



Labour Relations Newsletter

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In this edition:

- Subscribe to LR Resources
- Inquiry into the Fair Work Bill 2008
- Public sector gender pay gap in WA – 2008 reports in progress
- Role of LR in ILO matters
- Attraction and retention of women in the resources sector
- Jury composition – not really a trial by our peers
- Not-for-profit not a Constitutional Corporation

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On 1 January 2009 the Department of Consumer and Employment Protection (DOCEP) became the Department of Commerce.

The Department of Commerce will continue to provide the following services to stakeholders and the general community:

1. Monthly editions of the *Labour Relations Newsletter*.
2. Quarterly editions of the *Labour Market Bulletin*.
3. Copies of the *Award Newsletter*.
4. Copies of the *Wageline Newsletter*.
5. Advertisements of upcoming Departmental *seminars* and *campaigns*.

6. *Information on:*

- award variation and employment conditions;
- labour market statistics
- resources for public sector agencies;
- work life balance/ flexible workplace practices;
- pay equity;
- mature age employment; and
- small business advice and initiatives.

The *Labour Market Bulletin* provides an overview of the key measures of WA's labour market performance. It includes information relating to wages, employment growth, inflation, unemployment, labour market participation, industrial disputes and agreements. The *Award Newsletter* informs subscribers about changes to pay and conditions for the most common State awards while the *Wageline Newsletter*

provides practical information for employees and employers on developments in labour relations that may impact on employment rights and obligations.

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Inquiry into the Fair Work Bill 2008

The Senate, on 25 November 2008, referred the provisions of the *Fair Work Bill 2008* to the Senate Standing Committee on Education, Employment and Workplace Relations for inquiry and report by 27 February 2009.

The Committee invited written submissions to be provided to the inquiry by 9 January 2009 and has conducted public hearings from 11 December 2008.

The WA Government responded to the Committee's invitation by making a written submission to the inquiry. In addition the Hon Troy Buswell MLA, Minister for Commerce, represented the WA Government at a public hearing on 29 January 2009.

The WA Farmers Federation Industrial Association, Employment Law Centre of WA, Chamber of Commerce and Industry WA, National Union of Workers, National Aquaculture Council and Unions WA also gave evidence at the hearing.

A copy of the [Government's submission](#) and further information on the [Fair Work Bill](#) can be obtained from the Parliament of Australia's website:

(<http://www.aph.gov.au/index.htm>).

Public Sector Gender Pay Gap in WA – 2008 reports in progress

Western Australia has a gender pay gap (GPG) of 28%, which is the highest GPG in Australia, and significantly higher than the National GPG of 16%¹. In 2007 the Department of Commerce Pay Equity Unit undertook the first analysis of the GPG of the 26 largest government agencies to determine the extent of the GPG within the public sector. The 2007 report was based on data for the financial year ending June 2006.

With the 2007 report serving as a benchmark, the exercise was repeated in 2008. The third series of reporting is currently in progress and will shortly be released. The data to be released indicates an average GPG in the 26 largest public sector agencies of 12.2% for the year ending June 2008, as compared to 13.0% for the year ending June 2006.

As part of the current exercise each of the largest agencies will receive an individual Pay Equity Report containing basic data on the GPG within their agency; the GPG in some occupational groups; the number of female workers; and the incidence of part-time work. These are compared to the WA public sector average for each of these fields.

The aim of these reports is to encourage public sector agencies to undertake detailed pay equity audits to identify and address pay inequity. The standard reports provide a general overview of the GPG of organisations. Organisations can reveal the specific areas which need attention (such as specific age groups, different occupations or particular salary ranges) by

¹ ABS Average Weekly Ordinary Time Earnings (AWOTE) 6302 August 2008 (quarterly trend data)
Calculated as Female AWOTE / Male AWOTE x 100%

conducting a detailed payroll audit following the generation of the initial reports.

The Pay Equity Unit encourages both public and private sector agencies to make use of the simple, automated [WA Pay Equity Audit Tool](#), which is available through www.payequity.wa.gov.au

Role of LR in ILO matters

Australia has been a member of the International Labour Organisation (ILO) since the ILO was founded in 1919. Within an international framework, the ILO works with employers, employees and governments to set minimum international labour standards. Australia is part of the Asia-Pacific Government Group of ILO members. The Department of Commerce Labour Relations Division (LR) plays an important role in meeting Australia's reporting requirements to the ILO.

LR utilises its knowledge of industrial relations matters and experience in dealing with employment protection stakeholders to prepare reports on ILO Conventions with other Divisions of the Department of Commerce. ILO Conventions cover a range of topics from safety and health to employment protection and discrimination. Most recently, LR contributed to a report on WA's compliance with *Convention 138, Minimum Age Convention*. Although Australia has not yet sought to ratify this convention the reporting process demonstrated that WA has comprehensive protections for children in employment.

