

Workforce Reform Bill 2013
Explanatory Memorandum

OUTLINE

The principal purposes of this Bill are to amend the *Industrial Relations Act 1979*, *Public Sector Management Act 1994*, and *Salaries and Allowances Act 1975* as follows:

- a) to provide the capacity to implement enhanced and more flexible redeployment arrangements that may ultimately end with the involuntary severance of employees that are surplus to an agency's requirements or whose post, office or position has been abolished and cannot effectively be redeployed; and
- b) to ensure that decisions made by the Western Australian Industrial Relations Commission (WAIRC) and the Salaries and Allowances Tribunal have appropriate regard to the Public Sector Wages Policy Statement, the State's financial position and fiscal strategy, and in relation to the WAIRC, the financial position of the relevant public sector agency.

PART 1 – PRELIMINARY

Clause 1 Short title
Cities the title of this Act – *Workforce Reform Act 2013*.

Clause 2 Commencement
Provides for Part 1 of the Act to come into operation the day the Act receives Royal Assent, and for the rest of the Act on such day or days as is or are fixed by proclamation.

PART 2 – INDUSTRIAL RELATIONS ACT 1979 AMENDMENTS

Clause 3 Act amended
Specifies that the amendments contained in Part 2 of this Act are to the *Industrial Relations Act 1979*.

Clause 4 Section 26 amended
Inserts new sections that apply to WAIRC decisions that extend to and bind a public sector entity or employing authority.

New section (2A) requires the WAIRC, when making public sector decisions, to take into consideration the Public Sector Wages Policy Statement, the financial position and fiscal strategy of the State with specific reference to public statements arising from the Government Responsibility Act 2000 and government submissions; and the financial position of the public sector entity.

New section (2B) establishes definitions giving effect to the operation of (2A) as follows:

that a “public sector decision” means orders from arbitration of specified matters by consent of the parties (42G) or enterprise orders (42I) and to the extent that is relevant, to any other decision.

the meaning of “public sector entity” is established to clarify the scope of the application of 2A.

Confirms the application of the Public Sector Wages Policy Statement 2014 to industrial agreements expiring after 1 November 2013 and that the Statement can be replaced and re-issued.

New Section (2C) provides that in exercising jurisdiction under the *Industrial Relations Act 1979*, the new provisions are to be considered in addition to existing requirements of s26(1)(d).

New section (2D) establishes transitional provisions clarifying, with the exception of orders in respect of 42G agreements or enterprise orders (42I) which expire prior to 1 November 2013, that new section (2) (A) provisions will apply to public sector decisions for matters arising before, on or after commencement of the Workforce Reform Act, to the extent relevant.

New section (2E) excludes the new section (2A) provisions and continues the exclusion of existing (1)(d) requirements from consideration in State Wage order decisions.

- Clause 5** **Section 80E amended**
Deletes section 80E(7) and inserts a new provision to limit the jurisdiction of a Public Service Arbitrator. An Arbitrator does not have the jurisdiction to enquire into or deal with any matter in respect of a decision made under regulations referred to in sections 94 or 95A of the *Public Sector Management Act 1994*.
- Clause 6** **Section 80I amended**
Amends section 80I(3) to provide that a Public Service Appeal Board does not have jurisdiction to hear and determine an appeal by a government officer from a decision made under regulations referred to in sections 94 or 95A of the *Public Sector Management Act 1994*.
- Clause 7** **Section 80R amended**
Inserts a new provision after 80R(3) to provide that a Railways Classification Board does not have jurisdiction to enquire into or deal with, or refer to the WAIRC any matter in respect of a which a decision is, or may be, made under the regulations referred to in sections 94 or 95A or any matter in respect of a procedure referred to in the Public Sector Management Act section 97(1)(a).

PART 3 – PUBLIC SECTOR MANAGEMENT ACT 1994 AMENDMENTS

- Clause 8** **Act amended**
Specifies that the amendments contained in Part 3 of the Act are to the *Public Sector Management Act 1975*.
- Clause 9** **Section 22A amended**
Inserts a new provision to allow the Public Sector Commissioner to issue written instructions dealing with matters of redeployment and redundancy; and termination of employment.
- Clause 10** **Section 29 amended**
Amends subsection 29(1)(g) of this section to extend the responsibility of CEOs and chief employees to deal with matters relating to the appointment, deployment and termination of employees in their department or organisation.

- Clause 11** **Section 63 amended**
Amends section 63 to provide for the inclusion of termination of employment of registered employees as one of the ways by which an office held by an executive officer is vacated under the *Public Sector Management Act 1994*.
- Clause 12** **Section 67 amended**
Amends section 67 to provide for the inclusion of termination of employment of registered employees as one of the ways by which an office held by a public service officer other than executive officers is vacated under the *Public Sector Management Act 1994*.
- Clause 13** **Section 94 amended**
Inserts a new section (section 94(1A)) setting out the definition of a new term, 'registrable employee' for the purposes of registration for redeployment. Provides for the capacity to prescribe additional categories of employee that may be a 'registrable employee'.

Section 94(2) replaces section 94(1) to provide the capacity for the Governor to make regulations dealing with arrangements for registrable employees in relation to redeployment, retraining and redundancy and the associated terms and conditions that may apply.

Provides the capacity for the registration of employees for redeployment to be suspended or revoked by the Public Sector Commissioner.
- Clause 14** **Section 95A and 95B inserted**
95A Termination of employment of registered employees
Provides for the capacity for the Governor to make regulations dealing with the termination of employment of registered employees and the associated terms and conditions that are to apply.

95B Inconsistent provisions, instruments and contracts
Allows for overriding by the regulations of inconsistent industrial instruments and contracts of employment.
- Clause 15** **Section 95 replaced**
95 Jurisdiction of Industrial Commission in relation to section 94 decision
Allows for the maintenance of existing rights of review to the Industrial Commission regarding decisions made under the regulations up to the point of involuntary severance. The Industrial Commission will be able to determine whether the regulations have been fairly and properly applied up to the point of involuntary severance.

96A Jurisdiction of Industrial Commission in relation to section 95A decision
Inserts a new provision providing a right of review for a decision made or purported to be made under the regulations referred to in section 95A to terminate employment. Confines the jurisdiction of the Industrial Commission to review whether the employee has been allowed the benefits (pay etc) to which they are entitled under the regulations. The Commission will not have the jurisdiction to reinstate or otherwise compensate the employee.

Clause 16 **Section 101 amended**
Permits compensation available under the regulation to exceed the limit of 12 month's remuneration, otherwise applicable under the *Public Sector Management Act 1994*.

Clause 17 **Schedule 5 amended**
Provides that an executive office is subject to the regulations referred to in sections 94 and 95A.

PART 4 – SALARIES AND ALLOWANCES ACT 1975 AMENDMENTS

Clause 18 **Act amended**
Specifies that the amendments contained in Part 4 of the Act are to the *Salaries and Allowances Act 1975*.

Clause 19 **Section 10A inserted**
10A. Tribunal to have regard to government financial matters
Inserts a new provision which provides that relevant decisions made by the Salaries and Allowances Tribunal must take into consideration the Public Sector Wages Policy Statement and the State's financial position and fiscal strategy.