



Changes to state employment laws in WA

New equal remuneration provisions

June 2022

New equal remuneration provisions have been introduced into the state industrial relations system to help ensure equal remuneration for Western Australian men and women.

These new provisions were introduced by the *Industrial Relations Legislation Amendment Act 2021* and commenced on 20 June 2022.

The *Industrial Relations Act 1979* (IR Act) now provides an equal remuneration jurisdiction for the Western Australian Industrial Relations Commission (WAIRC) that applies to both the private and public sectors. The WAIRC is able to make an equal remuneration order on application from a range of parties, including an individual employee or group of employees. The WAIRC is also required to issue an equal remuneration principle as part of the State Wage Order each year.

Equal remuneration is defined to mean equal remuneration for men and women for work of equal or comparable value.

State employment laws have changed

This fact sheet is part of a suite of information on the changes to state employment laws that commenced on 20 June 2022. For details on the changes visit www.dmirs.wa.gov.au/new-employment-laws.

Equal remuneration orders

An application for an equal remuneration order may be made to the WAIRC by any of the following:

- a) an employee (or a group of employees) to be covered by the order;
- b) a union;
- c) an employer organisation;
- d) UnionsWA;
- e) the Chamber of Commerce and Industry of WA;
- f) the Minister for Industrial Relations; and
- g) the Commissioner for Equal Opportunity.

If the WAIRC is satisfied that an employee does not receive equal remuneration, it must make an equal remuneration order.

An equal remuneration order may direct any action that the WAIRC considers appropriate, including (but not limited to):

- reclassifying work;
- establishing new career paths;
- implementing changes to incremental pay scales;
- providing for an increase in remuneration rates, including:
 - minimum rates of pay in awards, industrial agreements and enterprise orders; and
 - new allowances; and
- reassessing definitions and descriptions of work to properly reflect the value of the work.

An equal remuneration order may introduce equal remuneration measures immediately, or progressively in stages.

The IR Act prohibits an employer reducing an employee's remuneration because an equal remuneration order, or an application for an order, has been made in relation to the employee.

Statement of principles

The WAIRC is also required to issue an equal remuneration principle as part of the State Wage Order each year. Since 2019, the WAIRC has included a principle for equal remuneration for men and women for work of equal or comparable value in the annual State Wage Order.

The WAIRC will need to apply the equal remuneration principle when determining whether an employee receives equal remuneration and the terms of any equal remuneration order.

Interaction with other types of applications

An application for an equal remuneration order cannot be made to the WAIRC if there are proceedings for an 'alternative remedy' in progress. An alternative remedy is a right to a remedy under the IR Act or other legislation to secure equal remuneration. For example, a union could make an application to register an industrial agreement to secure equal remuneration for employees covered by it.

Similarly, an employee or organisation (union or employer association) that applies for an equal remuneration order cannot commence proceedings for an alternative remedy while an application for an equal remuneration order is being dealt with by the WAIRC. However, this does not restrict a union or employer association from commencing proceedings to:

- vary an award;
- register an industrial agreement;
- initiate bargaining for an industrial agreement;
- apply for an order requesting the WAIRC arbitrate part of an industrial agreement; or
- apply for an enterprise order.

There is also no limitation on an employer commencing any proceedings to secure equal remuneration for its employees while an equal remuneration application is being dealt with by the WAIRC. For example, although a union may have applied for an equal remuneration order for particular employees, the employer of those employees is not prevented from initiating bargaining for an industrial agreement to secure equal remuneration.

Interaction with awards, agreements and other orders

The WAIRC is not able to register an industrial agreement, make an award or make an order (including a General Order) that prohibits or restricts the making of an application for an equal remuneration order, or is inconsistent with, or prohibits or restricts, the application of an equal remuneration order.

Example

The WAIRC makes an equal remuneration order that increases the rates of pay in an award to ensure that employees covered by the award receive equal remuneration.

An application is later made to vary this award. The WAIRC must not vary the rates of pay in the award if the variation is inconsistent with, or restricts the application of, the equal remuneration order that increased the award's rates of pay.

Similarly, the WAIRC cannot make a State Wage General Order that varies the rates of pay in the award, if the variation is inconsistent with, or restricts the application of, the equal remuneration order that increased the award's rates of pay.

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