



## **CPSU/CSA Submission Independent Review of the State Industrial Relations System**

### **Introduction**

The Civil Service Association (CSA) was established in 1901. It is a state registered trade union. The Union has over 14500 members, the vast majority of whom are employed in the WA state government public sector. Employers within the sector range from traditional public service departments such as Treasury and Finance to statutory authorities like Perth Zoo.

The CSA has a counterpart federal body (s71 of the Act), the Community and Public Sector Union (SPSF Group, WA Branch). The latter operates in the federal system, representing our members under the jurisdiction of the *Fair Work Australia*.

The CSA covers a diverse range of occupations. This includes: accountants, engineers, scientists, child protection workers, Juvenile custodial officers, fisheries officers, dental clinic assistants, social trainers, residential hostel workers, school registrars, wildlife officers, auditors, architects, court staff, general clerical and administrative employees. This diversity is further demonstrated in that two CSA awards have one hundred (100) employers as respondents.

CSA awards / agreements influence the salaries and conditions of thousands of WA public sector employees. The Public Service Award (PSA) and Government Officers Salaries and Conditions Award (GOSAC), alone cover 30,000 employees. The CSA is a significant body within the WAIRC jurisdiction. It would be the Union most regularly accessing the Public Service Arbitrator (PSA) and Public Service Appeals Board (PSAB).

The CSA is experiencing sustained growth in membership, a trend occurring over the last five years. It is an organising, vibrant and highly democratic Union. It is a leader in the sector, heavily investing in delegate training, contributing submissions to Government reviews of the public sector and always promoting the benefits of a world class public sector to the WA community. Our members are fully aware that their current terms and conditions of employment are premised upon the collective power they now hold in the workplace.

Toni Walkington  
Branch Secretary

<b>Issue</b>	
<b>Multi Employer Bargaining</b>	<ul style="list-style-type: none"> <li>• There are ten (10) major CSA awards in the WAIRC jurisdiction.</li> <li>• Similar conditions exist across the awards, the CSA is currently negotiating with employers to reduce the number of awards</li> <li>• Two of these awards have multiple employers as respondents, PSA – fifty one (51) employers, and GOSAC – forty nine (49)</li> <li>• The majority of the remainder have single employer respondents</li> <li>• The terms and conditions of awards are amended by Industrial Agreements under s41 of the Act</li> <li>• The latter are enterprise bargaining agreements, known as General Agreements (GA's) in CSA areas of coverage</li> <li>• Therefore each major CSA award has a General Agreement having precedent over it and facilitating modern work practices across the sector</li> <li>• The GA negotiations in CSA areas of coverage consist of only one set of negotiations and the agreed outcomes are flowed onto all GA's.</li> <li>• To enable individual employers / employees to <u>further</u> align working conditions to localised operational needs Agency Specific Agreements (ASA's) provide additional flexibilities. The latter are also registered under s41 of the Act, and apply to the whole or part of an enterprise</li> <li>• ASA's do not amend the core conditions of public sector employment as specified in the GA's</li> <li>• ASA's can vary significant conditions, including but not limited to working hours and allowances</li> <li>• There has been a steady reduction in the number of ASA's since their inception in 2001. This has occurred as the initiatives / flexibilities sought within the ASA's were increasingly provided by overarching GA's. Ten (10) of the current ASA's ( in the WA TAFE sector) are mirror images of each other, but require individual registration as the employer is the board in each of individual TAFE.</li> </ul> <p><b>Attachment 1</b> provides a summary of the Awards, General Agreement and Agency Specific Agreements in CPSU/CSA coverage areas registered with the Western Australian Industrial Commission.</p>
<b>Role of the Awards in the Public Sector</b>	CSA awards do not reflect the minimalist nature of federal awards. The majority of contemporary terms and conditions of employment are listed in the awards.

