



Western Australian Industrial Relations Commission

Submission

Review of State Industrial Relations Commission

Introduction

The Australian Hotels Association WA Branch [AHA (WA)] represents employers and businesses in the Western Australian hospitality and tourism industry including hotel, tavern, restaurant and special facility licenses. The industry provides over 45,000 jobs, generates \$2 billion for the state economy, pays over \$200 million in taxes and contributes over \$20 million a year to charities and community groups.

Approximately 15% of AHA(WA) members are subject to the State Industrial Relations System. These members generally employ workers under the:

- Hotel and Tavern Workers' Award 1978
- Restaurant, Tearoom and Catering Workers' Award 1979
- Motel, Hostel, Service Flats and Boarding House Workers' Award 1976
- Club Workers' Award, 1976
- Clerks' (Hotels, Motels and Clubs) Award 1979
- Liquor and Accommodation Industry – Hotels, Resorts and Gaming – (Managerial Staff) – Award 2003).

In larger Accommodation properties, specialised trade Awards may also apply.

AHA (WA) is currently the respondent/party for the above Awards. The Association has hotel, accommodation, restaurant, club and motel members and as such, we submit to the Commission that we wish to be cited as the industry Association respondent/party to any proposed modern State Award encompassing hotels, accommodation, motels, clubs and restaurants.

This submission addresses issues on the review of the industrial relations system for Western Australia is made pursuant to the terms of reference.

Proposal

We welcome the opportunity to provide further comments to the Chairperson of the Review, should the need arise.

Key points to be implemented in the State Industrial Relations System

1. Modern Awards

The Federal review of the Award Modernisation by the Australian Industrial Relations Commission objectives were to reduce the number of Awards operating, promote flexible modern work practices and efficient and productive performance of work.

- Promoting the creation of jobs
- High levels of productivity
- Low inflation
- Not intended to increase costs for employers.

The Australian Industrial Relations Commission has basically dumped an Eastern States current Award onto the hospitality industry in the rest of Australia. Therefore, it is not a modern Award, does not promote creation of jobs or flexibility and has substantially increased costs to employers.

There is merit in Western Australia hospitality businesses being merged to create a single new Award to cater for flexibilities, increase in employment, job satisfaction, development of skills and no increases in costs for employers.

If the WAIRC was involved in the establishment of Award Modernisation, specific criteria relating to the establishments and a simplified state system of industrial relations should be included to:

- Have quantified or nil costs increases to employers
- Reduce the inflexibilities of the current Award structure
- Provide flexibilities of the workplace
- Review the penalty and overtime structure of Award to be simplified to have State Employment Standards by providing an economically, sustainable safety net of minimum wages and conditions and to be in plain English to be easily read and interpreted by employers and employees.

The question arises do we need the Award system or a modern Award review or just a State Employment Standards with 15 or 20 main entitlements for all Western Australian employees who are non constitutional corporations.

2. State Awards

State Awards should be written in plain English and be modernised to reflect current business operations. Therefore, is there a need for State Awards and should State Employment Standards apply.

Business operations change and industrial relations should provide a mechanism to encourage employment growth not to reduce or hinder employment of workers.

Within the hospitality sector in Western Australia, there are four Awards which encompass the majority of hospitality businesses. These Awards are:

- Hotel and Tavern Workers' Award 1978
- Restaurant, Tearoom and Catering Workers' Award 1979
- Motel, Hostel, Service Flats and Boarding House Workers' Award 1976
- Club Workers' Award, 1976

All four of the above Awards provide basically identical wages, penalty rates and associated Award entitlements. Therefore, it is highly possible that these four Awards could be combined and formed into one new Award named the 'WA Hospitality Award'. Furthermore, the Clerks' (Hotels, Motels and Clubs) Award 1979 could also be included in this Award.

To ensure no hospitality business is disadvantaged, Award responsiveness coverage should include those that are specified as above.

The hospitality Award entitlements such as provisions in rostering, overtime, hours of work etc needs to be adapted to modern times to ensure flexibility within the workforce and by employees.

Hospitality businesses can generally operate 24 hours per day, 7 days per week and is totally different from other industries such as the trades industry whereby they operate basically between 7am – 5pm Monday to Friday.

Hospitality is a service industry, and to provide service to customers, there must be flexibility within the operation hours of the business. Therefore, if a businesses core hours and primary main business is weekends and evenings, why should high penalties apply? If an employee only requests to work on a weekend because of their personal situation why should they receive an additional bonus by penalty rates on their ordinary hourly rate?

