

Western Australia

Workforce Reform Act 2014

As at 20 May 2014

No. 8 of 2014

Extract from www.slp.wa.gov.au, see that website for further information

Workforce Reform Act 2014

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Industrial Relations Act 1979</i> amended		
3.	Act amended	3
4.	Section 26 amended	3
5.	Section 80E amended	6
6.	Section 80I amended	7
7.	Section 80R amended	7
Part 3 — <i>Public Sector Management Act 1994</i> amended		
8.	Act amended	8
9.	Section 22A amended	8
10.	Section 29 amended	8
11.	Section 63 amended	8
12.	Section 67 amended	8
13.	Section 94 amended	9
14.	Sections 95A and 95B inserted	10
	95A. Termination of employment of registered employees	10
	95B. Inconsistent provisions, instruments and contracts	11
15.	Section 95 replaced	12
	95. Jurisdiction of Industrial Commission in relation to section 94 decision	12

Contents

	96A.	Jurisdiction of Industrial Commission in relation to section 95A decision	13	
	96B.	Review of this Part	14	
16.		Section 101 amended		14
17.		Schedule 5 amended		15
		Part 4 — <i>Salaries and Allowances Act 1975</i> amended		
18.		Act amended		16
19.		Section 10A inserted		16
	10A.	Tribunal to have regard to government financial matters	16	



Western Australia

Workforce Reform Act 2014

No. 8 of 2014

An Act to amend the following Acts —

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

[Assented to 20 May 2014]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Workforce Reform Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, 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

Estimates” or, if the regulations prescribe another part of those budget papers, that other part;

- (ii) any submissions made to the Commission on behalf of the public sector entity or the State government.

(2B) In subsection (2A) —

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

- (a) the most recent Government Financial Projections Statement that is —
 - (i) released under the *Government Financial Responsibility Act 2000* section 12(1); and
 - (ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title “Economic and Fiscal Outlook” or, if the regulations prescribe another part of the budget papers, that other part;
- (b) the most recent Government Mid-year Financial Projections Statement that is —
 - (i) released under the *Government Financial Responsibility Act 2000* section 13(1); and
 - (ii) made publicly available under section 9 of that Act;

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 authority (as defined in the *Public Sector Management Act 1994* section 5);

- (b) an enterprise order that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);
- (c) if the matters set out in subsection (2A)(a), (b) and (c) are relevant to the decision, any other decision that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);

public sector entity means either of the following —

- (a) a public sector body as defined in the *Public Sector Management Act 1994* section 3(1);
- (b) an entity that is —
 - (i) mentioned in the *Public Sector Management Act 1994* Schedule 1; and
 - (ii) prescribed by regulations made by the Governor;

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.
- (2C) The matters the Commission is required to take into consideration under subsection (2A) are in addition to any matter it is required to take into consideration under subsection (1)(d).

- (2D) Subsection (2A) —
- (a) does not apply in relation to —
 - (i) an order made under section 42G in respect of an agreement proposed to be made in substitution for an industrial agreement that specifies a nominal expiry date that is earlier than 1 November 2013; or
 - (ii) an enterprise order made in substitution for an enterprise order that provides for an expiry day that is earlier than 1 November 2013;
- but
- (b) except as provided in paragraph (a), applies in relation to any public sector decision in respect of a matter arising before, on or after the commencement of the *Workforce Reform Act 2014* section 4.
- (2E) Subsections (1)(d) and (2A) do not apply when the Commission is exercising its jurisdiction under section 50A.

5. Section 80E amended

Delete section 80E(7) and insert:

- (7) Despite subsections (1) and (6), an Arbitrator does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench the following —
- (a) any matter in respect of which a decision is, or may be, made under regulations referred to in the *Public Sector Management Act 1994* section 94 or 95A;

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

6. Section 80I amended

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

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

7. Section 80R amended

After section 80R(3) insert:

- (4) Despite subsections (1) and (3), the Board does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench the following —
 - (a) any matter in respect of which a decision is, or may be, made under regulations referred to in the *Public Sector Management Act 1994* section 94 or 95A;
 - (b) any matter in respect of which a procedure referred to in the *Public Sector Management Act 1994* section 97(1)(a) is, or may be, prescribed under that Act.