	<ul style="list-style-type: none"> <li>• The CSA General Agreements (GA's) facilitate cooperative experimentation in public sector industrial relations. Employers and the Union use GA's as a vehicle to test out new initiatives for the duration of the GA. If successful, the initiative is later incorporated into the underlying award through s40 A of the Act.</li> <li>• The review of the WAIRC award system following the 2002 amendments to the Act facilitated award modernisation, the making of new awards and allowed awards to underpin collective enterprise bargaining. All CSA awards were modernised in that exercise. The latter was a cooperative process, involving the CSA, the then Department of Consumer and Employment Protection (DOCEP) and individual public sector employers.</li> <li>• The <i>Financial Management Act 2006</i> (FMA) imposes levels of accountability and transparency upon public sector employers. The latter refer to the comprehensive awards to ensure they have met their obligations to employees in compliance with FMA.</li> </ul>
<b>Individual flexibilities within a Collective Bargaining Framework</b>	<p>The current collective bargaining framework (CBF) for CSA Awards / GA's in the Unions area of coverage contains many examples of individual flexibilities, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Flexible working hours</li> <li>• Personal Leave</li> <li>• Change on normal span of hours</li> <li>• Additional employee purchased leave 44/52</li> <li>• Deferred salary scheme</li> <li>• Part-time employment</li> <li>• Study Leave</li> <li>• Access to pro rata LSL for older employees</li> <li>• Option of payment or TOIL for overtime</li> <li>• Working from home arrangements</li> </ul> <p>Given the multi employer responsiveness of the 2 major awards, PSA and the GOSAC, a mechanism has been established through the GA to allow for the individual needs of agencies to be accommodated. Where a need is identified the parties have negotiated Agency Specific Agreements (ASA). ASA's offer a further level of flexibility in relation to working hours, allowances, span of hours, time in lieu, annualised hours, out of hours call outs and other</p>

	<p>matters.</p> <p>The CPSU/CSA has been at the forefront in driving this change in the Awards and Agreements often meeting strong resistance from Government in the first instance. The flexibilities the Union have sought are documented through the Unions claims in successive rounds of bargaining. <b>(Attachment 2)</b> While we have achieved positive outcomes on the matters listed above Government has resisted introducing further flexibility into the system. The most pressing example of this was in the recent GA4 negotiations the Union put forward a proposal to allow for attraction and retention benefits to be negotiated under the auspices of the GA. This was vigorously opposed by Government.</p>
<p><b>Agency Based Collective Bargaining and Individual Agreements in the WA Public Sector in the 1990s.</b></p>	<p>The Court Government's wages policy required Agency level Enterprise Bargaining and the promotion of Workplace Agreements, rather than negotiations with Government as a whole. This caused a wide disparity of salaries and conditions entitlements paid to employees at the same level within an Agency/Department and across Agencies/Departments. There was a 29.5 per cent differential between the highest paid Agreement in the Public Sector and the lowest. There were in excess of 390 different employment agreements in CPSU/CSA coverage areas in the State Government. <b>(Attachment 3)</b></p> <p>High levels of pay were achieved in both Enterprise Bargaining Agreements (EBAs) and Workplace Agreements (WPAs) for a variety of reasons. Often it was because members took strong collective action, on other occasions it was because the Agency was cash-rich and had a reasonably supportive CEO and/or Minister. Agencies with a high male demographic often achieved good outcomes because of a greater propensity and willingness to trade off 'family friendly' conditions of employment.</p> <p>Our analysis suggests the gender pay gap in the Public Sector has increased as a result. This is supported by research analysing the outcomes in WA, <i>Mind the Gap: Gender Wage Differentials in the Public Sector</i> <b>(Attachment 4)</b></p> <p>The disparity of salaries and conditions has caused a number of difficulties with the mobility of employees between Agencies and Departments. The disparities act as an impediment to:</p> <ul style="list-style-type: none"> <li>➤ public sector career paths</li> <li>➤ to effective and flexible deployment of resources in the Sector</li> <li>➤ to difficulties with the attraction and retention of staff in agencies with low salary rates.</li> </ul> <p><b>Impact on the Sector</b></p>

