



Our ref: 2017/18933

Mark Ritter SC  
Ministerial Review of the State Industrial Relations System  
Level 4, Gordon Stephenson House  
140 William Street  
PERTH WA 6000

Dear Mr Ritter

## **MINISTERIAL REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM**

Thank you for the opportunity to provide feedback on the Interim Report on the Ministerial Review of the State Industrial Relations System.

On review of the recommendations and submissions to the Terms of Reference that has been undertaken, I would like to provide some following comments:

1. I note the proposal that the Department of Communities (the Department) submitted in our letter dated 22 December 2017 has been considered and addressed in the proposed recommendations. The Department appreciates the consideration and inclusion of its recommendations, as the proposal of allowing employees access to a consistent and common industrial relations framework will be beneficial for both employees and employers.
2. The current unfair dismissal process can be overly complex, particularly for employees who are unfamiliar with such processes. The Department would be supportive of a more streamlined, less complex process; one that will allow employers and employees the opportunity to identify their respective issues and resolve any outstanding matters. The current practice of parties engaging lawyers or advocates from the outset has contributed to what is often an overly adversarial process.
3. The Department has reservations in allowing the Western Australian Industrial Relations Commission (WAIRC) to have jurisdiction on hearing matters relating to the Public Sector Standards. The current system of the Public Sector Commission (PSC) having the jurisdiction to review any potential breaches is appropriate. If such matters are referred to the WAIRC, costs to the Department as well as the employee will increase, and a more adversarial approach to resolution will be created. The outcomes available within the current PSC process are considered appropriate and if such matters were to be heard by the WAIRC, the possible outcomes could be broadened, which may have a negative impact on the Department.

It is also considered that should the WAIRC deal with PSC breaches, this could impede the ability to enact the actions (i.e. appoint an employee to a position) given the timeframes experienced in the WAIRC in the past.

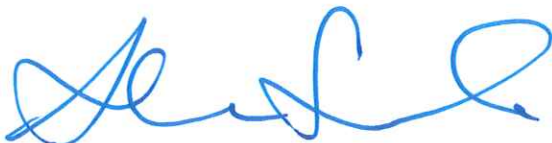
In addition to reviewing the process, the suggestion that the WAIRC ought to also review the merit of the matter raises concerns. A review of whether a proper process has been undertaken is quite easy to identify through such a process, however, trying to determine the merit of the matter (i.e. was the right person appointed to the advertised position) is more difficult and could be considered rather subjective. Accordingly, the Department suggests that the process for breach of Public Sector Standard claims remains as it currently stands.

4. The Department's view is that it would be beneficial if there were more options available to the WAIRC and employers to finalise matters. The current options are rather restrictive and if more options were available, it is likely there would be fewer matters being referred to a hearing. It would however be important that if alternative options are considered, that any unintentional consequences (such as more people submitting applications for a payout) are also identified and taken into account. It may also be beneficial if these options were available to all employees, regardless whether they are public servants or government officers.

Following consultation with the Disability Services division of the Department (the Division), a determination has been made that it would not be appropriate to provide public comment on recommendations 37 and 39 in Term of Reference 4, or to paragraph 43 of the same Term of Reference, due to a perceived conflict of interest, as the Division is a funder of disability services.

Thank you for the opportunity to provide feedback on the Interim Report. If you would like to discuss these matters in more detail, please contact Anna Gillespie, Manager Human Resources, on 9222 2911 or [anna.gillespie@communities.wa.gov.au](mailto:anna.gillespie@communities.wa.gov.au).

Yours sincerely



Grahame Searle  
**Director General**

 May 2018