

## AMENDOLA REVIEW OF THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS SYSTEM

### Background

1. On 13 August 2009, the Employment Law Centre of WA (Inc) (**ELC**) made a submission to the Department of Commerce (**DOC**) in relation to the Amendola review of the Western Australian industrial relations system (**ELC Amendola Review Submission**). The ELC Amendola Review Submission is annexed to this document and marked Annexure 1.
2. DOC has requested that ELC consider the structure and contents of state awards, the provisions of the *Minimum Conditions of Employment Act 1993 (WA)* (**MCE Act**) and ELC's clients' experiences with Western Australian Industrial Relations Commission (**WAIRC**) and Wageline.
3. ELC sets out its views below.

### Summary

4. ELC confirms its views set out in the ELC Amendola Review Submission.
5. Further, ELC supports reforms which result in a fair, simplified system of workplace relations. The reforms should include:
  - (a) streamlining the award system;
  - (b) enacting a single piece of legislation dealing with workplace relations in Western Australia including comprehensive minimum employment standards;
  - (c) retaining specialised tribunals (such as the WAIRC and Industrial Magistrates Court (**IMC**)) and services (such as DOC's Wageline); and
  - (d) providing employees with access to a flexible no costs jurisdiction for enforcement of claims.

### Awards

#### *Recommendations with which ELC agrees*

6. ELC broadly supports the proposition set out in recommendation 58 that state awards should be modernised.
7. The state awards currently suffer from various problems which make it difficult to interpret the awards and to determine their application. For instance, many awards are not drafted in clear language and key terms are often not defined or are not used consistently.
8. ELC agrees with the suggested option set out in recommendation 58(a) – that an award modernisation process be undertaken by the WAIRC.
9. ELC is of the view that the WAIRC is best placed to undertake an award modernisation process, given that the WAIRC has years of experience dealing with disputes in relation to

state awards. It is ELC's view that the WAIRC would be better placed in this regard than, for instance, the government and a Core Sector Review Taskforce (as suggested as another option by Mr Amendola). Further, ELC submits that a process undertaken by the WAIRC would be perceived to be more independent than a process undertaken within government.

10. ELC agrees with the bulk of the recommendations relating to the nature of the award modernisation process. ELC agrees with:
  - (a) recommendation 59 – that the award modernisation process be completed within a set period of time from receipt of the request and direction;
  - (b) recommendation 60 – that interested parties be able to make submissions during that period;
  - (c) recommendation 61 – that the Labour Relations Division of the DOC assist in the process;
  - (d) recommendation 62 – that the public sector be nominated as an industry division, encompassing public sector functions which might otherwise be covered by other industry divisions;
  - (e) recommendation 67 – that once core sector awards are in operation, the government produce composite documents which set out the State Employment Standards and the relevant, if any, core sector awards, upon request by an employee or an employer;
  - (f) recommendation 68 – that section 55 of the *Fair Work Act 2009* (Cth) (**FW Act**) (which provides for the interaction between the National Employment Standards and modern awards or enterprise agreements) be adapted and adopted in respect of core sector awards (and agreements under the new Act);
  - (g) recommendation 69 – that section 45 of the FW Act (which provides that a person must not contravene a term of a modern award) be adapted and adopted.
11. ELC agrees with recommendation 63 – that once core sector awards come into operation, current awards and enterprise awards should cease to operate. However, ELC is of the view that it may be appropriate for there to be a transitional period in which the core sector awards are phased in and the current awards and enterprise awards are phased out.
12. ELC agrees with the proposition set out in recommendation 64 that the core sector awards should be reviewed periodically. However, ELC is of the view that it would be preferable for the review mechanism not to be triggered automatically every four years.
13. ELC agrees with recommendation 66 to the extent that it means that there should be a capacity to cancel awards *in the process of* making and reviewing core sector awards. ELC is of the view that there should not be a capacity to cancel awards outside of this process.
14. ELC agrees with recommendation 70 to the extent that it proposes that there be a model dispute resolution clause in the core sector awards. ELC agrees that subclauses 1, 2, 3 and 4 should be included as part of a model dispute resolution clause but is of the view that subclause 5 should not be included. Further, ELC submits that the following subclause should also be included:

*Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure that the dispute is settled.*

15. ELC agrees with recommendation 71 to the extent that it proposes that section 40A of the *Industrial Relations Act 1979 (WA) (IR Act)* (which provides for the incorporation of industrial agreement provisions into awards by consent) not be retained. ELC is of the view that it is preferable for there to be a broad power to apply for the core sector awards to be varied instead.

#### *Recommendations with which ELC disagrees*

16. ELC disagrees with recommendation 58(b) – that an award modernisation process be undertaken by the government, following a report from a Core Sector Review Taskforce. ELC is of the view that it would be preferable for such a process to be undertaken by the WAIRC, for the reasons set out in paragraph 9.
17. ELC disagrees with recommendation 65 – that other than in respect of Minimum Wage Orders and to deal with incidental and technical matters, there be no capacity to vary core sector awards in between reviews.
18. ELC disagrees with recommendation 64 to the extent that it proposes that a review of the core sector awards be triggered by a Ministerial direction every four years. ELC is of the view that there should be a review periodically but that this review should not be triggered automatically every four years, as outlined above in paragraph 12.
19. As outlined above in paragraph 14, ELC agrees with the proposition in recommendation 70 that there be a model dispute resolution clause in core sector awards, but does not agree that subclause 5, as proposed in recommendation 70, should be included in the model dispute resolution clause.
20. ELC disagrees with recommendation 71 to the extent that it proposes that section 46 of the IR Act not be retained in the new system.
21. Section 46 provides that the WAIRC may declare the true interpretation of an award and by order vary any provision of the award for the purpose of remedying any defect in the award or of giving fuller effect to the award.
22. Mr Amendola asserts that it is preferable for a court rather than the WAIRC to interpret awards in this manner. However, ELC is of the view that the WAIRC is better placed than a court to interpret awards, given that the WAIRC has specific expertise in this area. Further, ELC notes that although Mr Amendola recommends that this provision not be retained, he does not recommend that a provision be inserted into the state legislation allowing a court to interpret awards in this manner.

#### **Minimum employment standards**

23. ELC has considered Mr Amendola's recommendations in relation to statutory minimum conditions of employment.
24. ELC reiterates its view that there should be a single piece of legislation dealing with workplace relations in Western Australia.
25. ELC submits that the legislation should be simplified and drafted in plain English. For example, the word 'cumulative' is used throughout the MCE Act. In ELC's experience, people applying the MCE Act's provisions to their workplaces often misunderstand this word. "Entitlements under this section carry over from week to week" would be more easily understood.

26. Except where otherwise stated, ELC generally considers that the substance of the provisions within the MCE Act should be retained.
27. ELC submits that section 17D of the MCE Act should be amended to reflect sections 324, 325 and 326 of the FW Act.

