

Transition FAQs for Sector

Last updated: 22 December 2022

This resource addresses the commonly asked questions about the transition of Local Governments and Regional Councils (**Local Governments**) to the State industrial relations (**IR**) system.

For advice on specific HR/IR questions regarding the transition to the State IR system that aren't addressed below, we encourage you to contact the WALGA ER team on 1300 366 956 or employeerelations@walga.asn.au.

This is a general resource only which does not replace the need to seek industrial or legal advice regarding specific circumstances.

RATIONALE AND STATUS OF TRANSITION

1. What is the rationale for moving WA Local Governments into the State IR system?

It is the State Government's view that Local Governments, as part of the body politic of the State, should be regulated by the State IR system rather than the Federal IR system.

It is also the Government's view that a legislative transition of Local Governments to the State IR system remedies the legal uncertainty surrounding the constitutional status of Local Governments (in the absence of High Court authority on this point).

2. What is the status of the transition to the State IR system?

Local Governments will be required to transition to the State IR system on 1 January 2023.

A summary of the steps taken by the State and Federal Governments to facilitate the transition can be viewed [here](#).

STATE EMPLOYMENT CONDITIONS

3. What legislation governs employment conditions and standards in the State IR system?

The key pieces of IR legislation in the State system include the:

- [Industrial Relations Act 1979 \(WA\)](#) (IR Act)
- [Minimum Conditions of Employment Act 1993 \(WA\)](#) (MCE Act)

A full list of the relevant State legislation can be viewed [here](#).

4. What are the General Orders in the State IR system?

General Orders relating to industrial matters may be made under s.50 of the IR Act.

State system Local Governments must comply with applicable General Orders, including, but not limited to the:

- Stage Wage General Order
- Termination Change Redundancy General Order
- Location Allowance General Order
- COVID-19 General Order (until 31 January 2023)

General Orders are published on the Western Australian Industrial Relations Commission (**WAIRC**) website [here](#).

5. What are the applicable Awards in the State IR system?

The primary Local Government State awards are the [Local Government Officers' \(Western Australia\) Award 2021](#) and the [Municipal Employees \(Western Australia\) Award 2021](#).

The Local Government Officers (Western Australia) Award 2021 applies to salaried officers in a range of professional, clerical and administrative positions.

The Municipal Employees (Western Australia) Award 2021 applies to employees in a range of occupations including construction, maintenance, horticulture, transport and cleaning.

The Department of Mines, Industry Regulation, and Safety (**DMIRS**) have prepared award summaries for the two Local Government awards:

- [DMIRS Local Government Officers' Award Summary](#)
- [DMIRS Municipal Employees Award Summary](#)

If an employee is not covered by the classifications of one of these awards, they may be covered by another State award (e.g., employees working in a cafe may be covered by the Restaurant, Tearoom and Catering Workers' Award).

Most State awards are “common rule”, meaning they have broad application across industries and classifications. It will be necessary to refer an award's scope clause to determine its application.

6. Which State tribunal/court deals with employment matters?

The tribunal that deals with industrial disputes and registers industrial agreements is the [Western Australian Industrial Relations Commission](#).

The court that deals with industrial claims is the [Industrial Magistrates Court](#).

7. Who is the regulator in the State IR system?

The regulator is the [Department of Mines, Industry Regulation and Safety](#) (DMIRS). The DMIRS website has some information for employers and employees. They also have a phone service called Wageline.

8. Will there be a transitional period before Local Governments who have been operating in the Federal IR system are subject to the State IR system?

No.

Section 80A of IR Act provides regulations may be made to fix a day as the 'relevant day' when Local Governments will not be a national system employer for the purposes of the *Fair Work Act 2009* (Cth) (**FW Act**).

The 'relevant day' has been proclaimed as 1 January 2023.

WALGA advocated for a six-month transitional period before the transfer to the State system since December 2021 but unfortunately the State and Federal Governments did not agree to this.

This means that a Local Government will need to comply with the following from 1 January 2023:

- IR Act;
- MCE Act;
- Applicable General Orders; and
- State awards – but only if the declared employer and employee are not covered by a new State instrument. Given the broad coverage of the Federal Local Government Industry Award 2020 (**LGIA**) which will become a 'new State instrument' it is unlikely that other State awards will apply.

