



## Changes to state employment laws in WA

# Local government employers transferred to the state industrial relations system

As of 1 January 2023, all WA local governments and regional local governments are covered by the state industrial relations system. Local government employers previously operating under the *Fair Work Act 2009* (Cth) transferred to the state system on this date.

Prior to 1 January 2023, some WA local governments operated in the state system and others in the national system. The WA Government supports local governments, as part of the body politic of the State, being covered by state employment laws. For this reason, the *Industrial Relations Act 1979* (WA) (IR Act) was amended on 20 June 2022 to enable local governments to be covered exclusively by the state system.

The *Fair Work Act* contains a process to enable certain employers, including local governments, to be declared not to be national system employers. Using this process, the WA Government declared local governments not to be national system employers on 20 June 2022. This declaration was in turn endorsed by the Federal Minister for Employment and Workplace Relations. For more information see the [Fair Work \(State Declarations – employers not to be national system employers\) Endorsement 2022](#).

To facilitate the move to the state system, the IR Act includes transitional arrangements that recognise existing federal employment arrangements for a specified period. This gives affected employers sufficient time to comply with the IR Act and other state employment laws.

### State employment laws have changed

This fact sheet is part of a suite of information on the changes to state employment laws that commenced on 20 June 2022. For details on the changes visit [www.dmirs.wa.gov.au/new-employment-laws](http://www.dmirs.wa.gov.au/new-employment-laws).

## Transitional arrangements

If a local government was covered by a federal industrial instrument (**old federal instrument**) immediately before 1 January 2023, then that instrument becomes a state industrial agreement (**new State instrument**) under the IR Act. An old federal instrument means:

- a federal modern award;
- a federal enterprise agreement;
- a workplace determination; or
- an order of the Fair Work Commission.

The new State instrument has the same terms and conditions as the old federal instrument, although any terms and conditions that are less favourable than the *Minimum Conditions of Employment Act 1993* (WA) are of no effect.

The new State instrument has a nominal expiry date that is the earlier of the following:

- two years after 1 January 2023; or
- the nominal expiry date specified in the old federal instrument.

### Example 1

A local government employer has a federal enterprise agreement with a nominal expiry date of 30 June 2023.

On 1 January 2023, the local government employer's federal enterprise agreement (the old federal instrument) becomes an industrial agreement (the new State instrument) under the IR Act. The nominal expiry date of the new State instrument is 30 June 2023, in accordance with its terms.

### Example 2

A local government employer is covered by the national *Local Government Industry Award 2020* (the old federal instrument), which has no expiry date.

On 1 January 2023, the *Local Government Industry Award 2020* becomes an industrial agreement (the new State instrument) under the IR Act. The nominal expiry date of the new State instrument is 2 January 2025, which is two years after 1 January 2023.

Although a new State instrument has a maximum nominal term of two years, it continues to operate after its nominal expiry until a new agreement is made in substitution for it, or a union or employer party retires from it. There is also nothing to prevent the parties from negotiating and making a new agreement during the nominal term of a new State instrument.

While a new State instrument is in force, a state award under the IR Act does not apply for a period of two years beginning on 1 January 2023 (i.e. up until 1 January 2025). After this time, a state award could apply in conjunction with the new State instrument (although the new State instrument will prevail to the extent of any inconsistency).

## Continuity of employment and leave entitlements

An employee's continuity of employment and any leave entitlements accrued in the national industrial relations system are preserved and recognised in the state system. Transitional provisions in the IR Act provide that a period of leave taken under an old federal instrument is deemed to have been taken under a new State instrument.

## Amendment to new State instruments

A local government employer, employee or registered organisation may apply to the Western Australian Industrial Relations Commission (WAIRC) to amend a new State instrument. The WAIRC may make the amendment if it is satisfied it is fair and reasonable to do so in the circumstances. The amendment may be provided to take effect:

- immediately; or
- progressively, in stages specified in the amendment.

## Other transitional arrangements

A variety of other transitional arrangements are included in the IR Act, including provisions:

- enabling the WAIRC to deal with any matters that were underway in the national system prior to a local government transferring to the state system, e.g. a bargaining dispute; and
- enabling a state registered organisation of employees to be added as a named party to a new State instrument, if employees covered by the instrument are eligible to be members of the organisation.

The Commonwealth has also made regulations to enable:

- certain applications made under the *Fair Work Act 2009* prior to 1 January 2023 to continue to be dealt with under that Act (e.g. unfair dismissal and general protection applications);
- certain applications to be made under the *Fair Work Act* after 1 January 2023, where those applications relate to conduct that occurred before 1 January 2023.

For more information see the [Fair Work Amendment \(Transitional Arrangements – Western Australian Local Government Employers and Employees\) Regulations 2022](#) or call the Fair Work Commission on 1300 799 675 or the Fair Work Ombudsman on 13 13 94.

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