



Australian Medical Association (WA) Submission for the Ministerial Review of the Western Australian Industrial Relations System

Introduction

1. The Australian Medical Association (WA) Inc. [AMA (WA)] represents and serves the medical profession, collectively and individually, to promote the health interests of the community of Western Australia.
2. Health is a key area of public policy and emergency services.
3. The key aims and objectives of the AMA (WA) are to promote and protect the interests of the medical profession in WA, to consider, originate and promote improvements or amendments to the law as it relates to the medical profession, the practice of medicine or to the medical or allied sciences, to develop and advance public health and to promote the welfare of patients.
4. The AMA (WA) is an Association that has express representative powers before the Western Australian Industrial Relations Commission under Section 72B of the *Industrial Relations Act 1979* (WA) [the Act].
5. The AMA (WA) represents all Medical Practitioners in the WA Health System employed by the various Health Service Boards that have been constituted under the *Health Service Act 2016* (WA).
6. The AMA (WA) has current Section 41 Agreements registered by the WAIRC which govern the terms and conditions of employment of both senior and junior medical practitioners operating in the WA Health System.
7. The Agreements registered by the WAIRC are:
 - *WA Health System - Medical Practitioners - AMA Industrial Agreement 2016*;
and
 - *WA Health System - Medical Practitioners (Clinical Academics) AMA Industrial Agreement 2016*

Jurisdiction

8. The AMA (WA) endorses the broad jurisdiction given to the WAIRC under Sections 26 and 27 of the Act as essential for the WAIRC to achieve its objects.
9. It is particularly important for the AMA (WA), the only organisation representing medical practitioners employed by public health service providers to provide services in public

hospitals, and hospital-delivered services being provided outside the physical environs of public hospitals, to have access to a Tribunal that has broad powers to deal with industrial issues in the public hospital system.

10. The public health and hospital system, being an area of critical importance to the WA public, needs to run smoothly and be assured of continuity of supply. Having an effective 'circuit breaker' whereby issues of importance can be conciliated and if necessary arbitrated enables industrial matters to be dealt with in a timely manner and the important work of caring for patients to continue uninterrupted.
11. If this jurisdiction is in any way weakened and the ability for matters to be resolved is somehow impeded, disputes relating to Doctors in the public health system will inevitably have adverse ramifications that will impact on patient safety.
12. The AMA (WA) requests that consideration be given to addressing the ambiguity that currently exists in the restriction of the Public Sector Arbitrator's powers at Section 80E.
13. The Industrial Appeal Court in the matter of *The Director General Department of Justice v Civil Service Association of Western Australia Incorporated* [2005] WASCA 244 noted at paragraph 56

'While S 80 E (7) is in some respects not happily phrased, and while we acknowledge that as a matter of legal principle, it is undesirable to construe too broadly provisions which limit the right of persons to approach courts and tribunals, it seems to us that, having regard to the statutory context, s 80E (7) must be read as excluding jurisdiction in respect of a matter, wherever there is a matter in respect of which the relevant standard (public sector standards) has been prescribed and in respect of which procedures of this type described in s 97 (1) (a) have been prescribed.'

14. The AMA (WA) has had a number of matters that touch on, or overlap with, the public sector standards which, in our view, might benefit from conciliation or arbitration powers if granted to the WAIRC. We believe that consideration should be given to the WAIRC having the latitude to deal with the 'industrial issue', that may be affected or constrained by the prescription or application of public sector standards.
15. The processes could be further simplified by expanding the jurisdiction of the Public Service Arbitrator to deal with any matter affecting a government officer, including interpretation of awards and orders as well as breaches of industrial agreements and awards.
16. There is significant overlap of industrial matters with questions of interpretation of agreements and awards and enforcement. The current separation requires the parties to choose which jurisdiction they want to access hence limiting their capacity to fully address all facets of the industrial matter that gave rise to the industrial dispute.



17. Simplification of the Public Service Arbitrator jurisdiction would aid in simplifying enforcement.
18. The definition of “employee” for the purposes of the *Long Service Leave Act 1958* (WA) currently excludes an employee covered by an industrial instrument which provides for an entitlement to long service leave at least equivalent to the entitlement to long service leave under the *Long Service Leave Act*. There is an ambiguity over the meaning and interpretation of “at least equivalent to” the entitlement to long service leave under the *Long Service Leave Act* as evidenced in the recent decision in *Public Transport Authority of Western Australian v Yoon* (Western Australian Industrial Appeal Court [2017] WASCA 25).
19. Minimum conditions of employment as set out in the *Minimum Conditions of Employment Act 1993* (WA) and the *Long Service Leave Act 1958* should as a matter of law and equity be imported into every industrial award and instrument to confirm them as minimum standards throughout Western Australia.

Section 44 Conferences

20. The AMA (WA) seeks the provisions relating to compulsory conferences at Section 44 be retained in any proposed amendments to the Act.
21. Given the important role Medical Practitioners play in the State Health System providing essential services to West Australians who are sick, a provision that allows prompt and easy access to the WAIRC is essential.
22. The AMA (WA) utilises this provision only when necessary but it has been an important ‘circuit breaker’ for any matter which has caused a break down in the relationship between management and the employee(s). Further, it is the final step in the dispute settlement procedure in the current Industrial Agreement applying to medical practitioners employed throughout the state in public hospitals and health services. (see *WA Health System - Medical Practitioners – AMA Industrial Agreement 2016* at Clause 54 (3)).
23. Since 2015, the AMA (WA) has accessed the WAIRC for a section 44 conference on 17 occasions.
24. The significance of the provision is seen in a recent application filed by the AMA (WA) in PSACR 5 of 2016. In this matter, there was a dispute over the payment of an activity bonus that arose out of the commissioning of Fiona Stanley Hospital. Without access to a conference, and then to arbitration, the matter would have remain unresolved or involved expensive litigation for the employees.
25. To this end, Section 44 achieves the end outlined in the short title of the Act, namely the ‘prevention and resolution of conflict in respect of industrial matters’. It should therefore be retained in its current format.



Process Requirements

26. Any review should consider aligning the current process requirements under the Industrial Relations Regulations with the process requirements under the *Fair Work Act 2009* (the FW Act).
27. In general terms, the FW Act places more responsibility on the parties to file and serve documents. This reduces any 'red tape' as well as makes the processing of claims more efficient.
28. For example, the requirement under the standard 'Notice of Application Form' and other documents to file a declaration of service is tedious and could be removed.

Submitted for the Review's consideration.