

**INDUSTRIAL RELATIONS AMENDMENT BILL 2000**

*Second Reading*

Resumed from 16 November.

**HON N.D. GRIFFITHS** (East Metropolitan) [8.00 pm]: The Australian Labor Party supports the Bill. The genesis of this Bill is in a decision of the Full Bench of the Industrial Relations Commission on 14 November 2000. As a result of that decision, it is considered necessary for the status of police officers with respect to their access to the Industrial Relations Commission and the status of the Western Australian Police Union of Workers to be clarified and safeguarded.

The minister's second reading speech summarises the matter. It deals with the decision of the Industrial Relations Commission and refers to the position of police officers in Western Australia. They are appointed by the Commissioner of Police and they hold the office of constable. They do not have the usual employee-employer relationship in the view of many authorities. This Bill does not change that. However, it provides safeguards for ensuring that there is no uncertainty about the validity of past awards and industrial agreements, by operating as though police officers have been employees of the Minister for Police for that purpose. In a sense, the safeguards will create a relationship of employer-employee for the purpose of access to the Public Service Arbitrator. The Bill will not, however, give the Public Service Arbitrator any power relating to the ability of the Commissioner of Police to deal with disciplinary matters under sections 8 and 23 of the Police Act, which have been the subject of some controversy in this Parliament. The Bill provides that the Western Australian Police Union of Workers will be an organisation of employees for the purposes of the Industrial Relations Act. That provision is retrospective in its application.

**HON NORM KELLY** (East Metropolitan) [8.02 pm]: The Australian Democrats support the Bill. As the minister said last week when he introduced the Bill, this legislation has been introduced due to the decision of the Full Bench of the Industrial Relations Commission, which deemed that police officers in Western Australia, appointed by the Commissioner of Police to serve the Crown, do not constitute a component of the typical employer-employee relationship. He went on to say that the decision left both officers and the commissioner out in the cold. It has also left the WA Police Union of Workers out in the cold with regard to its ability to represent police officers in this State.

In his second reading speech, the minister pointed out the four main effects of these amendments. First, the validity of past awards and industrial agreements will be resolved by assuming that police officers have been employees of the Minister for Police. The critical word is "assuming"; in other words, there is to be an assumption that they are employees of the minister. The amendments will create the relationship of employer and employee for the purpose of access to the Public Service Arbitrator. At the same time, the amendments do not give the Public Service Arbitrator the power to regulate or deal with any matter relating to the exercise by the commissioner of any disciplinary power under sections 8 or 23 of the Police Act.

This Bill should be seen as an interim measure that provides more up-to-date legislation relating to the treatment of police officers in this State. We have been looking forward to, and will continue to look forward to, the introduction of a police administration Bill that will bring the nineteenth-century Police Act through the twentieth century and into the twenty-first century. This Bill goes some way to bringing the legislation into current day reality.

The Minister for Police announced yesterday that legislation will be introduced to provide coverage for police officers under the Occupational Safety and Health Act. Of course, at this stage of the parliamentary session, we do not expect to see that legislation introduced this year; we will have to wait until next year.

Hon Peter Foss: We could be added to that coverage, too.

Hon NORM KELLY: Parliamentary staff should be adequately covered. As much as I would like to speak at length about the working conditions endured by parliamentary staff, that would be outside the scope of this Bill.

I will make some comments about occupational safety and health conditions that police officers must endure, because that relates directly to their industrial relations situation. In his media release yesterday, the Minister for Police cited the 1993 McCarrey commission report, which found that in some places officers were working two or three to a desk; former cells were being used as changing and eating rooms; there was a shortage of basic equipment such as facsimile machines; the public could see offenders being charged and overhear confidential discussions and radio transmissions; and a number of communal toilets had no ventilation - in one instance the toilet opened into a typists' area. It is interesting to note that the minister has used this reference to explain the scandalous conditions that police officers had to endure under the Labor Government. The fact that this Government has had eight years during which to correct that situation but has not is equally worthy of condemnation.

Hon Peter Foss: We have.

Hon NORM KELLY: It has been only in the final few days of this Parliament that this Government has announced that it will introduce legislation next year if it is re-elected.

Hon Peter Foss: We fixed the situation. That is the most important thing.

