, quite offensive. He used offensive language and called Sergeant Smith a name that I think any person would be offended by. It was alleged that Sergeant Smith imposed some summary justice upon the young man. I refer to page 13 of the report of the Full Bench of the Western Australian Industrial Relations Commission of 27 August 1993, Minister for Police and Commissioner of Police, appellants, and Desmond John Smith, respondent. The report states -

> A report to Messrs Frichot and Frichot by Dr G Michael Galvin, Acting Director of Clinical Services, on 5 June 1992 noted that upon examination at 1.10 am on 9 May 1992 there was the following:-
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> (a) Pain over the right side of the jaw.
>
> (b) A laceration along the lower right gum line with displacement of the alignment of teeth in that same region.
>
> (c) An incidental area of bruising superior to the left clavicle (not commented upon further in evidence).
>
> (d) Open fracture of the mandible.
>
> He was treated by:-
>
> (a) Operative repair to the fracture by fixing it with an internal plate and stabilising by tie wires to the upper jaw.
>
> (b) Returning to the ward for post-operative care and discharge on 11 May 1992.

Having inflicted that summary punishment upon Joseph Dethridge, Sergeant Desmond Smith was charged with assault - whether it was criminal assault, I do not know - found guilty and was subject to a section 8 dismissal from the Police Service. He appealed against the decision. The appeal was heard by the Western Australian Industrial Relations Commission, which ruled that Desmond John Smith be reappointed. Page 2 of the report I cited earlier states -

> "(1) THAT Mr Desmond John Smith be re-appointed as soon as practicable but not later than 26th February 1993 to the West Australian Police Force at the rank of Senior Constable for at least 2 years before being eligible for promotion. He is to undergo such training and assessment as is considered appropriate by the Commissioner of Police.
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> (2) THAT Mr Desmond John Smith is to suffer no loss of wages and entitlements at the rank of Senior Constable from the date of his dismissal to the date of his re-appointment.
>
> (3) THAT there be deemed no break in service from the date of the applicant's dismissal to the date of his re-appointment."

In summary, Desmond John Smith, in an incident at the police station, inflicted an injury upon a citizen and was subject to criminal prosecution and found guilty. As a consequence of having been found guilty, he was subsequently subject to a section 8 dismissal. The section 8 dismissal was appealed against and the appeal reinstated Desmond John Smith to the Police Force, subject to conditions.

The Commissioner of Police then appealed. The Full Bench of the Industrial Relations Commission in this case not only had to consider the procedures but also was asked to consider the merits of the case. The merits of the case related to the criminal matters with which Desmond John Smith had been charged. The Industrial Relations Commission was adjudicating or arbitrating on matters that were essentially criminal in nature. It also had to consider the question of administrative procedure. This gets back to the section 8 loss of confidence. The expectation upon a police officer is that because he is entrusted with such enormous powers, he shall to carry out his duties in an exemplary manner. If he does not carry out his duties in an exemplary manner, the Commissioner of Police is entitled under section 8 to dismiss him on the basis of loss of confidence. I refer to page 46 of the report of that appeal of 27 August 1993 when the full commission said -

> In failing to address the duty of the Commissioner of Police to maintain a disciplined Force and uphold the law, having regard to s.26(1)(d) of the Act which required the community's interest to be considered (which was not done by the Commission at first instance, although it was by the Commissioner of Police), one can only say that the discretion miscarried. That would be so even were the matter not aggravated by Sergeant Smith's failure to comply with Lockup Orders, Police Regulations, and his making of false entries in the Occurrence Book.
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> Mr Cock submitted that the Commission at first instance misunderstood the purpose of the power being exercised by the Commissioner of Police in dismissing the respondent, and submitted further that the Commission approached it as if the matter was to be looked at in terms of the punishment of the respondent and not whether there was a power of dismissal to be exercised, having regard, inter alia, to the public interest in maintaining the credibility of the Police Force, which, of course, the Commissioner of Police did consider.

Quite a different issue is the interests of the public, which the Commissioner of Police is required to consider, because that is the matter of trust which he must judge versus other matters in a case. In the case of Desmond John Smith, the court decided the fact of the matter was this: the Commissioner of Police considered very detailed submissions on behalf of Sergeant Smith and considered a whole number of factors with a great deal of care. He dismissed Sergeant Smith as not being a fit and proper person to be a police officer. The full commission overturned the decision on appeal and upheld the original dismissal. Central to the decision is the responsibility of the Commissioner of Police to consider the interest of the community. The interest of the community is to maintain a Police Service which acts with full integrity or a police officer who acts according to the expectations of the trust given to him by the community.

