

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2009–10

Melbourne — 21 May 2009

Members

Mr R. Dalla-Riva
Ms J. Huppert
Ms J. Munt
Mr W. Noonan
Ms S. Pennicuik

Mr G. Rich-Phillips
Mr R. Scott
Mr B. Stensholt
Dr W. Sykes
Mr K. Wells

Chair: Mr B. Stensholt
Deputy Chair: Mr K. Wells

Staff

Executive Officer: Ms V. Cheong

Witnesses

Mr M. Pakula, Minister for Industrial Relations,

Mr H. Ronaldson, Secretary;

Mr J. Strilakos, Acting Chief Financial Officer;

Ms B. O'Neill, Acting Deputy Secretary, Workforce Victoria; and

Mr M. O'Connor, Acting Deputy Secretary, Workforce Victoria, Department of Innovation, Industry and Regional Development.

The CHAIR — I now welcome the Minister for Industrial Relations; Ms Bernadette O’Neill, acting deputy secretary, Workforce Victoria and Mr Matthew O’Connor, acting deputy secretary, Workforce Victoria; also, again Mr Ronaldson and Mr Strilakos, Department of Innovation, Industry and Regional Development.

Overheads shown.

Mr PAKULA — I will start by talking a bit about Workforce Victoria. Workforce Victoria encompasses both industrial relations and workforce participation. It is a section of the department that advocates an industrial relations framework that encourages high-performance workplaces in the public and private sector and minimises industrial disputes.

The output group of industrial relations includes policy development in both the public and private sectors as well as the provision of information to employers and employees on areas like long service leave, child employment, and to outworkers and to the people who engage them.

Workforce Victoria develops policy, provides advice and delivers programs relating to industrial relations and workforce participation. It has a primary responsibility for developing policy, for administering workplace legislation and for managing programs aimed generally at establishing a fair, cooperative and dynamic industrial relations environment for Victoria. That is essential for attracting new business investment and for growing enterprises.

The budget for Workforce Victoria for 2008–09 has decreased by \$3.2 million to \$8.6 million, from the estimated outcome of \$11.8 million for 2009, principally due to the cessation of the Office of the Workplace Rights Advocate and the reallocation of output costs covering general departmental and corporate costs.

In terms of key achievements for 2008–09, we have undertaken a review of the Child Employment Act to ensure that it remains relevant. As of 4 May, 56 public sector agreements have been given government approval in the last year. We have been working closely with the commonwealth over the implementation of its Forward with Fairness reforms. In the last year we have seen the launch of a number of initiatives aimed at balancing work and family commitments, and that includes the ways2work website, which provides information to parents returning to the workforce as well as to the employers.

Also, in March I was pleased to launch the employer recognition program which allows the use of a special brand mark to employers who have acted to provide family-friendly policies and family-friendly benefits to their staff.

We are also about protecting independent contractors. Prior to the enactment of the Owner-Drivers and Forestry Contractors Act there was an unequal bargaining position between contractors and their hirers, and there was also an information imbalance. There were high rates of business failures, particularly amongst owner-drivers, low financial returns and workers who suffered from poor physical health and long hours of work.

There has been significant work undertaken by the Transport and Forestry Industry Councils to enable owner-drivers and forestry contractors to be better informed and to conduct more prosperous businesses. The councils have produced codes of practice, an information booklet, rates and cost schedules, and the transport industry model contract. We have spent just under \$300 000 on printing and promoting 200 000 copies of various materials.

I have recently appointed incoming council members and reappointed chairs for a new three-year term. The Transport Industry Council will again be chaired by Mr John Tolley, and the Forestry Industry Council by Mr Neil Pope. The government looks forward to their contribution in assisting — —

Mr WELLS — Is there anyone from the business community?

Mr NOONAN — Of course there is.

Mr PAKULA — Yes, absolutely. If you ask me a question about it, I will take you through it. They are the chairs, Mr Wells.

The CHAIR — There will be time for questions, I am sure — —

Mr WELLS — Just Labor people or union hacks — —

The CHAIR — The minister, to conclude, please, through the Chair.

