



WALGA Sector Reference Group

14 December 2021



Agenda

1. Introduction and welcome
2. Legislative and WALGA update
3. DMIRS update
4. Questions about the proposed transition to DMIRS and WALGA
5. The State award framework
6. Close and next meeting



Industrial Relations Legislation Amendment Bill 2021

- The *Industrial Relations Legislation Amendment Bill 2021* (IR Bill 2021) was passed by the Legislative Assembly on 16 November 2021 and is currently being debated in the Legislative Council.
- The 2021 version of the IR Bill is fairly similar to the 2020 version.
- The Federal Industrial Relations Minister will be required to sign a declaration that WA Local Governments are not “national system employers” for the purposes of the *Fair Work Act 2009*.



Terms of reference for Sector Reference Group

Purpose of SRG:

- To seek feedback from the Group on specific Local Government needs for the proposed transition to the State IR system
- For Local Governments to raise key anticipated issues to work towards sector solutions

Funding and ministerial engagement update

- **No funding from State Government**
- **Limited WALGA funding**
- **Engagement with State IR Minister – Hon Stephen Dawson MLC**
 - Meeting held on 15 July 2021
 - Key points
- **Engagement with the Federal IR Minister – Senator the Hon Michaelia Cash**
- **Meetings and discussions with key stakeholders since last SRG Meeting**
 - Minister's Advisor
 - DMIRS



WALGA preparation – Current

- **State IR Bulletin**
- **Dedicated area on WALGA's website**
- **Preparation of State IR Toolkit**
 - The preparation of templates and flowcharts to explain key aspects of the State IR system has commenced
- **Webinars**
 - Webinar for subscribers held on 16 November 2021 – Differences between Federal and State minimum employment standards
 - WALGA/DMIRS webinar on IR Bill on 8 February 2022

Website Demonstration



Home About WALGA State Council/Zones Work at WALGA Contact Us COVID19

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Home > Policy & Advocacy > Our Policy Areas > Employee Relations > State IR Transition

State IR Transition

<https://walga.asn.au/Policy-Advice-and-Advocacy/Employee-Relations/State-IR-Transition>

Policy & Advocacy

Our Policy Areas

- + Economics
- + Emergency Management
- Employee Relations
 - State IR Transition

State Legislation and Instruments

State IR Transition Bulletin

Sector Reference Group

Resources

WALGA Salary and Workforce Survey

The [Industrial Relations Legislation Amendment Bill 2021 \(WA\)](#) (IR Bill) proposes an amendment to the *Industrial Relations Act 1979 (WA)* (IR Act) to enable a declaration to be made by the Federal Minister for Industrial Relations that all WA Local Government authorities are not 'national system employers' for the purpose of the *Fair Work Act 2009* (Cth) (FW Act) (s. 14(2) FW Act). The effect of this legislation is to transition Local Governments to the State industrial relations system (State IR System).

At this stage it is unclear whether the transition of Local Governments to the State IR System will occur and if so, how long the process will take.

It is likely that the IR Bill will be passed by WA Parliament before Christmas 2021 or by February of 2022. The transition of Local Governments to the State IR System is however still subject to:

- the drafting of State regulations to specifically:
 - declare that Local Governments are not to be national system employers for the purpose of the FW Act; and
 - fix a day for the purpose of that declaration.
- the Federal IR Minister endorsing the declaration in writing under s.14(4) of the FW Act.

A copy of the IR Bill, the Explanatory Memorandum and the progress of the Bill can be viewed [here](#).

Website Demonstration



COVID-19 Resources



ER Alerts



Legislation and Awards



Salary and Workforce Survey



Sector Representation



ER Resources

- [Disciplinary Processes](#)
- [Support Person](#)
- [Probation](#)
- [Performance Improvement](#)
- [Unauthorised absence/Abandonment of Employment](#)
- [Templates](#)
- [Policies and Procedures](#)
- [Additional Resources](#)



State IR Transition

- [State Legislation and Instruments](#)
- [State IR Transition Bulletin](#)
- [Sector Reference Group](#)
- [Transition FAQs](#)
- [Subscriber Resources](#)
- [Resources](#)



Webinars and Forums

- [Webinars](#)
- [Forums](#)

WALGA preparation – Future

- Further meetings with key stakeholders
 - DMIRS, WAIRC, unions and Local Governments
- Some budget to seek legal advice on key sector issues
- Potential for private consultancy work about State awards

