



Western Australian Municipal, Administrative, Clerical and Services Union of Employees Submission to the Ministerial Review of the State Industrial Relations System – Terms of Reference 1 - 7

Term of Reference No. 1

Review the structure of the Western Australian Industrial Relations Commission with the objective of achieving a more streamlined and efficient structure.

The Western Australian Industrial Relations Commission (the Commission) has been set up to deal with industrial matters in the State of Western Australia by conciliation or, if necessary, arbitration. The main objectives of the Commission are to prevent and settle industrial disputes.

The current structure of the Commission is working well with access to the Commission available in a timely manner. The facilities of the Commission have recently been upgraded with access to both video and audio links.

The view of WASU is that the current structure of the Commission is working well and does not need any amendment.

Term of Reference No. 2

Review the jurisdiction and powers of the Western Australian Industrial Relations Commission with the objective of examining the access for public sector employees to the Western Australian Industrial Relations Commission on a range of matters for which they are currently excluded.

The Commission, when dealing with Government Officers should have the power to award financial compensation in lieu of reinstatement for unfair dismissal where appropriate.

The powers of the Commission to make decisions regarding public sector workers should be dependent on those workers having the same rights as private sector workers

The Commission's jurisdiction to remedy unfair dismissal should not be limited.

Term of Reference No. 3

Consider the inclusion of an equal remuneration provision in the Industrial Relations Act 1979 with the objective of facilitating the conduct of equal remuneration cases and other initiatives in the Western Australian Industrial Relations Commission.

The Commission should have the power to make Equal Remuneration Orders as per section 302 of the Fair Work Act 2009 (Cth) (FWA).

The Industrial Relations Act 1999 (Qld) (IRA) has provisions for 'equal remuneration for work of equal or comparable value'. A comprehensive Equal Remuneration Principle (ERP) was established in 2002. The ERP advantages for running Equal Remuneration Cases such as:

- not requiring a comparator to proceed with a case
- a broad definition of what comprises undervaluation
- recognition that proper work value assessment may not have taken place in the past.

The WAIRC should adopt an ERP the same as the Queensland IRC, which would mean that new awards would be subject to an Equal Remuneration test. When varying an existing award, making a determination or making an order, the WAIRC may give directions to the parties to obtain and provide wage related information.

Applications for the certification of a new agreement will need to be accompanied by an affidavit, signed by the parties, that informs the WAIRC of the steps taken by the parties to ensure that their agreement provides for Equal Remuneration

In addition to this we propose to amend the state industrial legislation to specifically refer to pay equity. This is to ensure that pay equity is considered in all decisions. Furthermore, any adoption or adaptation of the Fair Work Act 2009 (Cth) or other State legislation should exclude reference to a male comparator. It must be recognised that there is a category of workers whose remuneration is not equal, rather than referring to gender. Finally, criteria should be developed, in addition to that of FWA and other State legislation, regarding the extensive range of circumstances that contribute to undervaluation of particular work. This should be done with due consideration to the tendency to make unfair comparisons between what is traditionally considered men's work or women's work.¹

Term of Reference No. 4

Review the definition of "employee" in the Industrial Relations Act 1979 and the Minimum Conditions of Employment Act 1993 with the objective of ensuring comprehensive coverage for all employees

The WA IR Act's definition of 'employee' should be reviewed so as not to exclude domestic workers

¹ Robert Potter, *Changing the rules for working people* (Australian Services Union, 2017)

Term of Reference No. 5

Review the minimum conditions of employment in the Minimum Conditions of Employment Act 1993, the Long Service Leave Act 1958 and the Termination, Change and Redundancy General Order of the Western Australian Industrial Relations Commission to consider whether:

- a. The minimum conditions should be updated; and*
- b. There should be a process for statutory minimum conditions to be periodically updated by the Western Australian Industrial Relations Commission, without the need for legislative change.*

Bring the Minimum Conditions of Employment Act 1993 into line with the National Employment Standards at section 61 of the Fair Work Act 2009, as follows:

- Maximum hours of work of 38 hours per week. The employee may refuse to work the additional hours without fear of adverse action.²
Limit the hours of work that can be determined as 'ordinary' in an award or industrial agreement without additional application of penalties.
In addition to the FWA provisions, any working hours exceeding the maximum must have penalties applied as per below:
 - The first 2 hours, over and above ordinary hours per day to be paid at 150%
 - All hours after the first 2, over above ordinary hours to be paid at 200%
- Minimum rates of pay
 - Casual loading to be increased from 20% to 25 % as standard and not subject to awards or agreements.
 - Provision for payment of wages to be within 48 hours of the end of the pay period (minimum pay period of 1 month), and to be paid within 48 hours of ending employment. This is currently addressed in individual awards or agreements. There should be a minimum standard for all employees and employers.
- Leave entitlements
 - Minimum evidence required to claim sick, carer's or compassionate leave to be a statutory declaration. The current requirement at s 22 for provision of evidence that would satisfy a reasonable person.³ Employer's may not be reasonable regarding the form of evidence and provision of statutory declaration provides a minimum standard of acceptable evidence.
 - The replacement of Bereavement Leave with of up to five days per year for Compassionate Leave. This leave would not accrue and would be subject to the definition of member of the employee's family or household determined as per s 3⁴ Compassionate leave, per s104 of FWA⁵ would be able to be taken when a member of the employee's family:
 - Contracts or develops s personal illness that poses a serious threat to his or her life; or
 - Sustains a personal injury that poses a serious threat to his or her life; or

² Fair Work Act 2009 (Cth) s 62.

³ Minimum Conditions of Employment Act 1993 (WA).

⁴ Ibid.

⁵ Fair Work Act 2009 (Cth)

- Dies.
- The addition of up to ten days per year of Family and Domestic Violence leave, not accumulative. This is to recognise the additional stress and time required for families dealing with family and domestic violence issues. It would allow for leave to be taken to attend Family Court, seek legal advice, or other issues that must be addressed for families in such situations.
- Public Holidays no change to payment when not required work because that day is a public holiday.
 - Change s 31⁶ to allow for penalty rates of 250% for employees required to work on public holidays, whether shift workers or not. This is to override award provisions and set a minimum standard.
- Redundancy provisions to be amended from six years' service to allow for a minimum of 2 weeks redundancy pay for each completed year of service, up to a maximum of 20 weeks.
- The addition of family friendly flexibility arrangement in line with the National Employment Standards.⁷

As to a process for periodic update of the minimum conditions by WAIRC without the need for legislative change, this union would support this provisionally. Any process to achieve such an aim would need to be addressed separately with consideration to all the parties concerned to ensure there is no adverse effects on employees.

Term of Reference No. 6

Devise a process for the updating of State awards for private sector employers and employees, with the objectives of:

- a. Ensuring the scope of awards provide comprehensive coverage to employees;*
- b. Ensuring awards reflect contemporary workplaces and industry, without reducing existing employee entitlements;*
- c. Ensuring awards are written in plain English and are user friendly for both employers and employees; and*
- d. Ensuring that any award updating process is driven by the Western Australian Industrial Relations Commission, with appropriate input from the award parties and other relevant stakeholders.*

There must be safeguards in legislation to protect the present rights and conditions of award-reliant workers when considering whether to make or amend an award.

There must be safeguards in any award updating to ensure that no conditions of employees are reduced as a consequence of any updating, in particular any simplification of wording.

Ensure that awards cannot be varied to reduce the take home pay of an employee, including reductions in penalty rates or the hours to which penalty rates apply

⁶ *Minimum Conditions of Employment Act 1993 (WA).*

⁷ *Fair Work Act 2009 (Cth) s 65*

All new award or amended awards should enshrine the rights of workplace union delegates with the inclusion of a delegate's charter and 5 days paid union training leave in every award

All awards, new or existing, should contain a right to permanent employment. Fixed-term employment should be restricted to situations where they are genuinely needed. The reason for fixed term employment should be described in the employee's contract. Casual employment should be defined so that it is only used for short term, intermittent or irregular work. Awards should contain a clause which allows casuals to elect to convert to a permanent status after 6 months employment with a mandated conversion to permanent employment after 12 months.

No employee should be award free. Any award review should ensure all employees are covered by an award with comprehensive competency based classifications, including those historically excluded from award coverage

Term of Reference No. 7

Review statutory compliance and enforcement mechanisms with the of objectives of:

- a. Ensuring that employees are paid their correct entitlements;*
- b. Providing effective deterrents to non-compliance with all State industrial laws and instruments; and*
- c. Updating industrial inspectors' powers and tools of enforcement to ensure they are able to effectively perform their statutory functions.*

Freedom of association provisions should provide legislative recognition of the rights of union delegates.

The right to investigate possible breaches should not be restricted to only those impacting union members.

Access to non-member records should be permitted.

The qualification 'unduly hinder' should apply equally to the employer as to the permit holder in relation to hindering and obstructing conduct.

The Commission should be able to make awards and orders or register industrial agreements containing entry and inspection provisions that are additional to those described in the Act. Parties should be able to include any mutually acceptable provisions for union entry to a workplace, in enterprise agreements.

The unnecessary regulations around the exercise of Right of Entry should be removed from WA Industrial law, and should be replaced by a streamlined system that respects Australia's obligations on Civil and Political Rights to freedom of association.