WORKFORCE REFORM BILL 2013

Council's Amendment — Consideration in Detail

The following amendments made by the Council now considered —

No 1

Clause 4, page 3, line 17 — To insert after "section 11(1)" —

and made publicly available under section 9 of that Act

No 2

Clause 4, page 3, lines 18 to 25 — To delete the lines and insert —

(ii) the Government Financial Projections Statement;

(iii) any submissions made to the Commission on behalf of the public sector entity or the State government;

(c) the financial position of the public sector entity as set out in the following —

(i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title "Agency Information in Support of the Estimates" or, if the regulations prescribe another part of those budget papers, that other part;

(ii) any submissions made to the Commission on behalf of the public sector entity or the State government. 15

No 3

Clause 4, page 3, after line 26 — To insert —

Government Financial Projections Statement means whichever is the most recent of the following —

(a) the most recent Government Financial Projections Statement that is —

(i) released under the Government Financial Responsibility Act 2000 section 12(1); and

(ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title "Economic and Fiscal Outlook" or, if the regulations prescribe another part of the budget papers, that other part;

(b) the most recent Government Mid-year Financial Projections Statement that is —

(i) released under the Government Financial Responsibility Act 2000 section 13(1); and

(ii) made publicly available under section 9 of that Act;

No 4

Clause 13, page 8, lines 22 to 27 — To delete the lines and insert —

(2A) Regulations referred to in subsection (1) must specify which parts of the Public Sector must comply with the regulations.

No 5

Clause 14, page 10, lines 15 to 17 — To delete the lines.

No 6

Clause 14, 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.

No 7

Clause 14, page 10, lines 29 and 30 — To delete the lines.

No 8

Clause 15, page 10, 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.

No 9

Clause 19, page 15, after line 9 — To insert —

Government Financial Projections Statement means whichever is the most recent of the following —

(a) the most recent Government Financial Projections Statement that is —

(i) released under the Government Financial Responsibility Act 2000 section 12(1); and

(ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title "Economic and Fiscal Outlook" or, if the regulations prescribe another part of the budget papers, that other part;

(b) the most recent Government Mid-year Financial Projections Statement that is —

(i) released under the Government Financial Responsibility Act 2000 section 13(1); and

(ii) made publicly available under section 9 of that Act;

No 10

Clause 19, page 15, line 30 — To insert after "section 11(1)" —

and made publicly available under section 9 of that Act

No 11

Clause 19, page 16, lines 1 to 4 — To delete the lines and insert —

(ii) the Government Financial Projections Statement;

Mr C.J. BARNETT: There are 11 amendments on the notice paper. These are the result of the Standing Committee on Legislation of the Legislative Council that considered this bill. I indicate that these amendments were moved in the upper house, agreed in the upper house and the government accepts all of them. We support each of those 11 amendments, and I have just been advised that there is a typographical issue to be corrected. I move —

That amendment 1 made by the Council be agreed to.

Mr W.J. JOHNSTON: I wonder whether the Premier could explain what this amendment does. I will ask the same question each time, so when the Premier moves the amendments, perhaps he could give just a brief explanation.

Mr C.J. BARNETT: Sure. I have that in my notes. Amendments 1 and 2 will ensure that greater clarity is provided to the Industrial Relations Commission on the matters that it should take into consideration when making public sector decisions. The independence of the commission is not impacted in fact or by implication. In the bill it is a requirement that the Industrial Relations Commission take into account wages policy, economic conditions and the financial position of the agency. Most of these amendments relate to a tighter or clearer definition of the information that the commission is to take into account, and similarly for the Salaries and Allowances Tribunal. They are really matters that have come out of the upper house about tighter definition and clarity. We endorse that, and the upper house endorsed it as well.

Mr W.J. JOHNSTON: The first amendment we are dealing with states —

Clause 4, page 3, line 17 — To delete after "section 11(1)" —

and made publicly available under section 9 of that Act

That means that the words in paragraph (b)(i) will read —

> the most recent Government Financial Strategy Statement released under the Government Financial Responsibility Act 2000 section 11(1) and made publicly available under section 9 of that Act;

Mr C.J. Barnett: That's correct.

Mr W.J. JOHNSTON: The addition of "made publicly available" means that if, for example, there has been a decision of government to have a financial strategy statement, which might have been approved by cabinet under the provisions of section 11 but has not yet been published, that is not the one that the commission needs to take into account; it is only the one that has been published.

Mr C.J. Barnett: Yes; that is exactly correct.

Mr W.J. JOHNSTON: Is there anything to prevent the government publishing a new financial strategy statement after the commission has started hearing the matter?

Mr C.J. BARNETT: I would not have thought so, but I think it would be fairly clumsy to do so. There is nothing to prevent that, but I think this amendment makes it clear that a government cannot simply start to produce a whole lot of decisions out of cabinet. If the commission is to take the statement into account, it has to be formally publicly released. The amendment just gives certainty that it is the released public statement that the commission will take into account.

Mr D.J. KELLY: The committee looked at this issue, and my understanding is that it had a number of concerns about this process. One of them, as I understand—I am not a lawyer—was that the wording in the original bill would require the commission to consider a number of things, and they are listed in the bill. The amendment has rewritten the way they are listed, but there is still the problem that the bill potentially raises consideration of these issues by the commission from questions of fact to questions of law. Therefore, if consideration of these issues is a question of law, it would make the consideration of them an appellable matter. At the moment, under the Industrial Relations Act, people cannot appeal every decision of, for example, the full bench of the Industrial Appeal Court. They are limited in their right of appeal to questions relating to matters of law. An error in a finding of fact cannot ground an appeal. In the original bill, the concern of the committee was that because of the way in which it was drafted, it would elevate consideration of these matters to the level of a question of law rather than a question of fact. My understanding—I am happy to be corrected—is that the committee, in its second recommendation, redrafted the way these matters are dealt with. The new subsection (2A) that the committee proposes states —

> In making a public sector decision the Commission must take into consideration any submission made to the Commission on behalf of the State Government that is to include such matters as —

Those matters are then listed. In my understanding, the amendment to the bill that is before us is not in exactly the same form as that which was recommended by the committee, so I suppose my question to the Premier is: does the government agree with the committee's original finding that the original drafting of the provision in the bill had the potential to elevate the consideration of these matters from being a finding of fact to a matter of law? Does the government agree with that finding of the committee; and, if so, why was the amendment that was ultimately put through the upper house in a different form from that which was recommended by the committee? My reading of the way in which the amendment has ultimately been dealt with by the Council is that it appears to be different to an extent that will cause the same trip-wire, if you like, that the committee identified originally to be present in the bill if this amendment is passed by this house.

Mr C.J. BARNETT: I am not aware of what the deliberations of the committee were. I just take this amendment as a simple one to make it quite clear. Amendment 2 deletes what had originally been in the bill, and it basically incorporates that in a more concise form into amendment 1. It just makes it clear that the financial strategy statement is publicly available, and it specifies the act under which it is released. As to whether it provides grounds for appeal or otherwise, I am not aware of what was discussed in the committee. It seems to me to be a clarification. Therefore, the government and all members in the upper house basically supported it.

Mr W.J. JOHNSTON: The Premier is saying that he cannot advise us that it will not be something that could be appealed.

Mr C.J. Barnett: No, I can't.

Mr W.J. JOHNSTON: As far as we are aware, there certainly could be an appeal from a decision of the commission.

Mr C.J. Barnett: I guess that will be tested in the commission at some stage if someone decides to appeal.

Mr W.J. JOHNSTON: The member for Bassendean referred to the Industrial Appeal Court. The Premier is not disagreeing that it is a question of law.

Mr C.J. Barnett: No.

Mr W.J. JOHNSTON: Okay. That is quite important to the unions, because it will give them additional authority to seek an appeal. This is one of the comments I made when we were dealing with this legislation originally in this chamber: be careful what you wish for. The Premier is not disagreeing with the submission of the member for Bassendean that potentially what the government is doing here is making this legislation more subject to legal appeal on procedure rather than on merits. As I said, be careful what you wish for. Nonetheless, there is no reason for us to not want to support the amendment, because we are giving more power to the unions to seek appeals, which adds uncertainty and complexity to the operations of the commission and the operation of decisions of the commission in respect of the public sector. The opposition supports it, but the government should be careful what it wishes for because if things end up more complex, we may have been better not to amend the original provision at all. Of course, the original provision in the act, before this bill sought to make the amendment, already gave the government the right to go to the commission to explain the financial circumstances of the state and explain the policy objectives that it has in its wages policy. That would be a powerful argument for the commission, because the commission lives in the real world and makes real-world decisions.