Mr PAKULA — Can I say, we look forward to their contribution, Chair, in assisting those two key areas of Victorian small business. We have in the act taken the approach of the small business model of light-touch regulation, and as part of that approach the act gives power to the small business commissioner to mediate disputes and provide contractors and hirers with a fast, low-cost and accessible dispute resolution process.

On the last slide, in terms of key initiatives and priorities for 2009–10, Workforce Victoria will continue to work with its federal counterparts on the implementation of the new Fair Work Act to ensure that our workplaces are fairer and more productive. We welcome the new legislation. We will be seeking to make a new referral of powers to the commonwealth to support it. Workforce Victoria has been working with the federal department on the referral legislation and on an intergovernmental agreement that will set out how we as a state will participate in the national system.

Workforce Victoria also plays a key role in the negotiation of some public sector agreements, and all the agreements that have been negotiated to date have been consistent with the government's wages policy. Workforce Victoria will continue to facilitate new agreements in the context of the new wages policy and will also continue to work with other agencies in implementing the government's better work and family agenda. That is only a snapshot of the major issues confronting the IR portfolio over the past year and over the coming year.

The CHAIR — Thank you, Minister. I asked my question previously about federal grants. I assume that your previous answers will have covered that and that the department will cover anything in the response that they give us with more details.

Mr WELLS — Minister, I refer you to the industrial relations group output in budget paper 3, page 135, and to the dispute currently being fought out between the CFMEU and the Australian Manufacturing Workers Union on one side and the AWU on the other side for the principal union coverage of the government's proposed desalination plant, a dispute which the Trades Hall Council has also become involved in, and I ask: what are you doing as industrial relations minister to try to get this demarcation dispute resolved in a way that will ensure that if the desalination plant ever goes ahead, it will go ahead under a fair and reasonable site agreement without the threat of union militancy and disruption that could force bidders to add hundreds of millions of dollars to their contract bids at the expense of that Victorian water consumer and lead to long delays in completing this project?

The CHAIR — Minister, in respect of your portfolio.

Mr PAKULA — Firstly, Chair, perhaps I could seek some clarification. What dispute are you referring to, Mr Wells? There is no dispute in regard to the construction of the desalination plant, because the construction of the desalination plant has not commenced.

Dr SYKES — A pre-emptive strike, Minister.

Mr PAKULA — It is a pre-emptive strike, is it? So you are talking about a dispute that does not exist.

Mr WELLS — Hang on, you are really concerning me that you are that out of touch. At the moment there is a fight going on between the CFMEU with the AMWU on one side and you have got the Australian Workers Union on the other side fighting for coverage of the desalination plant site.

Mr NOONAN — The tender has not even been done.

Mr WELLS — No, we know that, and that is why we find it laughable. So are you saying that there will not be an issue on demarcation — —

The CHAIR — Mr Wells!

Mr PAKULA — Mr Wells, can I say — —

Mr WELLS — Just tell us. It is a simple, straightforward question.

The CHAIR — Mr Wells! The minister, to answer. Rather than ask the question again, it will go to other committee members.

Mr PAKULA — Chair, can I say, Mr Wells asked me whether I can guarantee that there will not be in the future a dispute. I have heard of — —

Mr WELLS — Demarcation dispute.

Mr PAKULA — I have heard of hypotheticals, but you are talking about a plant for which the tender has not been granted and for which there has not been any work on the site. You are surmising that there will be a demarcation dispute — —

Mr DALLA-RIVA — It currently is in place. Trades Hall are involved.

Mr WELLS — That is fine. Stick to what you have just said. That it is fine. I suspect there is going to be a lot of follow-up to what you just said, that you are that far out of touch with what is happening at Trades Hall.

The CHAIR — Mr Wells, thank you. Minister, if there is any further information to be provided, you will provide that to the committee.

Mr WELLS — I think you will read about in the paper. That is embarrassing.