In 2008 Perth hosted the annual ILO Technical Officers Meeting. Technical Officers from state and territory governments met with representatives from the Federal Department of Education, Employment and Workplace Relations to discuss conventions for ratification and reporting requirements. Four Department of Commerce Officers attended, including

Emma Forrest from LR. The 2009 Technical Officer's meeting will be hosted by Victoria.

The ILO is undergoing significant reform to improve its relevance, efficiency and capacity to influence and respond to rapid political, social and economic changes around the world.

ILO Conventions can be found at <http://www.ilo.org/ilolex/>

Attraction and retention of women in the resources sector

In December 2008 the Chamber of Minerals and Energy of Western Australia released a report entitled *Attraction and Retention of Women in the Western Australian Resources Sector*.

The report found that there is recognition amongst resources companies of the importance of gender diversity in the workplace, and that successful company diversity policies and practices are associated with improved business performance by reducing costs and increasing profitability through:

- access to a broader recruitment pool;
- improved attraction and retention of employees;
- improved corporate public image as a preferred employer because of demonstrated commitment to a harassment free workplace and implementation of work life balance initiatives;
- improved workplace behaviours;
- higher workplace morale and company loyalty;
- improved decision-making and more creative problem solving;

- improved productivity; and
- improved safety and equipment handling.

The report outlines 10 'Positive Practice Principles' for the attraction and retention of women and includes a number of case studies of organisations implementing strategies to increase the representation of women within their workplaces.

Attracting and retaining women across all industries is essential to meeting the long term workforce needs of Western Australian business. Ongoing demographic change, particularly with the ageing of the workforce, will create long term demand for skilled and experienced employees.

The report and associated materials are available at www.cmewa.com.au

The composition of juries

The Law Reform Commission of WA has requested that jury compositions be reviewed. Richard Hooker, an independent barrister, will provide recommendations to Attorney General Christian Porter by the middle of 2009.²

Currently, the *Juries Act 1957* prohibits lawyers, members of parliament, justices of the peace, police, executive-level bureaucrats and anyone over 70 years of age from serving on a jury.

In addition, dentists, veterinarians, psychologists, nurses, chiropractors, physiotherapists, pharmacists, osteopaths, priests, pregnant women, anyone over 65, and adults who have primary care of children less than 14 years of age can avoid jury duty.

² Chris Thomson 'Pensioners a target in government jury probe', watoday.com.au, 8 January 2009.

The draft recommendations prepared by Mr Hooker are expected to be available for public comment in the coming months.

Not-for-profit not a Constitutional Corporation

A "constitutional corporation" refers to a trading or financial corporation pursuant to section 51(xx) of the Commonwealth Constitution.

In *Aboriginal Legal Service of Western Australia (Inc) v Lawrence [No. 2] WASCA 254 (10 December 2008)* the Western Australian Industrial Appeal Court (the Appeal Court) has found that the Western Australian Aboriginal Legal Service (ALS), a not-for-profit incorporated association which provides legal services to Aboriginal Western Australians, is not a constitutional corporation. This decision is significant as non-constitutional corporations and their employees are covered by the State industrial relations system, rather than the federal system.

In this decision the Appeal Court considered an appeal by the ALS from a decision of the Full Bench of the Western Australian Industrial Relations Commission, which found that the ALS was not a trading corporation. The Appeal Court majority, with Le Miere J. dissenting, dismissed the appeal and affirmed the position that the ALS was not a constitutional corporation.

In determining the ALS not a constitutional corporation, the Appeal Court majority (Steytler P. and Pullin J.) considered the ALS's constitution, its activities, the nature of its funding arrangements and the contract entered into with relevant government departments.

The ALS' objects are to provide direct relief to all Aboriginals from poverty, suffering, destitution, misfortune, distress and helplessness. It relies almost entirely on

government funding to operate. Its primary activity is the provision of legal services.

The Appeal Court majority found that Commonwealth funding changes from a grant arrangement to a competitive tender process did not change the ALS's nature, as the tender was not based upon competitive prices. Importantly, the Appeal Court did not rely on the fact that the legal services performed by ALS were not done to make a profit. Instead the Appeal Court considering all the factors and determining that the work done by the ALS was not seen to be commercial in character.

Alternatively, Le Miere J. in dissent concluded that the ALS was a trading corporation as its activities of providing legal services were, by their nature, trading activities. He found that the ALS carried on its activities in a "business-like way" and that the fact that it was not-for-profit, altruistic in its objectives and received Commonwealth funding did not negate the fact that it was involved primarily in trade.

The decision highlights continuing uncertainty as to whether certain employers are "constitutional corporations", particularly in the not-for-profit, community services and local government sectors. It can often be difficult to ascertain whether an employer's trading or financial activities are "sufficiently substantial" for it to be considered a constitutional corporation.

Click [here](#) to access a full copy of the decision

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