3. State Employment Standards

Why in this modern world do we have State Awards? There should simply be State Employment Standards for all workers in Western Australia. The State Employment Standards should include:

i. Minimum hourly rate of pay for:

- Adults over 21
- Juniors - percentage of the appropriate adult rate

Under 16 years of age	50
At 16 years of age	60
At 17 years of age	70
At 18 years of age	80
At 19 years of age	Full Adult Rates

- Apprentices – percentage of the appropriate adult rate

The minimum hourly rate would be automatically increased on the 1st January each year in line with the CPI from the previous year. There would be no need to arbitrate this decision.

ii. Hours

- **Full-time and Part-time employees**
 - Ordinary hours to be worked on day of the week
 - Minimum of 3 hours to a maximum of 10 hours worked within a 12 hour spread of shift.
- **Casual employees**
 - A casual shall be engaged and paid as such
 - A casual shall receive the minimum hourly rate of pay applicable plus 25% for all hours worked
 - A casual shall work no less than 2 hours in a work period and no more than 10 hours in one day.

iii. Overtime clause

- Each day to stand alone
- Applies in excess of 38 hours per week
- Ordinary hours not to worked on more than five days per week
- No more than 10 ordinary hours to be worked on a day
- Time and half for first two hours, double time thereafter
- Does not apply to casuals.

iv. Meal breaks

- Every employee shall have a meal break of at least 30 minutes
- An employee who works less than 7 hours in a shift may waive their right to a meal break by advising the employer that they did not want a meal break
- A meal break must be taken within 6 hours of commencement of their shift; or waived as per above if they work 7 hours or less in a day.

v. Termination of employment

- Notice period by employer – same as Federal legislation.
- Notice period – employee
 - Same as the above; or if contract states specific requirement
 - Failure by employee to give required notice period, the employer may

- Deduct monies from outstanding wages, or annual leave or long service leave or
- Initiate action for recovery through the Industrial Magistrates Court or Civil Court. Any costs incurred is at the expense of the employee
- A combination of both.

vi. Public Holidays

- The standard rate for working on a public holiday is at the rate of 250% of the ordinary hourly rate of pay
- A public holiday payment is made for on the actual day of the public holiday and not the substituted day
- An employee who not normally works on the day that is a public holiday is not entitled to be paid for that day
- An employee may only be directed to work on that public holiday if that day is normally a trading day for the business. An example if so directed to work, fails to work on that day, the employer may lawfully terminate his/her employment for failing to carry out a lawful instruction.

vii. Annual Leave

- To be same as prescribed in the Minimum Conditions of Employment Act
- Leave loading to be abolished except for shift workers. Shift works to be defined as an employee who works a combination of morning and afternoon and evening shifts, over 7 days of the week
- Where an employee is terminated for serious misconduct or abandons their employment or fails to work out the prescribed notice period, the employee forfeits all accrued annual leave up to a maximum of 152 hours
- Can be cashed out to a maximum of 76 hours per year, provided parties agree to this in writing.

viii. Personal leave

- Part 4, division 2 applies
- Section 22 to be added:
 - For each occasion an employee, including casual is absent from work for any reason, then a medical certificate is required for each absence. An employer may not pay an employee if a medical certificate is not provided to the employer within 24 hours of returning to work.

- ix. Parental Leave**
 - Same as Part 4, Division 6.
- x. Redundancy**
 - Same as Part 5.
- xi. Keeping of Records**
 - Same as Part 6.
- xii. Payment of Wages**
 - Employees to be paid within five working days of the pay period
 - Wages and salary has same meaning
 - An employer and employee may agree in writing to any deductions the employer may deduct from an employees' wage or salary
 - In the case of theft, the employer may withhold wages, salary, annual leave and long service leave entitlements to offset any allegation of theft.
- xiii. Long Service Leave**
 - Long Service Leave Act applies in its current form.
- xiv. Locations Allowances**
 - Location Allowance to remain but qualifications simplified
 - 100% allowance for full-time employees
 - Percentage of hours workers for casual and part-time employees
 - Percentage of age component of base rate for juniors/apprentices.

4. Unfair Dismissal

Exemptions for Unfair Dismissal claim:

a) Qualifying Period

An Unfair Dismissal application must not be made unless the employee concerned had completed a qualifying period of employment with the employer. The qualifying period of employment is 12 months.

b) Operational Reasons

An application for an Unfair Dismissal claim must not be made on the grounds that include that ground, if the employees employment was terminated for operational reasons or reasons that include operational reasons.

'Operational reasons' are reasons of an economic, technological, structural or similar nature relating to the employer's undertaking, establishment, service or business, or to a part of the employer's undertaking, establishment, service or business.

c) Small Business

An application for an Unfair Dismissal claim must not be made if, at the relevant time, the employer employed 25 employees or fewer (full-time equivalent), including:

- i. the employee whose employment was terminated; and
- ii. any casual employee who had been engaged by the employer on a regular and systematic basis for at least 12 months;
- iii. but not including any other casual employee who has been employed for less than 12 months.

There should be provision in the legislation to include:

- Vexatious claims
- Costs recovery
- Conciliation to be heard for all matters.

5. Employment Agreements

Employment Agreements both individually and collectively should be made available to employees to be implemented providing:

- a) Meet the State employment standards, minimum conditions of employment and be no less than any State Award that would apply to the employee if applicable.
- b) Be paid an agreed hourly rate of pay or a weekly salary that includes:
 - i. Penalty rates
 - ii. Additional rates
 - iii. Public holidays.
- c) Be agreed in writing between the parties.
- d) Once agreed by the parties, to be registered as a valid Agreement, each party is to:

- i. Have their original signed by a Justice of the Peace or by a Registry Officer at the WAIRC; and
- ii. Give a signed copy to the other party
- iii. The date signed by (i) above will be the operational date of the Agreement.

