

Module	WA STATE GOVERNMENT
Jurisdictions	WA
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Module Scope

Employment

Does the public sector employer comply with its obligations in relation to employment, industrial relations and related matters?

Does the public sector employer comply with the requirements of the Industrial Relations legislation when bargaining for, varying, renewing or cancelling an industrial agreement?

Does the public sector employer comply with the Minimum Conditions of Employment legislation to ensure that the employee is provided with flexible work arrangements which they are entitled?

Governance

What are the laws that establish and prescribe the governance requirements for agencies in the Western Australian public sector?

Do public sector employees carry out their functions and exercise powers in a manner that allows them to discharge the duties they owe in their official capacity, while adhering to Western Australian State Government policies, guidelines, and standards of conduct?

Does the government agency keep, maintain, test and review business continuity plans and procedures to ensure that the agency is equipped to respond and recover following an incident?

Reporting, Record Keeping and Information Security

Has a Western Australian State Government agency or related person complied with all reporting, record-keeping and information security requirements that are set out in the relevant Western Australian legislation?

Has the government agency body complied with all of its non-financial record-keeping and reporting requirements?

Has a government agency and all relevant persons within the agency complied with all financial record-keeping and reporting requirements?

Resource Management

Does the government agency comply with its obligations in relation to the proper management of the financial and physical resources under its control?

Does the government agency prepare and maintain a financial management manual?

Does the government agency ensure that public money, statutory authority money or other money it receives is deposited to the credit of a relevant bank account, and only used for permitted purposes?

Module Application

The Western Australian State Government Entities module has 4 sub modules:

- Employment
- Governance
- Reporting, Record Keeping and Information Security
- Resource Management

Employment

The EMPLOYMENT sub module informs any Western Australian public sector employer about their obligations related to employment and industrial relations matters. “Public sector employer” includes government departments, statutory authorities and organisations.

Western Australian public sector employers and their employees derive their rights and responsibilities largely from three key pieces of state legislation;

The Public Sector Management Act 1994 (WA) (the PSMA); The PSMA sets out the general principles of public administration and management to be observed by the public sector generally;

The Industrial Relations Act 1979 (WA) (the IRA)

The Minimum Conditions of Employment Act 1993 (WA) (the MCEA)

The EMPLOYMENT sub module covers general obligations relating to employment and industrial relations in the sector;

Management positions;

Recruitment processes;

Employment and training contracts;

Industrial agreements;

Remuneration and work hours;

Leave and flexible work arrangements;

Managing superannuation obligations and contributions;

Public sector career management;

Fair treatment in the workplace;

Terminating employment;

Industrial action;

Workers compensation including providing suitable employment to an injured worker as and when required;

Record keeping.

The sub module also covers more specific obligations derived from the PSMA which direct Western Australian public sector employees to have as their goals;

continued improvement in the efficiency and effectiveness of their performance;

the most efficient and effective use of available resources;

proper standards of financial management, accounting and record keeping;

standardised human resource management principles;

standardised principles of conduct that are to be observed by all public sector employers and employees.

The minimum conditions of employment for all Western Australian employees are derived from the MCEA and include;

Minimum wages;

Maximum hours;

Minimum leave conditions;

Minimum conditions for employment changes with significant effect; and

Through a system of awards, industrial agreements and employer-employee agreements the IRA imposes additional obligations which act to supplement the minimum employment conditions and responsibilities. They include;

Prevention and resolution of conflict in respect of industrial matters;

Mutual rights and duties of employers and employees;

The rights and duties of organisations of employers and employees;

A collective bargaining process for employers, employees and employee organisations to bargain in relation to employment conditions that go beyond the conditions contained in the MCEA;

Processes for the handling of industrial disputes and the taking of industrial action;

Employee rights to fair treatment in the workplace, including protection from bullying and discrimination;

Defined powers and procedures of industrial tribunals, including the Western Australian Industrial Relations Commission.

