

WORKFORCE REFORM BILL 2013

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 10: Section 29 amended —

Debate was interrupted after clause 9 had been agreed to.

Mr D.J. KELLY: I want to go back to a point I raised earlier. This amendment is, again, part of a series of amendments through which the government is putting into the legislation the option of compulsory severance. In answer to a number of questions that have been raised, the Premier has talked about the process that will apply to a person leading up to their being given involuntary severance. He has said that it will be an exhaustive process and that in all likelihood people will accept a voluntary severance before being subjected to involuntary severance. He has talked about the benefits of an involuntary severance under this bill being greater than what would apply if somebody were terminated, for example, for not accepting a position as a result of a direction under the existing provisions of the act. He has talked about a whole range of procedures that will apply before someone is subject to an involuntary severance, but none of those examples appears in the bill. In response, the Premier has said, “Well, it’ll be in regulations.” I put it to the Premier that that is precisely one of the issues that is causing people in the public sector so much concern. The Premier has talked about these matters as though they are already fact, but they are not; they are simply matters that will be dealt with under regulations some time in the future.

The Premier must concede that it is quite unsatisfactory for him to continually say, “It’s nothing to worry about; it’ll rarely happen. It’s only going to apply to a very small number of people and, quite frankly, there will be benefits along the way that people can choose, rather than ultimately ending up with involuntary severance”, when none of that appears in the bill. The Premier is essentially saying to people, “You have to trust me that we can pass this bill and make it law and then, at some point down the track, there are going to be regulations that will make it all much more palatable than it appears to be on the face of it.” In respect of the amendment under clause 10, I would really like the Premier to consider putting in the bill some of these guarantees about the process leading up to involuntary severance. He seems to already know what they are going to be, because he has talked about them as though they were already fact. If he knows what these processes are going to be, and he knows how appealing they are going to be to people whose positions are going to be made redundant, I urge him to put them in the bill so that people can look at them and understand them. The Premier says that we are running a fear campaign, but the absence of those guarantees in the bill leads to a whole lot of speculation about what will happen to people. This clause is part of a series of amendments that the government is putting in place to enact this regime, and I ask the Premier to put more meat on the bones of this bill and get on with it.

Mr W.J. JOHNSTON: It would appear that the Premier does not intend responding to the contribution by the member for Bassendean.

Mr C.J. Barnett: It was an opinion.

Mr W.J. JOHNSTON: I did not ask the Premier to interject; he can interject if he chooses to. I was just making an observation so that when the *Hansard* is read by others, they can see that it was not the case that I just cut the Premier off; I would not want anybody to think that I was being rude to him at all!

In respect of the powers that are being granted here to chief executive officers and chief employees, the term “termination of employment” is again being used. I asked about this previously, but we did not get to the heart of the matter. Of course, termination of employment goes well beyond the question of redundancy, and deals with other issues. I tried to clear that up in respect of the Public Sector Commissioner, but we were not able to do that because the gag was moved. In respect of the functions of the chief executive officers and chief employees, could the Premier please explain how he expects that the power that is being granted here in respect of termination of employment will be used? Does he expect that chief officers, chief employees and CEOs will set out procedures to deal with resignations? Is there some interaction with the powers under section 29(1)(i)? How will they interrelate with the powers under section 30? Are there any limitations in respect of section 30? In respect of the power that is being given here, what is the interrelation between section 30 and its reference to the Industrial Relations Act, and the reference to the Industrial Relations Act that we will deal with further along in this bill?

I will just recap those three questions. What is the expectation for the exercise of these powers in respect of the termination of employment for CEOs and chief employees? Is it expected that there will be a relationship to the powers that currently exist under section 29(1)(i)? Thirdly, what is the interaction between this power and the power under section 30 of the Public Sector Management Act 1994, and its interrelationship with the Industrial Relations Act?

Mr C.J. BARNETT: All clause 10 does is extend the responsibility of the director general or the chief executive officers. Part 3 of the bill is about involuntary redundancy, and at the moment section 29 refers to the responsibilities of CEOs being appointment and deployment; under this amendment, it will be appointment, deployment and termination of employment. This is a new responsibility, and they will act under guidance, I would expect, of the Public Sector Commissioner. I imagine that there will be some training programs, whether for CEOs or human resources managers. It is pretty straightforward.

