

VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2013–14

Melbourne — 16 May 2013

Members

Mr N. Angus
Ms J. Hennessy
Mr D. Morris
Mr D. O'Brien

Mr C. Ondarchie
Mr M. Pakula
Mr R. Scott

Chair: Mr D. Morris
Deputy Chair: Mr M. Pakula

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Executive Officer: Ms V. Cheong

Witnesses

Hon. R. Clark, Minister for Industrial Relations;

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

Ms V. Harris, Acting Director, Public Sector Workforce Management Group, Department Of Treasury and Finance; and

Mr J. Hanney, Deputy Secretary, Trade and Industry Development,

Ms L. Zass, Acting Director, Private Sector Workplace Relations, Department of State Development, Business and Innovation.

The CHAIR — We will resume with the industrial relations portfolio. I welcome Mr Justin Hanney, deputy secretary, trade and industry development, Department of State Development, Business and Innovation — welcome back — Ms Lissa Zass, Acting Director, Private Sector Workplace Relations, Department of State Development, Business and Innovation, and Verity Harris, Acting Director, Public Sector Workforce Management Group, Department of Treasury and Finance.

I call on the minister to give a brief presentation of no more than 5 minutes on the more complex aspects of the industrial relations portfolio.

Overheads shown.

Mr CLARK — Thank you, Chair. I again thank the committee for its forbearance of my state of health and of voice.

This presentation sheds some more light on the respective roles of the Minister for Finance and the Minister for Industrial Relations. As I have indicated earlier, the Minister for Industrial Relations now has portfolio responsibility for both private and public sector IR. That includes a departmental policy unit supporting my private sector industrial relations role, which is currently based in DSDBI, which will be moving over to the Department of Treasury and Finance.

We move to the next slide, the private sector roles of the Minister for Industrial Relations, which include advocating for a national workplace relations system that meets the needs of Victorian employers, including making submissions, potentially getting involved in industrial disputation where there is a significant impact on the state, and administering various acts, which are set out on the following slide, which members are able to see there.

I will provide a bit more detail. I am moving to the slide after that in relation to advocating for Victorian interests. My predecessor was involved in putting a very substantial submission to the review of the Fair Work Act, supporting changes to promote investment and employment opportunities while maintaining a fair and relevant safety net and to assist in dispute resolution without parties having to resort to industrial action and to tackle unlawful conduct. The government was concerned that the federal government's response to the review did not address a number of problems that had been raised during the course of the review.

Moving on to the following slide, we have tried to have input into ongoing commonwealth government amendments to fair work laws, but regrettably the commonwealth has allowed very limited consultation times, and that has severely affected the capacity of states and indeed of other parties to have much input on the commonwealth government's legislation. The commonwealth has committed to consult further on future changes, and I certainly hope they do, because there is an intergovernmental agreement between Victoria and the commonwealth as part of Victoria's 2009 referral arrangements in which commitments were made about consultation by the commonwealth. We would certainly hope that those commitments would be honoured.

Moving to the next slide, we have participated in other matters, including the Fair Work Commission annual wage review, drawing to their attention matters that we believed ought to be taken into account. We have also been involved in various pieces of key legislation, including the High Court's decision in relation to the Bendigo TAFE and Barclay decision, which made clear that employees who also perform union activities are not immune from disciplinary action by their employers. It laid down some very clear criteria there.

Moving on to the next slide: we monitor what is going on in significant industrial disputes in Victoria. My predecessor was very active in arguing for the termination of the industrial action at Qantas; indeed the Victorian government effectively took a lead role in what led to a resolution of that dispute when the commonwealth government was lagging. The government has also supported the intervention that I referred to earlier that I have undertaken as Attorney-General in the contempt proceedings against the CFMEU.

The next couple of slides refer to strike rates in Australia and Victoria. Regrettably, strike rates have been rising in recent times, in particular in the construction sector. If we move on to the following slide, this illustrates strike rates nationally for selected industries, and the one that has shot to prominence is the construction industry, with a strike rate of over 20 in the year 2012.

Mr O'BRIEN — It has been happening since 2007.

Mr CLARK — Touching briefly on legislative responsibilities: the government has commissioned a review of the Victorian construction industry portable long service leave scheme and is continuing to support the work of the Transport Industry Council and is reinstating the forestry industry council, which had been allowed to fall into a state of some neglect under the previous government.

