Community & Public Sector Union
Civil Service Association of WA

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16 January 2014

Hon Robyn Sweeney MLC
Chair
Standing Committee on Legislation
Legislative Council
Parliament House
PERTH WA 6000

File ref :L070455/13/1

Dear Ms Sweeney

Re: CPSU/CSA submission on Workforce Reform Bill 2013

Please find attached the CPSU/CSA's submission. The CPSU/CSA would appreciate the opportunity to speak to and give evidence about the Bill to the Committee. Please contact Mr Mark Finnegan, Coordinator Member Services, on 9323 3834 or mark.finnegan@cpsucsa.org if further clarification or detail is required.

Yours sincerely

Toni Walkington
Branch Secretary

Workforce Reform Bill 2013

CSA submission to the Legislative Council Standing Committee on Legislation

Background to the CSA

The CSA [the Union] has been representing public sector employees since 1900; initially as an association incorporated under the Associations Incorporation Act 1895; and latterly in 1967 it was recognised by the Industrial Arbitration Act as an organisation.

Its federal counterpart is the Community and Public Sector Union, WA Branch. Between the two entities there are sixteen thousand members employed in the public sector and related areas.

The Union represents many members who are covered by the Industrial Relations Act 1979 [the Act] and the Public Sector Management Act 1994 [PSMA], and thus it has an interest in the proposed Workforce Reform Bill [WRB].

As an affiliate of Unions WA, the CSA is privy to their submission to the Standing Committee and endorses that submission.

The CSA's strategic plan and vision

The CSA and the CPSU operate in accordance with a strategic plan for its campaigns and other activities. Part of that plan is based on the following vision:

> *Our Vision*
>
> *"The Community and Public Service Union and the Civil Service Association have a firm commitment to building a fair and just society.*
>
> *With an active membership in varied workplaces we work to improve wages, employment conditions and the quality of public services for our community and state.*
>
> *We believe that robust, dynamic and high quality public services are the foundation of a fair and just society.*

In the light of that Vision, the Union makes the following submission about the proposed WRB. In particular, it runs counter to the Union's vision for improving its members' wages and conditions with respect to the renegotiation of its general agreements currently underway, and intended undermining of existing redundancy and redeployment entitlements under the current Public Sector Redeployment and Redundancy Regulations [PSRRR], which were promulgated under a previous Liberal/National Coalition.

There are approximately 10 general agreements up for renegotiation, and the negotiations are being hamstrung by the absence of clear detail on the scope / impact of Government wages policy. The largest agreement is the Public Service and Government Officers General Agreement.

Furthermore, the proposed changes to the Act are intended to erode the independence of the WA Industrial Relations Commission [the Commission], the arbitral umpire.

The CSA submits that the Bill should not proceed.

The key amendments to the Act should not be enacted for the following reasons:

- The proposed s. 26(2A), which refers to *the most recent Government Financial Strategy Statement and Financial Projections Statement,* is a form of arbitrary wage control and is contrary to the principles of collective bargaining. Simply put, the Crown [the employer] is dictating before negotiations have even begun the outer limits of any outcome. Any changes in wages or conditions cannot result in a cost increase to the employer of more than the equivalent of the Perth Consumer Price Index.
- This employer initiated action junks the principles of enterprise bargaining that have underpinned wage negotiations in WA since the early 1990's when the Commonwealth and State IR systems moved away from the centralised "award only" regulated system. Enterprise Bargaining provides for employers workers and unions to develop and implement workplace efficiencies and productivity improvements and for the fruits of those benefits to be fairly shared among employers and workers. Now the employer is stating that regardless of productivity improvements [or other efficiencies] it [rather than good faith bargaining or even the arbitral umpire] will dictate the outcome for workers.
- Any legitimate claim by workers [at the negotiation table or before the arbitral umpire] for reward premised upon productivity improvements will be statutorily blocked. The Union respectfully submits that the Committee should investigate and consider all the public sector efficiencies that have occurred since the last round of wage negotiations in 2010 / 2011. It includes, but is not limited to: agency amalgamations and dis-amalgamations, expanded service delivery obligations, workload increases and significant cross sector staff reductions. An employer [Government] initiated redundancy scheme will withdraw 1000 employees from the sector by April 2014. This is only the most recent in a series of employer exercises to reduce public sector employee numbers. After each and every reduction the Government repeats the mantra to the media and public that there will be no impact on the front line or service delivery. For that to occur [logic dictates] those workers left in the system need to be more productive. In consequence the employer is demanding workplace improvements without commensurate reward to those undertaking the tasks.
- The proposal to rely on the Perth Consumer Price Index based on Treasury methodology / calculations gives no opportunity to challenge the veracity of those figures. There is no independent comparator provided. It is a qualified

method of indexation. The Department of Commerce [DOC] were requested by the Union to explain and detail the methodology behind the proposed calculation and have refused to do so. Such a lack of transparency by the employer is only likely to breed disappointment and mistrust among its workforce.