Mr NOONAN — Minister, under your key initiatives and priorities for 2009–10, the first dot point goes to working with the commonwealth to ensure delivery of fair work commitments. Can you inform the committee how the government will achieve this in light of plan for national harmonisation of industrial relations?

Mr PAKULA — Thanks, Mr Noonan. It is a really important question because we need to have a new referral in place pretty soon. When the Premier announced in February this year the statement of government intent, we made a commitment to a unitary IR system following the introduction and passing of the federal government's Fair Work Bill. As the committee would know, the Fair Work Act has now passed, and we are working with the federal government to amend the existing referral of IR powers to the commonwealth.

Committee members would probably be aware that the commonwealth constitution provides certain powers to the commonwealth and it gives the commonwealth power to make law about constitutional corporations, otherwise known as the corps power. But section 51 also allows an arrangement where one or more states can refer a matter to the commonwealth, and that would then allow the commonwealth to make law about matters that they otherwise could not. In the case of IR, that would be unincorporated associations and employees of the state. It does not mean that we give up the *law-making power to the commonwealth; we can still make laws about the referred matter, but they would be ineffective to the extent of any inconsistency with commonwealth law.

Because a referral is made by a state, it is generally accepted that we can change or withdraw a referral at any time by amending or repealing the referral legislation and, if that occurs, then the commonwealth law becomes ineffective to the extent that it relied on the referral. As has been commented on on numerous occasions, the present Victorian referral was made by the former Kennett government in 1996, but at the time that that referral was made, most of the federal IR laws were based on the conciliation and arbitration power, and that is a power that is quite limited — for example, it does not allow the commonwealth to legislate for state-based awards, common rule awards or indeed for enterprise bargaining.

The corps power has been relied on for enterprise bargaining. The present referral is a subject matter referral, so it refers a specific list of subjects to the commonwealth. It refers to the subject of conciliation and arbitration for the settlement of industrial disputes within the limits of the state, and it is subject to a number of exclusions.

It has policy-based exclusions in respect of the public sector generally, so discipline and the transfer of public sector employees is excluded from the scope of the referral. The number and identity of persons employed in the public sector is something that is not referred to the commonwealth. It is excluded for very good reasons of state sovereignty and because those issues fall within *re AEU*. There are various other exclusions intended to

prevent state laws being overridden by federal laws — for example, state workers comp laws, OHS laws and long service leave laws.

But because the federal law is now based upon the corporations power the referral exclusions only affect the federal laws as far as they apply to excluded employers and their employees. We are now working with our counterparts in the commonwealth Department of Education, Employment and Workplace Relations to ensure that the interests of the government, Victorian business and Victorian workers are properly reflected in the new legislation.

We have been working with the commonwealth to look at how we can ensure that our workers here are covered by our fair share of those laws. The new referral will be a text-based referral rather than a subject matter referral — that is, it will refer to the matters dealt with in the text of the Fair Work Act rather than trying to describe every subject matter that the bill deals with that allow the laws to apply to unincorporated businesses.

Research that was done in 2006 has found that there are about half a million workers in Victoria in unincorporated businesses, particularly in retail trade and hospitality. As a result of the referrals those workers will benefit from the 10 national employment standards. We are also working with the commonwealth on ensuring that those new laws apply appropriately to the public sector and for those workers who work in public sector corporations.

We are also working with other states to ensure that to the greatest extent possible there will be national harmonisation of that referral. We are doing it through the Workplace Relations *Ministers Council. We will introduce into Parliament very shortly a new referral bill and we will be seeking the cooperation of all the parties in the Parliament to ensure that workers in Victoria benefit from the new national IR system.

Mr RICH-PHILLIPS — Minister, I refer to your role in establishing a fair, cooperative and dynamic work environment in Victoria and the long-running industrial dispute on the West Gate Bridge site, which was organised by the CFMEU and AMWU which involve violence, intimidation and other thuggery, including the use of bikie gangs on picket lines.

