

Workforce Reform Bill 2013

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Western Australia

LEGISLATIVE ASSEMBLY

Workforce Reform Bill 2013

A Bill for

An Act to amend the following Acts —

- **the *Industrial Relations Act 1979*;**
- **the *Public Sector Management Act 1994*;**
- **the *Salaries and Allowances Act 1975*.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Workforce Reform Act 2013*.

4

2. Commencement

5

This Act comes into operation as follows —

6

(a) Part 1 — on the day on which this Act receives the
Royal Assent;

7

8

(b) the rest of the Act — on a day fixed by proclamation,
and different days may be fixed for different provisions.

9

Part 2 — *Industrial Relations Act 1979* amended

3. Act amended

This Part amends the *Industrial Relations Act 1979*.

4. Section 26 amended

Delete section 26(1a) and insert:

(2A) In making a public sector decision the Commission must take into consideration the following —

(a) any Public Sector Wages Policy Statement that is applicable in relation to negotiations with the public sector entity;

(b) the financial position and fiscal strategy of the State as set out in the following —

(i) the most recent Government Financial Strategy Statement released under the *Government Financial Responsibility Act 2000* section 11(1);

(ii) the most recent Government Financial Projections Statement released under the *Government Financial Responsibility Act 2000* section 12(1);

(iii) any submissions made to the Commission on behalf of the State government;

(c) the financial position of the public sector entity.

(2B) In subsection (2A) —

public sector decision means any of the following —

(a) an order made under section 42G that will be included in an agreement that will extend to and bind a public sector entity or its employing

s. 4

- 1 authority (as defined in the *Public Sector*
2 *Management Act 1994* section 5);
- 3 (b) an enterprise order that will extend to and bind
4 a public sector entity or its employing authority
5 (as defined in the *Public Sector Management*
6 *Act 1994* section 5);
- 7 (c) if the matters set out in subsection (2A)(a), (b)
8 and (c) are relevant to the decision, any other
9 decision that will extend to and bind a public
10 sector entity or its employing authority (as
11 defined in the *Public Sector Management*
12 *Act 1994* section 5);
- 13 ***public sector entity*** means either of the following —
- 14 (a) a public sector body as defined in the *Public*
15 *Sector Management Act 1994* section 3(1);
- 16 (b) an entity that is —
- 17 (i) mentioned in the *Public Sector*
18 *Management Act 1994* Schedule 1; and
- 19 (ii) prescribed by regulations made by the
20 Governor;
- 21 ***Public Sector Wages Policy Statement*** means —
- 22 (a) the Public Sector Wages Policy Statement 2014
23 issued by the State government that applies to
24 industrial agreements expiring after
25 1 November 2013; or
- 26 (b) if any Public Sector Wages Policy Statement is
27 issued in substitution for that statement, the
28 later statement.
- 29 (2C) The matters the Commission is required to take into
30 consideration under subsection (2A) are in addition to
31 any matter it is required to take into consideration
32 under subsection (1)(d).

1 (2D) Subsection (2A) —

2 (a) does not apply in relation to —

3 (i) an order made under section 42G in
4 respect of an agreement proposed to be
5 made in substitution for an industrial
6 agreement that specifies a nominal
7 expiry date that is earlier than
8 1 November 2013; or

9 (ii) an enterprise order made in substitution
10 for an enterprise order that provides for
11 an expiry day that is earlier than
12 1 November 2013;

13 but

14 (b) except as provided in paragraph (a), applies in
15 relation to any public sector decision in respect
16 of a matter arising before, on or after the
17 commencement of the *Workforce Reform*
18 *Act 2013* section 4.

19 (2E) Subsections (1)(d) and (2A) do not apply when the
20 Commission is exercising its jurisdiction under
21 section 50A.
22

23 **5. Section 80E amended**

24 Delete section 80E(7) and insert:
25

26 (7) Despite subsections (1) and (6), an Arbitrator does not
27 have jurisdiction to enquire into or deal with, or refer to
28 the Commission in Court Session or the Full Bench the
29 following —

30 (a) any matter in respect of which a decision is, or
31 may be, made under regulations referred to in
32 the *Public Sector Management Act 1994*
33 section 94 or 95A;

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- 1 (b) any matter in respect of which a procedure
2 referred to in the *Public Sector Management*
3 *Act 1994* section 97(1)(a) is, or may be,
4 prescribed under that Act.
5

6 **6. Section 80I amended**

7 In section 80I(3) delete “section 94 of the *Public Sector*
8 *Management Act 1994*.” and insert:
9

10 the *Public Sector Management Act 1994* section 94 or 95A.
11

12 **7. Section 80R amended**

13 After section 80R(3) insert:
14

15 (4) Despite subsections (1) and (3), the Board does not
16 have jurisdiction to enquire into or deal with, or refer to
17 the Commission in Court Session or the Full Bench the
18 following —

