



## Changes to state employment laws in WA

# New provisions to enable bringing local government employers into the state system

New provisions have been introduced to enable all Western Australian local government employers to be brought into the state industrial relations system.

These new provisions are included in the *Industrial Relations Legislation Amendment Act 2021*. The *Industrial Relations Legislation Amendment Act 2021* commenced on 20 June 2022.

Until now, some Western Australian local government employers have been operating in the national industrial relations system, while others have been operating in the state system. Amendments to the *Industrial Relations Act 1979* (IR Act) now enable the Governor to make regulations declaring one or more local government employers **not to be a national system employer**. Any such declaration must be endorsed in writing by the Federal Minister for Industrial Relations for it to have legal effect. If both of these things occur, the local government employer will be covered exclusively by the state industrial relations system.

To facilitate the move to the state system, the IR Act includes transitional arrangements that recognise existing federal employment arrangements for a specified period. This will give affected employers sufficient time to comply with the IR Act and other state employment laws.

### 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](http://www.dmirs.wa.gov.au/new-employment-laws).

## Transitional arrangements

If a local government employer was covered by a federal industrial instrument (an **old federal instrument**) immediately before it moves to the state system, then that instrument will become a state industrial agreement (the **new state instrument**) under the IR Act. An old federal instrument means:

- a federal modern award;
- a federal enterprise agreement;
- a workplace determination; or
- an order of the Fair Work Commission.

The new state instrument has the same terms and conditions as the old federal instrument, although any terms and conditions that are less favourable than the *Minimum Conditions of Employment Act 1993* are of no effect.

The new state instrument has a nominal expiry date that is the earlier of the following:

- two years after the date the local government employer moved into the state system; or
- the nominal expiry date specified in the old federal instrument.

### Example 1

A local government employer has a federal enterprise agreement with a nominal expiry date of 30 June 2023. The regulations declare the local government employer not to be a national system employer from 1 July 2022.

On 1 July 2022, the local government employer's federal enterprise agreement (the old federal instrument) is deemed to be a state industrial agreement (the new state instrument) under the IR Act. The nominal expiry date of the new state instrument is taken to be 30 June 2023, in accordance with its terms.

### Example 2

A local government employer is covered by the national *Local Government Industry Award 2020* (the old federal instrument), which has no expiry date. The regulations declare the local government employer not to be a national system employer from 1 September 2022.

On 1 September 2022, the *Local Government Industry Award 2020* (the old federal instrument) is deemed to be a state industrial agreement (the new state instrument) under the IR Act. The nominal expiry date of the new state instrument is 1 September 2024, which is two years after the date the local government employer became bound by the state system.

Although a new state instrument will have a maximum nominal term of two years, it will continue to operate after its nominal expiry until a new state award or agreement is made in substitution for it, or a union or employer party retires from it.

## Continuity of employment and leave entitlements

An employee's continuity of employment and any leave entitlements accrued in the national industrial relations system will be preserved and recognised in the state system. Transitional provisions in the IR Act provide that a period of leave taken under an old federal instrument is deemed to have been taken under a new state instrument.

## Amendment to new state instruments

A local government employer, employee or registered organisation may apply to the Western Australian Industrial Relations Commission (WAIRC) to amend a new state instrument. The WAIRC may make the amendment if it is satisfied it is fair and reasonable to do so in the circumstances. The amendment may be provided to take effect:

- immediately; or
- progressively, in stages specified in the amendment.

## Other transitional arrangements

A variety of other transitional arrangements have also been included in the IR Act, including provisions:

- enabling the WAIRC to deal with any industrial matters that were underway in the federal system prior to a local government employer becoming bound by the state system, e.g. a bargaining dispute; and
- enabling a state registered organisation of employees to be added as a named party to a new state instrument, if it has eligible members covered by the instrument.

## Disclaimer

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