By adding legal rights and legal complexities, the government is not necessarily achieving what it is trying to get. We cautioned the government before and we do so again. We do not know what we are buying with this. The one thing we all know is that if laws are made more complex, lawyers will be asked to use their capacities and find problems. Yes, the opposition is happy to support making this amendment, but it still thinks that the original provision was stronger, both for the purposes of public sector employees and the government, because the government always had the right to explain. As I said, the financial circumstances of the state, or in fact of any other employer, have always been a powerful argument in front of the commission. I have always made the point that I have represented only a very small number of government employees. It was not a question of private sector employees versus government sector employees, but, rather, the fact that the commission was always going to operate in the real world and make real-world decisions. The Premier should be careful what he wishes for because he might not actually be getting what he thinks he is getting.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

> That amendment 2 made by the Council be agreed to.

Amendment 2 follows in the same vein but it provides more specific direction to the Industrial Relations Commission on the documentation that should be considered in relation to the financial position of a public sector entity—that is, a department or some other agency. Again, it details more carefully what should be available to the commission and what the commission should consider.

Mr D.J. KELLY: I appreciate that this amendment has been approved by the upper house, but I am compelled to seek clarity on what the government is trying to achieve by this amendment. I am of the view that when things are put into legislation that appear to do nothing more than replicate the status quo it invites people to spend hours trying to figure out why the government did what it did and what was there and is not there now. As the member for Cannington said, the requirement of the Industrial Relations Commission to consider, to put it broadly, the financial circumstances and the wages policy of the government when it makes decisions affecting government employees' wages and conditions already exists; yet the government will put provisions into the act and it has not clearly identified why it is doing so. What is different about the way that the commission will do its work after the amendment, from how it does its work under the existing legislation? Lawyers get paid a lot of money to look for things in legislation that are not there or should be there or they think might be there. I have seen hours and hours of public money wasted on lawyers making sense of something that is not there. For the sake of clarity and the sake of the sanity, if you like, of the people who are trying to interpret this legislation, I invite the Premier to tell us the reason for this. I have heard the Premier say that it will provide more clarity for the commission when it does its work on these matters, but I cannot see how this provides more clarity. Can the Premier tell us with some specificity how this amendment to the legislation will change the way the commission is required to do its work? It will be incredibly beneficial to those parties in proceedings before the commission to look back on what he says tonight to get a clear understanding of what the legislation intends to achieve.

Mr C.J. BARNETT: I doubt it would make much difference at all to the deliberations of the commission. All it does is specify in terms of the budget some of the actual information that should be provided and that the commission should therefore take into account. These amendments have been moved. They were amendments that came out of the Standing Committee on Legislation. I do not believe that they make a great deal of

difference, but in the interests of completing debate on this bill the government has agreed to them. Who knows how it will play out in any industrial case in the commission? These amendments simply add more information and they are more specific. Whether it makes it easier or more difficult in the commission—the member for Bassendean has spent more time in the commission than I have—I simply do not know what the outcome will be. I do not see that there is anything of great consequence in these amendments.

Mr D.J. KELLY: With respect, I am not sure that the Premier quite understood the question. I was not asking him to explain the difference between the amendments as we are currently considering them and the bill. My understanding is that the Premier said that he did not think that there was much difference being made by these amendments to the bill. I am asking what the difference is between the amendments and the legislation as it currently stands. It is a different thing. Presumably, the government introduced the bill with these amendments for some good purpose. I am asking for some clarity—not an explanation about the difference between the current amendments and what was in the bill—on the difference between the current amendments and what is in the original legislation, because that is what people in the commission will argue about. They will argue about what is currently in legislation and what is in this bill as it is finally passed, not what the bill looked like when it was originally brought into the house. I am asking for clarity on the meaning and the importance of these amendments to the original legislation.

Mr C.J. BARNETT: The fundamental amendment is one of the purposes of this bill, and that is to require the commission to take into account wages policy, economic conditions and the financial position of the particular agency. It is simply part of that. The point the member for Bassendean raises is a matter for the second reading debate, which we have been through.

Mr W.J. JOHNSTON: A moment ago the Premier said that these amendments arise out of the recommendations of the Standing Committee on Legislation in the other place. I seek his assistance and ask him to explain how the recommendations were actually adopted in the form that came from the committee. As I am sure the Premier is aware, the words that we are inserting are not the words that were recommended to us by the legislation committee. There are probably good reasons for that, and I am sure the Premier is aware of those, but what were those good reasons for not accepting recommendation 2?

Mr C.J. BARNETT: The committee obviously involved members from both sides of the upper house and it made its recommendations. There are some changes and I am advised that that was largely because of grammatical and comprehension flaws in the wording that came out of the committee, so it was just to correct that. It was a little literacy exercise.

Mr W.J. JOHNSTON: It appears to me that the two amendments refer to slightly different things. I could be wrong, of course, but proposed section 26(2A)(c)(i) and (ii) effectively amend what we already had written here, but they are not the words that were recommended to us. Proposed section (2A)(c) was simply "the financial position of the public sector entity", but this amendment inserts —

> (c) the financial position of the public sector entity as set out in the following —
>
> (i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title "Agency Information in Support of the Estimates" or, if the regulations prescribe another part of those budget papers, that other part;
>
> (ii) any submissions made to the Commission on behalf of the public sector entity or the state government.

The wording is substantially different from the wording used by the committee, and that may well be a good thing; I am not saying it is not, but I am not quite sure why it is, because the government is now referring to a specific part of the budget papers or a document prescribed by regulations. We do not know any of the regulations and, as I understand the evidence of Mr Wauchope to the upper house committee, not even draft regulations are available. I imagine that for this measure, they would not be available, because the amendment was not originally contemplated when the bill came to us. Therefore, I would not be at all surprised if that is the case. But we can see that the wording is substantially different from the wording that was recommended by the committee and it is not only a matter of grammar. Proposed section 26(2A)(c)(ii) states —

> any submissions made to the Commission on behalf of the public sector entity or the State government.

The question that arises out of those words is: if they are the submissions made to the commission on behalf of that entity, what probative value is placed on that by the commission? It refers to —

> (c) the financial position of the public sector entity as set out in the following —

That means that a submission developed by counsel or whoever represents the entity is to be taken as fact. We should be careful what we wish for because clearly that would then end up being subject to appeal if people did not believe that the submission was correct. Again, I am happy to support it if I can have the purpose and reason for the particular words as they are set out here explained, because they are not the words that came out of the upper house committee recommendations. There must be a reason that government thought to have these other words included in addition to the words recommended by the committee. I would be assisted if the Premier were able to explain why proposed section 26(2A)(c)(i) and (ii) is being included.

Mr C.J. BARNETT: I refer to what I said before; this provides for more specific direction to the commission on the documentation that it would consider. I make a bleeding obvious point: this is the Legislative Assembly and we are not considering amendments of the upper house committee; we are considering amendments of the upper house.

Mr W.J. Johnston: That is exactly right.

Mr C.J. BARNETT: The upper house has made some changes to whatever the committee recommended and those changes have been agreed to across the chamber, even though I appreciate that the member for Cannington does not agree with the amendment as a whole. All we can do is consider the amendments of the Legislative Council and not those of the Legislative Council committee. The Legislative Council has already considered the committee report and made some changes, some of which are grammatical and some of which are to add even more clarity. All I have indicated is that the government does not think that they are of any great consequence. Hopefully, they improve the legislation. We do not think they change the intent of the legislation in any significant way. Therefore, we have accepted the amendments. If the member is wondering about a difference in the wording between what the upper house committee recommended and what is now in the clause that we are looking at, I suggest he talk to his upper house colleagues. I did not listen to the upper house debate; I do not know whether the member for Cannington did. That is what they agreed with and promoted.

Mr W.J. JOHNSTON: That is the whole point. I know why the committee recommended what the committee recommended because it provided a detailed report with an explanation of why it recommended the issues that it recommended. The report details the debate and provides an explanation and refers to evidence. We can read the submissions et cetera and see the conclusion made by the committee. Now we are debating government amendments. With respect, of course, these are amendments agreed to by the upper house, but these are government amendments. Therefore, I am asking why the government has proposed the difference between what was recommended by the committee and what the government is recommending to the chamber. There may be a hundred good reasons to recommend not proceeding with what the committee wanted, and I am cool with that. All I am asking is the reason for having varied from the recommendations of the upper house committee. When the government considered the upper house committee recommendations, it must have had some process, looked at what was recommended and come up with a decision, then gone back to the upper house and told it not to worry about the recommendations of the committee as these are the things it wanted changed, and the upper house agreed to those changes. That does not excuse the government from having to explain itself when, as the Premier pointed out in a former life in this chamber, this is the place where questions get asked. All I am doing is asking that question: why did the government change to this set of words rather than adopting the words of the recommendation of the upper house committee? Of course, we are not dealing with the upper house committee. I am not asking why the upper house committee made the recommendation, but I am asking why the government is asking us to proceed with these words. This amendment inserts two extra proposed subparagraphs that are not in the committee's recommendation, so why did the government decide it wanted those two extra subparagraphs?