	<ul style="list-style-type: none"> <li>• Differential in pay / conditions for officers undertaking same job in one agency (<b>Attachment 5 Bailey et al</b>)</li> <li>• Above caused problems in rostering of staff in WA police , consequentially WPA amended to reflect collective union agreement</li> <li>• Differential in pay / conditions for officers undertaking same job (social worker, clerical officer, line manager) in different agencies stymied transfers between agencies. This resulted in career paths and movement across WA public sector drying up. Latter effected organisational plans for renewal and succession planning</li> <li>• Some larger PS agencies (with bigger budgets) were able to provide adequate wages and conditions without drastically reducing current conditions to fund pay increases. Smaller agencies could not and as conditions deteriorated (to find savings to fund pay increases) their employees applied for jobs in larger agencies. In these smaller agencies working hours increased, and leave entitlements were reduced</li> <li>• Smaller agencies had significant problems attracting and retaining appropriate staff</li> <li>• Significant pay roll administration difficulties in managing the diverse and confusing range employment contracts. Underpayments, overpayments and delayed payments became points of industrial disputation</li> <li>• Disharmony within PS as certain benefits were provided to WPA employees (salary packaging) but not those undertaking exactly same job on Union collective agreement. Employee relationships became fractious</li> <li>• Allegations of cronyism and nepotism occurred as line managers offered over generous WPA's to favoured employees</li> <li>• Vast majority of public sector employees on WPA's never negotiated an agreement with their employer, a take it or leave offer was presented</li> <li>• New employees had to sign WPA to get a job</li> <li>• Employee consultation and participation in organisational change exercises was reduced or became non existent</li> </ul> <p>There was also significant resourcing implications for Government agencies in administering wages and conditions were there are multiple arrangements in any one agency.</p>
<p><b>Individual agreements in the public sector in 2009</b></p>	<p><b>Impact on the Sector</b></p> <p>The issues that occurred in the 1990s as a result of agency based bargaining and individual contracts have been addressed through the centralised wages bargaining characterised by the General Agreement negotiations. The reintroduction of individual contracts into the WA public sector would again result in the detrimental outcomes experienced for the sector in the 1990s.</p>

### **Political Commitments**

In the lead up to the State Election in 2008 Colin Barnett made a commitment to the people of Western Australia that he would not reintroduce individual contracts to WA.

*The agreements were introduced by the former Court Government and its Industrial Relations Minister Graham Kierath, who lost his seat of Riverton at the 2001 election. Labor reversed the changes in its first term of Government. Mr Barnett said the Liberal Party won't be producing an I-R policy before the election but he said there will be no return of individual contracts. No we're not, we're not going down that path," he said.*

<http://www.abc.net.au/news/stories/2008/09/01/2352182>

The community in Western Australia voted for the Liberal Party understanding that this was their policy position.

### **Future Directions of the WA State Government**

The Treasurer Troy Buswell released an Economic Audit Discussion Paper on the 31 July 2009. The discussion document deals with a range of issues but importantly in this context theme 5 deals with 'Modernising the Public Sector'. A number of the matters mentioned are detailed below

➤ *Halve the number of agreements operating in the public sector each year for two years. Simplify Award structures, agreements and allowances to reduce costs associated with managing multiple awards and specialist arrangements like specified callings; p12*

The introduction of individual agreements and or agency bargaining and/or flexibilities would seem to run contra to the intention to streamline the management of wages and conditions in Government. There are a number of questions in relation to the Governments capacity to manage the systems associated with multiple wages and conditions in the sector. These are detailed in relation to the operations of the Office of Shared Services in the following section.

➤ *Government implements a suite of measures to substantially increase the flexibility available to manage the public sector workforce, including measures related to recruitment, performance management and the movement of employees around and out of the sector.*

➤ *Improve the capacity to manage recruitment and deployment of staff across the sector; p13*

The capacity to move staff around the sector is undermined when different wages and conditions exist. The consequence of this is well documented when reflecting on the experience of the 1990s in the WA Public Sector. It is