*Recommendations with which ELC agrees*

28. ELC agrees with recommendation 30 – that the subject matter of the State Employment Standards deal with unpaid trial work, minimum wages and their adjustment, SWS for disabled employees in open employment, reasonable hours of work, payment of wages, annual leave, personal leave, parental leave, public holidays, minimum conditions of employment, changes with significant effect and redundancy, notice of termination, redundancy pay, a record keeping provision and a generic type of employment provision. However, ELC submits that provisions in relation to deductions from wages, flexible working arrangements and payslips should also be included.
29. ELC agrees with the bulk of the recommendations relating to leave. ELC agrees with:
  - (a) recommendation 34 – that cashing out of annual leave provisions apply to employees across the board and that the terms of section 94(1)-(4) of the FW Act be appropriately adapted and adopted in that regard;
  - (b) recommendation 37 – that section 89 of the FW Act (a provision relating to the interplay between paid annual leave and public holidays) be adapted and adopted;
  - (c) recommendation 38 – that section 23 of the MCE Act (a provision relating to annual leave accrual) be retained in preference to the equivalent provision in the FW Act. However ELC considers that section 23(2) of the MCE Act should be amended so that entitlements accrue pro rata on a daily, rather than weekly, basis;
  - (d) recommendation 39 – that annual leave for shift workers be dealt with in core sector awards and agreements under the new Act, where appropriate;
  - (e) recommendation 40 – that personal leave be called personal/carer's leave;
  - (f) recommendation 43 - that section 19(2) of the MCE Act be retained in preference to the similar provision in the FW Act. However ELC submits that section 19 of the MCE Act should be amended so that entitlements accrue pro rata on a daily, rather than weekly, basis;
  - (g) recommendation 45 – that the FW Act provisions relating to compassionate leave be adapted and adopted, in lieu of the current bereavement provisions in the MCE Act;
  - (h) recommendation 46 - that cashing out of personal leave be available to employees across the board and section 101(2) of the FW Act be appropriately adapted and adopted in that regard;
  - (i) recommendation 47 - that the provisions in the FW Act dealing with parental leave be adopted in lieu of the current parental leave provisions in the MCE Act;
  - (j) recommendation 48 - that the relevant provisions of the current *Juries Act 1957 (WA)* and Part 9 of the *Emergency Management Act 2005* be signposted in the State Employment Standards provisions of the new Act;

- (k) recommendation 49 – that section 30 of the MCE Act be retained in preference to the similar provisions in the FW Act;
  - (l) recommendation 50 – that part 5 of the MCE Act be retained;
  - (m) recommendation 51 – that the notice of termination provisions in the FW Act be adapted and adopted;
  - (n) recommendation 52 – that the Centrelink notification provisions in the FW Act be adapted and adopted; and
  - (o) recommendation 54 – that the provisions in the FW Act dealing with redundancy be adapted and adopted - but not with the first 4 qualifications expressed by Mr Amendola.
30. ELC agrees with recommendation 56 – that the current definition of “employee” in the MCE Act be reviewed in respect of the new legislation. Further, it is ELC’s view that the exclusions listed in the *Minimum Conditions of Employment Regulations 1993 (WA) (MCE Regulations)* in relation to commission only, percentage reward and piece rate workers should not apply. Additionally, the exclusion in the IR Act in relation to persons engaged in domestic service in private homes should not apply.
31. ELC agrees with recommendation 57 - that section 44 of the FW Act (a provision relating to enforcement of entitlements) be adapted and adopted insofar as it concerns section 44(1) of the FW Act. ELC considers the issue of enforcement in further detail at paragraphs 68 to 71 below.

*Recommendations with which ELC disagrees*

32. ELC disagrees with a number of recommendations in relation to the State Employment Standards. Specifically, ELC disagrees with:
- (a) recommendation 31 – that section 9B of the MCE Act be retained in preference to similar provisions in the FW Act;
  - (b) recommendation 32 – that an employer be permitted to withhold monies from accrued entitlements where that is provided for in a core sector award or agreement under the new Act;
  - (c) recommendation 33 – that section 25 of the MCE Act (a provision in relation to taking annual leave) be retained and amended to reflect the provisions of sections 88, 93(3) and (4) and 94 of the FW Act;
  - (d) recommendation 35 – that section 24 of the MCE Act be replaced with a provision generally requiring an employer to pay out any period of untaken paid annual leave when the employee’s employment ends;
  - (e) recommendation 36 – that provision also be made to allow an employer to withhold payment for unused leave:
    - (i) for any period of service less than 12 months where the employee’s employment was terminated as a consequence of serious misconduct; or
    - (ii) where the employee failed to give sufficient notice pursuant to the MCE Act or his or her industrial instrument;

- (f) recommendation 41 – that the notice requirements in section 107 of the FW Act be adapted and adopted;
- (g) recommendation 42 – that provision be made that an employee is not entitled to be paid personal leave unless that employee has provided the requisite notice or the employer has agreed to provide the leave despite the employee's failure to provide notice;
- (h) recommendation 44 – that section 98 of the FW Act (a provision in relation to the interplay between personal leave and public holidays) not be adopted; and
- (i) recommendation 53 – that permanent employees be required to provide employers with at least one week's notice of termination, failing which the employer may withhold monies equivalent to the notice the employee failed to provide, from either the wages or accrued leave owing.

