

Government Sector Labour Relations

Shaping a contemporary government sector workforce

Circular 5/2025 – The Impact of Legislative Amendments on Industrial Agreement Flexible Working Provisions

Application

1. This Circular applies to all Western Australian public sector employers.

Background

2. The *Industrial Relations Legislation Amendment Act 2024* (WA) received Royal Assent on 13 November 2024. This resulted in several amendments to the *Industrial Relations Act 1979* (WA) and *Minimum Conditions of Employment Act 1993* (WA) (MCE Act) effective from 31 January 2025.
3. Part 4A of the MCE Act introduces the ability of certain categories of employees to request a flexible working arrangement (FWA) as a minimum condition of employment.
4. Many public sector industrial agreements already contain procedures for considering and responding to FWA requests that generally align with the MCE Act requirements.
5. Notwithstanding, there may be instances where the MCE Act is superior to industrial agreement provisions.
6. For example, 39J of the MCE Act – which mandates that an employer refusing an FWA request is required to set out changes in working arrangements it is willing to make to accommodate an employee's circumstances – is not reflected in clause 23.9 of the *Public Sector CSA Agreement 2024*.

Instruction to Agencies

7. To ensure consistency with the MCE Act, all public sector employers must:
 - a. ensure responses to employee FWA requests made under industrial instruments comply with the MCE Act;
 - b. for avoidance of doubt, and when refusing a FWA notification/request, employers must document any alternative changes it is willing to make to support the employee's circumstances; and
 - c. maintain documentation of the decision-making process to ensure procedural fairness can be demonstrated.
8. GSLR will coordinate the updating of industrial agreements to reflect the changed statutory amendments.

Further advice

9. Please contact your [Labour Relations Adviser](#) should you require further information.



Alex Lyon | Executive Director
Government Sector Labour Relations

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