

VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2014–15

Melbourne — 15 May 2014

Members

Mr N. Angus

Ms J. Garrett

Mr D. Morris

Mr D. R. J. O'Brien

Mr C. Ondarchie

Mr M. Pakula

Mr R. Scott

Chair: Mr D. Morris

Deputy Chair: Mr M. Pakula

Staff

Executive Officer: Ms V. Cheong

Witnesses

Mr R. Clark, Minister for Industrial Relations,

Mr D. Martine, Secretary,

Ms M. Skilbeck, Deputy Secretary, Budget and Finance,

Mr S. Witts, Director, Workplace Relations, and

Ms S. Mikkelsen, Acting Assistant Director, Private Sector Workplace Relations, Department of Treasury and Finance.

**Necessary corrections to be notified to
executive officer of committee**

The CHAIR — We will resume the hearings. I welcome back the minister, secretary and deputy secretary, and also from the Department of Treasury and Finance the Director, Workplace Relations, Mr Stephen Witts, and the Acting Assistant Director, Private Sector Workplace Relations, Ms Sam Mikkelsen. The minister now has an opportunity for a brief presentation of no more than 5 minutes on the budget estimates for the industrial relations portfolio.

Overheads shown.

Mr CLARK — Thank you, Chair. The first slide outlines my responsibilities as Minister for Industrial Relations. As I flagged previously, public sector industrial relations now comes within the portfolio as well as private sector. The next slide lists the various pieces of legislation for which I have ministerial responsibility, in whole or in part.

If we move to the slide after that, I present some information about the ministerial role in relation to public sector workplace relations and the government's workplace relations policies, which set out the government's expectations for public sector employers in terms of their conduct of workplace relations and enterprise bargaining, and the outcomes that are arrived at.

As I am sure members will be aware, the government's wages policy is in many respects, at least on paper, similar to the policy of the previous government in setting a wage guideline rate and providing for higher outcomes where an additional cost is offset by productivity gains. I think the difference is that we ensure that that policy is fully and properly applied. The slide also lists the various legislation that public sector bodies are required to comply with, as well as case law, in particular the *re AEU* decision and others.

The following slide flags two significant decisions that relate to limitations on the commonwealth's power to regulate Victoria's industrial relations matters. In particular those go to what conditions are or are not appropriate for including in enterprise bargaining agreements, and those are quite important in terms of setting the parameters within which wage negotiations take place in the Victorian public sector. I and my department have a role in making sure that those requirements are complied with.

We look to the next slide in relation to public sector enterprise bargaining. The slide provides some details about the number of EBAs that have been approved under the current government, including in the current financial year, and the expectations of government in relation to EBA outcomes, and flags my role in relation to the Fair Work Commission's modernisation of public sector awards.

The next slide talks about participation in major reviews and cases, and provides various details there, including the annual wages review and the pay equity case for child-care workers. The following slide refers to significant industrial disputes current in Victoria and their significance, particularly in relation to the rule of law in the Victorian construction industry.

The final slide refers to key initiatives and priorities for 2014–15 in terms of seeking to strengthen Victoria's industrial relations reputation and promote appropriate public sector wage outcomes, and participate in inquiries and cases where appropriate.

The CHAIR — Thank you, Minister. We have until 12.15 p.m. for questions, and again I will start. Minister, would you outline for the committee the budget initiatives in this portfolio which will contribute to the growth of Victorian jobs, both in the coming year and over the forward estimates period?

Mr CLARK — The situation is similar to that of my finance minister's portfolio. I have avoided the need for specific initiatives in this budget to support the industrial relations portfolio and that ensures there is more funding available for front-line service delivery and infrastructure across government. But, again, similar to my responsibilities as Minister for Finance, my job as Minister for Industrial Relations involves upholding Victoria's interests in relation to both public and private sector industrial relations matters in a way that supports whole-of-government service delivery and infrastructure delivery.

Previously I have outlined in particular the work I have done as Minister for Finance and in my portfolio in relation to the construction industry public sector aspects. Within my industrial relations portfolio I have a broader role to represent the Victorian government's interests in relation to private sector industrial relations matters, including in the construction industry.

We have made a submission to the Annual Wage Review 2013–14 in which we have submitted that the Fair Work Commission should exercise caution when determining changes to minimum wages and that the sustainable minimum wage is one that provides protection for low-paid workers, is responsive to economic conditions and has regard to the needs of employers.

