

Workforce Reform Bill 2013

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

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
7 Royal Assent;
- 8 (b) the rest of the Act — on a day fixed by proclamation,
9 and different days may be fixed for different provisions.

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) and made publicly available under section 9 of that Act;
 - (ii) the Government Financial Projections Statement;
 - (iii) any submissions made to the Commission on behalf of the public sector entity or the State government;
 - (c) the financial position of the public sector entity as set out in the following —
 - (i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title “Agency Information in Support of the

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- 1 Estimates” or, if the regulations
2 prescribe another part of those budget
3 papers, that other part;
- 4 (ii) any submissions made to the
5 Commission on behalf of the public
6 sector entity or the State government.
- 7 (2B) In subsection (2A) —
- 8 ***Government Financial Projections Statement*** means
9 whichever is the most recent of the following —
- 10 (a) the most recent Government Financial
11 Projections Statement that is —
- 12 (i) released under the *Government*
13 *Financial Responsibility Act 2000*
14 section 12(1); and
- 15 (ii) made publicly available in the budget
16 papers tabled in the Legislative
17 Assembly under the title “Economic and
18 Fiscal Outlook” or, if the regulations
19 prescribe another part of the budget
20 papers, that other part;
- 21 (b) the most recent Government Mid-year
22 Financial Projections Statement that is —
- 23 (i) released under the Government
24 *Financial Responsibility Act 2000*
25 section 13(1); and
- 26 (ii) made publicly available under section 9
27 of that Act;
- 28 ***public sector decision*** means any of the following —
- 29 (a) an order made under section 42G that will be
30 included in an agreement that will extend to
31 and bind a public sector entity or its employing
32 authority (as defined in the *Public Sector*
33 *Management Act 1994* section 5);

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

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- 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;

- 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

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

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

- (ga) dealing with —
 - (i) redeployment and redundancy of employees; and
 - (ii) termination of employment;

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

appointment, deployment and termination of employment

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

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

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

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

13. Section 94 amended

(1) Before section 94(1) insert:

(1A) In this section —

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

registrable employee means —

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

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

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

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

(2A) Regulations referred to in subsection (1) must specify which parts of the Public Sector must comply with the regulations.

(3) In section 94(3):

(a) delete paragraph (a) and insert:

- (a) the registration of a registrable employee who cannot be transferred within a department or organisation;

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- 1 (b) after paragraph (b) insert:
2
- 3 (ca) the revocation or suspension of registration of
4 an employee;
5
- 6 (c) in paragraph (f) delete “who does not;” and insert:
7
8 who does not.
9
- 10 (d) delete paragraph (g).
- 11 (4) In section 94(4)(b) delete “section 95(3), or the period referred
12 to in that section” and insert:
13
14 section 95(2), or the period referred to in section 95(3)
15
- 16 **14. Sections 95A and 95B inserted**
17 After section 94 insert:
18
- 19 **95A. Termination of employment of registered employees**
- 20 (1) In this section —
21 *registered employee* has the meaning given in
22 section 94(1A).
- 23 (2) The Governor may under section 108 make regulations
24 providing for the following —
- 25 (a) the termination of employment of a registered
26 employee, whether registered before, on or
27 after the commencement of the *Workforce*
28 *Reform Act 2013* section 14;
- 29 (b) the terms and conditions (including
30 remuneration) which are to apply to a registered

1 employee whose employment is terminated
2 under the regulations.

3 (3) If the employment of a registered employee is
4 terminated under regulations referred to in
5 subsection (2), the contract of employment of the
6 employee is terminated.

7 **95B. Inconsistent provisions, instruments and contracts**

8 (1) In this section —
9 ***industrial instrument*** means an award, industrial
10 agreement or order made under the *Industrial Relations*
11 *Act 1979*, including a General Order made under
12 section 50 of that Act, whether made before, on or after
13 the commencement of the *Workforce Reform Act 2013*
14 section 14.

15 (2A) The provisions of this Part prevail, to the extent of any
16 inconsistency, over any other provision of this Act
17 other than section 7, 8 or 9.

18 (2) The provisions of this Part and regulations referred to
19 in sections 94 and 95A prevail, to the extent of any
20 inconsistency, over any industrial instrument.

21 (3) Regulations referred to in section 94 or 95A prevail, to
22 the extent of any inconsistency, over the terms and
23 conditions applying to an employee's employment
24 under a contract of employment, whether entered into
25 or renewed before, on or after the commencement of
26 the *Workforce Reform Act 2013* section 14.
27

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1 **15. Section 95 replaced**

2 Delete section 95 and insert:

3

4 **95. Jurisdiction of Industrial Commission in relation to**
5 **section 94 decision**

6 (1) In this section —

7 **section 94 decision** means a decision made or
8 purported to be made under regulations referred to in
9 section 94 (other than a decision which is a lawful
10 order by virtue of section 94(4)).