The EMPLOYMENT sub module also covers the role of the Public Sector Commission (PSC) which is a central government agency that works with every government public sector employer. The PSC carries out a range of functions, including:

Enhancing the human resource management capability of the public sector; and

Providing strategic advice and tactical support in relation to various matters, including organisational design and capability, workforce policy and legal issues.

The public sector employer is obligated to establish and document processes and procedures to ensure that it remains compliant with all laws and regulations. The module advises the public sector employer with regard to;

Complying with the requirements of the collective bargaining process, including when negotiating and handling disputes in relation to a proposed industrial agreement;

The Senior Executive Service is appointed and managed in accordance with relevant legislation and circulars;

Documenting the basis upon which each employee is employed, ensuring the arrangement complies with requirements relating to the type of employment agreement utilised and any period of probation applicable in the circumstances;

Adhering to the extensive requirements relating to remuneration and working hours in respect of employees, including complying with the terms of any applicable award or industrial agreement;

Providing employees with their applicable leave entitlements and access to flexible work arrangements;

Appropriately managing employee conduct and educating its employees regarding their ethical obligations as public service officers;

Ensuring the workplace is free from bullying and discrimination and facilitates an appropriate work-life balance for employees;

Ensuring employment relationships are lawfully terminated as required, in compliance with obligations relating to, for example, the giving of notice or the payment of compensation in lieu of notice;

Comply with all applicable procedures and orders of the Western Australia Industrial Relations Commission, and cooperate with any lawful inspection of the employer's workplace;

Take out and maintain workers' compensation insurance;

Make required superannuation payments in respect of relevant employees.

The module also covers the obligation of public sector employers to;

Document and distribute the requisite procedures;

Provide ongoing training to employees on their rights and responsibilities in relation to the procedures;

Ensure relevant employees are appropriately monitored to ensure the procedures are complied with on an ongoing basis;

Ensure that the procedures are regularly reviewed for their effectiveness.

The EMPLOYMENT sub module also covers instances of breaching obligations and the range of consequences that the public sector employer may be subject to under the legislation for failure to comply with its obligations. The range of consequences include;

Cautioning the employer;

Requiring the employer to comply with the industrial instrument;

Imposing fines.

The EMPLOYMENT sub module's primary focus is on the rights, responsibilities and obligations of public sector employers and employees. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable WA state legislation applying to both private and public sector employment.

Governance

The GOVERNANCE sub module informs the Western Australian public sector of their legislated legal obligations to provide effective governance. The module demonstrates effective practical advice and assistance to the public sector to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the Western Australian public sector.

The public sector includes government departments, statutory authorities and government organisations. The GOVERNANCE sub module should be subscribed by all Western Australian government public sector entities.

The broad scope of the GOVERNANCE sub module is to provide answers to these questions for the WA public sector entity;

What are our legal obligations?

From where are our legal obligations derived?

How can we ensure that we are complying with our obligations?

What are the consequences if we do not comply with our obligations?

The GOVERNANCE sub module covers all legislated governance obligations of Western Australian public sector entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the WA public sector entity.

The three main areas that are comprehensively covered in the GOVERNANCE sub module are;

The legislative and regulatory landscape from which the primary governance obligations are derived;

Auditor General Act 2006 (WA);

Emergency Management Act 2005 (WA);

Public Interest Disclosure Act 2003 (WA);

Parliamentary Commissioner Act 1971 (WA);

Public Sector Management Act 1994 (WA);

Financial Management Act 2006 (WA);

Royal Commissions Act 1968 (WA);

Corruption, Crime and Misconduct Act 2003 (WA); and

Strategic Asset Management Framework (SAMF).

The governance legal obligations or duties imposed on WA public sector entities;

The duties of officials specifically Chief Executive Officers, Chief Employees, Chief Finance Officer, the employing authorities and accountable authorities;

Codes of conduct;

Training; and

Public sector standards and codes of ethics.