Mr C.J. BARNETT: It contains a reference to the factual information to make it absolutely clearly what the commission is to consider. It simply improves on the spirit of what came out of the upper house committee, and that was done by mutual agreement.

Mr W.J. JOHNSTON: I sort of understand the government's position on proposed section 26(2A)(c)(i), because that refers the commission to specific documents that exist and are produced in a particular manner and it is properly described there. The regulations thing is a bit unusual, but I can understand that. However, proposed section 26(2A)(c)(ii) reads —

> any submissions made to the Commission on behalf of the public sector entity or the State government.

Is the Premier saying that the commission is required to accept as a matter of fact that a submission made to the commission on behalf of the public sector entity is evidence of the financial position of the public sector entity? It appears that that is what proposed subparagraph provides. I understand subparagraph (i), but what happens if the submission by the public sector entity made in accordance with subparagraph (ii) differs from the information contained in the documents specified in subparagraph (i)? How does the commission resolve that

issue? That is a live question. It is a genuine question and regardless of what happened in the upper house, it still needs to be explained to us in this chamber because, as the Premier says, this is the only place in which we can ask these types of questions. What is the answer? If a public sector entity made a submission that contradicted the information provided in the document specified in subparagraph (i), what is the commission expected to do?

Mr C.J. BARNETT: I am sure that the commission will be able to deal with what is factual. The factual material essentially relates to budget documents. They are a matter of fact. In a submission there will probably be more interpretive material and the commission will determine how to deal with that. We are not wishing to limit what goes before the commission for consideration but we want to make clear what the factual material is. I have answered that question.

Mr D.J. KELLY: I am heartened by what the Premier is saying but I encourage him to be crystal clear about this. The point that the member for Cannington makes is that the submissions provided by the public sector entity may not differ in a numerical sense from the documents in proposed section 26(2A)(a), but the submissions will obviously put a commentary—to be polite, or, to be impolite, a spin—on the information to leave the commission to interpret the financial position in a particular way.

If the Premier is saying, and making it crystal clear, that the commission is not obliged to take the submissions and accept them at face value as fact, that would, I think, be an assistance to the poor souls who are going to have to interpret this legislation in the future. As I read it, the way the legislation is drafted, the submissions have been elevated to a position whereby the commission, as it currently stands, hears all the submissions and basically makes up its own mind based on the material before it. The danger with this round of legislation, not one of the perceived dangers by the other parties at the end of the bar table, is that the government will argue that this legislation elevates the submissions higher than anything put to the commission. The commission cannot, for example, interpret the financial information in subparagraph (i) in a way that is different from the way the submissions put to it in subparagraph (ii) are presented. I am heartened by what the Premier has said, but if he could make that crystal clear, he would be doing the community a favour.

Mr C.J. BARNETT: The factual material is essentially the budget documents, and they are fact in the sense that they are the budget. Submissions will have an element of argument in them; they will have some value judgments, they may have some interpretation of data and they may include some projections as to what the future may be. The commission will treat that as a normal submission, not necessarily as factual material. The commission will treat it, I hope, as close to objectively as it is able.

Mr W.J. JOHNSTON: As the Premier says, we hope the submissions would be as close to objective as submissions can get. That then is the question. As the member for Bassendean said, it would be good if the Premier was saying that it is still up to the commission to interpret the submission and that, of itself, the submission is not taken as fact. That would be very helpful. If that is not the case, the first thing that will happen, as I know from my former life dealing with the Western Australian Egg Marketing Board, is submissions would be made about the right of the authority to make the submission. It is taken as a procedural issue right up-front to make the case as complex as possible as early as possible so there is something to appeal if the board does not like the decision.

The last thing in the world an industrial officer would do is not make any submissions about the right of the authority to make the submissions, because when the final decision came out, they would not be able to appeal it due to not creating it as an issue. What would happen is an industrial officer would spend four or five hours at the start of the hearing arguing about what it is they have a right to talk about. The government is not doing itself a favour here. But if the Premier can say that it is still open to the commission to interpret the information provided to it and this legislation is not intended to make the submission of the authority factual—that it is simply an interpretation—then we are all relaxed about that.

Mr C.J. Barnett: I think I just said that.

Mr W.J. JOHNSTON: If we are agreeing that that is what those words mean, I hope that all the industrial practitioners in the commission who read this legislation in the future when they have to deal with these matters will understand that, because it would not be appropriate to let one side make submissions that have a higher probity value than the submissions from the other side.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

> That amendment 3 made by the Council be agreed to.

Mr W.J. JOHNSTON: Again, it would be helpful if the Premier had an opportunity to give a quick explanation of what these two paragraphs will do. The opposition is not opposing this, but we would like to know what the amendment is intended to do.

Mr C.J. BARNETT: The objective here is that the definition of "Government Financial Projections Statement" has been amended to specifically provide what documentation the industrial commission should consider and from where this documentation is available. If the member reads through the amendment, he will see that it defines quite clearly what that is. Most of these amendments are adding more detail into the bill. I do not know whether or not that is a wise decision, but that is what has come from the upper house.

Mr W.J. JOHNSTON: The Premier does not have to respond to this but I want to make the point that what we are saying is that cabinet makes decisions that are then reflected in documents from the Department of Treasury. All governments make these types of decisions in cabinet. It is not that these documents are created out of thin air; they are created out of a process and the information that goes into these financial projections statements are for the year in question and for three years in advance. They are the decisions of cabinet made known to Treasury. There are assumptions about financial and economic issues that affect the outcomes of these projections statements. That is the way our system of government works. It is not a criticism of the current government; it is just a statement of fact. I think it is very important that everyone understands that it is not as though these documents come out of an invisible process. A visible process is used to get them. There is nothing included in these papers that is not known to government. In fact, they are created only out of the decisions of government. That is a good thing; it is not a bad thing. I just want to make sure that everybody understands that this is exactly what we are talking about when we talk about these various statements.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

> That amendment 4 made by the Council be agreed to.

Amendment 4 deletes the reference to regulations that may be made that require specified matters to be dealt with or determined in accordance with the commissioner's instruction. This addresses the concerns of the Standing Committee on Legislation that clauses 13 and 14 may have had the effect of creating a new class of commissioner's instructions under part 6 of the Public Sector Management Act. If members can make sense of that, they are better men than me!

Point of Order

Mr W.J. JOHNSTON: I am wondering about amendment 8. I know that we have had a discussion with the Clerk about which page it is on, but I want to clarify that it is still in the correct order for the amendments.

Mr C.J. Barnett: Yes, I understand so. The typographical is, as the member says, on amendment 8, clause 15.

The DEPUTY SPEAKER: It is still amendment 8, member for Cannington, no matter where it occurs in the bill. We are dealing with amendment 4 at present.

Debate Resumed

Mr D.J. KELLY: Council amendment 4 seeks to amend clause 13 of the bill, and that is consistent, as best as I can tell, with the recommendation made by the standing committee. The concern that the Premier has identified in his explanation is a real one—that is, that this provision, if you like, has the potential to be seen to create a second type of regulation via a commissioner's instruction. We are pleased that it has been decided to accept that recommendation of the committee. I just have a query. There was a minority report from that upper house committee that also recommended a further amendment to section 94 of the Public Sector Management Act, and that was to remove proposed section 94(1A)(c) referring to a registrable employee being defined in paragraphs (a), (b) and (c). Paragraph (c) states —

> an employee in a category prescribed by the regulations.

The importance of this is that the person who becomes a registrable employee is generally understood to be someone who under paragraphs (a) or (b) is either surplus to requirements or someone whose position has been abolished. If someone's position has been abolished or they are surplus to requirements, they can become a registrable employee and that means certain processes kick in, which may under this legislation ultimately mean that they can be made involuntarily redundant. The bill as it currently stands creates a third category of employee—that is, an employee in a category prescribed by the regulations. The concern that was identified by the committee, which I think echoes some issues we raised when this matter was first raised in this chamber, was that it is a very general category. There is no explanation in the bill about why that additional category of person will potentially become a registrable employee. Someone who is surplus to requirement is well understood in

industrial relations law; someone whose job, position or office has been abolished is pretty well understood in industrial law; however, the additional category of an employee in the category prescribed by the regulations just seems completely open-ended. The regulations might prescribe that anyone employed, for example, at Swan District Hospital is a registrable employee or anyone employed in the catering department of a hospital is a registrable employee. The committee looked at that and there was a minority report recommending that that third paragraph be removed as these provisions do have very serious consequences. If at the end of the day a person is made involuntarily redundant, this legislation should not be so loose, open-ended and unspecific that in future a government could make a regulation that is well outside of what we all understand and what the Premier in his second reading speech said this legislation is intended to be about.

