

Our reference
NDE/-WPR

Brookfield Place Tower 2
123 St Georges Terrace, Perth WA 6000, Australia
GPO BOX 9925, Perth WA 6001, Australia
Tel +61 8 9460 1666
Fax +61 8 9460 1667
www.corrs.com.au



Sydney
Melbourne
Brisbane
Perth
Port Moresby

24 November 2017

By email:
irreviewsecretariat@dmirs.wa.gov.au
Mr Mark Ritter SC

Contact
Nicholas Ellery (08) 9460 1615
Email: nicholas.ellery@corrs.com.au

Dear Mr Ritter

Ministerial Review of the State Industrial Relations System

Dear Mr Ritter

I refer to the Terms of Reference of the Ministerial Review of the State Industrial Relations System. I make the following submissions.

These submissions are made in my personal capacity as a legal practitioner with extensive experience in industrial relations matters in Western Australia. These submissions do not reflect the views of any clients I represent, or the firm of which I am a Partner. I should also note for completeness that I have practised extensively in the Western Australian Industrial Relations Commission (**WAIRC**) in past years, but due to the nature of my client base and the reforms made in the Federal system, I have had more limited involvement in WAIRC matters over the last 10 years.

I propose to address only item 6 in the Terms of Reference, regarding State awards.

Updating State Awards

I consider it to be in the public interest that any state system have a contemporary and “user friendly” award framework. It should be relatively easy for small businesses and individual employees (who are in the state system) to ascertain what if any award applies to them, and the practical effect of the award on their conditions of employment.

The current State award system clearly fails to achieve this in my view.

I note that the WAIRC does have power to vary any award, on its own motion, (to summarise) to keep it up to date and to ensure it facilitates efficient organisation and performance of work while balanced with fairness to employees – s 40B(1)(d) and (e) of the **Industrial Relations Act 1979 (WA)**. Yet looking at the State awards (especially their content and drafting style), this power has clearly been used infrequently, or with limited success. This is not a criticism of the WAIRC. There are presumably many reasons why this power has been sparingly used (many of which are addressed in the recent paper by Senior Commissioner Kenner, “State Awards: Are They up to Date?” published on the WAIRC website¹).

¹ <http://www.wairc.wa.gov.au/images/State%20Awards%20-%20Are%20They%20Up%20to%20Date.pdf>

I would suggest that any new legislation could require the WAIRC to adopt a particular process (limiting the time and scope for submissions from the parties) of award review and modernisation.

For example there could be a 6 month period from commencement of the process to final determination. Such legislation could specify the objectives of the review. These might include:

- what type of award system is desired,
- approximately how many awards should there be,
- what level of detail would they cover,
- what must they cover,
- what would the transition process be.

The legislation could specify that the current awards are to be entirely or largely replaced. The more prescriptive the legislation was, the less scope there would be for the process to fail for some reason (such as lack of input from employer and union representatives).

You could also require the WAIRC to model the new State awards on existing Model Awards made under the **Fair Work Act** 2009 (Cth), or at least to have regard to them. These awards are generally much clearer and better drafted than the current State awards.

You could also elect to prescribe what industries and/or occupations were required to be covered by the State awards. For example, you might want to ensure that parts of the workforce where small unincorporated businesses are relatively common (and which therefore will fall mainly in the state system) are covered by the new State awards. Accordingly the legislation would prescribe that awards should be made to cover those specific industries and/or occupations. The WAIRC would have discretion in how to achieve this objective.

Having such a prescriptive process would no doubt mean that some of the unique needs or historical characteristics of particular industries would not be able to be fully addressed. Some stakeholders would not be happy with the process or outcome. But to address those considerations would require a far more extensive and labour intensive review process. There may never be an end to it. Accordingly you may never get the outcome of a truly modernised, user friendly State award system.

Finally, if such legislation was to succeed, you would need to ensure the WAIRC was adequately resourced to deal with this issue on top of its current work load dealing with other matters.

Yours sincerely



Nicholas Ellery

Partner