I also refer to the fact that the CFMEU and the AMWU have succeeded in getting access to the West Gate Bridge site under the terms of the agreement for the settlement of the dispute, meaning that their violence and thuggery has in effect paid off, so I ask: what did you and the Victorian government do through your union contacts to stop the violence and intimidation that occurred in that dispute?

How much has the CFMEU and AMWU campaign and terms of settlement added to the cost of the West Gate Bridge upgrade and the safety barrier installation for the Victorian taxpayers? Will you as industrial relations minister call on the ALP to expel the CFMEU and the AMWU, or will you and your government continue to be compromised by your links to unions that rely on violence and intimidation to get their way?

Mr WELLS — Great question!

The CHAIR — Minister, insofar as it relates to your portfolio — I do not think the last part does.

Mr PAKULA — What a surprising question, Chair!

Mr WELLS — He is the guy that does — —

Mr PAKULA — Let us just get on with it, Mr Wells.

The CHAIR — Just ignore Mr Wells, Minister. He is not chairing the meeting; I am.

Mr PAKULA — Thank you for your guidance, Chair. I thank Mr Rich-Phillips for the question, which I will answer in a couple of ways. Firstly, when you talk about industrial disputes I think it is worth making reference to dispute statistics in this state more generally. In the last quarter of the Kennett government there were — —

Mr WELLS — What has that got to do with the West Gate Bridge?

Mr PAKULA — I will tell you what it has got to do — —

Members interjecting.

Mr WELLS — This is thuggery and intimidation.

The CHAIR — Mr Wells, no interjections, please.

Mr PAKULA — Mr Wells, by way of comparison 112 000 working days were lost in the last quarter of that government.

Mr WELLS (to the Chair) — So you are just going to let him go on?

The CHAIR — He is giving a comparison.

Mr WELLS — Bring him back to the question.

Mr PAKULA — Now we come to the current day, Mr Wells. In the last quarter of 2008, 6600.

Dr SYKES — At what cost, Minister? How much taxpayers money did it take to buy them off?

Mr PAKULA — It is 112 000 versus 6600.

Mr WELLS — Are you going to get to the answer? This is embarrassing.

Mr PAKULA — Mr Wells, I am getting to the answer. In terms of dispute figures in this state — Victoria on a national scale — 2.8 days lost per thousand versus a national figure of 3.3 and a figure in New South Wales of over 5.

Mr WELLS — What has that got to do with the West Gate Bridge dispute?

The CHAIR — The minister, to answer, please.

Mr PAKULA — I am coming to the West Gate Bridge.

Dr SYKES — Drive faster, Minister. You are caught in gridlock.

Mr PAKULA — Mr Wells, I will get there a lot quicker without your interjections.

Mr WELLS (to the Chair) — He will not even stick to the question.

The CHAIR — Minister, thank you. Mr Wells, we could do without your intimidation and thuggery.

Dr SYKES — The pot calling the kettle black!

The CHAIR — The minister, to answer.

Dr SYKES — ‘Chair condones thuggery!’. You will be outed from the party. Just as well you are on the eastern suburbs, not the western suburbs.

Members interjecting.

The CHAIR — I am happy to apologise. The minister, to continue.

Mr PAKULA — Industrial relations in the construction industry generally has been extremely harmonious since the implementation of the Building Industry Consultative Council.

Dr SYKES — At what cost?

Mr PAKULA — The Building Industry Consultative Council, which is a bipartite board with representatives from both the construction industry and construction industry unions, keeps the Building Industry Comparative Index. In the time that that index has been in place, Victoria has gone from a rate of 41 to a rate of 52, the second best in the country.

The CHAIR — I think it is time to get onto the West Gate Bridge, Minister.

Mr WELLS — Thank you! At last! How many chances are you going to give him?

Mr PAKULA — Let me say about the West Gate Bridge — —

Dr SYKES — It cost heaps.

Mr PAKULA — This was a dispute — a concluded dispute, mind you — between John Holland and those unions that you referred to. I go back to the referral of 1996, which you are well aware of.

Mr WELLS — What did you do as minister?

Mr PAKULA — Go back to the referral of 1996, Mr Wells, that you are well aware of.