Mr C.J. Barnett: I just note that.

Mr W.J. JOHNSTON: This was canvassed on page 14 of the transcript of evidence of 5 February 2014, that being the transcript of the committee hearing with the Public Sector Commission. Hon Amber-Jade Sanderson asked the following question —

> My question relates to the future application of the reforms. While it is stated in the submission from the commission that it will apply to a very small number of public sector employees, is there the potential, in your view, for it to be applied on a much larger scale? For example, those employees at Swan District Hospital, when that closes down, will be expecting to move to St John of God hospital, and those who do not wish to, are they likely to be registrable?

Mr Warner, on behalf of the commission—he is now at the table with the Premier—gave the following answer —

> It is possible, I suppose. I think the Minister for Health addressed this matter in the Legislative Assembly, so I cannot really say what is planned for those people at the hospital. But it is possible that where there is structural change and people cannot be found work, then they could be registrable and then potentially registered. I would also point out that this bill, under clause 13, allows for the first time the commissioner to revoke or suspend someone's registration. So it does allow for some protections in regard to a personal circumstance that might need to be dealt with in relation to individuals, and I think that is an improvement on the current arrangements.

Again, we still have a provision, notwithstanding the amendment being moved, in which we end up with people en bloc being made redundant when there is a policy decision of the government to change the administrative arrangements—so outsourcing, privatisation et cetera—which is something not currently available to the government. Notwithstanding that we are making these changes to get rid of having things done by the Public Sector Commissioner through the provisions originally intended, we still end up with the same provision that a class of employee could be specified to be made redundant.

Mr C.J. BARNETT: I suppose that could happen. With the example of Swan District Hospital, the Minister for Health has made it clear that most of the employees in the current Midland hospital will be offered positions in the new hospital under construction if they are not able to be redeployed elsewhere within the public health system. I understand that some may not wish to work in a hospital managed by another entity, in this case St John of God. Some may feel very strongly about that and therefore they will be repositioned somewhere else in the public health system. Although I can understand that, my expectation is that most people will prefer to move across into the new hospital with vastly improved working conditions and medical care.

Mr D.J. KELLY: The Premier has answered the question from the member for Cannington by referring to only the specific circumstances of Swan District Hospital. The Premier would alleviate the concerns of many people in the public sector if he was to make that clear when looking at that provision of the legislation, which basically states that a registrable employee be just any employee in a category prescribed by the regulations. If the Premier could make it clear that it is not the intention of the government, the intention of the drafting or the way this thing should be interpreted to allow for regulations that would encompass a broad class of people, whether it be people employed at Swan District Hospital or all level 6 public servants or whatever, and these regulations would be limited to only a very small number of people who the Premier has specifically said in this place are the intended targets of this legislation, he would put at ease a lot of people in the public sector who feel as though this legislation, although it is being brought in under the guise of only dealing with a small number of people, will actually be used in the future to make wholesale redundancies in the public sector. Again, I am encouraged by what the Premier has said, but if he could make it clearer, rather than just referring to the circumstances at Swan District Hospital, it would be appreciated, I am sure, by many in the public sector.

Mr C.J. BARNETT: I made that point during the second reading debate and I clarify it on this issue.

Mr W.J. JOHNSTON: Could the Premier also clarify whether he could specify a class of people through this regulation based on some characteristic that they have; and, if the Premier cannot, can he just tell me why it is not possible to make a regulation that applies to people because of a characteristic they have?

Mr C.J. BARNETT: I am not sure what the member is asking about that. The only advice I have is that if a person was no longer qualified in some way, but I do not see that. I do not understand the point the member is making. Maybe the qualification they have is no longer suitable for the job. I do not want to stick to the hospital example, but that may have happened even if there had been no new hospital built.

Mr W.J. JOHNSTON: Redundancy came out of termination, change and redundancy in the 1970s. It is a well-understood arrangement. I am looking for whether the Premier thinks this provision could apply to other than TCR-type arrangements. Could the government specify a class of people based on characteristics? For example, could the government specify—I am not saying it wants to, but could it—that everybody who is left-handed cannot work in the Department of Finance? Is that possible under the regulation, no matter how obviously extreme it is? If the Premier cannot specify that, that is great, he can tell me why he cannot; and if the Premier can specify that, he can tell me why he should be allowed to.

The member for Fremantle just made a point. I recognise TCR; nobody has a problem with that. The nature of the work has changed such that the person who previously occupied the job is no longer qualified. Because the government is concerned about the level of unemployment amongst people who have graduated from university, everybody above level 7 has to have a university degree; therefore, the regulations state that anybody above level 7 who does not have a degree is now in a class of people covered by the regulations. I am not asking whether the government wants to do that; I am asking whether this regulation gives the government the power to do that. Depending on the answer, I might ask another couple of questions.

Mr C.J. BARNETT: This regulation, in my opinion, does not give the power to do that. It would be discriminatory to pick out one section of the workforce on some criteria like those. If the member is alluding to other parts of the bill that relate to involuntary redundancy, as was talked about during the second reading debate, there is an exhaustive process, such as retraining and redeployment options, before someone would be deemed to fall under involuntary redundancy. It will come down to a very small number of people. It may encourage people to accept a voluntary redundancy knowing that there is ultimately an involuntary redundancy somewhere down the track. But we do not expect the number of involuntary redundancies to be high and they certainly would not be applied to a class or category of employee.

Mr W.J. JOHNSTON: There was a long discussion in the hearing about the question of the procedures. I will not go through those. It is interesting that, effectively, people are being encouraged to appeal at every step of the process rather than only if there is an adverse outcome when they are made redundant. Normally in a TCR situation for a private sector employer, the union might take it to the Industrial Relations Commission at the start of the process to argue that there is no valid reason to have the process. For individuals whose employment is terminated, the union might take them to the commission to argue that they should not have been made redundant. There is no other argument that could be put to the commission. My view of the evidence presented to the upper house committee by the Public Sector Commission through the commissioner and his staff is that every step of the process is appealable to the Industrial Relations Commission. I am not going to go there because I went through that when we debated the bill. The question is not whether the government would do it, because I acknowledge that I cannot see it being done, but do these words allow it to be done?

Mr C.J. Barnett: I say, in my opinion, no.

Mr W.J. JOHNSTON: The Premier's opinion is that they do not. What is it that prevents the government doing it because of the words that the Premier is specifying to us? Otherwise, it is just the Premier's opinion. All the Premier has to do is point me to the provision that says it cannot be done.

Mr C.J. Barnett: It does not relate specifically to that. You are creating a hypothetical.

Mr W.J. JOHNSTON: Yes, I am.

Mr C.J. Barnett: It is a hypothetical that I do not believe is realistic.

Mr W.J. JOHNSTON: The problem I have is that I think this regulation power is very broad and that the government could in fact specify people in the way that I have described. An artificial construction could be created to get rid of a category of person. I thought the Premier was going to refer me to provisions about discrimination; that other provisions in other legislation would cover it and I would say that is fine.

Mr C.J. Barnett: It probably is discriminatory. It is a hypothetical situation. It is not what this amendment is about.

Mr W.J. JOHNSTON: But the problem is that the entire legislation we are dealing with is hypothetical. The point of having this consideration is so that we can make assessments of the provisions before they become law.

Once they are law, they cease to be hypothetical. They are only hypothetical when they are in this chamber. As the Premier says, this is the only place where we get to scrutinise the legislation and ask these types of questions. I am happy for the Premier not to answer but it leads to some conclusions. Although the Premier has made an assertion from the table of the house, I do not think the assertion is correct. I am not saying the Premier is lying; I am just saying that I think he is wrong. I think that provision will potentially cause trouble in the future.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

That amendment 5 made by the Council be agreed to.

This amendment deletes the reference to regulations that may be made that require specified matters to be dealt with or determined in accordance with the commissioner's instruction. This addresses the concerns that were raised by the Standing Committee on Legislation in the Council.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

That amendment 6 made by the Council be agreed to.

My advice is that amendment 6 deletes the reference in proposed section 95B to regulations prevailing over inconsistent provisions in the current act. It is considered that sufficient safeguards will remain to ensure that the redeployment and redundancy arrangements are binding on relevant parties. This addresses the Standing Committee on Legislation's concerns that proposed section 95B(2)(a) of the bill constitutes a Henry VIII clause.