Employers should be able to negotiate directly with employees for individual or collective agreements.

6. Union Right of Entry

The key points of Division 2G of the Industrial Relations Act would be:

- i. 49G Define working hours – we say in 49H working hours is between the hours of 8.00am – 5.00pm
- ii. 49H Should specify notice and 49H(2) be abolished. Therefore we say, notice should be given at least 24 hours in writing, during business office hours. For seven day operations, business hours are defined as Monday to Friday
- iii. The authorised representative shall be allocated a location within the premises and must not divert from the direct route from reception to this nominated location.

7. Western Australian Industrial Relations Commission (WAIRC)

The WAIRC has historically played a major part of the industrial relations system in Western Australia, especially prior to WorkChoices in March 2006.

With the revolution of WorkChoices in 2006, Constitutional Corporations have opted out of the state system to the Federal system, therefore changing the structural requirements and needs of the WAIRC.

Do we need the WAIRC in its current format?

Our view is the WAIRC could be simplified and restructured depending on the review of the state system.

Briefly, our key points would be:

i. State Wage Increase

No need for WAIRC to determine this. If the state wage could be increased automatically at the CPI rate. This CPI rate would flow onto Awards, individual agreements and entitlements automatically.

ii. Arbitration on State Awards

Would not apply if you had State Employment Standards.

iii. Unfair Dismissals

The WAIRC would be involved but streamline the process. The process could be:

- Conciliation conference; and (if not resolved)
- Commission hearing (one commission person)
- No appeals to Full Bench or Industrial Appeal Court. Appeals directly to Supreme Court.
- Industrial Magistrates Court would be abolished and industrial breaches referred to Local Court and/or Magistrates Court.
- There is scope to change the process and regulatory burden of the WAIRC to streamline its functions, duties and role with the State Industrial Relations System.

8. Industrial Inspectors

Where an alleged breach is lodged to the Department of Commerce it is our view that the following process should be observed:

- i.** On receipt of the alleged breach of an Award or non-Award matter, the Department will allow the parties 21 days to try and resolve the matter between themselves
- ii.** If after 21 day period the parties have not resolved the matter, then an industrial inspector can investigate the alleged breach
- iii.** The investigation of the alleged breach to be unbiased and fair and equitable to the complainant and the respondent
- iv.** When the industrial inspector has finalised his investigation and if there appears to be a breach of the Act or Award, a mediation conference is organised between the parties with an aim of resolution

- v. Should this matter not be resolved at mediation, then the industrial inspector advises the applicant and complainant to take and initiate own action
- vi. Own action to be taken into the Local Court or Magistrates Court
- vii. Prior to this being heard in the Local Court or Magistrates Court, a conciliation conference is arranged by the court to try to resolve the outstanding dispute
- viii. If matter not resolved, then directed to hearing.

Is there a need for industrial inspectors?

If a modern Award process was initiated for the reduction or abolishment of the number of state Awards and the introduction of State Employment Standards, is there a need for industrial inspectors?

If an employee alleges underpayment of wages or entitlements, they should complete a prescribed form and lodge for example to the Local Court or Magistrates Court.

On receipt of the prescribed form, the Local Court or Magistrates Court directs the parties to a conciliation conference.

Should the matter not be resolved, the matter is listed for hearing at the Local Court or Magistrate's Court.

As a result of the above, there is no requirement to have in industrial inspectorate department.

9. Apprenticeships & Traineeships

One of the key concerns facing the Western Australian community now and over the next decade and beyond is securing sufficient skilled workers to meet the state's major infrastructure, growing population and economy and to increase tourism growth from both international and interstate travelers.

It is critical that the industrial relations arrangements continue and develop Apprentice and Traineeship arrangements that can quickly respond to labour market volatility and to support young people in developing a career in hospitality.

Apprenticeships, especially those aspiring to be chefs need to provided flexibility, be competency based and assessed in-house.

Therefore, any review must include a review of the Apprenticeships and Traineeships system.

Our members would prefer Apprentices to be assessed, evaluated and trained on the job rather than spending a day at TAFE. Our findings indicate under the current system, it is more cost efficient to employ a cook for five days than to have an Apprentice work four days and one day at TAFE.

Therefore, we seek that a review of not only industrial agreements but of our youth in Apprenticeships and Traineeships be also jointly conducted in any review of the state industrial relations legislation.

Recommendation

The review of the Western Australian Industrial Relations System should provide an outcome which working arrangements within a modern environment is encouraged to promote flexibility in the workplace, an efficient and productive performance of work, the development of skills and a fair labour market and no increase in operational costs for employers.

To achieve this, State Employment Standards should replace the anticipated Award system, and a review of the Industrial Relations Act to promote fairness and equity to employers and employees.