Industrial Relations Legislation Amendment Bill 2021

KEY REFORMS RELEVANT TO LOCAL GOVERNMENT

Background to the Bill

- ❖ 2018 Ministerial Review of the State Industrial Relations System
- ❖ 2019 Inquiry into Wage Theft in Western Australia
- ❖ Recommendations to amend the *Industrial Relations Act 1979* (IR Act), the *Minimum Conditions of Employment Act 1993* (MCE Act) and the *Long Service Leave Act 1958* (LSL Act)

Progress of the Bill

- ❖ A 2020 version of the Bill was introduced into Parliament in June 2020, but lapsed when Parliament was prorogued for the 2021 State election
- ❖ WA Government made an election commitment to reintroduce the Bill if re-elected
- ❖ The 2021 Bill was introduced into Parliament in October 2021, and passed the Legislative Assembly on 16 November 2021
- ❖ The 2021 Bill is expected to be debated in the Legislative Council this week (sitting week commencing 14/12/21)

Ministerial Review & local government

- ❖ The eighth term of reference required consideration of “whether local government employers and employees in Western Australia should be regulated by the State industrial relations system, and if so, how that outcome could be best achieved”
- ❖ Extensive discussion in both the Interim Report (March 2018) and Final Report (June 2018) on the term of reference
- ❖ The Final Report relevantly concluded that “to date the preponderance of judicial and industrial commission authority favours local governments in Western Australia not being characterised as trading corporations” (p 490)
- ❖ Also concluded that “the most legally certain process to move local governments to the State system is to use the process outlined in s 14(2) of the FW Act” (p 491)

Section 14(2) of FW Act

- ❖ Section 14(2) of the FW Act enables the States and Territories to legislate to declare certain employers, including local governments, “not to be a national system employer” for the purposes of the FW Act
- ❖ Any declaration made under s 14(2) must be endorsed in writing by the Federal Minister for Industrial Relations (currently Senator the Hon Michaelia Cash)
- ❖ The mechanism in s 14(2) has been used by Queensland, New South Wales and South Australia in relation to local governments

Employers declared not to be national system employers

- ❖ The Bill proposes to insert new Part IIAA into the IR Act – “Employers declared not to be national system employers”
- ❖ WA Government has publicly stated that it intends to declare all WA local governments not to be national system employers
- ❖ An employer must be individually named in a declaration, made under regulations
- ❖ Regulations may fix the ‘**relevant day**’ for commencement of a declaration

Transitional arrangements

- ❖ Upon the commencement of a declaration, an applicable fair work instrument (**old federal instrument**) will become an industrial agreement under the IR Act (**new State instrument**)
- ❖ The new State instrument will have a nominal expiry date that is the **earlier** of the following:
 - a day that is two years from the relevant day;
 - the day that, immediately before the relevant day, was the nominal expiry day of the old federal instrument
- ❖ If an enterprise agreement has a nominal expiry date that is **earlier** than the relevant day, then that will be the expiry date of the new State instrument
- ❖ As modern awards do not have expiry dates, a modern award that becomes a new State instrument will have a nominal expiry date of **two years** from the relevant day

Transitional arrangements

- ❖ As per s 41(6) of the IR Act, an industrial agreement continues in force after the expiry of its term until **replaced** or **retired** from by one of the parties
- ❖ There is therefore no 'drop dead' date for new State instruments
- ❖ A party can retire by giving 30 days' notice to the Registrar of the Commission (any time after the expiry of the new State instrument, or no more than 30 days before the expiry)
- ❖ Proposed s 80BH of the IR Act enables a union to apply to the Commission to be named as a party to a new State instrument
- ❖ If a party retires from a new State instrument, and there is no replacement agreement, then the applicable State award(s) will apply
- ❖ Nothing to prevent the parties (employer and union) from negotiating and making a new industrial agreement to replace the new State instrument **during** its nominal term

Transitional arrangements

- ❖ New State instruments will be subject to the MCE Act
- ❖ An employer, employee or organisation may apply to the Commission to vary a new State instrument
- ❖ The Commission may make the amendment if it is 'fair and reasonable to do so in the circumstances'
- ❖ A reference to a federal organisation in a new State instrument will be taken to refer to a State organisation of which the federal organisation is a federal counterpart
- ❖ The Commission will have the ability to carry over matters from the FW Act to the IR Act

Transitional arrangements

- ❖ Employees' employment under an old federal instrument will be recognised under the new State instrument, but no 'double dipping' of entitlements
- ❖ Any leave accrued under an old federal instrument or the FW Act before the relevant day will be taken to have accrued under the new State instrument
- ❖ Leave arrangements made under an old federal instrument or the FW Act before the relevant day will be recognised under the new State instrument
- ❖ In terms of individual employee applications on foot under the FW Act as of the relevant day (e.g. unfair dismissal or adverse action applications), it is proposed that those applications continue to be dealt with under the FW Act

To endorse, or not to endorse...