Mr W.J. JOHNSTON: I thank the Premier. The Premier says that this part of the bill deals with redundancies. But the provision that we are dealing with does not deal with redundancies. The additional words that are proposed to be inserted, which will give additional functions to the CEOs and chief employees, are about the termination of employment.

Mr C.J. Barnett: Involuntary redundancy.

Mr W.J. JOHNSTON: It does not say that, Premier. I would be happy if the words “voluntary redundancy” or “involuntary redundancy” were to appear somewhere in this section. I would be very pleased if the Premier could explain how that would occur. All I know is the amendment that is on this piece of paper, which the Premier has moved that we agree to. That is to delete the words “appointment and deployment” and insert the words “appointment, deployment and termination of employment”. The only new power that we are putting in the act is the power related to termination of employment. Termination of employment goes well beyond the question of redundancy. That is what I am asking about. I am not asking about the intention of the Premier. I am asking about the intention of these words in the bill. The Premier has partly answered this, but I am seeking clarification of the expected relationship between the power in proposed section 29(1)(i) and the provisions in section 30. The principal act is to be amended by the insertion of these three words. I am trying to get a picture of how those three words relate to section 29(1)(i) and section 30.

Ms S.F. McGURK: I take it that the Premier does not intend to respond to the member for Cannington. Is that correct?

Mr C.J. Barnett: You have the call.

Ms S.F. McGURK: We have established that although the Public Sector Management Act contains a provision that redeployees can be directed to take suitable alternative employment, that has very rarely, if ever, been used; and, similarly, that although a department can be directed to accept a redeployee, that has never been used. I draw the Premier’s attention to a press release dated 13 June, under the letterhead of the Premier and the Treasurer, which states —

Mr Barnett said the State Government would also amend the Public Sector Management Act to give agencies the ability to, as a last resort, pay out and retrench surplus employees who could not—or would not—be redeployed.

In what part of the bill can we find outlined the steps that must be undertaken before a person can forcibly be made redundant?

Mr C.J. BARNETT: I answered that question previously; I do not know whether the member was in the chamber. I went through the steps. The process will be established by way of regulation. I will briefly repeat what the process will be. The person first must be surplus to requirements. That means that their job has been abolished. They will be notified that they are, therefore, a registrable employee. The employer—this is at the departmental level—will then be required to seek to do everything possible to provide alternative employment. This could include some support in the form of training, placement opportunities and the like. The employer may offer voluntary severance, if that is available. If no suitable job can be found within the organisation the person is working for, the employer may seek to register the employee for redeployment to another part of government. The Public Sector Commission at that stage will register the employee, but only if the Public Sector Commission is satisfied that the employee is genuinely surplus to requirements. Once registered, the employee will be entitled to priority access to jobs across the entire public sector, and also to retraining and counselling if required. If at the conclusion of the defined redeployment period the employee has not been found alternative employment, the employee will be determined to be redundant and is liable to be terminated by their employer; in other words, involuntary severance. That is distinct from what currently happens if an employee is dismissed on disciplinary grounds or other grounds. Under this arrangement, the employee will be entitled to an involuntary severance payment, in addition to their normal entitlements. That is the process. There are several steps in that process. It is exhaustive. That is why I do not expect that many people will come to this fate, if you like. As I said before, fewer than 80 people are on the redeployment list at present. The number may be 100, or it may be a bit more than that. But it will not be the hundreds of people members opposite have been implying during this debate.

Mr P. Papalia interjected.

Mr C.J. BARNETT: It is not worth talking to the member for Warnbro. The member does not like interjections, so I am not going to respond to him.

Ms S.F. McGURK: The Premier has outlined the process. Can the Premier explain why that process has not been put into the bill?

Mr C.J. Barnett: It will be done by way of regulation.

Ms S.F. McGURK: I understand that it will be put into the regulations. However, regulations are not subject to the same amount of scrutiny as can be provided by this chamber. The member for Bassendean has spoken about the anxiety that is present among employees when privatisation is undertaken and when job cuts are announced periodically by the government. Why was the decision made to not put those protections and that process in the bill itself?

Mr C.J. Barnett: It is standard practice. There is nothing unusual about that.

Mr W.J. JOHNSTON: I want to clarify something, Premier. I keep returning to the same clause, but I am not getting an answer. It will be very difficult for the courts in future to interpret these words if we do not have clarification of what the government believes these words to mean. Is there anything in this bill that will limit the functions of the CEOs and chief employees that we are dealing with under clause 10 in respect of the restrictions and caveats that are placed on those functions by section 30 of the Public Sector Management Act? Is there anything in this bill that can be read as replacing or limiting the restrictions on the CEOs and chief employees that are provided for in section 30?

