

INDUSTRIAL RELATIONS AMENDMENT BILL 2012

EXPLANATORY MEMORANDUM (E288)

(Introduced by Hon. Mark McGowan, MLA)

This Bill will amend the *Industrial Relations Act 1979* to allow access for public sector employees to have the same rights as private sector employees to have their industrial matters dealt with by the Western Australian Industrial Relations Commission.

1. Short title

This is the *Industrial Relations Amendment Act 2012*.

2. Commencement

This Act comes into operation upon Royal Assent.

3. Act amended

This Act amends the *Industrial Relations Act 1979*.

4. Section 80E amended

(1) In section 80E(1) delete "and (7),".

(2) In section 80E(6) delete "but subject to subsection (7),".

(3) Delete section 80E(7).

When the Public Sector Management Act was enacted in 1994, it placed restrictions on the rights of public sector employees and public sector unions to have matters considered by the Western Australian Industrial Relations Commission (WAIRC). These restrictions did not exist for private sector workers covered by the same legislation.

The specific restrictions that apply to matters for individuals are any matter covered by public sector standards. Public sector standards cover such matters as: redeployment, grievances, performance management, acting secondment, transfers and recruitment.

The specific exclusion for the WAIRC to deal with the matters is found at 80E(7) of the *Industrial Relations Act 1979*. The IR Act was amended at the same time to support the establishment of the standards and the Public Sector Standards Commission (PSSC). It meant that a breach of anything covered by a standard could only be lodged with the PSSC as the WAIRC no longer had jurisdiction.

However, the PSSC could only find on procedural matters and could then only recommend that the employer change their processes in the future. This is unlike the WAIRC, which has the power to hear the merits of the case and provide for a finding for the individual.

The Public Sector Management Act was enacted prior to the Commission on Government (COG). At recommendation 83 the COG found that the PSMA was “flawed in that it does not provide for compliance by chief executive officers and chief employees with standards, codes of ethics and codes of conduct.” They found that the WAIRC should be empowered to deal with employment related grievances and provide injunctive relief or direct administrative remedies as appropriate.

The Fielding Review in 1996 reinforced this and described the standards and codes of ethics in Government as “pointless” because they could not be enforced.

It is not envisaged that the removal of this restriction will result in a significant increase in the number of matters progressing to the WAIRC. For example, the structure of the advice provided by the CPSU/CSA to its members seeks to resolve matters at the workplace through its UnionLink advisory service. It is only where there are significant issues of fairness that matters are referred to its advocacy team for progression to the WAIRC for assistance.

The introduction of the public sector standards was also used to restrict the ability of the public sector unions and the Government to include matters covered by public sector standards in industrial agreements. These provisions were contained at section 99 of the PSMA. These restrictions to content in Agreements did not apply to the private sector.

The deletion of section 99 of the PSMA which has now occurred removes the restrictions on the matters that can be in an industrial agreement. It does not mean, however, that these matters will then be included in an industrial agreement. This can only occur where agreement is reached between the parties.

This restriction has in the past forced the parties to include matters in the Award rather than in an agreement (modes of employment). The Government’s preference had been to have the provisions inserted in the General Agreement 2. Instead it was inserted straight into the Award because of the restrictions imposed by these provisions.

The deletion of section 99 of the *Public Sector Management Act 1994* occurred in 2010; however, the consequential amendments to section 80E of the *Industrial Relations Act 1979*, to give effect to this change, have not occurred.

The deletion of section 99 of the *Public Sector Management Act 1994*, and with these consequential amendments to the *Industrial Relations Act 1979* to delete section 80E(7), will provide public sector employees the same rights of access to the Western Australian Industrial Relations Commission as private sector employees.