- The Government has acknowledged that Perth CPI will have an adverse effect on staff engaged in regional WA. Public sector employees in certain locations will suffer a wages reduction as local cost of living increases outstrip the Perth based CPI.
- The Government claims it is not hobbling the independence of the Commission, but only seeking to ensure it is cognisant of its fiscal planning and strategies when making decisions. This claim is not well founded as the present Act [s26] already requires the Commission to have regard to the state economy and the impact of arbitral decisions on employers [including the Crown]. Partly in consequence of the above, public sector arbitral outcomes in the recent past have not achieved outcomes significantly above Government's wages policy.
- In hobbling the Commission the Government is acting contrary to comments and commitments it made in December 2010 when formally responding to the "Amendola Report". At that time it acknowledged broad community support for the Commission and referred to its specialist skill and knowledge. Obviously its confidence in the Commission has dissipated. The Committee may consider asking the Government to justify this dramatic turn around. Further, the Government committed to retaining a Commission with general powers for conciliation and arbitration. It has now broken that promise. If the Bill is successful, the general [as opposed to severely restricted] powers of the Commission to arbitrate on public sector matters will be removed.
- The Bill is a further example of Government action to deny its own employees those industrial rights freely available to private sector employees under the jurisdiction of the WA Commission. Such private sector employees are not faced with a statutory wages cap when entering negotiations. Further, they're not denied the ability to bring disputes before the independent umpire relating to crucial issues such as: transfers, workplace grievances, and recruitment as are public sector workers pursuant to s 23 (2a) and s80(E) of the Act.
- The policy will damage the public sector's ability to attract and retain staff where wages / conditions fall below market expectation. In the recent past the wages policies of successive Governments to limit such increases have resulted in an inability to attract and retain professionals such as mining inspectors, child protection workers and dental professionals. In consequence, wages and conditions supplements [attraction & retention benefits] had to be invented. The cycle will be repeated as important professional groups leave the sector.

The key amendments to the PSMA should not be enacted for the following reasons:

- The Union has a long standing policy opposed to forced redundancies.
- The Governments justifications for the proposals are ill founded. Initially the Premier claimed all other States and Territories utilised involuntary redundancies. At a meeting on 9 July 2013, Union representatives made the

Premier and his Deputy Chief of Staff Mr Stephen Home, aware that the claim was erroneous. At that time although State and Territory Governments had legislation in place to for involuntary redundancy, some choose not to through binding industrial instruments (agreements) or policies. In such circumstances Voluntary separation remained the preferred method.

- Further, the Premier claimed involuntary redundancy was required to remove chronic poor performers or redeployees who refused to accept suitable alternative roles but remained on the pay roll. Such commentary ignores the current regulatory regime applying to employees under the PSMA. The PSMA Act and PSRRR [as written and likely remaining so post the Bill] provide no avenue for removing poor performers via redundancy. Indeed, current employees with performance issues cannot be considered for registration as a redeployee with the Public Sector Commission [PSC]. Further, the current PSMA already provides adequate means for dealing with poor performers (s79), which were justified, includes dismissal. As for redeployees refusing to accept suitable alternative roles, this is already addressed by s82A(3) (a) and s 94(2) (b) of the PSMA which mandates dismissal.
- Union representatives met with senior officials from PSC and DOC on 29 October 2013. In light of the Premier's contention that redeployees were refusing to accept suitable alternative roles we asked: "What is the current number of registered public sector redeployees?" to which the answer was "90". That figure is remarkably small when one considers the PSMA and PSRRR cover approximately 130,000 employees. We then enquired as to how many had refused to accept suitable alterative roles, to which the answer was "0".
- If the Premier and Government have been advised that involuntary redundancy is required to deal with poor performers or intransigent redeployees they have been ill advised. Given the adequacy of current legislative powers to handle such matters [see above], any actual impediments are more likey the result of operational deficiencies at PSC or agency level. The Union requests the Committee to enquire of the Public Sector Commissioner why he [or any other officer with such powers] has not directed any of the reported 90 redeployees to accept suitable alternative roles?
- The Union has [in the past] received anecdotal information that CEO's of public sector entities are reluctant to consider / accept redeployees from other entities, despite the requirement to do so. Indeed, the Public Sector Commissioner has the power to direct a public sector employer to accept such a redeployee [PSMA s94 (3) (c) (ii)]. In consequence, we request the Committee enquire of the Public Sector Commissioner about the claimed reluctance of CEO's to consider / accept redeployees. Also, given his extensive powers, how many CEO's has he directed to accept a registered redeployee in the last 12 months?
- Simply put, the Union contends any alleged blockages relating to the handling of poor performers or intransigent redeployees are not the result of deficiencies in the current PSMA and do not justify the proposed Bill in regards to involuntary redundancy.
- The Union suspects the Government may have reasons for introducing the Bill that are not related to these claimed justifications. The Bill has the