Part 3 — *Public Sector Management Act 1994* amended

8. Act amended

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

9. Section 22A amended

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

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

10. Section 29 amended

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

appointment, deployment and termination of employment

11. Section 63 amended

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

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

12. Section 67 amended

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;

s. 14

- (b) after paragraph (b) insert:
 - (ca) the revocation or suspension of registration of an employee;
 - (c) in paragraph (f) delete “who does not;” and insert:
who does not.
 - (d) delete paragraph (g).
- (4) In section 94(4)(b) delete “section 95(3), or the period referred to in that section” and insert:

section 95(2), or the period referred to in section 95(3)

14. Sections 95A and 95B inserted

After section 94 insert:

95A. Termination of employment of registered employees

- (1) In this section —
registered employee has the meaning given in section 94(1A).
- (2) The Governor may under section 108 make regulations providing for the following —
 - (a) the termination of employment of a registered employee, whether registered before, on or after the commencement of the *Workforce Reform Act 2014* section 14;
 - (b) the terms and conditions (including remuneration) which are to apply to a registered

employee whose employment is terminated under the regulations.

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

95B. Inconsistent provisions, instruments and contracts

- (1) In this section —
industrial instrument means an award, industrial agreement or order made under the *Industrial Relations Act 1979*, including a General Order made under section 50 of that Act, whether made before, on or after the commencement of the *Workforce Reform Act 2014* section 14.
- (2A) The provisions of this Part prevail, to the extent of any inconsistency, over any other provision of this Act other than section 7, 8 or 9.
- (2) The provisions of this Part and regulations referred to in sections 94 and 95A prevail, to the extent of any inconsistency, over any industrial instrument.
- (3) Regulations referred to in section 94 or 95A prevail, to the extent of any inconsistency, over the terms and conditions applying to an employee's employment under a contract of employment, whether entered into or renewed before, on or after the commencement of the *Workforce Reform Act 2014* section 14.

15. Section 95 replaced

Delete section 95 and insert:

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

- (1) In this section —
section 94 decision means a decision made or purported to be made under regulations referred to in section 94 (other than a decision which is a lawful order by virtue of section 94(4)).
- (2) A section 94 decision may be referred to the Industrial Commission —
 - (a) under the *Industrial Relations Act 1979* section 29(1)(a); or
 - (b) by an employee aggrieved by the decision,
as if it were an industrial matter that could be so referred under that Act.
- (3) A referral under subsection (2) must be made within the period after the making of the decision that is prescribed under section 108.
- (4) The *Industrial Relations Act 1979* applies to and in relation to a section 94 decision referred under subsection (2) as if the decision were an industrial matter referred to the Industrial Commission in accordance with that Act.
- (5) In exercising its jurisdiction in relation to a decision referred under subsection (2), the Industrial Commission must confine itself to determining whether or not regulations referred to in section 94 have been fairly and properly applied to or in relation to the employee concerned.

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

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

- (1) A decision made or purported to be made under regulations referred to in section 95A to terminate the employment of an employee or any matter, question or dispute relating to the decision is not an industrial matter for the purposes of the *Industrial Relations Act 1979*.
- (2) Despite subsection (1), a decision made or purported to be made under regulations referred to in section 95A(2), other than a decision to terminate the employment of an employee, may be referred to the Industrial Commission —
- (a) under the *Industrial Relations Act 1979* section 29(1)(a); or
 - (b) by an employee or former employee aggrieved by the decision,
- as if it were an industrial matter that could be so referred under that Act.
- (3) A referral under subsection (2) must be made within the period after the making of the decision that is prescribed under section 108.
- (4) The *Industrial Relations Act 1979* applies to and in relation to a decision referred under subsection (2) as if the decision were an industrial matter referred to the Industrial Commission in accordance with that Act.

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

96B. Review of this Part

- (1) The Minister must cause a review of the operation and effectiveness of this Part to be carried out as soon as is practicable after the 4th anniversary of the day on which the *Workforce Reform Act 2014* section 15 comes into operation.
- (2) The Minister must —
- (a) prepare a report based on the review; and
 - (b) cause a copy of the report to be laid before each House of Parliament.

16. Section 101 amended

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

(2) At the end of section 101 insert:

- (2) Subsection (1) does not apply in relation to compensation payable under —
- (a) the *Industrial Relations Act 1979* section 23A(6); or
 - (b) regulations referred to in section 94 or 95A if those regulations provide for a higher amount of compensation.

17. Schedule 5 amended

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

sections 94 and 95A,

Part 4 — *Salaries and Allowances Act 1975* amended

18. Act amended

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

19. Section 10A inserted

After section 10 insert:

10A. Tribunal to have regard to government financial matters

(1) In this section —

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

- (a) the most recent Government Financial Projections Statement that is —
 - (i) released under the *Government Financial Responsibility Act 2000* section 12(1); and
 - (ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title “Economic and Fiscal Outlook” or, if the regulations prescribe another part of the budget papers, that other part;
- (b) the most recent Government Mid-year Financial Projections Statement that is —
 - (i) released under the *Government Financial Responsibility Act 2000* section 13(1); and
 - (ii) made publicly available under section 9 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.

=====