	<p>clear that the intention of this Government is to promote greater flexibility in resource allocation and movement in order to deliver services to the WA community. Irrespective of how individual contracts are formed (ie underpinned by no disadvantage tests or award minimums), any movement to individual contracts will undermine the capacity for government to achieve the flexibility in staff deployment they are seeking.</p>
<p><b>Individual agreements in the public sector:</b></p> <p><b>Capacity for the Sector to Manage</b></p>	<p><b>Office of Shared Services</b></p> <p>In the current environment where agencies have or will have their pay roll systems administered through the Office of Shared Services (OSS) there is the potential for OSS having to administer hundreds of different employment arrangements in CPSU/CSA coverage areas alone if individual contracts are introduced. There have been significant issues with Shared Services Reform project many of which were detailed in the Report of the Auditor General to State Parliament in 2007, 'Shared Services Reform: A work in Progress'. The Executive Summary and the responses from agencies to the report can be found at <b>Attachment 6</b></p> <p>It is clear from the response by the Department of Treasury and Finance to the Auditor General's report that the integration of all three components (finance, procurement and human resources) is critical to OSS success. The Auditor General found the following:</p> <ul style="list-style-type: none"> <li>➤ <i>To date, only two of the three components of the integrated corporate services system have been established – finance and procurement.</i></li> <li>➤ <i>Successful development of the third component of the integrated system – human resource component – is under serious threat from a range of technical and management issues. A common integrated system with all three components is a critical element of the shared services reform.</i></li> </ul> <p>The Treasurer Troy Buswell has endorsed the continuation of the Shared Services Reform Program. The Treasurer released an independent report on progress of the Reform Program by Quadrant Group. The report found that the Reform Program had remained on track and met its milestones since the revised business case was approved in November 2007. The report also identified ongoing risks associated with the Reform Program and the importance of carefully monitoring these risks.</p> <p>In the recent negotiations with the CPSU/CSA the Government sought to minimise any differences between award and agreement wording in order to facilitate the OSS project. OSS has difficulties administering minor wording differences between awards. Given this it is clear that there will be significant issues if individual contracts are introduced in the</p>

	<p>WA public sector.</p> <p>In the latest newsletter of the OSS (Cannington) they reported that only 8000 of a potential 25 000 employees were currently been serviced of the Shared Service Centre. The Cannington Office will cover all public sector employees with the exception of those employed in Health or Education which have there own Shared Services arrangements in place.</p>
<p><b>Protected Industrial Action (PIA)</b></p>	<ul style="list-style-type: none"> <li>• PIA does not currently operate in the state IR system, this has not proven a hindrance for CSA or PS employers in successfully negotiating GA's</li> <li>• PIA operates in the federal IR system, but not for multi employer collective agreements for non low wage employees</li> <li>• As the CSA's (and some other state registered PS Union's GA's) cover multi employer agreements for non low wage employees, the current federal model adds little value to the state IR system</li> <li>• Some significant public sector terms and conditions of employment (for CSA members) sit outside of GA's. This includes, but is not limited to legislation, Government and Agency policy and Agency Specify Agreements (ASA's) registered in the WAIRC. Therefore, PIA if introduced to the WA public sector would need to cover potential disputes for each and every one of these terms and conditions. PIA could not be limited to GA bargaining.</li> <li>• The CSA is unaware of any CSA official (or member) being sued by a public sector employer due to industrial action</li> <li>• The current system in WA allows the CSA and public sector employers to quickly access WAIRC conciliation and arbitration services if industrial action is pending/occurring.</li> <li>• As the current system of conciliation &amp; arbitration is working well the level of industrial disputation in the PS is at an historical low, conversely the introduction of PIA will increase the use of industrial action as a bargaining tool</li> <li>• The pre 2002 WA labour relations regime included pre strike ballots- Part VIB of the Act. That Part was repealed in 2002. No prestrike ballots were ever conducted despite periodic industrial action in the state. The CSA see no reason to re introduce such a proposal. All industrial action (actual and impending) can be referred to the WAIRC.</li> <li>• The WAIRC jurisdiction includes the concept of good faith bargaining, s42B- the provision is similar to the FWA provision. s42B appears to have worked well for both public sector unions and employers. Prior to it employers / Unions had publically criticised the other before the WAIRC for refusing to negotiate in good faith.</li> </ul>