Mr WELLS — What did you do as minister?

The CHAIR — Allow the minister to answer.

Mr PAKULA — Mr Wells, it is very easy for you to come in here and — —

The CHAIR — Ignore the interjection.

Mr PAKULA — Thank you, Chair.

Dr SYKES — Answer the question!

Ms MUNT — He is trying.

Mr PAKULA — It would be a hell of a lot easier to answer questions without — —

The CHAIR — The minister, to ignore interjections.

Dr SYKES — At what cost, minister? How many million?

Mr PAKULA — Can I say it is easy to come in here and say, ‘What did you do about a dispute?’

Mr WELLS — You are responsible. You are the minister.

The CHAIR — The minister to answer, please.

Mr PAKULA — I am doing my best, Chair. It is easy to come in here and say, ‘What did you do about a dispute between a private company and unions?’, when you know that the instruments of conciliation, the instruments of dispute resolution and the instruments of federal agreement-making are all federal instruments, since 1996. There is no state industrial relations commission — —

Mr WELLS — Then why do we have a Minister for Industrial Relations?

Dr SYKES — You’re a man without a job!

The CHAIR — Without assistance, Minister.

Mr PAKULA — Can I say, having said that, you would be well within your rights to imagine that given that there is no state system, no state act and no state commission, there are federal authorities — the Federal Court which was utilised, the federal commission which was utilised, the federal ABCC which was utilised — having said all of those things, you would be within your rights to say that someone from the government should act behind the scenes to urge, to encourage, to facilitate discussions, to get the dispute resolved.

However, the responsibility for that is for the minister responsible for delivering the project, which is the Minister for Roads and Ports.

Mr DALLA-RIVA — And he was involved in that!

Mr WELLS — So what do you actually do?

The CHAIR — Thank you, without assistance, Mr Wells.

Mr PAKULA — Mr Wells, if you would like to hear the conclusion of the answer, I do not know whether you asked the Minister for Roads and Ports whether he did those things when he appeared before you — —

Mr WELLS — I thought we would ask the Minister for Industrial Relations.

Mr PAKULA — But if you did not, I did, and I can tell you that the answer is yes. He did all of those things you would expect the Minister for Roads and Ports, who is responsible for delivering the project, to do in order to encourage the parties to resolve the dispute as expeditiously as possible.

The CHAIR — Thank you, Minister. You will have to ask the relevant minister that one, Mr Wells.
Ms Munt?

Ms MUNT — Thank you, Chair. Minister, can I please refer you to budget paper number 2, page 18 and I will quote from that page:

In April 2009 the government announced it would be securing and preserving jobs in the public sector through a new wages policy. In response to lower inflation forecasts, the government announced that the 3.25 per cent a year guideline rate a year for enterprise bargaining agreements would drop to 2.5 per cent, with the opportunity for further increases in line with productivity increases.

Could you please detail for the committee why that decision was made; and what will be the consequences of it?

The CHAIR — Quickly, Minister, because we want to get another question in.

Mr PAKULA — I will be quick. We were faced with a decision that faces probably every government and business around Australia and around the world. In the face of the global financial crisis, businesses and governments have had to make some pretty hard decisions about job reductions, down days and redundancies, and that was a path we wanted to go down.

We are the largest employer in the state, and we are committed to our entire public sector workforce, so we made a decision that we would not embark on a program of redundancies; but in order to achieve that we had to tighten our wages policy.

The previous policy was based on a wages policy guideline for a 3.25 per cent increase with additional increases in return for genuine productivity improvements, and there were concluded agreements over the last little bit of time between us and the police, and nurses and teachers consistent with that policy; but we had to announce a change to that policy at the end of March. We consulted with both the public sector unions but also with industry representatives; we gave a pretty clear message that in these times government, businesses and unions had to make saving jobs a top priority.

Therefore we immediately capped the wage increases for MPs and public sector executives at 2.5 per cent, and we indicated that a new wages policy of 2.5 per cent would commence from 4 May — the day before the budget.