As I alluded to, part of the significance of my role as Minister for Industrial Relations is supporting whole-of-government service delivery and ensuring affordable and sustainable wage outcomes in the public sector. I was very pleased that Standard & Poor's in their November 2013 Victorian update flagged that the work of the government in constraining wages growth to appropriate levels was integral to the state's credit rating and to the productivity of the Victorian economy. So while there are not specific initiatives in my portfolio I do believe the portfolio has a valuable role to play in contributing to whole-of-government projects and activities, not only in relation to jobs but in relation to the provision of services and infrastructure to the community.

The CHAIR — Thank you, Minister.

Mr PAKULA — Minister, in your presentation you indicated that your role now incorporates public sector IR and you described one of your core responsibilities as public sector workplace relations. I refer you to an article in the *Age* of 24 April which was headlined 'State's \$1 billion outsourcing bill' and I am wondering if you can provide the committee with details about the number of public sector employees who have either been made redundant or not had their contracts renewed by the government and since been re-engaged as consultants, contractors or employees of recruitment or labour hire companies in the current financial year?

Mr CLARK — Chair, as I understand Mr Pakula's question, that is not one that relates to my portfolio responsibilities as Minister for Industrial Relations in relation to public sector EBAs and wages policy.

The CHAIR — A supplementary question to refine that.

Mr PAKULA — Minister, you have just indicated to the committee that you have a responsibility for whole-of-government public sector workplace relations. Is it your evidence to this committee that the question of whether public servants are engaged by the government or whether their jobs are outsourced is not a matter of public sector workplace relations?

Mr CLARK — I have not had the opportunity to see the *Age* article to which Mr Pakula refers. However, my understanding of his question is that it relates to practices of departments in relation to staffing levels and engagement of contractors, and, as I take his question, that is not one that relates to my portfolio responsibilities.

Mr SCOTT — On a point of order — —

The CHAIR — The minister has concluded his answer to that question. Do you want to proceed with the point of order?

Mr SCOTT — The minister has previously in relation to his role in public sector industrial relations made reference to the public sector workplace relations policy and his responsibilities there. Attachment 5 to *Public Sector Workplace Relations Policies* relates to termination of employment, including such issues as redundancy and other matters relating to termination, the circumstances in which they can occur and matters related to that. Therefore the question actually does refer to the minister's responsibilities and he is seeking to avoid the question.

Members interjecting.

The CHAIR — Order! Mr Scott took a point of order and he has failed to make a point of order. Does he have a substantive point of order?

Mr SCOTT — I believe the minister is misleading the committee. He says it is not his responsibility. It clearly is.

The CHAIR — I do not uphold the point of order. You are simply trying to conflate government-wide policies with — —

Mr PAKULA — You are commenting now, are you?

The CHAIR — No, I am ruling on the point of order. In the matters that Mr Scott has raised with the committee in the point of order he has sought to conflate government-wide policies with operational decisions of departments, which is clearly what the minister referred to. Mr Ondarchie.

Members interjecting.

The CHAIR — Order! Is there a desire for an early lunch? If I am on my feet, end of discussion. Mr Ondarchie.

Mr ONDARCHIE — Thank you, Chair. With all due respect to you as Chair, let me ask this question of the Minister for Industrial Relations — —

Members interjecting.

The CHAIR — We have 14 minutes left before we get 1 hour away from one another, so let us just keep it calm until then.

Mr ONDARCHIE — Minister, I refer to budget paper 3, page 277, which lists the DTF objectives, indicators and outputs relating to industrial relations. I wonder if you could inform the committee about the potential effects on jobs, investment and confidence in Victoria of building union blockades and boycotts. At the Grocon Emporium site you would remember that that is the blockade that stopped Victorians going to work, that is the blockade where Labor's mates punched horses, that is the blockade where they ransomed the CBD, that is the blockade where — —

The CHAIR — I think we can get to the question.

Mr ONDARCHIE — Sorry, I was just talking about Labor — spelt C-F-M-E-U. — which held Victoria to ransom.

Members interjecting.

Mr ONDARCHIE — The John Setka-led blockade held Victoria to ransom during their June blockade. I am just wondering if you can talk about the effect that has had on the economy, such as Grocon and the Boral blockades as well.

Members interjecting.

The CHAIR — Order! Deputy Chair, people had the opportunity to ask their questions without assistance for the entire morning. I do not think anything has changed because it has turned midday. Can we finish this session? Allow the member to ask his question without assistance.

