



Upcoming changes to state employment laws in WA

Public sector industrial relations changes

New laws in the state industrial relations system will see applications made by public sector employees dealt with by the general jurisdiction of the Western Australian Industrial Relations Commission (WAIRC) and also allow the WAIRC to deal with breaches of specified public sector standard claims.

These new provisions in the *Industrial Relations Act 1979* (IR Act) have been introduced by the *Industrial Relations Legislation Amendment Act 2024*. Some changes will commence on 31 January 2025 and others will commence on a date to be proclaimed.

This fact sheet outlines:

- the WAIRC's changed jurisdiction for public sector employee claims;
- how claims relating to substandard performance and discipline are dealt with; and
- breach of public sector standards claims.

Change in jurisdiction for public sector employee claims

Currently, government officer industrial matters are dealt with by the Public Service Arbitrator (PSA) and Public Service Appeal Board (PSAB). The IR Act has been amended to abolish the PSA and PSAB and transfer their jurisdiction to the general jurisdiction of the WAIRC.

This means claims by all public sector employees will now be dealt with the general jurisdiction of the WAIRC.

Claims relating to substandard performance and disciplinary decisions

The treatment of claims made by government officers and other public sector employees who are not government officers in relation to substandard performance and disciplinary decisions made under the *Public Sector Management Act 1994* and the *Health Services Act 2016* will be standardised. This includes:

- a 28-day timeframe for the making of an application;
- access to conciliation before the WAIRC;
- a right to legal representation;
- access to compensation if the WAIRC determines a dismissal was unfair; and
- appeal rights.

These changes commence on 31 January 2025.

Breach of public sector standard claims

The IR Act will also be amended to provide the WAIRC with the jurisdiction to deal with a claim from a public sector employee alleging a breach of a specified public sector standard. These are claims that relate to one or more of the following:

- the transfer of employees;
- the performance management of employees;
- the redeployment of employees;
- the termination of employment of employees; and
- grievance resolution (for as long as grievance resolution is a prescribed human resource activity under the PSM Act).

Such claims will no longer be referable to the Public Sector Commissioner (PS Commissioner).

Breach of public sector standard claims regarding recruitment, selection, appointment, secondment and temporary deployment (acting) decisions will, however, remain referable only to the PS Commissioner. The PS Commissioner will also remain responsible for setting public sector standards.

A person may only make a breach of public sector standard claim to the WAIRC if:

- they have first made a claim for relief to a public sector body in accordance with the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*; and
- the claim is not resolved by agreement or withdrawn within 21 days of making the claim to the public sector body (the 'agency resolution period').

An unresolved claim must be referred to the WAIRC within 28 days of the conclusion of the agency resolution period and the claim may be conciliated and/or arbitrated.

If a claim is arbitrated, the WAIRC may issue an order to:

- quash the decision or action;
- remit the process for taking the decision or action back to the public sector body to be recommenced;
- direct the public sector body to take specified steps in the recommenced process; and/or
- take specified action.

There will be no capacity, however, for the WAIRC to award compensation to an employee if it is determined that a standard has been breached.

The parties will have a right to legal representation in breach of standard claim proceedings and decisions will be appealable.

These changes will commence on a date to be proclaimed.

State employment laws are changing

This fact sheet is part of a suite of information on the changes to state employment laws. For details on the changes visit www.demirs.wa.gov.au/new-employment-laws.

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