<p><b>Regulation in Public Sector Industrial Relations</b></p>	<p>A sensible level of regulation is required across the sector to ensure public funds are appropriately allocated and expended. These regulations should promote transparency and ensure accountability. Radical deregulation / self regulation will only lead to further scandals akin to the current salary packaging rort in WA public hospitals. The CSA has no coverage in WA public hospitals and the salary packaging regulations for CSA covered employees is different to that in the public hospitals.</p> <p>Essential services legislation</p> <ul style="list-style-type: none"> <li>• There is no current WA legislation prohibiting certain PS employees from involvement in industrial action</li> <li>• CSA members in essential service type occupations (Juvenile Custodial Officers, Social Trainers) maintain skeleton staffing rosters during industrial action. This practice also occurs for other essential service type occupations within the jurisdiction of the WAIRC</li> <li>• The current system in WA allows the CSA and public sector employers to quickly access WAIRC conciliation and arbitration services if industrial action is pending / occurring.</li> <li>• Urgent conferences before the WAIRC can be arranged by the parties at very short notice</li> <li>• Given the above the CSA see no need for essential services type clauses in the Act prohibiting certain employees from involvement in industrial action</li> </ul> <p>Public sector standards</p> <p>See references to public sector standards below- the CSA would prefer the regime to be dismantled and all such matters covered by Standards be within the jurisdiction of the WAIRC. Our members advise that the current PSS regime does not successfully resolve disputation between individual employees and their PS employer.</p> <p>Miscellaneous PS regulation</p> <p>Regulation of the PS (outside of legislation) derives from multiple sources: Premiers circulars, Departmental circulars, Administrative instructions, Approved procedures, Public sector standards and Public sector policies. The CSA would welcome an initiative to streamline this abundance of diverse regulation and maintain any future version in one context.</p>
<p><b>Conciliation and Arbitration</b></p>	<p>The CSA contend that arbitration and conciliation should not be limited to award and agreement making matters.</p> <ul style="list-style-type: none"> <li>• The CSA and public sector employers can currently access the full range of WAIRC conciliation and arbitration</li> </ul>

	<p>services for all “permitted” industrial matters</p> <ul style="list-style-type: none"> <li>• This service is not limited to issues related to DSP’s under GA’s / awards, bargaining for GA’s or other individual matters proscribed by a GA</li> <li>• Many significant public sector terms &amp; conditions of employment are not found in awards or GA’s. This includes, but is not limited to: classification systems, reclassification procedures, disciplinary and performance management regimes. If access to conciliation and arbitration services were limited only to GA related issues, an important vehicle for resolving these other industrial matters would be lost</li> <li>• The Public Service Arbitrator has a good track record in conciliating / arbitrating a diverse range public sector matters – first arbitration for Industrial Agreement pursuant to s42G of the Act, development of GA’s for multi employer agreements, salary packaging, and reclassification appeals</li> <li>• The arbitration pursuant to s42G demonstrated the useful level of deregulation and the sensible application of arbitration in the current system. The industrial parties were left to negotiate an agreement, this resulted in the majority of matters being settled, but a few issues were left unresolved. Given the impasse, the parties consented to arbitration over those remaining matters only.</li> <li>• The Public Service Appeals Board provides an informal conciliation service and a formal arbitration role. It has a good track record in conciliating / arbitrating on matters relating to discipline / termination</li> <li>• WA public sector employees are fully aware that when they were denied access to the WAIRC conciliation &amp; arbitration under the infamous WA Workplace Agreements regime, career paths disappeared, working conditions deteriorated, consultation was none existent and morale plummeted.</li> </ul>
<p><b>Definition of an industrial matter</b></p>	<p>The definition of industrial matter currently contained in the Act provides a mechanism for a wide range of issues to be resolved between the parties. This definition should not be limited to award / agreement matters for the reasons outlined below:</p> <ul style="list-style-type: none"> <li>• See above- Conciliation &amp; Arbitration- note the range of matters currently referable for both services</li> <li>• The current definition of “industrial matter” is a flexible tool allowing for diverse matters relating to the employment relationship to be heard by the WAIRC.</li> <li>• Any proposal to remove the collection of Union dues from the definition would be unhelpful. The relationship between PS Unions and the Government is cordial and business like. Levels of industrial disputation are historically low and a return to the 1990’s is in no party’s interest.</li> <li>• Any limitation of the definition to award / GA related matters will disadvantage the CSA and public sector employers. A range of public sector industrial matters falling outside of awards / GA’s will be beyond the</li> </ul>