Mr ONDARCHIE — They cannot speak without John Setka — —

The CHAIR — Mr Ondarchie, that is not helpful.

Mr ONDARCHIE — Minister, I wonder if you could explain the economic damage that has occurred as a result of Labor's mates blockading the city at the Grocon site and the Boral site and others.

Mr CLARK — Thanks, Mr Ondarchie. These are very serious instances of where militant union activity is raising very substantial issues. I need to be a little bit limited in what I say because both of these matters are still currently before the courts. Nonetheless to respond more generally, whenever there are major disruptions on building sites, and the sorts of blockades that we saw in relation to Grocon at the Emporium site, they can have very grave consequences for the Victorian economy in terms of undermining confidence and willingness to invest. Certainly the matters that have been alleged in the Boral case, where injunctions have been granted and there are now proceedings — —

Mr PAKULA — On a point of order, Chair, the first point of order — I actually have two, so you might want to rule on them one at a time.

The CHAIR — Do them one at a time.

Mr PAKULA — Firstly, I would ask the Chair to caution the Attorney-General not to stray into matters that are sub judice, because he has done that before in the house. The second point of order goes back to the previous question. It is amazing to this side of the committee that the minister is capable of responding to questions relating to private corporations, and that is within order, but he is not capable of answering for public sector consequences of the government's own decisions in regard to contracting out. I would be far less concerned — —

Members interjecting.

The CHAIR — Order! Mr O'Brien, the Deputy Chair will be heard in silence.

Mr PAKULA — I would be far less concerned about the level of detail that the minister appears to have on this issue with regard to this if he was equally — —

Members interjecting.

The CHAIR — I am having a lot of trouble hearing the point of order, so I would appreciate silence.

Mr PAKULA — If he was equally prepared to answer for the actions of his own government in regard to the contracting out of public sector jobs. It just amazes me, Chair, that he can answer this question, but he cannot answer a question — —

Members interjecting.

The CHAIR — Order! In the contribution on what you identified as a second point of order, was there a point of order?

Mr PAKULA — My substantive point of order was the matter of sub judice.

The CHAIR — I am sure the minister — —

Mr PAKULA — He has not shown it to be the case before.

The CHAIR — I am sure the minister is aware of the conventions of the house and the committee as it applies. I am sure he has no need of a reminder from me.

Mr CLARK — Thank you, Chair. Let me refer to the history of the Grocon matter and some of the findings of Justice Cavanough in relation to that. In May last year the Supreme Court found that the CFMEU was guilty of criminal contempt. On 31 March this year fines totalling \$1.25 million were imposed by the court, in addition to an order to pay Grocon's costs, and that related to five counts of criminal contempt arising from pickets or blockades at two Grocon building sites. His Honour referred to the CFMEU's conduct as being 'exceptionally serious'. He went on to say:

So much so that they warrant explicit classification as criminal contempts, perhaps for the first time in the Australian industrial context. I have already explained why I consider these contempts to be so serious. In short, they were highly contumacious. They were also highly visible and highly memorable. The court must visit the defiance of the CFMEU with a penalty which will not only adequately respond to the scale of the defiance but also act as a general and specific deterrent. No fines of a level previously imposed could do that.

His Honour went on to make numerous references to bear out that overview. He indicated that he could not:

... see any good reason for treating players in the industrial field differently from others with respect to the application of the principles concerning the circumstances in which a breach of an order or an undertaking should be classified as criminal.

These are matters that are subject to appeal, but those are the findings of His Honour at first instance, and I think they reinforce the concern that the government has had for many years about the damage that blockades, boycotts and the like can cause to the Victorian economy. Certainly as Minister for Industrial Relations, I view those as particularly serious and concerning, and it is important that not only are public sector projects able to be constructed without union disruption and militancy but also that the private sector can get on with undertaking its — —

Ms GARRETT — On a point of order, Chair, in the interests of a fulsome response on this issue, I was wondering if the minister was at any point going to go into the unprecedented actions taken against Grocon recently and the damage to the families of those people who died because of the collapsed wall. Is this where he is taking it to?

Members interjecting.

Ms GARRETT — This is a serious matter. The minister is using selective ideology.

The CHAIR — Order! I am not hearing any more on the point of order. That is not a point of order, and I will not allow further debate about it. If Ms Garrett wishes to ask a question on the matter that she raised, then she has the opportunity when the minister has concluded his answer to Mr Ondarchie's question.

