



PROPOSED REFORMS IN RESPONSE TO THE MINISTERIAL REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM

The Final Report of the Ministerial Review of the State Industrial Relations System (the Review) was tabled in State Parliament on 11 April 2019.

The Final Report makes a total of 85 recommendations for reform of the State industrial relations system to ensure it is modern, fair and accessible.

The McGowan Government is taking action to reform the State industrial relations system, and implement many of the recommendations of the Final Report of the Review. The first round of legislative reforms will focus on increased protection for workers.

The key reforms are:

- The *Industrial Relations Act 1979* (IR Act) will be amended to introduce an entitlement for workers to seek an order from the Western Australian Industrial Relations Commission (WAIRC) to stop bullying at work. These provisions will be based on those in the Commonwealth *Fair Work Act 2009* (FW Act).
- A legislative equal remuneration framework will be provided for the WAIRC to deal with applications for equal remuneration orders and requiring it to develop an equal remuneration principle. These provisions will be based on those in the Queensland *Industrial Relations Act 2016*.
- The definitions of “employee” in State industrial laws will be amended to remove the following existing exclusions:
 - persons engaged in domestic service in a private home (IR Act and *Minimum Conditions of Employment Act 1993* (MCE Act));
 - persons remunerated wholly by commission, percentage reward or piece rates (MCE Act and *Minimum Conditions of Employment Regulations 1993* (Regulations));
 - persons with a disability in supported employment (MCE Act and Regulations); and
 - persons appointed under the *National Trust of Australia (WA) Act 1964* to carry out the duties of wardens (MCE Act and Regulations).

These exclusions have been identified by the Commonwealth Government as a barrier to Australia ratifying the International Labor Organization (ILO) *Protocol of 2014 to the Forced Labour Convention, 1930*. The Protocol aims to support the global fight against forced labour, people trafficking and modern slavery and these amendments will ensure that Western Australian laws are compliant with the Protocol. The amendments will also ensure that no category of employee is denied employment protections. It is also intended to make consequent amendments to deal with administrative matters.

It is proposed that the definition of “employer” in the IR Act be amended to include a foreign state or foreign consulate. The current definition does not encapsulate these bodies.

- The MCE Act and IR Act will be amended to adopt the Commonwealth Supported Wage System as the mechanism for determining a minimum wage for employees who have a disability that has been assessed to affect their productive capacity. This will only apply where there are no alternative wage-setting mechanisms in an award or agreement.
- The WAIRC will be provided with the power to vary the scope of awards on its own motion to ensure that all State private sector employees are covered by an award, except for those employees traditionally not covered by an award. This will address the current significant gaps in State award coverage.
- Penalties for breaches of the *Long Service Leave Act 1958* (LSL Act) will be introduced. Various amendments to the LSL Act will be made, including clarifying that casual and seasonal employees are covered by the LSL Act, providing that all forms of paid leave count towards an employee's continuous employment and allowing for long service leave to be taken in alternative ways.
- To enhance the compliance and enforcement framework, the IR Act will be amended to:
 - increase civil penalties for breaches of employment laws;
 - require employers to provide pay slips to employees, and to keep a record of any cash payment made to employees; and
 - strengthen industrial inspector powers including enabling inspectors to issue infringement notices and compliance notices, and to enter into enforceable undertakings.
- There is currently a lack of certainty as to which industrial relations jurisdiction applies to local government, and as an integral part of the body politic of the State, it is appropriate that local government be regulated by the State industrial relations system rather than the national system. The IR Act will accordingly be amended to enable a declaration to be made that Western Australian local government authorities are not "national system employers" for the purposes of the FW Act. There will be transitional arrangements to assist affected local governments move to the State system, as well as savings provisions to protect employees' accrued entitlements. Any declaration made under the IR Act will require the endorsement of the Federal Minister for Jobs and Industrial Relations under the FW Act. This process will of course be the subject of considerable consultation with key stakeholders.

In addition to the above legislative reforms, it is proposed the following Taskforces be established at the appropriate time with relevant stakeholder participation, to assist with implementation of certain reforms:

- a Taskforce to develop education and implementation strategies around removing the exclusions from the definitions of "employee"; and
- a Taskforce to facilitate the transition of affected local government employers and employees from the national industrial relations system to the State system.

The Government intends to give consideration to further reforms arising from the Final Report of the Review in the future.

The Final Report of the Review is available at www.dmirs.wa.gov.au/labour-relations.