	<p>WAIRC's jurisdiction with the parties losing an important vehicle to resolve disputes.</p> <ul style="list-style-type: none"> <li>• Industrial dispute relating to these non award / GA matters will have no formal context for resolution</li> <li>• This will result in the CSA seeking to amend awards / GA's to incorporate the "missing matters" in those instruments and facilitate access to the WAIRC</li> <li>• This would see detailed position descriptors being incorporated in awards / GA's, an action that would double the size of the relevant instruments. Further each and every other condition of employment not codified in an award / GA would be subject to a similar CSA application.</li> </ul>
<p><b>Public Sector Standards (PSS)</b></p>	<ul style="list-style-type: none"> <li>• PSS restrict access to the WAIRC on matters that would normally be referable to WAIRC</li> <li>• A wide range of public sector industrial matters are listed as PSS</li> <li>• This results in the majority of PSS being beyond the jurisdiction of the WAIRC</li> <li>• This disadvantages public sector employees as access to WAIRC is less than that of other WA employees</li> <li>• The above, the limited process matters examinable under PSS, and the inadequate enforcement / penalty regime, result in PSS being unpopular among public sector employees.</li> <li>• The review process provided under PSS regime is overly bureaucratic, cumbersome and is confusing to PS employees</li> <li>• PS employees have little faith in a process where the employer pays for a consultant to investigate a complaint against that employer</li> <li>• The limitations placed on the office of PSSC and PSS regime often results in industrial disputes left without resolution and consequential on going industrial disharmony</li> <li>• The CSA believe it would be better for public sector employees and employers if all industrial matters were referable to WAIRC. Transparency will increase as matters of substance and process will be heard. This will assist applicants in accepting the relevant outcome</li> <li>• Public sector workers only access the PSS regime as a last resort if the WAIRC is inaccessible and negotiation unavailable</li> </ul>
<p><b>Reclassification Process in the Public Sector</b></p>	<ul style="list-style-type: none"> <li>• Group and individual reclassification claims are an important element in the WA public sector employment. The exercise calibrates the changes in work value for individual occupations. This allows employers to change skill sets and functions, but facilitates the recognition of work value changes.</li> <li>• The reclassification process is referenced in the Act s80 E (2) (a), providing for an appeal and not in CSA Awards or GA's</li> </ul>

	<ul style="list-style-type: none"> <li>• Group classification issues have been the subject of significant past industrial disputation: e.g. school administration, social trainers, and specified callings</li> <li>• The current Act provides an adequate mechanism for resolving both individual and group reclassification matters</li> <li>• The WAIRC has successfully streamlined the process for reclassification hearings under s80E (2) (a) through practice notes.</li> </ul>
<b>WAIRC Structure</b>	<ul style="list-style-type: none"> <li>• The CSA would not object to the streamlining of the WAIRC. In particular the office and functions of the President and the functions of the Commission in Court Session should be reviewed. The functions of these bodies could be undertaken by the full bench.</li> <li>• The 2002 amendments to the Act have already streamlined and clarified the grounds of appeal to the Industrial Appeals Court.</li> </ul>
<b>Constituent Authorities</b>	<p>Public Sector Employees are treated differently to other employees under WAIRC jurisdiction. The legal sources of differentiation include specific legislation PSMA, subsidiary legislation such as redeployment &amp; redundancy regulations, approved procedures, and circulars.</p> <ul style="list-style-type: none"> <li>• PSAB / PSA provide a specialist service for the public sector. PSA / PSAB Commissioners are required to have PS specific knowledge / expertise</li> <li>• PSAB is a de novo jurisdiction unlike the main stream of WAIRC and has developed a unique series of PS precedents. It would be unhelpful to disturb this area of settled law. The latter provides clear guidelines for the practices of the CSA and PS employers</li> <li>• As PSAB cannot provide financial compensation in lieu of reinstatement for unfair dismissal (unlike mainstream of WAIRC), this anomaly should be removed on equity grounds</li> <li>• Individuals are currently able to access the PSAB , it focuses upon matters impacting on <u>individuals</u>, the CSA see no need change this process</li> <li>• The PSA is appropriate jurisdiction for PS employers / CSA to resolve <u>collective</u> industrial matters and should remain so. This is the reverse of the coin for an individual's right to access the PSAB. The PSA has good track record for settling public sector matters – eg first arbitration for Industrial Agreement pursuant to s42G &amp; development of GA's to cover multi employer Industrial agreements in PS</li> </ul>