33. ELC disagrees with recommendation 55 insofar as it recommends that the provisions in 3.31 to 3.44 of the *Fair Work Regulations 2009* (Cth) (which relate to record keeping) be adapted and adopted. Rather, ELC considers that the record keeping provisions in the IR Act should be adopted.

#### *Long Service Leave Act 1958 (WA)*

- 34. ELC submits that the *Long Service Leave Act 1958* (WA) (**LSL Act**) should be simplified and drafted in plain English.
- 35. Except where otherwise stated, ELC generally considers that the substance of the provisions within the LSL Act should be retained.
- 36. ELC submits that the LSL Act should be amended to provide that where an employer pays an employee in lieu of requiring the employee to work out a notice period, the period in respect of which payment was made counts as continuous service for the purpose of accruing long service leave.

#### **Unfair dismissal**

##### *Recommendations with which ELC agrees*

- 37. ELC agrees with recommendation 146 – that there not be a Small Business Dismissal Code.
- 38. ELC agrees with recommendation 151 – that whilst reinstatement should be available as a remedy, the issue of remedy should be left to the discretion of the tribunal.
- 39. ELC agrees with a number of dot points under recommendation 153. Specifically, ELC agrees that provisions about the following are appropriate:
  - (a) dot point one – definitions of dismissed and unfairly dismissed;
  - (b) dot point 3 – provisions for an application to be made within a certain time by an applicant, that applicant being the dismissed employee, and for an extension of time to file in appropriate circumstances;
  - (c) dot point 4 – provision for the determination of jurisdictional questions before or after conciliation;

- (d) dot point 5 – a provision preventing multiple actions as a result of the dismissal;
- (e) dot point 7 – provisions setting out factors to which an industrial tribunal must have regard in considering whether a dismissal was harsh, unjust or unreasonable; and
- (f) dot point 8 - provisions setting out criteria for deciding amounts of compensation including having regard to any misconduct by an employee which contributed to the employer's decision to dismiss in determining an amount of compensation - insofar as it provides for provisions setting out criteria for deciding amounts of compensation.

*Recommendations with which ELC disagrees*

40. ELC disagrees with:

- (a) recommendation 145 – that there be an exemption for small business from unfair dismissal laws and that there be a qualifying period of either 6 or 12 months for employees before they become eligible to make an unfair dismissal claim;
- (b) recommendation 147 – that a remuneration cap apply;
- (c) recommendation 148 – that the exemptions set out in section 386(2) of the FW Act be adapted and adopted, together with section 386(3) of the FW Act;
- (d) recommendation 149 – that section 389 of the FW Act be adapted and adopted, although not section 389(2)(b);
- (e) recommendation 150 - that the definition in section 40(1) of the MCE Act be adopted; and
- (f) recommendation 152 – that the compensation cap for an unfair dismissal be set at either 3 or 4 months.

41. ELC disagrees with a number of dot points under recommendation 153. Specifically, ELC disagrees with:

- (a) dot point 2 – provision for a matter being listed for conciliation following receipt of an application, such conciliations to be conducted by a registrar;
- (b) dot point 6 – provision allowing for costs orders to be made if a party or their representative behave unreasonably, once an unfair dismissal application has been heard and determined;
- (c) dot point 9 – provisions making it clear that compensation cannot include a component for shock, distress or humiliation, or other analogous hurt caused to the person by the manner of the dismissal;
- (d) dot point 10 – provisions allowing for payment by instalment; and
- (e) dot point 11 – provisions limiting appeals from unfair dismissal decisions.