Finally, the key initiatives and priorities for 2013–14 are listed there, in terms of pressing the commonwealth for sensible changes to the fair work act, continuing to pressure for a national long service leave standard and intervening as needed to seek good outcomes in relation to key cases and inquiries.

Mr ANGUS — Minister, I refer you to budget paper 2, page 41, and to the statement:

Changes to industrial relations in the public and private sectors that support flexibility and new employment opportunities will drive productivity and investment in Victoria.

Minister, can you identify how your portfolio contributes to labour productivity growth?

Mr CLARK — Thank you, Mr Angus. The key part of that is promoting an effective and productive industrial relations climate. As I covered in my presentation, a lot of that involves trying to persuade the commonwealth government to adopt sensible measures in fair work legislation, as well as being prepared to get involved in individual disputes where necessary. Insofar as there are direct state involvements in IR matters, that is done to try to minimise the impacts of that involvement on business and to promote development of the skills and capabilities of the workforce here in Victoria.

I would have to say one of the big issues that we are continually confronting is illegal conduct at work sites. This is a growing issue. I have touched on it previously in relation to the construction industry, but we have seen a range of highly disruptive pickets — I will not cast judgement as to their legality, but they have certainly been highly disruptive — including at City West Water, Schweppes, Baiada, Toll Holdings Limited, Coles distribution centre and Little Creatures brewery in Geelong, and disruption at Boral sites and the Emporium blockade. That is consistent with a rising pattern of industrial disputation. You saw it in the slides: Victoria's strike rate is now above the national rate quite significantly, and many working days are being lost in Victoria due to industrial disputation. We have been keen to do what we can to tackle that, and I touched earlier on the work of the construction code compliance unit.

We are continuing to advocate for the commonwealth to play its role in relation to tackling unlawful and disruptive industrial action. We all recall the now Prime Minister talking about — and indeed committing to — keeping a strong cop on the beat in the building industry. And she gave a very famous speech in which she said how appalled she was about the level of threats and intimidation and coercion that was present on construction sites. Having uttered those fine words, the conduct of the commonwealth government has been exactly in the opposite direction, scrapping the ABCC, creating a fair work building construction body and at the last minute and accepting amendments that meant that proceedings were dropped if a dispute was resolved, meaning that if an employer could be bludgeoned into backing down, there was no capacity for an independent party to continue to pursue that matter. We have seen the commonwealth changes to its building code in recent times, which are designed to frustrate efforts of states such as Victoria. Indeed most recently we have seen in the commonwealth budget in the last few days a substantial reduction in the budget for the Fair Work Building and Construction Inspectorate, which is supposed to be the body to take the place of the ABCC. So there is a lot of work at a state level to try to fill those commonwealth gaps.

Mr SCOTT — Minister, when the presiding officers came before this committee they presented some quite extraordinary evidence regarding the electorate officers' enterprise bargaining agreement, which was that it was currently being held up by the Department of Treasury and Finance. Considering the separation between the Parliament and executive government, the matter that I am seeking some information from you on is what role the public sector industrial relations policy, and therefore the Department of Treasury and Finance in enforcing it, has in relation to the management of decisions taken within the Parliament.

Mr CLARK — Thank you, Mr Scott. I will see if anybody is able to provide some information about progress of that matter, but my understanding is that the issues relate primarily to the capacity of Fair Work to certify enterprise bargaining agreements that contain various provisions. So it is not a matter of executive versus legislature; it is a matter of ensuring that the law is complied with and that Fair Work is not being asked to endorse agreements that contain provisions that would be beyond the power of the Fair Work Commission to

support. We are getting back to issues relating to the *re AEU* case and the capacity of the commonwealth to restrict the ability of the state to function as a state.

Mr PAKULA — It is not the state.

Mr ANGUS — Just listen.

The CHAIR — Order!

Mr CLARK — The Parliament is part of the state of Victoria.

Members interjecting.

The CHAIR — Order!

Mr CLARK — And the commonwealth does not have the capacity to impose various restrictions on the capacity of the state to operate, be that the state in right of the executive or in right of the Parliament.

Mr SCOTT — By way of follow-up I am going to be honest and say the evidence that you present here is contradicted by testimony given by the President — —

Mr O'BRIEN — A strong allegation.

Mr SCOTT — Yes, it is.

