

Sector Reference Group

14 December 2021

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

SECTOR REFERENCE GROUP (SRG) MEETING

Date	Tuesday, 14 December 2021
Time	11.00am – 12.30pm
Attendees	19 in person, 10 via Zoom
Chairs	Tony Brown, Davina Hunter and Sam Lyon

SUMMARY OF MEETING

- Welcome, introductions and acknowledgement of country by Tony Brown (**TB**).
- Davina Hunter (**DH**) discussed the progress of the *Industrial Relations Legislation Amendment Bill 2021 (IR Bill)* in State Parliament and the likelihood of the IR Bill passing before Christmas. She also noted the transition of Local Governments (**LGs**) to the State IR system being subject to the drafting of regulations and a written declaration which needs to be made by the Federal IR Minister. DH outlined that WALGA is advocating for the transition to commence for LGs six months after the enactment of the regulations to assist with the transition and wrap up any enterprise negotiations.
- DH discussed the terms of reference for the group, including that WALGA will continue to communicate with the sector via a monthly bulletin and the website. The Sector Reference Group (**SRG**) was informed of its purpose – To raise key anticipated issues to work towards sector solutions and provide feedback on specific LG needs for the proposed transition. WALGA will continue to communicate and seek feedback from the SRG via email.
- TB provided a summary of funding for the transition confirming that no funding or additional resources have been allocated by the State Government. WALGA has budget allocated for its subscribers (training, fact sheets and templates), the Employee Relations Project Consultant (Sam Lyon) and to seek legal advice or consultancy expertise on some issues.
- The ER service operates on a subscription basis. The ER service can provide certain support for the sector as a whole, particularly around advocacy, but in-depth support will be limited to ER subscribers as they fund this service
- TB outlined the advocacy steps which have been taken. Engagement with the State IR Minister, Hon Stephen Dawson MLC about funding, resources, award framework and delayed transition. Attended a meeting on 15 July 2021 and written correspondence to the State IR Minister and his advisor. Engagement with the Federal IR Minister, Senator the Hon Michaelia Cash. Written to the Federal IR Minister seeking an opportunity to meet to discuss whether intending to sign a declaration that WA LGs are not 'national system employers' under the *Fair Work Act 2009 (Cth) (FW Act)*. No response to date. Also

outlined meetings with the Department of Mines, Industry Regulation and Safety (**DMIRS**) to understand the proposed IR Bill and discuss resources and support available for the LG sector.

- Sam Lyon (**SL**) discussed current and future preparations for the proposed transition. WALGA now has a dedicated section on its website regarding the transition. The SRG was provided with a website demonstration and advised that WALGA's website was upgraded on 14 December 2021. SL also discussed the monthly State IR Bulletin, template resources and webinars available to subscribers or the sector. WALGA is planning further meetings with key stakeholders (DMIRS, WAIRC, unions and LGs operating in the State IR System). There is some budget to seek legal advice on key sector issues and potential for private consultancy work about State awards.
- DMIRS provided a detailed presentation about the reason for and the progress of the IR Bill and noted the confidence that it would be passed by WA Parliament before Christmas (likely by 16 December 2021).
- DMIRS summarised the State Government's view that it believes that LGs are part of the body politic of the State and should be regulated by the State IR system. DMIRS noted the discussion of case law in the Ministerial Review Reports and that there is legal commentary to argue strongly that LGs would not be Constitutional Corporations based on their governmental activities but that this point of law had to be decided by the High Court.
- DMIRS outlined they were not privy to discussions that were occurring between the Federal and State IR Ministers and not able to advise of the Federal IR Minister's intentions or position about the declaration under s.14(2) of the FW Act.
- DMIRS confirmed the State Government's intention to declare all WA LGs not to be national system employers and the requirement to draft regulations once the IR Bill was passed. Regulations will need to be drafted to name each LG employer individually and fix the 'relevant day' for commencement of the declaration. The declaration is a political issue and must be decided by the Federal IR Minister.
- DMIRS discussed the transition of Federal industrial instruments and the preservation of entitlements on transition to the State IR system. DMIRS outlined that all transitioning instruments would be deemed industrial agreements and will be subject to the *Minimum Conditions of Employment Act 1993 (WA)*. Industrial agreements will have a nominal expiry date (**NED**) of the earlier of the agreement's NED or two years from the 'relevant day'. An overview was provided about the ability to amend, replace or retire industrial agreements under the *Industrial Relations Act 1979 (WA)* (**IR Act**). The retirement by one party to an industrial agreement will bring it to an end if there are only two parties to the agreement. If there is no replacement agreement, then the applicable State award(s) will apply. DMIRS explained that this process was administrative. A relevant union can apply to the Western Australian Industrial Relations Commission (**WAIRC**) to be named as a party to a transitional instrument. A reference to a federal union in a transitioning instrument will be taken to refer to a State union of which the Federal union is a Federal counterpart. The bargaining framework of the State system was explained and that there is nothing to prevent parties from negotiating and making a new industrial agreement to replace a transitioning agreement during its nominal term under the IR Act.
- DMIRS outlined that the WAIRC will have the ability to carry over matters from the FW Act to the IR Act. 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. This requires the Federal Government's agreement.

- DMIRS gave an overview of the resources available to the sector. Any support from Wageline would be high level. Online resources can be found at www.commerce.wa.gov.au/labour-relations and templates on key aspect of the IR Bill, including a specific factsheet for LGs, will be published on the DMIRS website before Christmas. DMIRS will continue to work with WALGA to provide information and knowledge about the State IR system.
- DMIRS explained its compliance role and the ability for employees to make complaint to the inspectorate under the IR Act to enforce State industrial instruments, statutory minimum conditions of employment and WA child employment laws.
- Questions were asked to clarify points about: the transitional instruments, including the retirement process; the unions' roles and obligations; and whether to/how to engage with employees about the proposed changes.
- SL discussed the State awards and noted coverage and common issues with the State awards.
- The SRG workshopped the advantages and disadvantages of the Federal Local Government Industry Award 2020 and confirmed that they would like to see some form of award modernisation process in the State system for the LG Sector. State IR experience of the SRG will be gathered via email due to time constraints.
- DH closed the meeting and confirmed the next SRG meeting would be held on 23 February 2022, between 2-3.30pm at WALGA, ONE70, LV1, 170 Railway Parade, West Leederville and focus on the employee engagement process.

Attachment 1 – Copy of PowerPoint presentation from meeting