potential to provide a means for the swift termination of employees at limited financial cost to the employer whilst mandating severely limited legal rights for an employee to contest the decision before the WA Commission. A Government planning to privatise or outsource swathes of public sector activities would benefit from such a tool. The Union respectfully requests the Committee enquire of the relevant Minster and senior officials in PSC and DOC whether the Bill could provide a quicker and cheaper means [than currently exists] for Government to terminate public sector employees.

- The Union's concerns regarding the Government's motivation for introducing the Bill were not eased when Union representatives met with the Hon. Helen Morton, Minister for Disability Services on 6 November 2013. The purpose of the meeting was to discuss the Minister's announced intention to outsource 60% of Disability Services Commission [DSC] accommodation services to non-government organisations, which is expected to result in the abolition of approximately 500 full time equivalent [FTE] positions. The Union asked the Minister, "If the Workforce Reform Bill is passed, will forced redundancies be applied to workers whose jobs are outsourced?" The Minister replied that the use of forced redundancies could not be ruled out.
- It is concerning to public sector workers that the details of importance to them: notice periods, access to retraining and redeployment opportunities and redundancy quantum's will remain unknown when the Bill passes. All such vital detail will be codified in regulations being prepared under the supervision of PSC.
- Given the Union's growing concern that the Government may be seeking a quicker and cheaper means to offload its employees, our fears were heightened on reading the 2013-2014 Budget Fact Sheet "Public Sector Workforce Reform" prepared [so we were advised] by the Department of Treasury. Under the sub heading "Enhanced Redeployment Arrangements" it provided no guarantee that employees, surplus to requirements, unable to be redeployed and choosing not to accept voluntary redundancy, would receive <u>any severance payment</u> at all on termination. [see attachment 1]. The Union wrote to the Public Sector Commissioner in regards the matter on 21 August 2013, receiving a reply on 24 October 2013. It advised "the model" proposed by Treasury had been revisited and "an appropriate redundancy payment" would be available where an employee had been engaged for at least a year. Although a relief, the response provides no information on notice periods, access to retraining and redeployment opportunities and redundancy quantum.
- Union members from the Department of Education [central office] whose positions were abolished in a significant restructure in August 2013 cited the lack of detail in the Bill regarding the forced redundancy process and package as contributing to their decision to accept a voluntary severance rather than redeployment. In short, fear of being subject in the future to the potential harshness of forced redundancies was utilised to drive affected employees to the comparatively more favourable option of "voluntary" severance. This enabled the Government to cut an estimated 146 jobs which support the operations of public schools within a mere 2 months.
- A further concern is that the enabling legislation will give the Government a blank cheque to rewrite the regulations without adequate consultation with stakeholders, including the Union or without prior Parliamentary scrutiny.

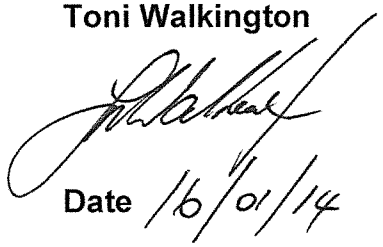
- The Union has already experienced difficulty [under the current regime] in getting agencies, like the Department of Education and the Teachers' Registration Board, to engage in meaningful consultation [regarding redundancies] as envisaged by the change management clauses set out in Awards and Agreements.
- The absence of detail in the Explanatory Memorandum or the proposed legislation raises questions about the following:
    - How does an employee become a registered redeployee?
    - The notice period for registration as a redeployee;
    - Agencies' obligations to offer retraining or finding suitable vacancies;
    - The quantum of voluntary and forced redundancy severance payments;
    - Compensation or transmission of entitlement rights if the work is contracted out or privatised;
    - The requisite notice periods for forced redundancies.