The CHAIR — Order! Can we please not have conversations around the table? It is not the purpose of this exercise.

Mr SCOTT — I am happy to provide that to the minister, but he was certainly saying that it was in relation to parameters that the government set in terms of negotiations with other agencies and that appear to be within government. I take what you are saying in good faith; I am not casting aspersions in terms of your honesty, but there is a disconnect between the two sets of evidence that have been provided. So I would like to have taken on notice if possible — and I will provide you with a transcript or obviously you can look it up — that particular issue relating to the relationship between the Parliament and the executive.

Mr O'BRIEN — You should have done that before the question.

Mr CLARK — I am very happy to follow up on that. As I say, I have been responding in respect of my understanding of the situation, but I am happy to seek further information and have regard to the matters you referred to.

The CHAIR — I think — if I might chip in here, Minister — that it would be of great assistance to the committee to have a full understanding of the issues that are raised, because obviously, as Mr Scott says, it raises potentially important matters. Obviously if the matter of referral to DTF is simply a compliance issue, then that is one thing, but if it is referral for other matters, then obviously there is the potential for conflict. The committee, I am sure, would wish to deal with the matter in the forthcoming report and to do so in a way that makes clear what the actual facts of the situation are. I would appreciate that information.

Mr CLARK — I would be more than happy to obtain further information and respond further to the committee.

Mr O'BRIEN — Thank you, Minister. I would like to ask you a question about page 284 of budget paper 3 and the performance measures that you touched on in your presentation, being 'Victoria represented in major industrial relations cases and inquiries', and ask if you could explain to the committee what cases and inquiries the government has been involved with and what the outcomes have been.

Mr CLARK — Thanks, Mr O'Brien. Yes, this is a relevant performance measure, and it has been moved from DSDBI to DTF, reflecting machinery-of-government changes, but we have been intervening in a range of cases where the interests of Victorian businesses and employees have been threatened and in terms of making representations to the commonwealth. I have referred to some of those earlier, but to recap: we have made submissions opposing the abolition of the Australian Building and Construction Commission, we have made a

very detailed submission to the fair work act review, we have made a submission to the annual wages review and a submission to the Senate inquiry on public sector employees, we have participated in select councils on workplace relations and we have been in frequent correspondence with the relevant federal ministers.

I mentioned earlier that there were consultation obligations that the commonwealth was under as a result of the agreement made between the commonwealth and Victoria in 2009. The commonwealth is supposed to consult with us in relation to any proposed changes to the national system, and that, as I mentioned earlier, has been sadly lacking. There have been a wide range of legislative amendments introduced by the commonwealth, effectively at the last minute, and there have been many instances where Victoria has been informed about significant legislative amendments only days or weeks before the amendments were introduced into the commonwealth Parliament, including the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012, amendments to the Fair Work (Registered Organisations) Act 2009, the Fair Work (Transfer of Business) Act 2012 and the introduction of the Road Safety Remuneration Tribunal legislation.

There was minimal consultation on the abolition of the Australian Building and Construction Commission and, as I also touched on earlier, the new commonwealth national building code, which was announced by the commonwealth government precisely one day before it came into effect. Notwithstanding that, we intend to continue to be as active as we can in participating in major industrial relations cases and inquiries and advocating for Victoria's interests.

Ms HENNESSY — Minister, I just wanted to better understand what the Victorian government's position is in respect of the fair wage case. The wage submission to the Fair Work Commission effectively argues that the Fair Work Commission should exercise caution when determining minimum wage adjustments and that minimum wage workers should have their pay rises more closely linked to productivity improvements. I have a copy of it here if you need one. Given that the government's CPI forecast is 2.5, is it the view — and perhaps I am misreading the submission — that low-paid workers should be awarded an increase over 2.5 per cent if they can demonstrate productivity gains, or is the position being put forward in this submission that without productivity gains they should get no increase at all?

Mr CLARK — I think you are trying to read too much into the submission. The submission was simply pointing out that there needs to be productivity growth and that the Fair Work Commission should exercise caution when determining changes to minimum wages and leave scope for flexible and productive work practices. So we were urging the commission to take account of the soft labour market and outlook impact of commonwealth taxes on business costs, the effect of the additional cost of the increase in the superannuation guarantee contributions, the limited capacity of employers to absorb or pass on increases in minimum wages and the need to retain incentives for parties to be able to bargain at the enterprise level.