Mr C.J. Barnett: I have just read out the process.

Mr W.J. JOHNSTON: The Premier seems to be confused. I am not asking about redundancy. I am asking about termination of employment. Redundancy was the question asked by the member for Fremantle. I have not sought to canvass the question of redundancy, although of course redundancy is a subset of the power of termination of employment. I am not focusing on redundancy. I am focusing on termination of employment. Is there anything in this bill that can be read as replacing or limiting the restrictions on the CEOs and chief employees that are provided for in section 30? This is a critical issue for us. Is it the Premier's intention that this bill will change the limits under section 30?

Mr C.J. Barnett: I answered that.

Mr W.J. JOHNSTON: When?

Mr C.J. Barnett: I answered that in the debate on previous clauses.

Mr W.J. JOHNSTON: I was not here last night. I was paired because of family issues.

Mr C.J. Barnett: You should have been here. You should be doing your job.

Mr W.J. JOHNSTON: I was paired because my son was sick; he was at home, vomiting. So I went home to be with my vomiting son, as the Premier knows from my discussion with the Deputy Premier while he was sitting next to him in the chamber this morning.

I do not know of any occasion on which the question about the limitation of the functions of the CEOs and chief employees that are provided for by section 30 have been canvassed. This is a very simple question. This amendment could be read as meaning that this bill is attempting to change the effect of section 30. I am trying to establish whether the intention is that the restrictions in section 30 will remain unamended. On the plain reading of the bill, section 30 is not being amended. I want to ensure that after the passage of this bill, the powers and functions of CEOs and chief employees will continue to be restricted in the same manner as they are today. That will be a very important issue when the courts come to interpret the powers, functions and rights of people under this bill. That is a critical issue for the proper interpretation of what the Parliament is intending this legislation to do. We need this on the record so that there will be no doubt about what will happen. If the Premier does not put anything on the record, it will be open for the courts to say that section 30 was deliberately not amended and that the restrictions on the functions will continue to be limited by the effect of section 30.

Question to be Put

Mr C.J. BARNETT: I move —

That the question be now put.

Division

Question put and a division taken, the Acting Speaker (Mr I.C. Blayney) casting his vote with the ayes, with the following result —

Extract from Hansard

[ASSEMBLY — Wednesday, 27 November 2013]

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Mr Dave Kelly; Mr Bill Johnston; Mr Colin Barnett; Ms Simone McGurk

Ayes (33)

Mr P. Abetz
Mr F.A. Alban
Mr C.J. Barnett
Mr I.C. Blayney
Mr I.M. Britza
Mr G.M. Castrilli
Mr V.A. Catania
Ms M.J. Davies
Mr J.H.D. Day

Ms W.M. Duncan
Ms E. Evangel
Mr J.M. Francis
Mrs G.J. Godfrey
Mr B.J. Grylls
Dr K.D. Hames
Mrs L.M. Harvey
Mr C.D. Hatton
Mr A.P. Jacob

Dr G.G. Jacobs
Mr R.F. Johnson
Mr R.S. Love
Mr W.R. Marmion
Mr J.E. McGrath
Mr P.T. Miles
Ms A.R. Mitchell
Mr N.W. Morton
Dr M.D. Nahan

Mr D.C. Nalder
Mr D.T. Redman
Mr A.J. Simpson
Mr M.H. Taylor
Mr T.K. Waldron
Mr A. Krsticevic (*Teller*)

Noes (17)

Dr A.D. Buti
Mr R.H. Cook
Ms J. Farrer
Ms J.M. Freeman
Mr W.J. Johnston

Mr D.J. Kelly
Mr F.M. Logan
Mr M. McGowan
Ms S.F. McGurk
Mr M.P. Murray

Ms M.M. Quirk
Mrs M.H. Roberts
Ms R. Saffioti
Mr C.J. Tallentire
Mr P.B. Watson

Mr B.S. Wyatt
Mr D.A. Templeman (*Teller*)

Pairs

Mr S.K. L'Estrange
Mr T.R. Buswell
Mr J. Norberger
Mr M.J. Cowper

Ms L.L. Baker
Mr P.C. Tinley
Mr J.R. Quigley
Mr P. Papalia

Question thus passed.