Proper conduct and use of position especially with regard to;

The duty to not improperly use position or information;

Proper contact with registrants and lobbyists;

The duty to notify misconduct; and

Communication arrangements.

Risk management planning and framework;

Establish risk management framework; and

Business continuity planning.

Budget management;

Authorisation and making of payments;

Loans;

Appropriate use and retention of money;

Managing supplementary funding; and

Managing assets.

Financial administration;

Administration of agency special purpose accounts;

Managing trust money;

Collecting and handling money; and

Review of fees and charges.

Investigations and Inquiries;

Complying and co-operating with the ombudsman;

Complying and co-operating with the corruption and crime commission; and

Complying and co-operating with the public sector commission.

Providing information and access to auditors for internal audit

Performance planning and reporting;

Key performance indicators;

Annual reports; and

Statements of compliance.

Emergency situations;

Policy and planning;

Co-operating with authorities; and

Hazard management.

Obtaining adequate insurance

Establishing a register of guarantees and indemnities.

Managing public interest disclosures;

Investigating;

Taking actions;

Notifying; and

Protection

The consequences that can be applied to WA public sector entities and employed individuals that are found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach. The GOVERNANCE sub module covers specific consequences in detail. They can include

monetary penalties and even terms of imprisonment for individuals committing serious criminal offences.

The GOVERNANCE sub module's primary focus is on the legal obligations and duties of Western Australian public sector entities relating to effective and compliant governance. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable WA state legislation which in many cases applies to both private and public sector entities.

Reporting, Record Keeping and Information Security

The REPORTING, RECORD KEEPING AND INFORMATION SECURITY sub module informs the Western Australian public sector of their legislated legal obligations relating to reporting, record keeping and information security. The module demonstrates effective practical advice and assistance to the public sector to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the Western Australian public sector.

The public sector includes government departments, statutory authorities and government organisations. The REPORTING, RECORD KEEPING AND INFORMATION SECURITY sub module should be subscribed by all Western Australian government public sector entities.

The broad scope of the REPORTING, RECORD KEEPING AND INFORMATION SECURITY sub module is to provide answers to these questions for the WA public sector entity;

What are our legal obligations?

From where are our legal obligations derived?

How can we ensure that we are complying with our legal obligations?

What are the consequences if we do not comply with our legal obligations?

The REPORTING, RECORD KEEPING AND INFORMATION SECURITY sub module covers all legislated reporting, record keeping and information security obligations of Western Australian public sector entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the WA public sector entity.

The three main areas that are comprehensively covered in the REPORTING, RECORD KEEPING AND INFORMATION SECURITY sub module are;

The legislative and regulatory landscape from which the primary reporting, record keeping and information security obligations are derived;

Auditor General Act 2006 (WA);

Disability Services Act 1993 (WA);

Electricity Corporations Act 2005 (WA);

Financial Management Act 2006 (WA);

Freedom of Information Act 1992 (WA);

Industrial Relations Act 1979 (WA);

Parliamentary Commissioner Act 1971 (WA);

Public Interest Disclosure Act 2003 (WA);

Public Sector Management Act 1994 (WA);

Rules of the Supreme Court 1971 (WA);

State Records Act 2000 (WA);

Public Sector Commission's Annual Reporting Framework;

Sector Commissioner's Circulars, Guidelines, Approved Procedures;

Financial Administration Bookcase – Treasurer's Instructions;

Australian Accounting Standards - Board Standards;

Premier's Circulars; and

Office of the Government Chief Information Officer Policies.

The reporting, record keeping and information security legal obligations or duties imposed on WA public sector entities;

Non-financial record keeping and reporting;

Annual report on compliance;

Workforce data;

Intellectual property;

Information sharing;

Breaches;

Special enquiries; and

Employment records.

Financial record keeping and reporting;

Official losses;

Annual financial reports;

Evaluation reports; and

The abolition of agencies.