19 (a) any matter in respect of which a decision is, or
20 may be, made under regulations referred to in
21 the *Public Sector Management Act 1994*
22 section 94 or 95A;

23 (b) any matter in respect of which a procedure
24 referred to in the *Public Sector Management*
25 *Act 1994* section 97(1)(a) is, or may be,
26 prescribed under that Act.
27

1 **Part 3 — *Public Sector Management Act 1994* amended**

2 **8. Act amended**

3 This Part amends the *Public Sector Management Act 1994*.

4 **9. Section 22A amended**

5 After section 22A(1)(f) insert:

6

7 (ga) dealing with —

8 (i) redeployment and redundancy of
9 employees; and

10 (ii) termination of employment;

11

12 **10. Section 29 amended**

13 In section 29(1)(g) delete “appointment and deployment” and
14 insert:

15

16 appointment, deployment and termination of employment

17

18 **11. Section 63 amended**

19 In section 63(1)(f) delete “section 79(3); or” and insert:

20

21 section 79(3) or under regulations referred to in section 95A; or

22

23 **12. Section 67 amended**

24 In section 67(d) delete “section 79(3); or” and insert:

25

26 section 79(3) or under regulations referred to in section 95A; or

27

s. 13

1 **13. Section 94 amended**

2 (1) Before section 94(1) insert:

3

4 (1A) In this section —

5 *registered employee* means an employee registered
6 under arrangements prescribed under subsection (1);

7 *registrable employee* means —

- 8 (a) an employee who is surplus to the requirements
9 of a department or organisation; or
- 10 (b) an employee whose office, post or position has
11 been abolished; or
- 12 (c) an employee in a category prescribed by the
13 regulations.

14

15 (2) Delete section 94(1) and insert:

16

17 (1) The Governor may under section 108 make regulations
18 prescribing arrangements for registrable employees in
19 relation to —

- 20 (a) redeployment and retraining; and
- 21 (b) redundancy.

22 (2A) Regulations referred to in subsection (1) —

- 23 (a) must specify which parts of the Public Sector
24 must comply with the regulations; and
- 25 (b) may require specified matters to be dealt with
26 or determined in accordance with the
27 Commissioner's instructions.

28

- 1 (3) In section 94(3):
2 (a) delete paragraph (a) and insert:
3
4 (a) the registration of a registrable employee who
5 cannot be transferred within a department or
6 organisation;
7
8 (b) after paragraph (b) insert:
9
10 (ca) the revocation or suspension of registration of
11 an employee;
12
13 (c) in paragraph (f) delete “who does not;” and insert:
14
15 who does not.
16
17 (d) delete paragraph (g).
18 (4) In section 94(4)(b) delete “section 95(3), or the period referred
19 to in that section” and insert:
20
21 section 95(2), or the period referred to in section 95(3)
22
- 23 **14. Sections 95A and 95B inserted**
24 After section 94 insert:
25
- 26 **95A. Termination of employment of registered employees**
27 (1) In this section —
28 *registered employee* has the meaning given in
29 section 94(1A).

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- 1 (2) The Governor may under section 108 make regulations
2 providing for the following —
- 3 (a) the termination of employment of a registered
4 employee, whether registered before, on or
5 after the commencement of the *Workforce*
6 *Reform Act 2013* section 14;
- 7 (b) the terms and conditions (including
8 remuneration) which are to apply to a registered
9 employee whose employment is terminated
10 under the regulations.
- 11 (3) If the employment of a registered employee is
12 terminated under regulations referred to in
13 subsection (2), the contract of employment of the
14 employee is terminated.
- 15 (4) Regulations referred to in subsection (2) may require
16 specified matters to be dealt with in accordance with
17 the Commissioner's instructions.

18 **95B. Inconsistent provisions, instruments and contracts**

- 19 (1) In this section —
- 20 *industrial instrument* means an award, industrial
21 agreement or order made under the *Industrial Relations*
22 *Act 1979*, including a General Order made under
23 section 50 of that Act, whether made before, on or after
24 the commencement of the *Workforce Reform Act 2013*
25 section 14.
- 26 (2) The provisions of this Part and regulations referred to
27 in sections 94 and 95A prevail, to the extent of any
28 inconsistency, over —
- 29 (a) any other provision of this Act other than
30 section 7, 8 or 9; and
31 (b) any industrial instrument.

