

**INDUSTRIAL RELATIONS AMENDMENT BILL 2012**

*Second Reading*

**MR M. MCGOWAN (Rockingham — Leader of the Opposition)** [4.02 pm]: I move —

That the bill be now read a second time.

In 2010, Parliament voted in favour of a bill to amend the Public Sector Management Act 1994. A number of changes were introduced as a result of this, but importantly section 99 of the act was deleted. Section 99 created an exclusion by which matters covered by public sector standards were not capable of being taken to the Western Australian Industrial Relations Commission. In order for this to have effect, complimentary provisions that were introduced into the Industrial Relations Act in 1994 need to be deleted. Specifically, section 80E(7) must be deleted to give full effect to the intention of the Parliament when it voted to delete section 99 of the Public Sector Management Act.

This matter has been the subject of a number of reviews. The Commission on Government found at recommendation 83 that the PSMA was flawed in that it did not provide for compliance by chief executive officers and chief employees with standards, codes of ethics and standards of conduct. It found that the WAIRC should be empowered to deal with employment-related grievances and provide injunctive relief or direct administrative remedies as appropriate. The Fielding review reinforced this and described the standards and codes of ethics in government as pointless because they could not be enforced. These restrictions do not exist for workers employed in the private sector who are also covered by the jurisdiction of the WAIRC. These employees have full access to the commission on any matter deemed to be an industrial matter for the purposes of the Industrial Relations Act 1979.

To have a lesser standard of rights for employees in government than for those employed by the private sector can be seen to suggest a lesser standard of accountability for public sector employers. Although a number of checks and balances exist in government, the capacity for an individual to seek relief through the mechanisms provided within the public sector itself is limited. If an individual complaint is made to the Public Sector Commissioner, the commissioner can examine the complaint and make recommendations to the government department to fix its process to ensure that any flaws in its system are remedied. There is no power to either reverse a decision or provide any other form of remedy to the individual. There is also limited capacity in this process to give consideration to the merits or fairness of the employer's actions.

The inability of the WAIRC to review matters covered by public sector standards even though the decision may be unfair, harsh or unreasonable was confirmed in the Industrial Appeal Court matter *Director General Department of Justice v Civil Service Association of Western Australia Incorporated* [2005] WASCA 244. The Industrial Appeal Court, a court of the Supreme Court of Western Australia, found that while an injustice had been suffered by the appellant, the public service arbitrator and the full bench of the Western Australian Industrial Relations Commission had no jurisdiction to hear the matter as it related to an appointment covered by the public sector standard on employment. At paragraph 171 the Industrial Appeal Court found the following —

It follows from earlier discussion concerning the first and second grounds of appeal that I am of the view that both the Arbitrator and the Full Bench lacked jurisdiction. I consider that the appeal should be allowed and the orders made by the Arbitrator and by the Full Bench should be quashed. To my mind, these orders are justified by the need of courts and tribunals to act within jurisdiction. Further, having regard to s 90(3a) of the Industrial Relations Act, it follows from the reasons I have given concerning the other grounds of appeal that, in my view, it is not open to the Industrial Appeal Court to confirm the decision the subject of the appeal upon the basis that no injustice has been suffered by the appellant. I consider that an injustice has been suffered by the appellant.

The public sector standard on employment also deals with issues such as selection, appointment, secondment, transfer and temporary deployment—acting. For example, an employee can be transferred without the employer taking into consideration their family responsibilities. An incidence of this occurred when an employee was transferred to a new workplace 25 kilometres from their current office. The employee had previously been able to visit during lunch hours a disabled relative over whom they had guardianship. This arrangement had to be terminated, having a negative impact on the quality of the life of the family member.

The public sector standard on grievances casts a wide net and can capture matters not specifically covered in an industrial agreement. One of the biggest areas of concern is in relation to dealing with the issue of bullying. In most instances bullying must be taken through the grievance process, thereby cutting off potential access to the WAIRC. A recent survey undertaken by the Community and Public Sector Union has found that, of the members surveyed, 35 per cent had experienced bullying and 58 per cent had witnessed bullying. The union has also

reported a growing incidence of employees making application under workers' compensation for stress-related claims as a result of being bullied.

Removing section 80E(7) of the Industrial Relations Act will not of itself change behaviour in the public sector. It will, however, provide an avenue by which employees can seek support in having the issues resolved when genuine attempts to do this internally have failed. It will also send a strong message to the public sector about acceptable standards of management, and support those managers who are dealing with these issues in an appropriate manner.

The introduction of commissioner's instructions under the 2010 amendments to the Public Sector Management Act has also created a legal uncertainty regarding the capacity of a matter covered by commissioner's instructions to be taken to the WAIRC. It is unclear whether they have the same legal footing as a public sector standard. The deletion of section 80E(7) will resolve this uncertainty and provide certainty to employers and employees alike.

The opposition reiterates its support for the right of public sector employees to access the Western Australian Industrial Relations Commission on the same terms as private sector employees in Western Australia. I sincerely hope that the government will also show its support for public sector employees by supporting the Industrial Relations Amendment Bill 2012. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.