A similar case occurred in New South Wales. The case before the President of the Industrial Relations Commission of New South Wales was that of Trevor David Haken, Assif Dib and Norman Korbage, who had been investigated by the Wood Royal Commission into the New South Wales Police Service. Bear in mind that the royal commission is simply an inquisitorial body. They were found to have conspired to provide false statements to police in respect of their involvement in the shooting at Louis Bayeh's house to facilitate the discontinuance of proceedings against them in return for payments of money. The evidence was that Trevor David Haken did receive corrupt payments in respect of that matter; that Detective Sergeant Haken, as he was then, received corrupt payments between January and July in relation to a Pink Panther strip club and a Budget Hotel; that he received corrupt payments in respect of assistance with an assault charge; that he shared corrupt payments from a drug dealer; that he received corrupt payments from one Bill Bayeh; that he organised the theft of a truckload of cigarettes belonging to Rothmans Pall Mall Australia Ltd and evidence that he received a corrupt payment from Raymond Younan.

Detective Sergeant Haken appealed his dismissal by the Commissioner of Police. The Commissioner of Police had dismissed him under a provision of the New South Wales Police Service Act 1990 amended to enable the Commissioner of Police to dismiss police officers on evidence arising out of the royal commission, because at that stage the Police Service of New South Wales did not have the equivalent power of section 8 of the Western Australian Police Act. A special provision was therefore made in the New South Wales Police Act 1990 to enable the Commissioner of Police to dismiss police officers on the basis of the evidence of the royal commission. That is the evidence that was used to dismiss Mr Haken. The Commissioner of Police in giving reasons for Mr Haken's dismissal decided that Mr Haken had engaged in corrupt conduct and that he was no longer a fit and proper person to hold a position in the Police Service.

Mr Haken's appeal was on the ground that a royal commission is an inquisition and that in that royal commission he was not given the opportunity to challenge the evidence against him nor was it the fair and due process of a judicial hearing. The opinion of the President of the Industrial Relations Commission of New South Wales is instructive. He said at page 8 of the opinion -

> The issue in these proceedings relates not to proof of allegations of criminal conduct but to issues of fitness to continue in employment arising within a defined reemployment relation. The Acting Police Commissioner informs himself as required by Statute. His managerial responsibility is to ensure that only trustworthy and adequately behaved employees should exercise police powers with respect to citizens of the State.

That is a very significant statement. It is not a question of guilt or otherwise of the allegations of criminal conduct but whether a fair administrative decision has been made as to the fitness of that person to hold the position of employment according to the terms and conditions of his employment. A police officer entrusted with considerable powers who uses those powers contrary to the best interests of the community loses the confidence of the Commissioner of Police, and the Commissioner of Police dismisses him. The alleged corrupt conduct of Haken is not the issue. The issue is whether the Commissioner of Police had taken proper

consideration of whether Detective Sergeant Haken was a fit and proper person to continue in the position of police officer. Detective Sergeant Haken's appeal was dismissed, not on the grounds of whether he had been guilty of criminal conduct - that was a matter for a properly appointed court of criminal jurisdiction - but on the grounds of whether the Commissioner of Police had exercised due process in making the decision that Detective Sergeant Haken was a fit and proper person to continue in the position of police officer. This distinction is important, because it became a matter of focus following the serving of section 8 notices on five police officers and one commissioned officer following the so-called Miller inquiry of the Anti-Corruption Commission. I will not go into those matters, because I anticipate they will be matters on which the royal commission will deliberate; also, much of it is subject to Supreme Court constraints on the revealing of information.

However, as a result of the controversy that ensued from the dismissal of those five non-commissioned and one commissioned officer, the then Minister for Police, Hon John Day, appointed Mr Codd to report on the suspension and removal of police officers in Western Australia. If members will forgive me for labouring the point, I will read the conclusions and recommendations of the "Report on the Suspension and Removal of Police Officers in Western Australia", prepared by Mr M.H. Codd and dated January 1998, because those conclusions and recommendations are very important to this Bill. Page 17 of the report states -

> 50. The power to suspend or remove members of the Police Service provided in section 8 of the Police Act is a necessary power because of the special character of the Police Service in terms of its responsibilities and authority which impact the lives of citizens in sensitive respects, and because of the importance of public confidence in the integrity of the Police Service so vital to the public co-operation necessary to achievement of effective performance.
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> 51. While Section 8 provides such a power, it does not regulate its application.