Mr D.J. KELLY: I do not see any reason why we would question the government's decision to put in new proposed section 95B(2A) that would essentially take away the potential that regulations created under the part would in effect override statute. I once again ask the Premier why he has not made a similar amendment in respect to industrial agreements listed in proposed paragraph (b). I raised this at length with the Premier in this house: the Premier personally, as the employer of a range of persons in the public sector, signed industrial agreements in the lead-up to the last state election. I believe there was correspondence from the Premier to my union that said that certain things would not occur including no involuntary severance of hospital workers, education assistants, cleaners and gardeners. But the Premier has come into this Parliament and introduced legislation that will override the provisions of the industrial agreement that was negotiated with the Premier and which he signed up to. People were not happy with the pay rise, but the Premier gave a commitment that there would be no involuntary severance. I raised that with the Premier in this chamber at length but received no positive response from him. It then went to the upper house. Its Standing Committee on Legislation looked at it. In consideration of this issue, the committee heard evidence that the Department of Commerce actually advised the government that there should be transitional arrangements so that existing industrial agreements were not overridden by these provisions. The government members on the committee did not make a recommendation based on that advice from the Department of Commerce. That is why it is only a minority report from the committee in the upper house that recommended we similarly propose an amendment to make it clear that existing industrial agreements will not be overridden by this legislation. But here we are again, Premier. I said to the Premier in the debate on this matter that this is a matter of his personal credibility. In this business, if people cannot believe what the Premier says and if when he shakes hands with another party—whether it be in an industrial dispute or in negotiations over a commercial deal—people cannot accept his word, I suggest he is not worth much to anybody.

I have put to the Premier on a number of occasions, in and out of the chamber, that the least he should do is honour his word. The cleaner who works at Belmont Primary School, who accepted a pay rise less than that cleaner thought they deserved but did so because they had a commitment from the government that their position would not be subject to an involuntary redundancy decision, made a decision to accept that offer because they accepted the Premier's word. Under this legislation the Premier is overriding those agreements. The Premier's own department, the Department of Commerce, gave him advice that he should exclude existing industrial agreements and phase in this provision so that at least he would honour the commitments he made to public sector workers who made these agreements. I suppose this is the last opportunity I will have to raise this issue with the Premier before the bill becomes law. This is the Premier's opportunity to say, "We will phase it in. We will honour the agreements we made before the election."

Mr C.J. BARNETT: I think if the member looks at the agreements that have been referred to, he will see that I did say that we would not have forced redundancies, and for permanent employees we are not intending to have forced redundancies subject to them doing their job in a satisfactory manner. So what has happened, certainly with education assistants and I imagine also school cleaners—I do not doubt that—is that a number may not have had their contracts renewed, but they are contractual employees not permanent employees. It does not make

it any easier for the individual; I concede that point. We do not have the power and we have not entered into forced redundancies for those permanent employees, but if they refuse to move to other suitable jobs, they may face that situation. I therefore do not accept the point the member raised. We have not contravened that agreement.

Mr D.J. KELLY: I have to take the Premier to task on that answer. He is saying that he has not broken those agreements because he has not yet made someone involuntarily redundant. I am not talking about people who are on fixed-term contracts; they are a particularly unfortunate class of worker. The Premier put a lot of people on fixed-term contracts in his time as Premier.

Mr C.J. Barnett: During your time in government they were on contracts.

Mr D.J. KELLY: Those people have very limited rights. I am talking about permanent employees who were employed under agreements that the Premier signed up to before the election, and those agreements state that there will be no involuntary severance.

Mr C.J. Barnett: Has there been any?

Mr D.J. KELLY: The Premier has not passed this legislation first.

Mr C.J. Barnett: There hasn't been any.

Mr D.J. KELLY: With respect, Madam Deputy Speaker, I am used to being heckled from the cheap seats!

We have not passed this legislation. Once it is passed, the Premier will have broken the word that he gave to those employees. Let us say there is a restructure of cleaning at Fremantle Hospital. The public sector will put together a handbook of how this is going to be dealt with, and it will outline what the law says. At the current state of play that handbook would say, "Involuntary severances are not possible because of clause blah of your agreement." Once this legislation is passed, that handbook, in answer to a question on whether voluntary severance is possible, will say, "Yes, it is under these circumstances under these regulations." Those cleaners therefore will have to make those decisions based on what the legislation says. They will not be told by the management of Fremantle Hospital, "You don't have to worry about this legislation that's just been passed, you can rely on the provision that the Premier signed up to in your industrial agreement because the Premier said he's not going to break his word in the Parliament." Just because the Premier has not yet forced someone and applied the legislation does not mean that when decisions are made in the future once this legislation is passed he will not have materially changed the landscape. If the Premier does not intend to use this legislation to breach the commitments he made in industrial agreements that he signed up to immediately before the election, he should take it out of the legislation. The Premier should show a bit of dignity. He should show that he has some honour. He should show that he values his word. Do not say to us, "I'm going to pass legislation and let's wait and see. We won't make anyone involuntarily redundant." If the Premier does not intend to do it, take it out of the legislation and people can trust the Premier that when he gives his word he will keep it.

Mr C.J. BARNETT: People will judge that in time. The fact that the government is introducing an involuntary redundancy scheme as part of this legislation is a reform that the state needs. Every other state and the commonwealth have such provisions. I accept what the member says about the industrial agreements he was talking about. We did say and I did say—I was not directly involved but I accept responsibility—that in those agreements there will not be in the term of that agreement forced redundancy. For someone performing their duties we have no intention of having forced redundancies. Involuntary redundancy will be a last resort after all of the redeployment and retraining is offered, and it will affect in my view a comparatively small number of people. Whether it is seen as an incentive or a threat I guess depends on where people sit philosophically, but as I said previously, it may encourage more people to take up a voluntary offer. There is nothing wicked or dastardly about this. The member has made his stump speech—good on him; he can keep doing that—but this will not change the way in which the government will handle those agreements that it signed up to.

When this bill came into Parliament there was a lot of scepticism from members opposite. They should respect what public servants wish and indeed what some of the member for Bassendean's members in his previous role have accepted. The Public Sector Commissioner has supported 1 201 applicants; that is well above the 1 000 people who sought voluntary redundancy. The final number dropped down to 1 112 because some people changed their mind, and they were allowed to change their mind if they decided they did not want to accept that redundancy. For interest, the average severance package worked out at $105 000. If we include their accumulated leave, it averaged at $134 000. So, 1 112 public servants without any duress at all accepted the offer of voluntary redundancy. They took it, they are getting an attractive payout and I would say that they are happy. That is giving some choice to people to leave the public sector in a dignified way. It is not some dastardly piece of legislation, and it is common to legislation throughout the commonwealth.

Ms S.F. McGURK: I too want to take the opportunity to clarify the purpose of the government in putting forward the amendments, following on from the line of questioning by the member for Bassendean. During the

consideration in detail stage on this bill originally in November last year, I asked the Premier about section 94 of the Public Sector Management Act. That is the section that provides for the commissioner to direct a registered employee who is surplus to requirements to accept redeployment to another job or between one department and another. That is, when someone refuses to take that redeployment when suitable training has been offered et cetera, that person can be directed to take a position in another department. That was the scenario that was outlined many times by members on the other side of the house for why this bill was necessary. According to members opposite, there were all these public sector workers languishing in departments who were surplus to requirements but who did not accept redeployment and nothing could be done for them. Under section 94 of the Public Sector Management Act, an employee can be directed to move departments. Has such a direction ever been given to an employee? The Premier conceded in that discussion that such a direction has not been given—that no-one has been forced to accept redeployment. So there are powers in the current act that have not been used to deal with surplus employees by directing them to transfer between departments.

The second scenario is the one outlined by the member for Bassendean. Some public sector employees entered into industrial agreements that they thought gave them job security; that is, there would be no forced redundancies under the terms of that agreement for the life of that agreement. I was reminded during the exchange between the Premier and the member for Bassendean of an expression that the Premier used a few weeks ago—that a person's word is their bond. The government entered into an agreement —

Mr W.J. Johnston: That was when he was giving away $10 million.

Ms S.F. McGURK: That is right. I concede that it was in another debate. The government gave its word in this case. The union entered into an agreement on behalf of its members and on behalf of a whole section of public sector employees that there would not be forced redundancies for the life of that agreement. I have outlined a few scenarios. There are powers under existing legislation that have not been utilised to deal with surplus employees and there are provisions of industrial agreements that do not allow employees to be forced to be made redundant. However, this bill will override all of that and force employees to be made redundant against their will. The Premier said that it might act as an incentive for people to consider what he says are quite generous redundancy provisions. I have certainly dealt with union members over the years in various industries and I have also spoken to employees of Fremantle Hospital since I have been representing that electorate. People are genuinely worried because of their age and skills set. What will happen to them if they decide not to accept a redundancy? We know that the unemployment rate is increasing. As I said, it might be an older worker who is a cleaner or a patient-care assistant. They are genuinely worried about what will happen and so will feel forced to take the redundancy that is offered to them because they are worried that they will be forced to take a redundancy at a lower rate and at a later stage whether they like it or not. Perhaps the Premier could address those scenarios: why will this bill force redundancies when provisions in the current act that provide certain powers have not been used, despite the provisions of industrial agreements, and when pressure is being placed on some employees in difficult circumstances?