We provided the public sector unions with until that date to finalise their existing agreements. There is a good faith requirement that if you put an offer on the table, you have to have a reasonable period of time to allow those agreements to be finalised, so we gave them a reasonable opportunity to get that agreement done. We were able to reach a number of heads of agreement in the period between when we announced the change to wages policy and the new kick-in date.

They were with the health services union no. 1; allied catering staff; health maintenance workers, dental therapists and general dentists, the DSE field staff, kindergarten teachers, V/Line passenger workers, DPI wild dog controllers, electorate officers, Victoria legal aid, the Melbourne Recital Centre, the CFA managers, ESTA operational and administrative staff, the Centre for Adult Education, and of course, importantly, with the Victorian Public Service.

We reached a new heads of agreement with the CPSU on 4 May, and six months of intensive negotiation concluded in a collaborative way without any industrial action. The agreement provides for a 2 per cent increase on 1 July, another 1.25 per cent on 1 February and another 3.25 per cent on 1 October 2010. That is the 3¼ and 3¼, and a lump sum productivity payment of 0.8 per cent of annual salary, paid on agreement, and that reflects the fact that the agreement is in fact a 2 years 4 months deal.

Dr SYKES — Those agreements that you nominated, were they all within the 3.25 per cent?

Mr PAKULA — They all complied with government wages policy, Dr Sykes. Government wages policy is 3.25 per cent plus any demonstrated productivity improvements.

Mr DALLA-RIVA — Minister, I refer you to budget paper 3, page 135, in terms of performance measures and outputs where, under your portfolio, industrial relations is to advocate for and deliver programs aimed at establishing fair, cooperative and dynamic work environments in Victoria, in both private and public organisations.

That performance relates to the recent West Gate Bridge dispute, in which the use of violence and thuggery has resulted in the CFMEU and the AMWU winning access to the site.

I also refer you to the fact that prior to the great success of the ABCC — the Australian Building and Construction Commission — established by the Howard government, union militancy and disruption on Victorian building projects added hundreds of millions of dollars of costs for Victorian taxpayers and Victorian citizens.

Does the Victorian government accept that without tough action against construction industry union lawlessness Victoria is already returning to those bad old days? Does the Victorian government support Julia Gillard's claimed policy of continuing to have a tough cop on the beat to fight union militancy in the construction industry? If so, what will the Victorian government do in the forward estimates to support that policy and support the work of the ABCC?

Will you ensure that under your portfolio the Victorian government requires tenderers for Victorian government contracts in future to undertake to be co-compliant with the code of industrial relations practice established under the Howard government?

Mr PAKULA — Is there time for me to answer, Chair?

The CHAIR — You will have to answer it as quickly as possible. You can take the rest of it on notice.

Mr PAKULA — I will answer it as quickly as possible. Like I said earlier, there has been a stunning reduction in issues in the construction industry and across all industries in Victoria. Our model is a model of cooperation through the Building Industry Consultative Council. That has been a council which has led to a reduction in industrial disputes in the construction industry from the levels that they were under the Kennett government to historically low levels today. That is the result of the cooperative relationship that we have fostered through the BICC in this state. In relation to the question about Ms Gillard and the response to Wilcox, we made our own submission to the Wilcox inquiry. We expressed our grave concerns about what we saw as some of the pretty significant powers that the ABCC had that were antidemocratic, powers that even Wilcox has recommended should be severely curtailed because they are the sorts of powers that would be more appropriate for the Office of Police Integrity — in fact in some regards they went even further than the powers of the OPI. I think given the time constraints, Chair, we will have to take the rest of that question on notice.

The CHAIR — Can you take the rest of it on notice? That includes consideration of the budget estimates for the portfolios of industry and trade and industrial relations. I thank the minister and departmental officers for their attendance today. Where questions were taken on notice the committee will follow up with you in writing at a later date. The committee requests written responses to those matters be provided within 30 days. Thank you, Minister.

Mr PAKULA — Thank you, Chair.

Witnesses withdrew.