I hope I have made that point. It continues -

> 52. Such a power, because of its character, needs to be administered with fairness and there needs to be a process to ensure accountability in its administration.
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> 53. The procedures necessary to ensure fairness, and to govern accountability through a review process, should ideally be embraced in legislation and regulations.
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> 54. The philosophy and policy underlying use of the power should be managerial, and it should not be administered on the basis of assuming or seeking to determine guilt or innocence in relation to any particular alleged offence.
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> 55. Given this managerial focus, members removed under this power should be enabled to leave with as much dignity as possible and with full entitlements, and public presentation should support that policy.
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> 56. Suspension without pay should only be used in exceptional circumstances and for a limited period.
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> 57. The review process should also be managerially focused and should be non legalistic and non adversarial. It should be a review of procedural fairness under the principles of administrative law.
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> 58. The integration of the disciplinary provisions of Section 23 with the powers and procedures of the amended Section 8 should be considered, including the development of more managerially focused and delegated administration of the disciplinary provisions themselves.

That is a significant statement with regard to this Bill, because my reading of the Bill is that it attempts to give legislative statement to those propositions. I have some caution about the Bill. Regrettably, I had arranged to be briefed on this Bill tomorrow, because the Bill contains some matters of detail that I would have liked to test with the framers of the Bill before I proceeded to discuss it. The general principles of the Bill I can talk about ad nauseam, as I have done. However, the devil is in the detail. As we found in the cases of Desmond John Smith in the Western Australian Industrial Relations Commission and Mr Haken in the New South Wales Industrial Relations Commission, the question is not the merits of the case in the criminal sense but whether due process has been observed. The previous Government responded to the Codd report by putting in place an interim procedure that did not have legislative force. That procedure contained an instruction that the Industrial Relations Commission should consider not the merits of the case but whether due process had been observed in making the administrative decision. However, the Industrial Relations Commission found that it could not consider administrative fairness without considering also the merits of the case. Mr Justice McKechnie of the Supreme Court has subsequently found that some of the decisions of the Industrial Relations Commission are unsafe under the criminal law. In my discussions with the parliamentary counsel and the Western Australian Police Union tomorrow, I will seek an assurance that a section 8 dismissal is an administrative proceeding and that the appeal process considers whether due process has been observed. Another matter that I want to discuss

tomorrow is whether the processes are fair, in the best interests of the community and protect the private interests of the individual. For example, the Bill provides that an officer upon whom a section 8 dismissal notice is served may resign within 28 days after the notice is served. One of the matters on which I hope to be satisfied tomorrow is that the resignation would not confer benefits on an individual. For example, what loss of privileges would be incurred by an individual who is dismissed compared with one who resigned and would have no threat to privileges? I will pursue that matter tomorrow.

I have canvassed the philosophy of the dismissal of police officers, the peculiarity of the power of the Commissioner of Police in a summary dismissal and the need to ensure that due process is observed, as demonstrated in the industrial relations courts in Western Australia and New South Wales and in the Codd report. Although I understand those matters of detail, I want to test them before we enter the committee stage. I hope the Government will agree to that before we proceed to the committee stage so that I can have an opportunity to have those questions answered.

Hon Nick Griffiths: The arrangement was to the effect that you would be briefed tomorrow and following the briefing it is proposed to commence the committee stage.

Hon DERRICK TOMLINSON: Excellent; I am comfortable with that.

The Opposition supports the principle of the Bill. I will pursue some matters of detail, as the minister has indicated, and I look forward to the committee stage of the Bill.

HON GIZ WATSON (North Metropolitan) [9.12 pm]: I rise to speak on the Bill and to say that I received a briefing on the Bill today. The Greens (WA) will support the passage of the Bill. It is obviously important that any change to legislation on the Police Service be carefully scrutinised. We as a community invest a lot of power in the Police Service and in police officers in the Police Service, and it is important that the conditions of employment and the operation of the Police Service be the best that can be achieved. I understand that this amendment Bill has had a long period of discussion between the Western Australian Police Union and the Commissioner of Police to deal with a particular controversy relating to section 8 of the Police Act. The second reading speech indicated that the nature and circumstances of the use of section 8 of the Police Act has in the past been controversial and been the subject of litigation and industrial dispute. It is, therefore, appropriate that this section be clarified. The Bill seeks to clarify the circumstances in which police officers may be removed from office and affords officers an independent right of appeal to the Western Australian Industrial Relations Commission.