The DEPUTY SPEAKER: Just for clarification, I did mention that we were discussing amendment 7; in fact, it is amendment 6. Is that correct? We are on amendment 7; I am sorry about the confusion.

Mr C.J. BARNETT: I understand the concern that members opposite have for employees. I share their view, which members might find surprising. We can take the example the member for Fremantle raised about the health sector. Health is undergoing a major transformation in the metropolitan area. For example, some functions at Fremantle Hospital will move to Fiona Stanley Hospital. I expect the majority of employees will take up the offer of jobs at Fiona Stanley Hospital. For some, it may not be practicable to do that for personal or family circumstances or whatever.

Mr D.J. Kelly: They will lose their sick leave, annual leave and long service leave.

Mr C.J. BARNETT: Hang on. For others, it might be that they are approaching retirement age and do not want to confront the physical change, the new technology, retraining et cetera—there may be a whole range of circumstances. Given that the health sector is growing and that total employment in the health sector will grow strongly as these hospitals open, I expect there will be opportunities. Every effort will be made to find suitable employment for people in either existing hospitals or one of the new hospitals. There may be some for whom that just does not suit. I imagine they will be offered a voluntary redundancy and I imagine they will accept it. The one consistency of redundancy schemes with which I have been involved is that they have been significantly oversubscribed. That has been the case with the most recent one. This government does not want to make a large number of people redundant on an involuntary basis. An involuntary redundancy will be applied only after an exhaustive process. I think everyone in this chamber, if they are honest, knows that within some organisations, and government is no exception, there are some people who are almost impossible to employ productively, whether it be because of their capacity, their commitment to their career or behavioural matters. There are people in the government service for whom even if jobs are offered in other agencies they refuse to move, or, to be

stark, whom the other departments do not want. We are talking about a small number of people who just simply do not produce and do not have, I guess, the requirements. It is a small number. The member knows I am being truthful. I am not being overly political here, but the unions have a fairly chequered history of getting rid of some of their staff. We are not going to do that, but there will be a limited number of people, maybe 100 or so across the system, who just cannot be productively employed for whatever reason and for whom the last resort might be involuntary redundancy. Again, I go back to the points raised about the industrial agreement. People who are capable and competent to do their job will not be made involuntarily redundant. Job losses, which have occurred, have been for people on contracts. Even then, often other opportunities have been offered. Of 150 000 employees, there is a small number who simply cannot be employed in a worthwhile way.

Mr W.J. JOHNSTON: The problem is that every so often the Premier gives a little speech like that and everybody gets worried. I make the point that redundancy does not have anything to do with work performance. That is not what redundancy is about. Redundancy is about the sort of termination, change and redundancy arrangements that I talked about previously. If the Public Sector Commission is failing to properly manage the staff of the public sector, that is a failing of the Public Sector Commission. If there are employees who are not doing the job properly, sack them. That is what happens. I am a former union official. I have done lots of tribunal hearings on unfair dismissal and the argument was about whether the person was doing their job properly. If they are not doing their job, sack them. No industrial tribunal in the country will reinstate an employee who does not do their job properly. That is not what happens. Of course, there has to be procedural fairness. In the state system the terms used are "harsh, unjust or unreasonable" and in the federal system the term used is "unfair", but either way it is not that everybody gets their job back if they go to a tribunal. That is not what happens. If a person is not doing their job, they lose it.

Mr D.J. Kelly interjected.

Mr W.J. JOHNSTON: It is a secret. Apparently the only group in Western Australia that is unaware that people can be sacked for not doing their job is the Public Sector Commission. Whenever there is a discussion about redundancy and the government and, sadly, the Premier talks about people not doing their job properly, everybody on the other side of the chamber and every employee in the state goes, "Hang on a second; what aren't they telling me? Am I on some hit list written on a notepad in the boss's office?" That is the problem. If we are talking about a small number of forced redundancies, we are not talking about inefficiency. If we are talking about inefficiency, there are hundreds of procedures—probably too many—in the public sector for dealing with that. There will be another occasion on which I will go through this in greater detail.

Public evidence was given by the Public Sector Commission to the Public Accounts Committee in our recent hearings. It is worth people reading the transcript of that public evidence. According to the evidence provided by various parties, it is taking 18 months for people to not get a conclusion to a disciplinary procedure. That would never happen in the private sector. The fact that the Public Sector Commission does not believe that that is something it should even report to the Parliament is extraordinary. Yes, there are some problems in the management of the public sector. Based on the limited information that has been made available to me, I observe that there are problems with the Public Sector Commission—absolutely. As I said, on another day we will talk about that. But the Premier should not raise inefficiency and those matters in respect of redundancy. Redundancy is not a solution to the inefficient management of staff in the public sector. The Public Sector Commission has a responsibility given by this Parliament to manage discipline in the public service. If the Premier is complaining that the Public Sector Commission is not doing the job, in one of the meetings that the Premier has each month with the Public Sector Commissioner he should tell him to do his job. But the Premier should not come into this place and ask us to change the law to solve an efficiency problem, because the Public Sector Commission and the public service have the power to solve those problems without this legislation. In fact, this legislation does not have anything to do with that. This legislation is about a different problem; this is about the problem that the Premier is expressing of redundancy arrangements, and redundancy, as I said, has nothing to do with the issues the Premier has raised. It would be great if the Premier would argue in favour of this legislation based on the issues covered by it rather than on issues that are not covered by it, because that would be helpful to everybody else, and then people would not be worried about hit lists of 100 people across the public service who apparently are not doing their job properly. They are not subject to any disciplinary procedure, but the government is going to get rid of them using these provisions.

Mr D.J. KELLY: The Premier is not going to like it, but I will deal with this issue of the industrial agreements one more time and see whether I can tackle it in a different way. Maybe the Premier will then understand why this issue is so concerning to many people in the public sector.

Mr C.J. Barnett: You frighten them. That's why they are concerned.

Mr D.J. KELLY: The Premier frightens them. He signed an agreement to get himself re-elected and he has not got the guts to come in here and say he will abide by it. The reason people say that he will do that is that the

Premier does not really care about what cleaners at a primary school in Forrestfield think. He has no respect for them and he does not think they can do him any harm.

Mr C.J. Barnett: Keep to the clause.

Mr D.J. KELLY: The Premier would not do this to an agreement that he signed with, for example, BHP Billiton, Rio Tinto or "Twiggy" Forrest.

An opposition member: Allia.

Mr D.J. KELLY: Allia Venue Management. If the Premier had signed an agreement with one of those —

Point of Order

Mr C.J. BARNETT: We are just getting into political rhetoric. This has nothing to do with the clause before the house. It is just a joke.

Mr W.J. JOHNSTON: Clearly, it has something to do with the clause, because we are dealing with a provision that means that the legislation will not, by regulation, override other parts of the legislation but will continue to override industrial agreements, and that is exactly what the member for Bassendean is discussing.

The DEPUTY SPEAKER: I ask the member for Bassendean to address his comments to the amendment.

Debate Resumed

Mr D.J. KELLY: I will. I am just saying that this clause allows the government to override provisions of industrial agreements. This government would not do this for other types of agreements. By comparing the way in which the government would deal with other types of agreements, I am encouraging the government to deal with industrial agreements in the same way. The government would not sign an agreement with other sections of the community, whether it be the business community or the not-for-profit sector, and then come into this chamber and pass legislation to override the terms of that agreement. For example, Rio Tinto would go ballistic. It would say to its shareholders, "Sovereign risk." There would be notifications to the stock exchange and all sorts of stuff. The government simply would not do it because, firstly, it respects those people; and, secondly, it fears the consequences. But in this legislation the government is quite happy to override agreements that it has entered into with people who it perceives do not have the power to fight back. To me, that is the definition of a bully—someone who perceives that they can deal with people in a certain way because of the power that they have.

Mr C.J. Barnett interjected.

The DEPUTY SPEAKER: Order! Member for Bassendean, can you please —

Mr D.J. KELLY: All I have asked the Premier to do in the 15 months since the election is assure the state government employees who work under these agreements that he will honour the agreements and ensure that the honouring of those agreements is reflected in this legislation so that they do not have to worry. The Premier may say that he will honour them, but if he retires, for example, and someone else is in his shoes, we want to ensure that the new Premier and the new government will not say, "Well, we passed the legislation. All we are doing is abiding by the law." The Premier would not do this to other sections of the community; he just would not do it. I challenge the Premier to think of one other circumstance in which he has signed an agreement with another section of the community and then come into this place and introduced legislation to override it. I challenge the Premier to do it.

Mr C.J. Barnett: Iron ore royalties.