Hon NORM KELLY: Perhaps the Attorney General believes there is no need to provide coverage for police officers. The Attorney said that the Government has fixed the situation. I can assure him that police officers in this State, although they welcome this improvement, do not believe they have adequate coverage.

Hon Peter Foss: They are two different things.

Hon NORM KELLY: Of course, some caveats apply to how such legislation will cover police officers. The most obvious example is that it will not stop police officers confronting dangerous situations. If they are to carry out their duties properly, they will be involved in dangerous scenarios. I am glad that is the case.

Several members interjected.

The PRESIDENT: Order! We will have one act at a time. The one act at this point is Hon Norm Kelly.

Hon NORM KELLY: I am sure we will debate this issue in full next year when the legislation is introduced.

Hon Derrick Tomlinson: No you won't!

Hon NORM KELLY: I am sure we will.

Hon Derrick Tomlinson: No you won't.

Hon Peter Foss: We will.

Hon NORM KELLY: Clause 2(3) of the Bill relates to the disciplinary powers covered by the Police Act. Those disciplinary powers are contained in sections 8 and 23 of that Act. About two and a half years ago, police around the State were very concerned by the then Commissioner of Police's use of section 8 powers. I attended a police rally at Mount Claremont and listened to some of the arguments put forward for changes to that legislation. Fair and equitable appeal rights do not exist for police dismissed under section 8 of the Police Act. I raise this because clause 2(3) of schedule 3 of the Bill provides an exemption for any matter -

... relating to or arising from the transfer, reduction in rank or salary, suspension from duty, removal, discharge or dismissal under the *Police Act 1892* of a police officer.

Western Australia is very much behind the times in allowing fair and adequate appeal processes in such disciplinary matters.

Hon Derrick Tomlinson: Every Commissioner of Police in Australia would love to have section 8 powers.

Hon NORM KELLY: I am sure they would. Now that Hon Derrick Tomlinson has referred to the other States, I would like to outline how some of those States offer better appeal processes than Western Australia. The Police Regulation Act in Tasmania provides, under section 50(di), that any decision made by the commissioner to dismiss an officer or to reduce his pay can be made the subject of an appeal by the officer to the police appeals board. Under the Queensland Police Service Administration Act, police can appeal to a misconduct tribunal. Under the South Australian Police Complaints and Disciplinary Proceedings Act, officers can appeal against convictions and penalties under the police disciplinary tribunal. The South Australian Supreme Court has the power to make a binding order on the commissioner. In the New South Wales Police Act, section 181(d) provides that the commissioner can remove any police officer in whom he has lost confidence, but under section 181(e) an officer can apply to the Industrial Relations Commission for a review of the order to discharge him on the grounds that the removal was harsh, unreasonable or unjust. In Western Australia, for disciplinary matters under section 23 of the Police Act there is an appeal process.

Hon Derrick Tomlinson: Exactly the same as other States. Hon Norm Kelly should not confuse section 23 with section 8. Section 8 refers to severe loss of confidence.

Hon NORM KELLY: I do not think it mentions the word "severe". Disciplinary matters under section 23 allow a right of appeal to the police appeals board, which is made up of one elected representative of police officers, another representing the commissioner, and a third being the chairman, who must be a stipendiary magistrate appointed by the Governor. For matters under section 8 there is no such appeal process. I appreciate that, because of the problems that have been caused by dismissals under section 8 in recent years, new protocols have been established to provide some level of access to an appeal right through the Industrial Relations Commission.

I refer to these matters to make it clear that what we have before us is very much an interim step. The Police Administration Bill that we expect to see next year should contain far better and fairer appeal provisions against

section 8 powers. The Australian Democrats recognise the need for such powers, but when those powers are used they should have a degree of scrutiny through an appeal process. The Australian Democrats support this Bill. We look forward to further police legislation, which has been long promised but slow in coming, together with proper reform of the Police Act and the administrative procedures of the Police Service.

**HON TOM HELM** (Mining and Pastoral) [8.15 pm]: I support the Bill and welcome its introduction into this place, which is not before time.