I have briefly read the judgment of Supreme Court Justice McKechnie in a case that was raised in the second reading speech; this case probably highlighted the need for this amendment Bill. Justice McKechnie expressed great reservations in his judgment about the validity and legal effect of many terms of the arrangements in section 8 of the Police Act. It is worth reading what was said in that case because the judgment casts some light on the debate this evening. The findings in the case, delivered on 31 May 2002, revolved around an allegation of a denial of natural justice, which, in particular, stated -

> . . . The failure of the Commissioner to provide the applicants with discovery and inspection of relevant documents prior to the issue of the appeal to the IRC.
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> . . . Denying the applicants the right to give evidence under oath about the circumstances leading to the Commissioner issuing his notice of intention to remove.
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> . . . By restricting itself to considering only written material the IRC were unable to test the probative value of the applicants' submissions supporting the appeals and the Commissioner's submissions of his reasons for losing confidence in the applicants.
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> . . . The Commissioner had failed to observe substantially the protocol in relation to discovery and inspection of documents as a consequence of which process the process of removal of the applicants under s8 was a denial of natural justice and a failure of procedural fairness.

That was the basis of the case. At page 8 of the ruling, Justice McKechnie went on to say -

> However, I have grave doubts as to the legal effect of aspects of the Protocol as will appear. There is also a question as to the extent to which the holder of a statutory power can fetter his or her discretion in the exercise of that power.

The existing provision in section 8, as quoted in the decision, 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 obviously a very broad provision. It is my understanding that in 1998, a protocol was developed that expanded the procedures to be engaged in pursuing a section 8 matter. I again refer to the decision on section 8, which states -

> . . . the power is very wide. The decision is vested in the Commissioner alone. The power to approve or withhold approval is vested in the Minister alone.
>
> No doubt in order to introduce some measure of review into the exercise of power, a Protocol was developed between the Commissioner and the Police Union and endorsed by the Government on 10 August 1998. Although the Protocol was intended to operate as an interim arrangement for 12 months only, the parties accept that it continues to apply today. Features of the Protocol are, by Part A, 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.
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> The Protocol, by Part B, 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 as to whether the Commissioner must accept the recommendation.

That protocol is currently still in operation. However, that case challenged whether such a protocol was adequate to deal with procedural fairness matters raised by the applicants. I will move to some of the concluding remarks in the judgment. On page 22, at paragraph 57, it reads -

> The applicants' argument is that the Commissioner failed to provide discovery pursuant to the terms of the Protocol. It appears to be accepted that the Commissioner did provide the reasons for his decision, the summary of the investigation, and the other documents and materials on which he has relied.

Paragraph 58 states -

> But it is argued that the applicants, for various reasons, were denied the right to inspect all materials collected for the purposes of the investigation before making their response: Protocol Part A.5.(c). I am prepared to accept, for the purposes of this application, that such material was not made available in accordance with the Protocol. The failure to provide such material may in an appropriate case give rise to an arguable case that there has been procedural unfairness such as to justify the grant of *certiorari*. However, it is necessary to look at the facts of each case. The possibility of procedural unfairness does not mean that there was actual unfairness. If there is no evidence of actual unfairness or, to put it another way, if a breach of the rules of natural justice did not give rise to any actual harm, then a writ should not issue.

The conclusion was that the grounds for the case were dismissed. However, Justice McKechnie again reiterated that he had grave doubts as to the validity of most of the terms of the protocol. Hence, this amendment basically seeks to reflect that protocol that was in place but to give it the force of law by way of an amendment.

On my perhaps rather brief reading of this case and as a result of the briefing that I had this afternoon, it seems fair and reasonable that police officers should have access to a clearly laid-out procedure under which they have access to the documentation on which they are being judged, and should have the right to defend a case. The other side of the coin is that as well as providing procedural fairness and the right of appeal, the commissioner will still have sufficiently broad powers to remove an officer under section 8. Although the existing wording is exceptionally broad, I argue that the words being inserted are also sufficiently comprehensive as to give the commissioner wide powers to remove an officer. The conditions are that the commissioner must have lost confidence in the officer's suitability to continue as a police officer, having regard to the officer's integrity, honesty, competence, performance or conduct. I believe that is important, because as much as we want to provide procedural fairness for police officers, we also acknowledge that the powers of the commissioner must be sufficiently broad to deal with officers who, in his view and on the evidence provided, should be removed from the service. I am satisfied that the wording will ensure that those powers are adequately broad.

