



Government of **Western Australia**
Department of **Health**
Office of the Director General

Mr Mark Ritter SC
c/o Public Sector Labour Relations
Department of Mines, Industry Regulation and Safety
Level 4, 140 William Street
PERTH WA 6000

By email: irreviewsecretariat@dmirs.wa.gov.au

Dear Mr Ritter

MINISTERIAL REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM – INTERIM REPORT

I refer to the Interim Report of the Ministerial Review of the State Industrial Relations System (**IR System**) (**Interim Report**) published on 20 March 2018.

The Department of Health (**Department**) has considered the Interim Report recommendations and provides the following further submission on behalf of the WA health system in relation to the recommendations and the request for additional submissions. Please note some Terms of Reference have not been addressed as these may not directly relate to the WA health system.

Term of Reference 1: Review the structure of the Western Australian Industrial Relations Commission with the objective of achieving a more streamlined and efficient structure

The purpose of the Western Australian Industrial Relations Commission (**WAIRC**) is to prevent and settle industrial disputes between employers and employees.

The WAIRC was not intended to be a court of law. It should be timely, efficient, and equally accessible to all users. Disputes should continue to be resolved with little intervention and formality. The Department recognises however, the structure of the WAIRC and related Courts and jurisdictions need to be reorganised to be contemporary.

While the Department concurs with recommendations 4, 5, 6, 7, and 8 in relation to the structure of the WAIRC, consideration should be given to ensuring the proposed reform does not increase the complexity of the IR System.

The Department agrees with the proposal at recommendation 13 to enable the WAIRC to regulate the conduct of registered industrial agents appearing before the WAIRC.

The Department agrees with proposed amendments at recommendation 14(c).

In relation to recommendation 14(d), the Department submits it is preferable for the WAIRC to conduct conciliations in person where possible, but in the alternative by video conference or by telephone.

The Department notes several WA health system industrial agreements provide for the establishment of "Boards of Reference" under the IR Act. Consideration should therefore be given to the impact of removing the "Boards of Reference" mechanism as proposed at recommendation 16.

The Department would be concerned if parties were entitled to be represented by an Australian legal practitioner in all matters as per recommendation 18. The Department however, affirms its submission that section 31 of the *Industrial Relations Act 1979 (WA) (IR Act)* should be amended as it limits the ability for a legal practitioner who is an employee of an organisation or agency to appear on behalf of their employer.

The Department agrees with the proposal at 17(c) of the Interim Report. In relation to 17(b) and (d), the Department submits these requirements could be relaxed so Commissioners who have a tertiary qualification in law and who have worked in a relevant field for a period of not less than five years prior to appointment be appointed.

In relation to additional submissions arising at 19 of the Interim Report, the Department submits 19(b) is preferable.

The Department submits the right to obtain discovery and inspection of relevant documents held in the possession, power or custody of any other party typically becomes relevant when it is clear a matter is proceeding to trial. If the right to obtain discovery is introduced arising from consideration to additional submissions at 22, it should only arise once the matter has not been resolved at conference and is listed for arbitration.

Term of Reference 2: Review the jurisdiction and powers of the WAIRC with the objective of examining access for public sector employees to the WAIRC on a range of matters for which they are currently excluded

In relation to recommendation 23, the Department affirms its submission that there should be a single system for public sector employers and employees to refer industrial matters to the WAIRC, and the Public Service Appeal Board (**PSAB**) and Public Service Arbitrator (**PSA**) should be abolished.

While the Department submits the PSAB and PSA should be abolished, industrial disputes between public service and government officers and their employing authorities should continue to be resolved with little intervention and formality. In the first instance, the resolution of disputes between these parties should focus on conciliation, and consideration should be given to whether the matter is in the public interest prior to it proceeding to arbitration.

At present, the PSA hears and determines reclassification appeals pursuant to section 80E(2)(a) of the IR Act. If the PSA is abolished, consideration should be

given to expanding the general jurisdiction of the WAIRC to ensure reclassification appeals can continue to be heard. The Department submits that the present practice in relation to the operative date regarding reclassification appeals be preserved.

The Department's preference in relation to recommendation 28 is for the status quo to remain in relation to alleged breaches of the Public Sector Standards (**PS Standards**) by an agency.

If breaches alleged to have been committed were able to be referred, challenged or appealed to the WAIRC, there would be a significant increase in the number of claims before the WAIRC. Historically, when the WAIRC had jurisdiction over these matters, there were significant delays to filling public sector vacancies as public service officers lodged disputes about recruitment processes, and there were instances in which the employment relationship between public service officers broke down in relation to disputes over promotions.

If these restrictions were removed, decisions made by the Public Sector Commission (**PSC**) would be open to scrutiny from by the WAIRC. The PSC is an independent agency that is responsible for all functions administered by the Minister for Public Sector Management. It is required to provide oversight to the public sector and therefore its independence should be retained.

The Department concurs with recommendation 25.

In relation to additional submissions at 31, the Department submits section 96A(1) of the *Public Sector Management Act 1994* (WA) (**PSM Act**) should not be repealed. Section 96A(1) of the PSM Act was specifically introduced to facilitate the involuntary redundancy of staff who were surplus to requirements. It is a major component of the WA health system's current policy to find and retain high-quality staff while allowing the movement on of staff who are not competent or are surplus to requirements.

The Department further submits sections 96(A)(2) and 96A(5)(b) of the PSM Act should not be amended.

Term of Reference 5: Review the minimum conditions of employment in the *Minimum Conditions of Employment Act 1993* (WA)

The Department submits any increase in the casual loading from 20 per cent as regarding additional submissions for consideration at 53 of the Interim Report will have a significant financial impact on the WA health system.

Term of Reference 6: Updating of State Awards

The Department submits any award modernisation process should be commenced and undertaken by the WAIRC. This would be the most efficient and timely way to modernise state awards.

Additional Consideration

Further to the Interim Report, the Department reiterates its earlier submission that consideration should be given to reviewing the penalties available at subsection 84A(5) of the IR Act. At present, the Full Bench may issue a penalty not exceeding \$2,000 in the case of an employer, organisation or association and \$500 in any other case. This deterrent is insufficient and ineffective.

The Department recommends updating subsection 84A(5) of the IR Act to provide appropriate penalties for employers, organisations, associations, and in any other case. These amounts should be no less than up to \$10,000 in the case of an employer, organisation or association and no less than up to \$3,000 in any other case.

I trust this further submission assists with finalising your report of the review. If you would like further information or clarification in relation to the Department's submission, please contact Ms Kelly Worlock, A/Executive Director, Governance and System Support on 9222 6481 or email kelly.worlock@health.wa.gov.au.

Yours sincerely



Dr D J Russell-Weisz
DIRECTOR GENERAL

03 May 2018