If a federal industrial instrument (s.80BB(1)(b) IR Act) applied to the employee, the instrument will become a new State instrument. New State instruments include:

- the Local Government Industry Award 2020;
- a Fair Work Commission (**FWC**) registered enterprise agreement that has not passed its nominal expiry date; and
- a FWC registered enterprise agreement that has passed its nominal expiry date.

New State instruments are industrial agreement under the IR Act and will be subject to the MCE Act. However, the State awards will not apply to a new State instrument for a 2-year period i.e. until 31 December 2024, due to State transitional regulations.

Under s.41(6) of the IR Act, a new State instrument/industrial agreement continues in force after the expiry of its term until replaced or retired from by one of the parties i.e., there is therefore no 'drop dead' date for new State instruments.

9. What happens to an employee's service on transition?

Employees' employment under a federal industrial instrument will be recognised under the new State instrument, but there will be no 'double dipping' of entitlements.

10. What happens to an employee's leave entitlements on transition?

Any leave accrued under a federal industrial instrument or the FW Act before 1 January 2023 will be taken to have accrued under the new State instrument. Leave arrangements made under a federal industrial instrument or the FW Act before 1 January 2023 will be recognised under the new State instrument.

11. What happens to the Local Government Industry Award 2020/other modern awards on transition?

The LGIA will transfer from the Federal to the State IR system on 1 January 2023 and become a 'new State instrument'/industrial agreement under the IR Act.

Any other modern award will also become a new State instrument if it applied immediately to a declared employee before 1 January 2023. For example, if your Local Government applies the [Nurses Award 2020](#) or another [modern award](#) this will become a new State instrument on transition.

As a modern award does not have a nominal expiry date, each of these new State instruments will have a nominal expiry date of two years after the relevant day i.e., 31 December 2024.

12. What will the LGIA be called for each Local Government when it becomes a 'new State instrument'/industrial agreement on 1 January 2023?

We have raised this query with the Western Australian Industrial Relations Commission (**WAIRC**) and there is no firm view at present about what these instruments will be named.

We suggest using the current title of the instrument, the Local Government Industry Award 2020, until such time that the WAIRC advises otherwise.

13. What happens to a Federal enterprise agreement that has not passed its nominal expiry date on transition?

A Federal enterprise agreement registered in accordance with the FW Act which has not passed its nominal expiry date will transfer from the Federal to the State IR system as a 'new State instrument' and be regarded as an 'industrial agreement' registered under the IR Act.

The nominal expiry date of this instrument will be the earlier of:

- (a) two years after the 'relevant day'; or
- (b) the nominal expiry date of the Federal enterprise agreement.

14. What happens to a Federal enterprise agreement that has passed its nominal expiry date on transition?

A Federal enterprise agreement registered in accordance with the FW Act which has passed its nominal expiry date will transfer from the Federal to the State IR system as a 'new State instrument' and be regarded as an 'industrial agreement' registered under the IR Act.

The nominal expiry date of this instrument will be the date specified in the Federal enterprise agreement.

15. What happens to a certified agreements registered under the *Workplace Relations Act 1996 (Cth)* on transition?

A certified agreement registered under the *Workplace Relations Act 1996 (Cth)*, or any other transitional instrument given continuing effect in the Federal IR system with the enactment of the FW Act, will not be recognised in the State IR system.

16. What happens to employees that are award-free in the Federal IR system on transition?

For Federal award-free employees, they may be covered by a State award from 1 January 2023.

17. Which instrument does our Local Government apply if we have a Federally registered enterprise agreement and an old State registered industrial agreement?

This should not be an issue for any Local Government. WALGA ER identified all of the old State registered industrial agreements for those Local Governments that subsequently registered a Federal enterprise agreement, and assisted those Local Governments to retire from their old State registered industrial agreements (which has the same effect as terminating the agreement).

This means the newer Federally registered enterprise agreements will become a new State instrument.

18. When we employ a new employee on or after 1 January 2023, will the new State instruments (i.e. a transitional LGIA or transitional enterprise agreement) apply to them?

Yes, the new State instruments will apply to new employees that you engage on or after 1 January 2023.