I have mentioned that the new amendments will provide for a right of appeal. A question that then arises in this Bill is that of an officer receiving payment while being investigated. This has also been a controversial issue. The second reading speech refers to a number of officers who were still being paid after periods in excess of two years while their cases were being assessed, and notes that the existing arrangements perhaps encourage officers to prolong any processes of appeal if they are still drawing full pay. This amendment seeks to limit the period in which an officer receives full pay. By general community standards, I believe it would be acceptable that the period be limited.

Another point I raise and acknowledge is that in the case of an appeal, the Western Australian Industrial Relations Commission must also pay particular regard to the public interest in maintaining public confidence in the Police Service and, as the second reading speech notes, the special nature of the relationship between the

commissioner and police officers. It is vital that the Police Service is viewed as a special category. It is important that police officers are subject to very high standards because that is what the community expects. Indeed, for the community to have confidence in the Police Service, people must be reassured that the public interest component is part of any appeal process. The Greens (WA) support that.

When I received a briefing on this Bill this morning, I raised the matter of timing. One of the frustrations of the order of business in this House is that I received a briefing on this Bill only this morning because it suddenly appeared on the weekly bulletin for this week.

Hon Nick Griffiths: The material is fresh in your mind, though.

Hon GIZ WATSON: Absolutely. It is a useful component that the material is fresh in my mind. However, I was required to do some fairly hasty reading. On matters concerning the Police Service in particular, a little more time would be appreciated. Obviously, we are in the middle of a long-awaited royal commission into the Police Service, and the operations of the Police Service are of great interest to not only the broader community but also the Greens. However, I feel sufficiently confident that this Bill has the support of both the commissioner and the Western Australian Police Union, and has achieved the correct balance between providing procedural fairness for police officers and at the same time giving the commissioner sufficient powers to remove officers in whom he has lost confidence. I guess the timing may be important in terms of any outcomes from the royal commission. It is important that this process is enshrined in legislation before any further police officers are subject to a section 8 removal. I acknowledge that the Government has done the work to bring forward this legislation, and the Greens will support it.

HON NICK GRIFFITHS (East Metropolitan - Minister for Racing and Gaming) [9.29 pm]: I thank Hon Derrick Tomlinson for his observations, and in particular his support for the principles of the Bill. I confirm my understanding that a briefing will take place tomorrow and that, following that briefing, it is proposed to move to deal with the committee stage of the Bill.

In terms of timing, it is important that the Bill be proceeded with for the reasons that Hon Giz Watson has very properly pointed out. It is wonderful when a member is briefed on day one and then comes into the House and gives a good speech, setting out the very strong reasons that this important measure should be supported. We are dealing with a management matter and there is no need to delay. As Hon Derrick Tomlinson so eloquently put it, it is a simple Bill that is not controversial. He made some comments about detail, but those matters can be dealt with during the committee stage. He raised the issue of the protection of employees and the role of the Commissioner of Police. Both Hon Derrick Tomlinson and Hon Giz Watson quoted the material part of section 8 as it now stands. Hon Giz Watson went on to refer to how the wording of section 8 is to be amended by reference to matters - she alluded to these; I am not quoting her - which are set out later on in the Bill, in particular proposed section 33L.

Hon Derrick Tomlinson made quite proper reference to the treatment of criminal conduct. Criminal conduct is to be dealt with as part of the criminal justice system. We are dealing with a management matter relating to the confidence of the commissioner in non-commissioned officers. Hon Derrick Tomlinson made reference to the Codd report and what has occurred in recent years with the administrative arrangements that have been put in place, as did Hon Giz Watson. Both members made reference to the judgment of Justice McKechnie. What we are debating builds on what has happened in the past. It builds on the Codd report, which, I suggest, is consistent with the substance of the Bill. It is the product of a very welcome agreement from the community's point of view between the Government, the Western Australian Police Union and the Police Service. Therefore, it comes before the Parliament for it to endorse.

Hon Derrick Tomlinson made a couple of points about entitlements. I note that tomorrow he wants to hear from the horse's mouth, as it were, whether under these managerial arrangements, accrued resignation or dismissal entitlements will continue. However, the particulars can be dealt with in the course of the briefing and no doubt in the committee stage. Perhaps there may be examples of that.

In addition to the matters that I have mentioned in passing, Hon Giz Watson also made reference to the role of the Western Australian Industrial Relations Commission in the past, as did Hon Derrick Tomlinson. Each of them referred to the issue of the public interest being a matter to be taken into account and the Bill seeks to do that. I commend the Bill to the House.

Question put and passed.

Bill read a second time.