Complying with the Treasurer's Instructions;

The authorisation of payments;

Payment records;

Records of assets;

Employment, attendance, time worked and pay records;

Financial management manuals;

Shortages and surplus funds;

Retention of accounting records;

Department accounts;

Write-offs;

Resource agreements;

Loan indebtedness;

Registers;

Statements of compliance;

Agency reports;

Key performance indicators;

Related party disclosures;

Explanatory statements;

Certification of financial statements;

Financial statements;

Estimates; and

Revaluation of non-current physical assets.

Record keeping processes and access to documents;

Parliamentary departments;

Governments organisations;

State records;

Recovery of records;

Reporting; and

Outsourcing

Collection, use and disposal of personal information;

Access;

Amendments;

Information Commissioner reports;

Management of complaints; and

Publication of information on agencies.

Public interest disclosure;

Obligations of the person to whom a disclosure is made;

Protection for a person making a disclosure;

The duties of a principal executive officer; and

Code of conduct and guidelines.

Privacy, data protection and business continuity;

Business continuity and disaster recover policy;

Digital security policy;

Digital services policy;

Interoperability policy;

Cloud policy; and

Open data policy.

Reporting on disability services;

Access and inclusion plans; and

Reporting to the Director and the Council.

The consequences that can be applied to WA public sector entities and employed individuals that are found to have breached or not complied with their legal obligations. These consequence vary considerably depending on the nature and extent of the breach. The WA – REPORTING, RECORDING KEEPING AND INFORMATION SECURITY module covers specific consequences in detail. They can include monetary penalties or even terms of imprisonment for individuals committing serious criminal offences.

The REPORTING, RECORD KEEPING AND INFORMATION SECURITY sub module's primary focus is on the legal obligations and duties of Western Australian public sector entities relating to effective and compliant reporting, record keeping and information security. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable WA state legislation which in many cases applies to both private and public sector entities.

Resource Management

The RESOURCE MANAGEMENT sub module covers obligations of the West Australian State Government departments, sub-departments, agencies and statutory authorities that are involved in the management of financial and physical resources which come under the control of the state. Employees, members and officers of all public authorities have obligations that are covered in this module.

The RESOURCE MANAGEMENT module informs WA state government and government authorities regarding processes and procedures as well as a required review process to ensure compliance with its obligations in relation to the proper management of the financial and physical resources under its control in the areas of;

- › financial management;
- › procurement;
- › management of contracts;
- › asset management;

- › developing and managing investment proposals;
- › strategic asset plans and related support plans;
- › liability; and
- › managing Intellectual property.

There are obligations on individuals either employed or contracted to the public service and charged with duties relating to;

- › keeping accounts;
- › dealing with money;
- › disbursing public money; or
- › dealing with public property.

These obligations and directions to ensure compliance are covered by the WA RESOURCE MANAGEMENT module.

To ensure compliance with all relevant legislative and regulatory requirements there are obligations relating to the close monitoring of systems and procedures from the establishment and implementation to regular review processes and remedial actions to be taken to avoid breaches or non-compliance. The RESOURCE MANAGEMENT sub module informs all individuals and government departments involved in this process and also the penalties which may be applied.

There is an obligation for staff to be provided ongoing training to ensure compliance regulation. If a public service officer fails to comply with resource management obligations then the employing authority may deem that to be substandard performance in the execution of their duties. Depending on the nature of the breach non-compliance may constitute misconduct, fraud, or corruption and in serious matters potentially may attract criminal penalties;

- › acting corruptly or failing to act;
- › taking advantage of their position to benefit themselves or another person;
- › a public service officer found guilty of fraud or corruption may be personally subject to fines or imprisonment;
- › a public service officer in control of money may be liable to pay back lost funds unless the officer has taken reasonable steps to prevent the loss.

There are specific, additional obligations that apply to Chief Executive Officer's (CEO's) and Chief Employee's (CE's) and some different consequences for breaches or incidents of non-compliance. These specific, additional obligations are not covered in the RESOURCE MANAGEMENT sub module.

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