Mr D.J. KELLY: Yes. The Premier negotiated with them and —

Mr C.J. Barnett: You asked for an example.

Mr D.J. KELLY: Yes, and the Premier reached an agreement with them. They were happy with the outcome because the Premier negotiated that agreement with them. He did not do that with this group of workers. This came absolutely out of the blue. All I am saying to the Premier is that he should show a bit of decency and a bit of respect. I say to the government members who are in the chamber that this all reflects on them as well, because people in their constituencies, in all their electorates, are signed up to these agreements. They entered into them on the basis that it gave them the benefit of job security. All we are asking of the Premier is to show a bit of decency. As the member for Fremantle said, the Premier should show that his word is his bond. We judge people not by how they treat the most powerful in the community, but by how they treat the least powerful. Generally speaking, the people who are covered by these industrial agreements do not have a lot of power. The Premier should show a bit of guts, a bit of honour and a bit of decency and honour the word that he gave those people.

Ms S.F. McGURK: I want to take the opportunity to reiterate some of the points we raised earlier. The reason we are doing it in the context of the amendments before us is so that people can properly understand how this bill, when it is an act, will apply and how it will interact with other arrangements that are already in place. I spoke before about section 94 of the Public Sector Management Act, under which employees who are considered surplus to requirements can be directed to move departments. They are in one department and do not want to move, but they are surplus to the requirements. Under the current law, they can be directed to move to another department or into another position. That provision has never been used according to the Premier, so I am trying to understand how these new provisions will interact with that and with industrial agreements that the member for Bassendean has spoken about at length. People understood that they had entered into an agreement under which there would not be forced redundancies. Finally, I want to understand how these provisions will interact so that people can properly understand what their rights are. They are given superior conditions if they take voluntary redundancy. There may be someone in the scenario that we outlined before, such as a patient-care assistant, a cleaner or a blue-collar worker in a government department. A range of changes may be taking place in, say, Fremantle Hospital. These people are considering whether they should take a superior redundancy agreement as a voluntary redundancy, even though they are worried that they might not get another job, or whether they should hold out. However, they are worried that involuntary redundancy will be forced upon them and that inferior remuneration will be given to them as part of that package. They are not sure whether they will be in the firing range. The Premier can say that there are processes and that there will be limits to the number of people that this will affect, but they are real concerns for someone in their early 60s who is a cleaner or a patient-care assistant at Fremantle Hospital. They will be worried about whether to accept involuntary redundancy or whether they will be forced onto a lower amount of pay if they move to Fiona Stanley Hospital and, as the member for Bassendean pointed out, lose accumulated benefits because they are going to work for Serco, if they get offered a position with Serco.

They are the scenarios that the opposition has outlined. People have genuine concerns about the processes where involuntary redundancies will apply. They are the frustrations on this side of the house on behalf of public sector employees, who up until now have felt that although they had inferior pay to others in the private sector, at least they had job security in the public sector. That is what attracted and retained people in the public sector. It has meant that the public sector has kept a quality workforce across a range of different industries. That sort of security is being removed in this bill. The Premier may believe that under his Premiership or while he has some say that will not apply in a widespread sense, but in practice that is what is written in this bill and it is of little comfort to those employees, because the reality is that redundancies can be forced on them. That is one of the things members of the Standing Committee on Legislation in the upper house tried to improve through its deliberations and which resulted in some of the amendments we are discussing tonight. Perhaps the Premier could address the specific points the opposition has raised, particularly those that deal with public sector employees being forced to move to another department. Now there are provisions under the law that gives the government the power to force someone to move to a department but it has never actually been used.

Mr C.J. BARNETT: This amendment simply says that the act when it comes into law will prevail over industrial agreements. That is hardly a surprising concept—that black-letter law will prevail.

Mr D.J. Kelly: I think a few people are surprised.

Mr C.J. BARNETT: I am not going to go into political debate. I understand the member for Bassendean's constituency, but this government has a far superior record than the previous government in the treatment of public servants in a number of respects. It was a Labor government that forced out 40 senior executives when it came to power under Dr Geoff Gallop. Never before had that happened in Western Australian industrial history. He sacked 40 people, so do not come in here and preach to me about job security and respect for public servants. What Gallop did was absolutely outrageous! If the opposition wants to argue politics, we can do that. He sacked 40 people.

Dr A.D. Buti: You are jealous of him.

Mr C.J. BARNETT: Get away from the truth. Under his administration 40 people were sacked.

The SPEAKER: Member for Armadale, I call you to order for the second time.

Mr C.J. BARNETT: Do not come in here and preach the high moral ground. The opposition's record is there to be seen by everyone.

Mr D.J. Kelly: Geoff Gallop was a man of his word.

Mr C.J. BARNETT: Did he tell 40 people they were going to be sacked?

The SPEAKER: Member for Bassendean, I call you to order now for the first time.

Mr C.J. BARNETT: This is introducing involuntary redundancy after an exhaustive process of trying to redeploy and retrain, offering voluntary packages and whatever else. Few people will end up in the situation of involuntary redundancy. The member for Fremantle made comments about health workers and the like. Permanent workers in the categories she referred to have job security. In the health sector, the numbers employed are growing. At the same time there is attrition, retirement and turnover. We will probably be struggling to find workers to operate these new hospitals. Economically and structurally there is job security, and they are respected. This government has respected government employees. I know the opposition finds that an affront, but the government has respected people working for government, people on low incomes and on disability, and the not-for-profit sector—something the Labor government failed to do. If the opposition wants to ask for politics, we can have a debate on this tomorrow. All this clause does is say that the act prevails over industrial commissions, but the opposition is going out there and unnecessarily scaring large numbers of people employed within the Western Australian public service. Yes, they are on lower incomes and perhaps do not have the opportunities elsewhere that others have, but the opposition should be reassuring them and not frightening them.

Mr D.J. KELLY: I do not understand why the Premier would say that the opposition is just scaring people. To say that I do not understand what world the Premier lives in does not capture how unrelated to the real world his comments are. I have seen how this has played out in the real world, under the previous government, of which the Premier was then a senior minister, when there were major changes in the health system.

Point of Order

Mr C.J. BARNETT: On a point of order, Mr Speaker. This is a clause that simply asserts that the act prevails over industrial agreements.

Dr A.D. Buti: You just gave a political speech.

Mr C.J. BARNETT: In response to yours, and we finished it.

The SPEAKER: Member for Armadale, I call you to order now for the third time. I do not want to hear from you again. If you want to shout out, that will be the end. Carry on, member for Bassendean.

Debate Resumed

Mr D.J. KELLY: I give a specific example of where I have seen this played out. For example, when a previous Liberal government privatised the orderly service at Sir Charles Gairdner Hospital, the human resources plan given to those staff was contrived in a way to make it clear to those staff that if they did not accept a job with the new private contractor, there may not be a job for them in the public sector. That was despite a federal agreement at the time which gave those workers job security. Many of those staff thought that if they did not take a job with the private company, they would, as a result, have no job in the public sector. That is what happened. It happened to orderlies at Sir Charles Gairdner Hospital, to cleaners at Fremantle Hospital and to cleaning and catering staff at Royal Perth. That was the scenario built around those changes in the way the work was done. I have seen it happen. It is not scaremongering.

As I have pointed out, the government is changing the law so that people have to make a decision, for example, about whether to move from Fremantle Hospital to be employed by Serco at Sir Charles Gairdner Hospital. When they ask the question, if I do not accept a job with Serco, can they make me involuntarily redundant, the handbook that worker will be given will say, "Yes, under this legislation there will be a process of finding you another position, but if you do not ultimately accept it, one of the outcomes may be an involuntary severance package." Once the government says that to people, they will believe that if they do not take a job with Serco, for example, that they may face involuntary severance. Without this legislation, that handbook would say, "No, if you do not take a job with Serco and you want to remain in the public sector, you are guaranteed a permanent position within the government sector." That just changes the ball game. People know that provided they accept positions that match their skills—all the things that are currently provided for—if they do not want to go to work with Serco on different rates of pay, with different management, with loss of sick leave and long service leave and all that stuff, at the end of the day they will have a job in government.

The government is changing what that handbook states, and once it states that at the end of the process people may lose their job and be subject to involuntary severance, a shiver will be sent through the whole workforce. They read the tea-leaves; they do not have the same sense of security that they should have. The government will probably guillotine the debate on this, but someone said that when we change the government, we change the country. When we change the law around redundancy, we change how it plays out in the workplace. If the government's intention is not to scare people and its intention is to honour the industrial agreements to which it signed up, it simply should not accept the advice from the department. The government should not apply this

legislation to existing agreements; it should phase it in so that it applies only to new agreements. If it does that, I will think that the Premier has honoured his word and is a man who can be trusted, and a lot of people who think this government is going to dud them will be reassured.