- The Union draws to the attention of the Committee that workers seeking to contest the involuntary redundancy decision before the WA Commission, can only appeal on severely limited grounds related to process. The substance of the decision [for example its fairness], cannot be raised. This contrasts with the rights of all private sector employees under the jurisdiction of the WA Commission.

Conclusion

The Union advocates for a robust and vibrant Public Sector, appropriately staffed and funded. Further, for the Crown to be an "employer of choice" it needs to offer reasonable salaries and conditions and not treat its workforce less favourably than workers in the private sector. In contradiction, the proposed legislation removes or limits current employment rights, thus disadvantaging public sector employees. In summary, the Union finds the proposals unfair and unnecessary.

Toni Walkington



Date 16/01/14

PUBLIC SECTOR WORKFORCE REFORM

The public sector workforce reform package was announced in June 2013 and comprises the following measures:

- a cap on growth in general government agencies' salaries expenditure equal to projected growth in the Consumer Price Index (CPI);
- a new public sector wages policy that caps wage and conditions increases to projected growth in the CPI;
- a voluntary severance scheme targeting 1,000 positions across the general government sector; and
- enhanced redeployment arrangements, supported by legislative amendments, to provide for involuntary redundancy as a measure of last resort.

The measures reduce net debt levels by an estimated $2.9 billion over the four years to 2016-17.

CPI Cap on Salaries Expense Growth

Over the four years to 2011-12, general government salaries expense growth averaged 8.6% per year. In response to this unsustainable trend, growth in general government agencies' salaries expenditure has been capped at projected growth in the Perth CPI. Agencies reporting above-CPI growth have had their salary expense budgets re-based accordingly. In this respect, CPI growth is forecast at 2.5% per annum from 2013-14.

Total salaries expenditure across the general government sector is budgeted to increase by $689 million or 6.8% in 2013-14. This includes a provision of $100 million for the estimated up-front cost of 1,000 voluntary severances in 2013-14. Abstracting from this, salaries expenditure is estimated to grow by 5.8% – well down on the 8.6% average growth over the four years to 2011-12. The above-CPI growth in salaries expenditure reflects the impact of discrete policy measures in the 2013-14 Budget, such as the police boost, as well as additional resources in Health and Education to meet unprecedented levels of demand generated by Western Australia's rapidly growing population.

Public Sector Wages Policy

A new public sector wages policy will come into effect from 1 November 2013. The new public sector wages policy caps increases in wages and associated conditions for Enterprise Bargaining Agreements at the projected growth in the Perth CPI (currently 2.5% per annum).

Legislative amendments will be introduced to ensure that decisions made by the Western Australian Industrial Relations Commission and the Salaries and Allowances Tribunal have appropriate regard for the Government's fiscal strategy, including the public sector wages policy.

Voluntary Severance Scheme

The enhanced voluntary severance scheme commenced on 1 July 2013, targeting 1,000 positions across the general government sector. The scheme is set to close in December 2013 and allows for a temporary increase in the maximum payment in lieu of notice – from 12 weeks' pay to 20 weeks' pay. Employees who have the necessary past service may therefore qualify for a maximum separation package equivalent to 72 weeks' pay.

Agencies that seek to use the enhanced voluntary severance scheme as a tool to achieve their re-based salaries expense limit, have priority access to the scheme.

Enhanced Redeployment Arrangements

Urgent legislative amendments will be introduced to establish involuntary redundancy as a measure of last resort for managing surplus employees. For public sector employees who are surplus to requirements, cannot be redeployed effectively, and choose not to accept a voluntary separation offer, involuntary redundancy will be introduced as a clear end-point to the redeployment process.

The enhanced redeployment process provides for a 12 week career transition process, followed by ongoing employment for a period consistent with the surplus employee's length of service payment (to a maximum of 40 weeks). If, at the end of this process (a maximum of 52 weeks), the employee has not been successfully redeployed, they will be made redundant.

It is anticipated that the enhanced redeployment arrangements will take effect from 2014-15.