11 (2) A section 94 decision may be referred to the Industrial
12 Commission —

13 (a) under the *Industrial Relations Act 1979*
14 section 29(1)(a); or

15 (b) by an employee aggrieved by the decision,

16 as if it were an industrial matter that could be so
17 referred under that Act.

18 (3) A referral under subsection (2) must be made within
19 the period after the making of the decision that is
20 prescribed under section 108.

21 (4) The *Industrial Relations Act 1979* applies to and in
22 relation to a section 94 decision referred under
23 subsection (2) as if the decision were an industrial
24 matter referred to the Industrial Commission in
25 accordance with that Act.

26 (5) In exercising its jurisdiction in relation to a decision
27 referred under subsection (2), the Industrial
28 Commission must confine itself to determining
29 whether or not regulations referred to in section 94
30 have been fairly and properly applied to or in relation
31 to the employee concerned.

- 1 (6) The Industrial Commission does not have jurisdiction
2 in respect of a section 94 decision if the employment of
3 the employee concerned is terminated.

4 **96A. Jurisdiction of Industrial Commission in relation to**
5 **section 95A decision**

- 6 (1) A decision made or purported to be made under
7 regulations referred to in section 95A to terminate the
8 employment of an employee or any matter, question or
9 dispute relating to the decision is not an industrial
10 matter for the purposes of the *Industrial Relations*
11 *Act 1979*.
- 12 (2) Despite subsection (1), a decision made or purported to
13 be made under regulations referred to in
14 section 95A(2), other than a decision to terminate the
15 employment of an employee, may be referred to the
16 Industrial Commission —
- 17 (a) under the *Industrial Relations Act 1979*
18 section 29(1)(a); or
- 19 (b) by an employee or former employee aggrieved
20 by the decision,
- 21 as if it were an industrial matter that could be so
22 referred under that Act.
- 23 (3) A referral under subsection (2) must be made within
24 the period after the making of the decision that is
25 prescribed under section 108.
- 26 (4) The *Industrial Relations Act 1979* applies to and in
27 relation to a decision referred under subsection (2) as if
28 the decision were an industrial matter referred to the
29 Industrial Commission in accordance with that Act.

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- 1 (5) In exercising its jurisdiction in relation to a decision
2 referred under subsection (2), the Industrial
3 Commission —
- 4 (a) must confine itself to determining whether or
5 not the employee concerned has been allowed
6 the benefits to which the employee is entitled
7 under the regulations referred to in
8 section 95A(2)(b); and
- 9 (b) does not have jurisdiction to exercise its powers
10 under the *Industrial Relations Act 1979*
11 section 23A.

12 **96B. Review of this Part**

- 13 (1) The Minister must cause a review of the operation and
14 effectiveness of this Part to be carried out as soon as is
15 practicable after the 4th anniversary of the day on which
16 the *Workforce Reform Act 2013* section 15 comes into
17 operation.
- 18 (2) The Minister must —
- 19 (a) prepare a report based on the review; and
- 20 (b) cause a copy of the report to be laid before each
21 House of Parliament.
22

23 **16. Section 101 amended**

- 24 (1) In section 101 delete “Subject to section 23A(4) of the
25 *Industrial Relations Act 1979*, the maximum compensation” and
26 insert:
27

- 28 (1) The maximum amount of compensation
29

1 (2) At the end of section 101 insert:

2

3 (2) Subsection (1) does not apply in relation to
4 compensation payable under —

5 (a) the *Industrial Relations Act 1979*
6 section 23A(6); or

7 (b) regulations referred to in section 94 or 95A if
8 those regulations provide for a higher amount
9 of compensation.
10

11 **17. Schedule 5 amended**

12 In Schedule 5 clause 13(4) delete “section 94,” and insert:

13

14 sections 94 and 95A,
15

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 ***Government Financial Projections Statement*** means
11 whichever is the most recent of the following —

12 (a) the most recent Government Financial
13 Projections Statement that is —

14 (i) released under the *Government*
15 *Financial Responsibility Act 2000*
16 section 12(1); and

17 (ii) made publicly available in the budget
18 papers tabled in the Legislative
19 Assembly under the title “Economic and
20 Fiscal Outlook” or, if the regulations
21 prescribe another part of the budget
22 papers, that other part;

23 (b) the most recent Government Mid-year
24 Financial Projections Statement that is —

25 (i) released under the *Government*
26 *Financial Responsibility Act 2000*
27 section 13(1); and

28 (ii) made publicly available under section 9
29 of that Act;

Public Sector Wages Policy Statement means —

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

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

- (a) any Public Sector Wages Policy Statement, irrespective of whether or not the statement applies to a person or office in respect of whom or which the determination is made;
- (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) and made publicly available under section 9 of that Act;
 - (ii) the Government Financial Projections Statement;
 - (iii) any submissions made to the Tribunal on behalf of the State government.