Mr W.J. JOHNSTON: I will give the example of the education department warehouse. As I said, I represented a small number of employees in the public sector, including in the education warehouse department. When I first went to that warehouse, the 40 guys who worked there told me that they would all be made redundant because the place was going to be outsourced. They could all see that that was the inevitable consequence of the nature of the work that they were doing, and indeed that is exactly what happened. The majority of the guys took a place with the new contractor and, interestingly enough, part of my job at that time was to convince these guys to leave the Shop, Distributive and Allied Employees' Association and join the Civil Service Association of WA.

Mr D.J. Kelly: It wouldn't have been hard.

Mr W.J. JOHNSTON: It was harder than it should have been. All the guys who left the union and joined the CSA all rejoined the SDA when they took jobs in the private sector. A number of employees, including our chief shop steward, did not want to do that. The member for Fremantle has outlined that there were already provisions that allowed government to direct people to take jobs. Some took a severance package and four or five of them took jobs in other parts of government. Some went off to hospitals; some became cleaners et cetera, because there were no more storemen positions. The chief shop steward got directed to a particular job and he took it. He rang me about six or eight months later and told me how pleased he was because he ended up being directed off to that job. The member for Fremantle has made this point on a number of occasions, but it does not appear to have been properly responded to by the Premier. There is this provision that allows the government to do this, yet it is being used only on wages employees and not on salaried employees. The government makes unbalanced arguments about what happens in the public sector and ignores the fact that the wages staff in the public sector are not treated in the way that the government describes.

When the member for Bassendean provides specific examples of the consequences of the law for people in the blue collar space, we are then told, "Oh, yes, but look what happened to public servants." The Premier has to answer the questions being raised by the member for Bassendean, because despite the fact that he gave a bit of a rant about politics—that is his right and he will get up and say these things as he is entitled to do—the explanation given by the member for Bassendean is 100 per cent right. We understand the government's problem; the government has this outsourcing and privatisation and public–private partnership agenda, which will not save one dollar for the taxpayers of Western Australia because every time the state has been involved in these practices it has ended up costing more. If we look at all the studies around the world about these things, we see that there are almost no cases in which money was saved. There are a couple of cases in Aberdeen for schools and a couple in New South Wales for schools, but basically all these practices do not save taxpayers any money, so let us get away from that.

The government has an agenda and we understand that. It has probably been diminished now that the member for Vasse is no longer the Treasurer, but we still understand that there is this agenda and a belief that the private sector can do things better than the public sector even though there is not a single piece of evidence with anything that has happened here in Western Australia to support the proposition that the government can provide a better service through privatisation. We have only to look at Westrail Freight to see the disasters that result from these types of approaches. Joondalup Health Campus, which was a complete shambles, is another example. It took Hon Jim McGinty to fix that problem in the northern suburbs. I was a resident of the northern suburbs when children died in the emergency ward of that hospital and people in the northern suburbs were scared to take their children there. There is no evidence of benefits to the community, but the government still wants us to get it out of its own pickle because it has this privatisation agenda and it will end up with workers that it cannot get rid of because it will not have jobs to put them in. This has everything to do with the issues raised by the member for Bassendean and nothing to do with the ridiculous examples the Premier gave about the public service when he talked about efficiency, which has nothing to do with the bill in front of us. It is not unexpected that given the government has no evidence to support the legislation, we are not supporting it.

Mr P. PAPALIA: I would really like to hear further from the member for Cannington.

Mr W.J. JOHNSTON: We need to also ask this simple question. As I understand amendment 6, it moved the provisions in proposed section 95B(2)(a). Therefore, we are deleting proposed section 95B(2)(a). Can the Premier confirm for me that the only things that will be overridden by regulations are industrial instruments? If we are not allowing regulations to override the act, what changed in the government's mind? This issue was raised and discussed extensively in the original consideration in detail. The Premier claims that the original provision was not a Henry VIII provision and that it is not being deleted because it was a Henry VIII provision. What was the characterisation of the provision that allowed a subsidiary instrument to override the act and why does the Premier not intend to proceed with the arrangement to allow the regulations to override the act?

Mr C.J. BARNETT: I do not think regulations can override an act. Acts prevail over industrial agreements and regulations prevail over industrial agreements, and if we have a problem with a future regulation, we can disallow it. That is the process.

Mr W.J. JOHNSTON: I need to clarify that answer. The original provision reads —

> (2) The provisions of this Part and regulations referred to in sections 94 and 95A prevail, to the extent of any inconsistency, over —
>
> (a) any other provision of this Act other than section 7, 8 or 9; and
>
> (b) any industrial instrument.

Is the Premier saying that in the original construction put to the Parliament by the government there was a regulation power that was able to override provisions of the act and that is what we are now deleting; and, if that is true, why are we deleting it?

Mr C.J. BARNETT: The original form of this bill had proposed section 95B(2)(a), which provided that regulations can prevail over the act. The Legislative Council objected to that, as did, I understand, the standing committee. They got it right; the regulations should not prevail over parts of an act. The act should prevail over the regulations.

Mr W.J. JOHNSTON: That is great. That is a good answer and I thank the Premier for that. Given that this matter was canvassed in detail in the consideration in detail stage of this bill when it was in this chamber originally, what changed for the government? It was originally what the government wanted and now the Premier says that it was not a good provision. What happened that made the government change its mind?

Mr C.J. Barnett: We bowed to the wisdom of the Legislative Council.

Mr W.J. JOHNSTON: Okay; so the upper house committee explained to the government what we could not explain to it.

Mr C.J. Barnett: That is right.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

> That amendment 7 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

> That amendment 8 made by the Council be agreed to.

Amendment 8 inserts a provision to ensure that the minister must cause a review of the operation and effectiveness of part 6 of the legislation to be carried out as soon as practicable four years after section 15 of the Workforce Reform Act 2013 comes into operation. This will ensure proper scrutiny of the new redeployment and redundancy arrangements applicable to the Western Australian public sector. On the advice of the standing committee in the upper house, the upper house formed the view that there should be a review clause; the government has accepted that, and there is a review clause now by way of this amendment.

The SPEAKER: I just want to clarify something. Amendment 8 should read "clause 15, page 13, after line 18".

Mr C.J. Barnett: Thank you, Mr Speaker. That is correct. It is a typographical error.

Mr W.J. JOHNSTON: I am indebted to the Clerks. I spoke to them before we moved to consider this message because I was trying to mark up the bill, and when I came to page 10, they explained to me that although that was the message that was received from the upper house, the minutes of the upper house showed that the amendment was to be made on page 13 of the bill and that it was just a matter of fixing the error. I will have to raise with members of the other house that they ensure they tell us what they are doing.

Obviously, the opposition supports the decision to have a review of the legislation. I note the number of pieces of legislation that have review clauses and there are no reviews. As a member of the Public Accounts Committee, that makes me a member of the joint committee on audit, or whatever they call it.

Mr M.H. Taylor: The Joint Standing Committee on Audit.

Mr W.J. JOHNSTON: There we go; the Joint Standing Committee on Audit; I thank the member for Bateman very much for his interjection. He is also, like me, on this committee. It has taken a number of years for the two houses to agree to the terms that that committee should operate under—under what standing orders and what other arrangements need to be made. The committee determined to commence a process of review last year and advertised for a reviewer and then, of course, it was found that there was no appropriation to engage a reviewer

and that led to further delay. The point I am making is that although we say we have to have a review, the review has to be after four years, and when the review is finished, a report has to be prepared based on the review and copies of that have to laid before each house of Parliament. One of the problems we have is that lots of these provisions never get acted on. One of the lawyers in the room might confirm this: we could get a writ of mandamus to force action, but other than that there is probably nothing that could be done to get the review underway—we have a learned lawyer in the chair right now. I do not think there would be much hope of seeing anybody do that. Although we have this provision and the opposition supports having a review, we will need to watch to see whether the review ever takes place, because the history of these things is that these provisions are honoured in the breach. Therefore, we will watch and see what happens.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

That amendment 9 made by the Council be agreed to.

Amendments 9, 10 and 11 are similar to what we have debated earlier. The earlier provisions related to a tighter definition and, I would have thought, clarity in terms of the financial information to be taken into account by the Western Australian Industrial Relations Commission. This makes similar amendments about the information to be taken into account by the Salaries and Allowances Tribunal on the issues the SAT deals with. They are the same matters but amendments 9, 10 and 11 apply to the Salaries and Allowances Tribunal.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

That amendment 10 made by the Council be agreed to.

This provides the same clarity and definition that was discussed previously.

Question put and passed; the Council's amendment agreed to.

Mr C.J. BARNETT: I move —

That amendment 11 made by the Council be agreed to.

This is the third of those amendments that apply the same provisions to the Salaries and Allowances Tribunal as apply to the Western Australian Industrial Relations Commission.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.