So we said that the maintenance of a safety net for fair minimum wages needed to reflect general economic conditions and had to be balanced against the continued provision of employment opportunities for all Victorians and the needs of Victorian businesses. We were not advocating for a specific increase. We indicated that any excessive increase in minimum wages that did not reflect productivity improvements was likely to limit the capacity of businesses to absorb cost increases and may end up costing job opportunities, and we said that, in setting the minimum wage, Fair Work should maintain those incentives for enterprise bargaining to which I referred. We were trying alert the commission to the context in which it needed to make its decision and ensure that it had regard to the need for productivity, for flexibility and to avoid adverse employment effects.

The CHAIR — A supplementary?

Ms HENNESSY — No. Just by way of comment, for cleaners, for child-care workers — —

The CHAIR — No, this is not a debate. If there is no supplementary — Mr Ondarchie.

Mr ONDARCHIE — Minister, under the heading of 'Industrial relations' in budget paper 2, page 41, it talks about the fact that the Victorian government is continuing to advocate to the commonwealth for sensible and necessary industrial relations reforms. Can you tell the committee how the government has been advocating to the commonwealth and how it intends to advocate to the commonwealth over the coming budget period?

Mr CLARK — Thanks, Mr Ondarchie. That probes and seeks more detail about some of the matters that I touched on earlier. In 2012 we made a detailed submission to the Fair Work Act Review, and then we provided

a further response to the final report. We sought workplace relations laws that facilitate business flexibility and productive work practices while maintaining a fair and relevant safety net in employment terms and conditions. There were some aspects in particular that were of concern to us, which we highlighted: the potential for enterprise agreements that can provide for expanded rights of entry. These rights of entry can have very disruptive consequences for employers, increasing costs, disrupting business operations and involving entry by multiple unions.

In responding to the review we thought that the outcomes missed a lot of valuable opportunities, and we were concerned that the commonwealth had failed to acknowledge that the panel had recommended that actions under the 'strike first, bargain later' principles should not be permitted under legislation and that there should be legislative amendment to overcome that. There were 53 recommendations for change, a substantial proportion in support of technical amendments that did not address the regulatory burden of law imposed on small business. The first tranche of commonwealth reforms ignored a lot of the pressing issues of the business community and implemented only a small part of the technical amendments.

There was a second tranche introduced in March this year that went beyond the scope of the panel's recommendations, and some provisions we thought were simply designed to entrench union privileges and went contrary to the direction of reform that should have been pursued. These are matters that we continue to advocate for and we are pleased to see the federal coalition's industrial relations policy commitments undertook to implement a further 13 of the review panel's recommendations.

Mr PAKULA — You will be glad to know, Minister, that my question can be answered, if you choose, with probably a one or two-word answer. I just want to ask you about public sector wages policy and the DTF's IR guidelines. As you know, from 1 July this year there is a 0.25 per cent increase in the superannuation guarantee charge. I am wondering whether your wages policy of 2.5 per cent plus productivity — is it 2.5 per cent including the 0.25 or excluding the 0.25?

Mr CLARK — The short answer for that in one or two words is: it is to be taken into account in the way that Minister Shorten indicated it should be taken into account.

Mr PAKULA — So is it including?

Mr CLARK — He said regard should be had to the superannuation increases.

Mr PAKULA — So it is including?

Mr CLARK — I am referring you to what Mr Shorten said.

Mr PAKULA — I am asking you what your policy is.

The CHAIR — Order!

Members interjecting.

Mr PAKULA — It is including?

The CHAIR — Order! The question has been asked, and the question has been answered.

Mr PAKULA — Kind of answered.

The CHAIR — The question has been answered.

Members interjecting.

The CHAIR — If we have all finished — —

Members interjecting.

The CHAIR — That concludes consideration — —

Members interjecting.

The CHAIR — Order! That concludes consideration of the budget estimates for the industrial relations portfolio. I thank the minister and departmental officers, and I particular thank the minister under the circumstances. I do appreciate the effort you have made to attend and to supply information for the committee.

Where questions were taken on notice the committee will follow up with you in writing at a later date. On my count, there were two for Attorney-General, one for finance and one for industrial relations. The committee does request that written responses to those matters be provided within 21 days in order to assist timely reporting to the parliament.

Committee adjourned.