	Any proposal to disband the PSA / PSAB and move CSA covered employees to the general jurisdiction of the WAIRC would be unhelpful unless the current level of access, relevant legal precedents, legal protections and PS specific expertise of the Commissioners was maintained.
<b>Alternative Authority</b>	<p>The CSA would not wish to see the powers and functions of the WAIRC ended. If this occurred our members would be the only PS employees in Australia without access to an independent industrial relations commission. The State Administrative Tribunal is not seen a suitable replacement for the WAIRC for the reasons outlined below:</p> <ul style="list-style-type: none"> <li>• The SAT has no relevant experience in conciliating and arbitrating industrial disputes across a whole industry (the PS industry)</li> <li>• It has some experience in resolving disputes within a limited area of vocational regulation</li> <li>• The SAT has experience and relevance to matters of administrative law, industrial law is a different area of law</li> <li>• We do not accept that the SAT has the same legal powers as the WAIRC in relation to interrogatories, interlocutories and discovery etc....</li> <li>• Interim orders are used by the WAIRC to stabilise an industrial situation prior to final arbitration, this prevents unilateral acts leading to gross unfairness. We doubt the SAT has the current power to do the same</li> <li>• The above is an example of how the WAIRC can and will act quickly to prevent the escalation of an industrial dispute. We doubt the SAT has the current power to do the same. The WAIRC can and does call the industrial parties before a compulsory conference within hours of the commission being notified.</li> <li>• The SAT has no experience in matters of PS job classification, reclassification and broad banding</li> <li>• The SAT has no experience in matters of PS award creation, maintenance, variation or modernisation</li> <li>• The SAT has no experience in matters of PS work related allowances, their creation, maintenance or variation</li> <li>• The SAT has no experience in matters of PS agreement negotiation, registration, maintenance, variation or modernisation</li> <li>• The SAT has no experience in matters of PS discipline or performance management</li> <li>• Currently the SAT emphasis the role of mediation in resolving disputes. The CSA has not found this medium very useful in relation to PS industrial disputes</li> </ul>
<b>Harmonisation of the Minimum Conditions of Employment</b>	<ul style="list-style-type: none"> <li>• As the minimum conditions set out in NES &amp; proposed modern awards do not align with the current provisions of MCE any proposed harmonisation would need to incorporate the higher of all the standards set by each relevant piece of legislation.</li> </ul>

<p><b>(MCE) with the Fair Work Australia National Employment Standards (NES)</b></p>	<ul style="list-style-type: none"> <li>• Any minimum category present in one of the source Acts, but not the other, would need to be identified as a new minima under the harmonised legislation. For example, the keeping of employment records and consultation at times of significant change are codified in the MCE but not as NES. Though similar provisions appear in <u>other</u> sections of the FWA</li> <li>• As the WA economy has demonstrated structural / cyclical differences from other parts of the Australia there is an argument for keeping a state based minimum rate of pay to meet the needs of state economy and employers / employees in the state system. This issue was widely canvassed in the 1995 <i>Review of the WA Labour Relations Legislation</i> and in the explanatory memorandum to the <i>Labour Relations Bill 2002 Attachment 7</i>. This role should remain with the WAIRC which has carried out the function in an increasingly open and transparent manner</li> </ul>
<p><b>Role of the Section 50 parties</b></p>	<ul style="list-style-type: none"> <li>• As Work choices transferred many WA based employers into the Federal system it is appropriate that employer organisations (CCIWA, Mines &amp; Metal Association) only retain special status (s50 &amp; s51) if they represent a significant numbers employers within WAIRC jurisdiction</li> <li>• New relevant replacements may need to be found if the concept of employer umbrella organisations continues</li> </ul>
<p><b>Unfair &amp; Unlawful dismissal</b></p>	<ul style="list-style-type: none"> <li>• The previous unfair dismissal regime prior to 2002 was cumbersome &amp; confusing. Some employees had to access to Industrial Magistrate's Court and others the WAIRC. Different rules, procedures and fees applied.</li> <li>• The CSA is unaware of complaints from PS employers re the current termination regime under the Act.</li> <li>• The CSA propose that the PSAB be given the power to award financial compensation in lieu of reinstatement as per the mainstream WAIRC. The PSAB exercised such powers until the late 1990's. Although reinstatement should remain the primary remedy for the employee, financial compensation in lieu may be required in certain circumstances.</li> </ul>
<p><b>Union ROE, record keeping &amp; inspection of records</b></p>	<ul style="list-style-type: none"> <li>• The CSA is unaware of complaints from PS employers re the current regime under the Act and see no need to change it. The exercise has been undertaken for many years without incident in CSA areas of coverage</li> <li>• The lack of Union access to workplaces under the previous state regime (WA Workplace Agreements) and the refusal / inability of DOPLAR / DOCEP to monitor compliance with legislation / employment contracts facilitated underpayments and working conditions below the MCE.</li> </ul>