- 1 (3) Regulations referred to in section 94 or 95A prevail, to
2 the extent of any inconsistency, over the terms and
3 conditions applying to an employee's employment
4 under a contract of employment, whether entered into
5 or renewed before, on or after the commencement of
6 the *Workforce Reform Act 2013* section 14.
7

8 **15. Section 95 replaced**

9 Delete section 95 and insert:
10

11 **95. Jurisdiction of Industrial Commission in relation to**
12 **section 94 decision**

- 13 (1) In this section —
14 *section 94 decision* means a decision made or
15 purported to be made under regulations referred to in
16 section 94 (other than a decision which is a lawful
17 order by virtue of section 94(4)).
18 (2) A section 94 decision may be referred to the Industrial
19 Commission —
20 (a) under the *Industrial Relations Act 1979*
21 section 29(1)(a); or
22 (b) by an employee aggrieved by the decision,
23 as if it were an industrial matter that could be so
24 referred under that Act.
25 (3) A referral under subsection (2) must be made within
26 the period after the making of the decision that is
27 prescribed under section 108.
28 (4) The *Industrial Relations Act 1979* applies to and in
29 relation to a section 94 decision referred under
30 subsection (2) as if the decision were an industrial

s. 15

- 1 matter referred to the Industrial Commission in
2 accordance with that Act.
- 3 (5) In exercising its jurisdiction in relation to a decision
4 referred under subsection (2), the Industrial
5 Commission must confine itself to determining
6 whether or not regulations referred to in section 94
7 have been fairly and properly applied to or in relation
8 to the employee concerned.
- 9 (6) The Industrial Commission does not have jurisdiction
10 in respect of a section 94 decision if the employment of
11 the employee concerned is terminated.
- 12 **96A. Jurisdiction of Industrial Commission in relation to**
13 **section 95A decision**
- 14 (1) A decision made or purported to be made under
15 regulations referred to in section 95A to terminate the
16 employment of an employee or any matter, question or
17 dispute relating to the decision is not an industrial
18 matter for the purposes of the *Industrial Relations*
19 *Act 1979*.
- 20 (2) Despite subsection (1), a decision made or purported to
21 be made under regulations referred to in
22 section 95A(2), other than a decision to terminate the
23 employment of an employee, may be referred to the
24 Industrial Commission —
- 25 (a) under the *Industrial Relations Act 1979*
26 section 29(1)(a); or
- 27 (b) by an employee or former employee aggrieved
28 by the decision,
- 29 as if it were an industrial matter that could be so
30 referred under that Act.

- 1 (3) A referral under subsection (2) must be made within
2 the period after the making of the decision that is
3 prescribed under section 108.
- 4 (4) The *Industrial Relations Act 1979* applies to and in
5 relation to a decision referred under subsection (2) as if
6 the decision were an industrial matter referred to the
7 Industrial Commission in accordance with that Act.
- 8 (5) In exercising its jurisdiction in relation to a decision
9 referred under subsection (2), the Industrial
10 Commission —
- 11 (a) must confine itself to determining whether or
12 not the employee concerned has been allowed
13 the benefits to which the employee is entitled
14 under the regulations referred to in
15 section 95A(2)(b); and
- 16 (b) does not have jurisdiction to exercise its powers
17 under the *Industrial Relations Act 1979*
18 section 23A.
- 19
- 20 **16. Section 101 amended**
- 21 (1) In section 101 delete “Subject to section 23A(4) of the
22 *Industrial Relations Act 1979*, the maximum compensation” and
23 insert:
24
- 25 (1) The maximum amount of compensation
- 26
- 27 (2) At the end of section 101 insert:
28
- 29 (2) Subsection (1) does not apply in relation to
30 compensation payable under —
- 31 (a) the *Industrial Relations Act 1979*
32 section 23A(6); or

4

5

7

9

1 **Part 4 — *Salaries and Allowances Act 1975* amended**

2 **18. Act amended**

3 This Part amends the *Salaries and Allowances Act 1975*.

4 **19. Section 10A inserted**

5 After section 10 insert:

6
7 **10A. Tribunal to have regard to government financial**
8 **matters**

9 (1) In this section —

10 ***Public Sector Wages Policy Statement*** means —

- 11 (a) the Public Sector Wages Policy Statement 2014
12 issued by the State government that applies to
13 industrial agreements expiring after
14 1 November 2013; or
15 (b) if any Public Sector Wages Policy Statement is
16 issued in substitution for that statement, the
17 later statement.

18 (2) In making a determination under section 6(1)(a), (ab),
19 (d) or (e) the Tribunal must take into consideration the
20 following —

- 21 (a) any Public Sector Wages Policy Statement,
22 irrespective of whether or not the statement
23 applies to a person or office in respect of whom
24 or which the determination is made;
25 (b) the financial position and fiscal strategy of the
26 State as set out in the following —
27 (i) the most recent Government Financial
28 Strategy Statement released under the
29 *Government Financial Responsibility*
30 *Act 2000* section 11(1);

s. 19

- 1 (ii) the most recent Government Financial
2 Projections Statement released under the
3 *Government Financial Responsibility*
4 *Act 2000* section 12(1);
- 5 (iii) any submissions made to the Tribunal
6 on behalf of the State government.

8