



A•S•U
Australian Services Union

ASU Submission

WA Ministerial Review of the State Industrial Relations System

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Introduction

1. Nationally the Australian Services Union (ASU) is one of Australia's largest unions representing approximately 122,000 members.
2. The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.
3. Currently, ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:
 - Local government including municipal employees
 - Social and Community Services
 - State government
 - Transport, including passenger air and rail transport, road, rail and air freight transport
 - Clerical and administrative employees in commerce and industry generally
 - Call centres
 - Electricity generation, transmission and distribution
 - Water industry
4. The ASU has members in every State and Territory of Australia, as well as in most regional centres. Around 50% of ASU members are woman, the exact percentage varies between industries, e.g. in social and community services and clerical and administrative work around 70% of our members are women.
5. In 2011, the Western Australia Branch of the ASU formed the State union known as the Western Australian Services Union (WASU). WASU covers Railway Officers, Private Clerical, Social and Community Services (SACS) Workers and Local Government Officers and Municipal Employees. In effect WASU has industry wide coverage of Local Government, as well as the private sector clerical and administrative occupation and SACS industry. ASU and WASU are linked together by a Section 71 application as per the decision of WAIRC on 10 February 2011. The ASU and WASU operate through one Branch Executive Council.
6. The ASU has read and supports the UnionsWA submissions in response to the proposed recommendations.
7. The ASU in these submissions wish to focus on the following three recommendations:
 - **Term of Reference 1** – Review of the structure of the WAIRC with the objective of achieving a more streamlined and efficient structure.
 - **Term of Reference 6** –Devise a process for the updating of State awards for private sector employers and employees following certain objectives.

- **Term of Reference 8** – Consider whether local government employers and employees in Western Australia should be regulated by the State IR system and how this is best achieved.
8. The ASU notes the recent High Court Decision *Burns v Corbett*¹ and the effect this may have on the jurisdiction of the WAIRC. The ASU submits that wherever possible under constitutional law the State IRC should continue to have the power to declare the “true interpretation” of the Award binding on all (State) Courts as per s46(1)(a) and (3) of the IR Act. It is presumed that the State jurisdiction is only intended to apply to State system employers and not constitutional corporations which are otherwise National System employers.²

Term of Reference 1

Review the structure of the Western Australian Industrial Relations Commission with the objective of achieving a more streamlined and efficient structure.

9. The ASU submits that it supports the renaming of the current State Act to the: *Industrial Relations Act 2018 (WA)*. The title reconfirms continuity with what remains the most enduring legacy of the State IRC in common with other State IR jurisdictions: the efficiency and fairness of conciliation and arbitration based on a system of employee and employer representation through registered organisations.
10. The ASU notes the reference to a plain English drafting style in Recommendation 3 and cautions that drafting should involve Industrial Relations advocates/practitioners as much as legal practitioners so as to ensure that it is practical in its application and user friendly to employees and line management alike. ASU’s experience with the Fair Work Act and award modernisation has been generally negative and has resulted in a significant loss of minimum conditions. No matter how well intended, award modernisation/simplification results in workers losing conditions. At best it allows the introduction of inferior conditions with complex employee safeguards not clearly understood nor applied. It also comes at a huge cost stretching Union resources. The current drafting is tried and tested and should wherever possible be maintained.
11. In relation to Recommendations 4 to 17, the ASU strongly supports the current roles of the WAIRC Full Bench and President. Firstly, in relation to the WAIRC Full Bench it should retain the powers it has always had including the denial of contractual benefits jurisdiction and/or the interpretation of awards, orders and industrial agreements jurisdiction and there should be no change to current practice. As with most, if not all, other industrial tribunals in Australia’s history retaining a President’s role is critical to ensure continuity in policy and administration under the IR Act and to restrict any external political interference regardless of changes to the State Government.
12. At Recommendation 18, the ASU submits that parties should only in very limited circumstances be represented by legal practitioners before the WAIRC after permission is granted by the presiding Commissioner. The main criteria should be related to whether complex technical aspects of law are in dispute. Otherwise parties

¹ [2018] HCA 15

² *Fair Work Act 2009*, s14

in the greater majority of industrial disputes should be represented by IR advocates employed by registered organisations ie unions and employer associations.

13. In relation to Recommendation 19, the ASU is strongly opposed to the WAIRC having the power to make orders for costs, including legal costs. Industrial Tribunals have, in Australia's history, generally been 'cost free' jurisdictions being 'layman's courts' ensuring equity for all dispute parties in particular Award covered employees and small employers. Therefore, the ASU strongly supports: "*In no cases, so as the WAIRC remains a no costs jurisdiction in all matters*".³
14. The ASU supports WAIRC powers to issue summons for compulsory conference as currently provided for in s44 of the IR Act⁴ and for the WAIRC to conciliate and arbitrate an industrial matter that is referred to it as provided by the IR Act. The number of disputes settled in the past in this way reflects the essential role of the WAIRC.
15. At Recommendation 22, the ASU strongly supports the right of any party to obtain discovery and inspection of relevant documents held in possession, power or custody of any other party. Often employee disputes cannot be fairly resolved as employers retain all records of management decisions and communications, human resources/staff policies and employee records.