My last involvement with the police in this State was on the picket line at Newman a few weeks ago when police were ordered to charge us with batons to make way for people who had signed a contract with BHP to get onto the site. It was rather bizarre that those policemen, who were ordered to break that legal picket line with their batons, were lobbying for the rights that the people at BHP at that time were fighting for; that is, the ability to be represented by their union. I welcome this Bill, which will give the police the opportunities that every trade unionist in this State has enjoyed, because that is what we fought for.

Hon J.A. Scott: You had to get hit with a baton.

Hon TOM HELM: That is right. Some 20 or 30 policemen were there. When they were given the order to draw their batons and charge us, they all obeyed. We can be proud in this State that the police will do what they are ordered to do no matter what the circumstances. Some carried out the order with enthusiasm and caused a few bruises and hurt a few of our womenfolk and young people in Newman whom we could not keep out of the picket line. Others did it reluctantly. Few policemen from Newman were part of that baton charge.

After the blue was over, it was brought to my attention that this legislation was being considered and that the Police Union (WA) was lobbying strongly to get the recognition it should have had a long time ago. It has always been a mystery to me and many others that when workers of this country have been in the vanguard of change, and in some cases have paid the extreme price to bring about change, the ones who have been trying to resist the change at the coalface, as it were, have been the police carrying out the instructions of the reactionary forces in our State who try to reduce or take away the rights of workers or prevent their rights being implemented.

Hon Simon O'Brien: In stopping employees entering their place of employment?

Hon N.F. Moore: Order!

Hon Simon O'Brien: I am entitled to be just as irrelevant as he is.

Hon TOM HELM: The member can be as irrelevant as he wants. He obviously does not pay any attention because I explained that it was a legal picket line. There was no danger of anyone being arrested for illegally preventing others from going to work.

Hon Simon O'Brien: The police were trying to move you during the workers' lunch break, were they? At the same time you are complaining about police charging the picket line and getting you out of the road.

Hon TOM HELM: The member would be better off with the Hope Valley Bill. He stuffed that up, and it looks as though he will stuff this Bill up.

I was trying to explain the police's difficulty. On the one hand, I would suggest that they were full of sympathy for the position we were in, but on the other hand, they were committed to obeying the orders they were given from people on the other side of this Chamber and perhaps in another place, and certainly employers who would die before they would see the police in a union that would maybe act in the same way as the union to which I used to belong.

The Attorney General has carriage of this Bill. He made a comment about workers compensation. As I understand the position now, a policeman, ambulance driver or fireman who is driving a vehicle in the normal course of their duties and is involved in an accident as a result of going through a red light may be in breach of the law. What is the current status of those officers? Does this Bill give those officers more rights or fewer rights? Will this amendment provide more protection for people who are killed or injured, or who cause injury or death, in the pursuit of their legitimate duties? I stand to be corrected, but I understand that a policeman who is involved in a chase or whatever, who goes through a red light and causes an accident or is killed or injured, does not get any assistance whatever - except for an ex gratia payment from the Government - because police officers are not covered by workers compensation provisions as are workers under award provisions. I support the Bill.

**HON J.A. SCOTT** (South Metropolitan) [8.21 pm]: The Greens (WA) also support the Bill. I have heard the term "it's very, very late", but I would say it is timely. Most members are aware that one of the strongest

advocates of the Police Force stands a reasonable chance of coming into the Parliament in the not too distant future, and we probably need further protections in place.

The Bill corrects some of the anomalies that apply to police officers compared with other workers in this State. Its intentions are good. As Hon Norm Kelly said, the Bill requires a lot more work to complete the circle of legislation affecting the working conditions of police officers. However, the Bill is heading in the right direction. We understand perfectly that being a police officer is a very different job from that of normal workers and requires different handling. The Greens (WA) support the Bill.

**HON PETER FOSS** (East Metropolitan - Attorney General) [8.23 pm]: I thank Hon Nick Griffiths for his pertinent, precise and to-the-point remarks on this Bill. However, the remainder of the debate had a tendency to stray into other areas. I will deal with two of those irrelevancies. One is Hon Norm Kelly's reference that this should be part of the police administration Bill. This Bill has been brought about because of a decision of the Full Bench of the Supreme Court which altered the situation that was previously understood to be the case. This Bill does not even purport to deal with the matters raised by Hon Tom Helm, although I would not for one moment like to suggest that any of the points he made were correct. The Bill does not deal with any of the problems there might be in that area, nor does it intend to.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and passed.