Mr CLARK — Chair, I was concluding my answer to Mr Ondarchie by remarking that not only in the public sector but also in the private sector it is important to ensure that we have law-abiding, safe and productive workplaces and that people can invest with confidence, knowing that their projects will be free from unlawful actions.

Mr SCOTT — Minister, you made reference in your presentation to the restrictions on the state's capacity to govern that arise, and often the shorthand that is used relates to one of the cases relating to this matter, *re AEU*. I am seeking to get an understanding from you, Minister, about the application of the issues that arise in relation to that particular matter. In the material provided to departments in the public sector workplace relations policy, there is discussion relating to new agreements, but I would seek clarification of how these particular issues relate to existing agreements. For example, there are issues relating to nurse-patient ratios, to the numbers of firefighters to be employed under various parts of previous EBAs. Will the Victorian government agree to honour previous EBAs or arbitration rulings as part of existing industrial agreements in relation to these matters which may be impinged upon by the issues that are related to what is often described as *re AEU*?

Mr CLARK — *Re AEU* matters are primarily relevant in the context of negotiating new EBAs and the terms that are appropriate and legitimate to include in them. In relation to whether or not a provision in an existing EBA may infringe *re AEU* provisions, that is something that would need to be determined by examining the particular agreement concerned. The government's focus in relation to these matters, and my role as Minister for Industrial Relations, has been to ensure that these matters are properly taken into account in the negotiation of upcoming EBAs.

The CHAIR — Is there a supplementary question?

Mr SCOTT — I seek further clarification relating to these matters. To what extent are contractors and/or consultants not directly employed by government but who perform work undertaken by Victorian public sector employees covered by the exclusions which the government on numerous occasions has referred to — that is, the restrictions relating to matters — and I will use the shorthand again — in *re AEU*.

Mr CLARK — Mr Scott, effectively you are asking for a legal opinion there. If I were in a position to provide you with some feedback on that particular topic on the spot, I would be happy to do so, but I think since you have asked quite a detailed question on a point that probably requires answer by revisiting the fundamental principles under which the *re AEU* decision has been made in terms of the state's capacity to operate as a state and to conduct its business, I think it is best that I have a further look at your question in writing and see if I am in a position to come back to you with further detail or more fulsome response in relation to it.

Mr O'BRIEN — Minister, I refer you to budget paper 3, page 277, which lists the Department of Treasury and Finance objectives, indicators and outputs relating to industrial relations, and I also refer you to the establishment by the commonwealth government of a royal commission into irregularities within the trade union movement, and I ask you: can you inform the committee whether the Victorian government will be seeking to make submissions to the royal commission, and if so on what issues?

The CHAIR — Order! In a similar vein to the last session, before I invite the minister to respond I indicate that there is about 2 minutes left in this session.

Mr CLARK — Thank you, Chair. In short, the government has welcomed the establishment of the royal commission into the irregularities within the trade union movement and the terms of reference are wide-ranging. They relate to whether there have been breaches of the law by union officials in order to procure an advantage for themselves or others, or to cause a detriment. They extend to the — —

Members interjecting.

The CHAIR — It appears we are all finished? The minister has the call.

Mr CLARK — The terms of reference also enable the commission to examine the participation by other persons or organisations in the breaches listed in the terms of reference. This will enable the commission to investigate allegations such as unlawful kickbacks, coercion, extortion, boycotts and black bans by the building union industry or union officials or indeed involvements by organised criminal elements in conjunction with that. The commonwealth royal commission letters patent were issued in March this year, and in April this year the Victorian Governor established complementary terms of reference so the commission will have state-based powers as well as commonwealth-based powers.

Certainly the Victorian government is seeking to be represented and appear at the commission in order to ensure that the interest of the Victorian community in identifying unlawful behaviour anywhere it occurs, but particularly within the building and construction industry, is pursued, and if there is evidence to support it that appropriate findings are made by the royal commission. Hopefully this will contribute to ensuring the rule of law is upheld in an industrial relations context as in other contexts.

The CHAIR — Thank you, Minister. That concludes the hearing for the industrial relations portfolio. There is one matter that is the subject of a question on notice that you will follow up on the basis of Mr Scott's contribution, so if that issue can be followed up — we will of course write to you — we would appreciate a response within 21 days. I thank the minister, the secretary, the deputy secretary and departmental staff for your attendance today.

Witnesses withdrew.