Term of Reference 6

Devise a process for the updating of State awards for private sector employers and employees, with the objectives of:

- (a) ensuring the scope of awards provide comprehensive coverage to employees;**
 - (b) ensuring awards reflect contemporary workplaces and industry, without reducing existing employee entitlements;**
 - (c) ensuring awards are written in plain English and are user friendly for both employers and employees; and**
 - (d) ensuring that any award updating process is driven by the Western Australian Industrial Relations Commission, with appropriate input from the award parties and other relevant stakeholders.**
16. The ASU does not support any review that follows the process of award modernisation conducted by the Fair Work Commission or creation of 'modern awards' which were a product of the passing of the *Fair Work Act 2009*. Any form of award modernisation would be costly and a drain on union resources. The state Government would need to fund Unions and UnionsWA to engage in this process.
 17. If the issue is that some industries or workers are now award free, then the ASU is of the view that current provisions of the Act⁵ enable the commission to deal with

³ Recommendation 19 c

⁴ Recommendation 20

⁵ Section 40 IR Act

scope, to vary or cancel awards. The Commission and unions just need to exercise their rights.

18. The ASU is currently engaged in a national ACTU co-ordinated “*Change the Rules*” Campaign as the Fair Work Act has, over time, significantly disadvantaged employees. We are reluctant to engage in any process that reflects the Fair Work Act and the creation of and review of modern awards was an exhausting process that in the end favoured employers and disadvantaged workers.
19. As a consequence the ASU is opposed to any transitioning (or deeming) of federal modern awards into the State IR system. In addition to the State Local Government awards referred to in paragraphs 24 and 25 the ASU submits the following State awards should be maintained:
 - Aboriginal Communities and Organisations Western Australian Interim Award 2011
 - Crisis Assistance Supported Housing Industry Western Australian Interim Award 2011
 - Social and Community Services (Western Australian) Award Interim 2011
 - Various State private sector ‘Clerks’ awards
20. The Commission and the WASU should be able to vary the scope of the above awards to ensure all employees of State System employers are ultimately award covered.⁶

Term of Reference 8

Consider whether local government employers and employees in Western Australia should be regulated by the State Industrial Relations System, and if so, how that outcome could be best achieved.

21. The ASU strongly supports all Local Government employers and employees being regulated by the State Industrial Relations system and is, from the ASU’s perspective, the main reason to support a new State system.
22. The reasons why all WA Local Government employers and employees should be in the State system are as follows:
 - Local Government was not intended to be governed by the Commonwealth Government and should ultimately be regulated by State Governments. The ASU submits that as per the *Constitution Act 1889 (WA)*⁷ local Councils and Shires are part of the arm of government constituted by “elected local government bodies” which are controlled by the provisions of the *WA Local Government Act (“LGA”)*.
 - Local Governments have many functions and responsibilities under WA State legislation and act as the governing body for each district. As found in *Ravensthorpe v Galea*⁸, the activities of the Shire must be viewed within the paradigm of its general function which, as set out in the LGA, is to govern a local district.

⁶ Section 40 IR Act

⁷ Section 52

⁸ 2009 WAIRC 01149

- Local Government regulated in the State system allows for continuity of service for employees transferring to State Government roles and vice versa.
 - Where the Fair Work Act conflicts with Western Australian Local Government Act the Federal Act prevails. This is problematic when applying State Government policy such as with the process of Council amalgamations under the Fair Work Act's transmission of business provisions.
23. The ASU submits that Local Government should have two separate and distinct awards covering the industry. The reasons for two Local Government industry awards in WA include:
- Historically Local Government in Western Australia, as in most States, has had at least two awards covering their employees.
 - The modern *Local Government Industry Award 2010* is a far inferior Award to the current Local Government State Awards and it is also a combined Award that the ASU submits is not fit for purpose.
24. Historically, Local Government in Western Australia has had two awards covering the broad spectrum of roles. *Local Government Officers' (Western Australia) Interim Award 2011* and *Municipal Employees (Western Australia) Interim Award 2011* were originally Federal Awards from 1999 until they were replaced by the modern *Local Government Industry Award 2010*, after a transitional period that ended in March 2011. Both State awards have continued to be used by Local Government Councils and Shires operating in the State IR system for the last 7 years. During that time no disputes have arisen from these Awards and this has ensured relative industrial harmony in councils under the state system.
25. The ASU therefore proposes that the two WA Local Government awards should be as follows:

Local Government Salaried Officers Award 2018

This award is proposed to cover all Local Government officers including (generally inside) office workers and salaried officers including but not limited to:

- Administration (including Customer Service) Officers
- Aged Care Employees
- Airport Officer
- Community Services Officer (Welfare and ancillary services - family support, services, income, welfare, employment, education, health, housing, children, youth, aged and domiciliary services)
- Community Services Officer (Recreation with such functions as recreation centre and swimming pool staff)
- Community Services Officer (Arts, Theatre and Museum)
- Coordinators and Supervisors
- Day Care Centre Employees
- Environmental Health Officers
- Finance and Accounts Payable
- Law Enforcement Officer including Security Officers and Rangers
- Library Employees
- Town Planning and Engineering

- Visitor Centre Employees (Tourism)
- Mechanics
- Store persons

Municipal Employees Award 2018

This award is proposed to cover wage based employees generally working outdoors and with trade qualifications including but not limited to:

- Cleaners
- Construction, Maintenance of infrastructure and Heavy Vehicle Operators
- Sporting Ground employees
- Parks and Gardens (Landscape, Gardening, Turf Management or Nursery person)
- Sanitation (Garbage collection, recycling plants and rubbish tips)

In particular, municipal workers, members and delegates employed at the depots need an award they can comprehend. A document that they can read and understand the conditions and entitlements that apply to them without confusion.

26. The ASU does not support the creation of a Local Government taskforce of various Departmental and representative organisations as per Recommendation 73. This would only prolong the period of transition of Federal System Employers and Enterprise Agreements to the State system. It would also come at considerable cost to both the Government and the union. Given the budgetary constraints brought on by the previous Government's spending spree, we think that this extravagant talk fest would be a waste of taxpayers' money. If the taskforce was to proceed then the ASU would require additional funding from the State Government to engage in that process.
27. The ASU proposes a process, similar to the Local Government transition process that applied in Queensland, recognising current registered industrial instruments, such as Enterprise Agreements, in the State system and as each agreement expires replacing them with State agreements. All councils without Industrial agreements would simply transition into the WAIRC which is where they should be now in any case based on the Ritter Interim Review findings thus far.
28. Unlike the employer advisor groups, ASU does not believe that there will be huge disruption to Local Government any more than there is now with Fair Work enterprise bargaining. The sky won't fall in and it won't be the end of the world. Local Government should, like all other States with State jurisdictions, have always been in the State jurisdiction.
29. Negotiating Enterprise Bargaining Agreements in Local Government under the Fair Work Act can be problematic and causes endless hostility in the workplace. For example, the City of Wanneroo replacement agreement took 16 months to negotiate, meeting every Thursday with 38 individual bargaining representatives at the negotiation table and going to the ballot four times. Senior management relied upon an external consultant and only engaged in the bargaining process within the last month. In the end, they decided to roll the agreement over; a total waste of time and a distraction from the core business of the council in providing services to the community. Local Government in Western Australia is a very good example of how the Fair Work system does not work.

30. The ASU does not see the value of a task force once the legislation has been drafted and the legislation should be written based on this report.

Conclusion

31. In this submission ASUWA / WASU has focused on terms of reference 1, 6 and 8. In addition to supporting UnionsWA's submissions after consultation with the AMWU, United Voice, SDA and CFMEU we also support their submissions.
32. With regard to term of reference 8, local government union members and delegates have passed resolutions as far back as 2009 to fight hard in each workplace to maintain industry standards which historically were captured in the state awards: *Local Government Officers' (Western Australia) Award 1999* and *Municipal Employees (Western Australia) Award 1999*.
33. Negotiations have not always been successful because of the very restrictive nature of bargaining under the Fair Work Act. Industrial consultants, employer advisers and law firms, with varying degrees of expertise in local government, have all benefited financially especially when negotiations are protracted.
34. Whilst councils are forever increasing rates for ratepayers, the persistent drive for lesser conditions for workers is, in general, not borne out of necessity but out of greed. A case in point is that during the Global Financial Crisis, six Councils lost tens of millions dollars overnight having invested in the long and short term global money markets⁹.
35. We conclude that advice given to local government councils in WA in industrial jurisdictional matters has been wrong and that was well known. Precedent was set in the *Etheridge*¹⁰ and *Ravensthorpe*¹¹ cases. The Fair Work Act and the federal jurisdiction suited the direction in which local government employer advisers wanted to take Western Australian local government authorities, that is with a deliberate intention of reducing workers conditions through the inferior *Local Government Industry Award 2010*. This constant attack on worker conditions has set local councils on a path of industrial disharmony for employees. This in itself has been disruptive and unproductive.

⁹ Michael Cole, *Review of NSW Local Government Investments: Final Report*, April 2008, p. 6.

¹⁰ *AWU(Qld) v Etheridge Shire Council* [2008] FCA 1268 (20 August 2008)

¹¹ *Shire of Ravensthorpe v John Patrick Galea*