- ❖ Any declaration made by the WA Government pursuant to s 14(2) of the FW Act must be endorsed by the Federal Minister for Industrial Relations
- ❖ This is a political issue
- ❖ Ongoing discussions between the State Minister for Industrial Relations and the Federal Minister

Commencement of the reforms

- ❖ Assuming the Bill passes Parliament this year, it is likely most parts of the Bill will commence early in 2022 (February/March)
- ❖ Regulations still have to be drafted for certain aspects of the Bill
- ❖ Regulations are required to declare local government employers not to be national system employers, and to fix the relevant day
- ❖ The relevant day can only be determined in conjunction with the Federal Minister

DMIRS resources

- ❖ The Private Sector Labour Relations Division (PSLR) of DMIRS is responsible for:
 - **Wageline (1300 655 266)** – providing telephone/online advice to State system private sector employers and employees on minimum employment obligations and entitlements
 - **Online information @ www.commerce.wa.gov.au/labour-relations** – including private sector WA award summaries, information on WA minimum wages and leave entitlements, public holidays and online complaint form for underpayments
 - **Compliance** – PSLR industrial inspectors have statutory powers under the IR Act to enforce State industrial instruments, statutory minimum conditions of employment, the LSL Act and WA child employment laws
- ❖ PSLR will publish information sheets on key aspects of the Bill if passed by Parliament
- ❖ PSLR will work with key stakeholders, such as WALGA, to raise awareness of the legislative reforms



Questions

- Any questions about the proposed transition?



Overview of State award framework

State awards

- Local Government Officers' (Western Australia) Award 2021 (**LGO Award**)
- Municipal Employees (Western Australia) Award 2021 (**ME Award**)
- Other State awards

Scope and coverage

- **LGO and ME Award:** *“This award shall apply throughout the State of Western Australia to all local government authorities and their agencies and their employees whether members of the Union/s or not”*
- Classifications are broad. Generally, the LGO Award applies to inside workers and the ME Award applies to outside workers
- WALGA is getting legal advice on award coverage for CEOs

Common issues

- Cashing out of annual leave
- Difficulty interpreting ordinary hours of work, and penalty and overtime rates
- Disorganised layout
- Numerous allowances previously transitioned out of LGIA e.g. location allowance

IR Bill

- No legislated process to modernise State awards
- Federal Local Government Industry Award 2020 becomes an industrial agreement for each Local Government

Award modernisation process

What do parties want?

Local Government employers

- Do you see benefit in seeking to modernise the State Awards?
- If yes, what key things do you want to see?

Unions

ASU

- Appetite to negotiate new award is limited
- Likely approach will be to cherry pick best of the Federal and State awards
- Strong State Government relationship/support

CFMEU

- Demarcation dispute
- Disruptive for LG sector

LGRCEU?

Issue identification

Activity 1 – Experience (by a show of hands)

1. Do you have experience working in the State IR system?
2. Were you working in Local Government when the *Fair Work Act 2009* (Cth) commenced?
3. Did you advise on the transition to the Local Government Industry Award 2010?
4. Do you have experience in award modernisation? E.g. drafting the awards, policy work or advocacy

Activity 2 – Practical experience (post it notes)

1. Which clauses in the LGIA would you like to retain? Clear ordinary hours of work structure, coverage clause
2. Which clauses in the LGIA would you like to leave behind? E.g. annualised wage arrangements, casual minimum engagement

Stakeholder engagement and consultation

Next steps: WALGA to compile and consider feedback from SRG and:

1. Engage with LGs who have recently transitioned to the State IR system; and
2. Consider whether to engage a consultant to facilitate feedback on an award modernisation process and/or obtain legal advice about options for award modernisation.



Close and next meeting

Date: 23 February 2022, 2 – 3.30PM

Location: WALGA, ONE70, LV1, 170
Railway Parade, West Leederville

Focus: employee engagement process