*Additional comments – limitation period for unfair dismissal*

42. As outlined on pages 2 and 3 of the ELC Amendola Review Submission, ELC considers that the limitation period for claims involving termination of employment should be 90 days.

ELC notes that the limitation period in relation to unlawful termination and general protection disputes involving dismissal under the FW Act is 60 days.

43. ELC's view is that the current 28 day limitation period should not be reduced. Further, applicants should be able to apply for an extension of time in circumstances where they have not been able to file their claims within the limitation period.

*Additional comments – apprentices and trainees*

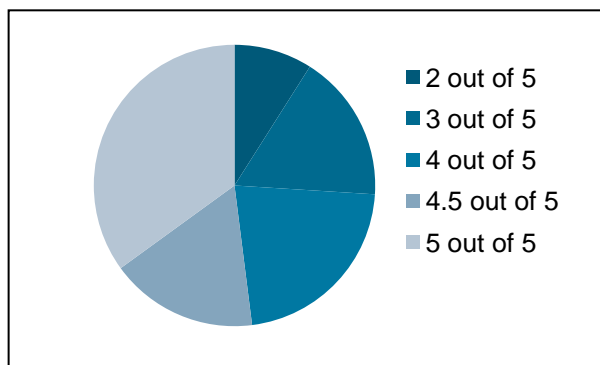
44. It is ELC's view that apprentices should not be excluded from bringing unfair dismissal claims. It is the experience of ELC's clients that they may be unable to seek remedies other than unfair dismissal in circumstances where their apprenticeships have been unfairly terminated.
45. Section 23(3)(d) of the IR Act provides that "[t]he Commission in the exercise of the jurisdiction conferred on it by this Part, shall not regulate the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee or any one of a class of employees if there is provision, however expressed, by or under any other Act for or in relation to a matter of that kind and there is provision, however expressed, by or under that other Act for an appeal in a matter of that kind."
46. Accordingly, generally an apprentice whose training contract is terminated will not be able to bring an unfair dismissal claim to the WAIRC because there is provision in the *Vocational Education and Training Act 1996 (WA) (VET Act)* to deal with such matters.
47. Under section 60G of the VET Act, a party to a training contract may terminate the training contract. Once any probationary period has passed, an employer must not terminate the training contract unless:
  - (a) the apprentice has consented to the termination; or
  - (b) the chief executive approves the termination.
48. Regulation 54 of the *Vocational Education and Training (General) Regulations 2009 (WA)* provides that a party to a training contract who is dissatisfied by a decision made in relation to the contract by the chief executive may appeal against it to the WAIRC.
49. On appeal, the WAIRC must rehear the matter and may:
  - (a) confirm the decision or set it aside; and
  - (b) either substitute a decision the chief executive could make or order the chief executive to decide the matter again.
50. There is no statutory claim open to apprentices or trainees which would enable them to claim lost wages as a result of unfair termination of their training contracts.
51. In the past 12 months, ELC has assisted a number of apprentices who have had their training contracts terminated by their employer or ApprentiCentre in breach of the VET Act. Given the unfair treatment they have experienced and subsequent breakdown of relationship between employer and employee, in none of those cases was reinstatement an appropriate remedy.
52. ELC submits that the remedies currently available to apprentices and trainees under the VET Act are inadequate. Apprentices and trainees should be able to access the same protections as other employees under unfair dismissal legislation.

## Wageline

### *ELC's clients' experiences*

53. ELC has been asked to comment on its clients' experiences dealing with Wageline / DOC (**Wageline**).
54. In order to provide such comment, ELC recently conducted a brief survey which asked clients who had dealt with Wageline the following questions:
- (a) whether they were satisfied with the service provided by Wageline;
  - (b) how satisfied they were on a scale of 1 to 5;
  - (c) if they were satisfied, why they were satisfied;
  - (d) if they were not satisfied, why they were not satisfied; and
  - (e) how Wageline could improve its service.
55. Twenty-four clients who had recently dealt with Wageline were interviewed over the telephone in March 2011.
56. Of the 24 people surveyed, 20 people (83.33%) were satisfied with the service and 4 people (16.67%) were not satisfied.
57. Twenty-three of the people surveyed rated Wageline's service on a scale of 1 to 5. The ratings provided by those surveyed is set out in the diagram below:

**Chart 1 – Clients' ratings of Wageline's service**



58. As the table above illustrates, of the 23 people who rated Wageline's service, none rated the service provided by Wageline 1 out of 5.
59. Of the 23, 8 people (35%) rated Wageline's service 5 out of 5, 4 people (17%) rated the service 4.5 out of 5, 5 people (22%) rated the service 4 out of 5, while 4 people (17%) rated the service 3 out of 5, and 2 people (9%) rated the service 2 out of 5.
60. The clients who were satisfied with Wageline's service made a number of comments about why they were satisfied, including:
- (a) they were referred to someone who could help them, such as ELC;
  - (b) Wageline rang them back;
  - (c) Wageline answered the questions they wanted answered;

- (d) the information given was very good;
- (e) Wageline obtained documents for them;
- (f) Wageline asked the client a broad range of questions;
- (g) Wageline pointed the client in the right direction without giving the client false hope;
- (h) the client left with a positive outlook;
- (i) Wageline was “pretty quick once they got onto the ball”; and
- (j) “the inspector came on board and tried to do the best he could with the information he had.”

61. Wageline staff were also described variously by clients who were satisfied with the service as “helpful”, “thorough”, “friendly”, “polite”, “kind”, “easy to talk to”, “supportive”, “understanding”, “prompt” and “efficient”.

62. The few clients who were not satisfied with Wageline’s service gave the following reasons for not being satisfied:

- (a) no-one really helped the client (although this client acknowledged that this might be “the law’s fault”, not Wageline’s fault);
- (b) Wageline was unable to refer them to anyone who could help them;
- (c) the clients were transferred from place to place and did not get enough information or were given the wrong information;
- (d) the client could not get a straight answer from Wageline.

63. The following comments were made about ways in which Wageline could improve its service:

- (a) it would be good to have a record of the call so that the client did not have to go through everything twice;
- (b) Wageline could take the names of employers in the first phone call and monitor those employers that have complaints against them;
- (c) Wageline could avoid “handballing” issues to other organisations;
- (d) Wageline could improve the efficiency of the process and get back to clients in a more timely fashion;
- (e) Wageline could be available more often – for instance, with extended hours;
- (f) Wageline could offer a follow-up call to see if the client had followed through with the advice;
- (g) Wageline could ensure that staff were more knowledgeable about specific industries;
- (h) Wageline could ensure that staff knew more about the wages and could explain fully what the client needed to know;

- (i) staff could have more training so that people did not have to ring around to find the help they needed; and
- (j) staff could have a bit more compassion.

64. Overall, the survey results above indicate that ELC's clients generally have a very positive experience dealing with Wageline – it appears they are generally provided with useful information, they are assisted by staff in a timely fashion and are treated with respect.

## **WAIRC/IMC**

### *Recommendations with which ELC disagrees*

- 65. ELC disagrees with recommendation 16 – that matters of enforcement and civil remedy provisions be matters for a court alone. ELC is of the view that the WAIRC is more accessible than a court and that the WAIRC is better placed to deal with such matters. See further “Additional comments – enforcement” below.
- 66. ELC disagrees with recommendation 17 – that the IMC and Industrial Appeal Court be abolished and their relevant jurisdictions integrated into the existing court system. ELC is of the view that the existing court system is likely to be more costly, more formal and less accessible for ELC's clients.
- 67. ELC disagrees with recommendation 181 to the extent that it recommends that there be a broader capacity for the WAIRC to order costs. ELC submits that if the WAIRC were to have a broader capacity to order costs, this would make the WAIRC much less accessible to ELC's clients who often cannot afford to pay filing fees, let alone the other party's costs should they not be successful. ELC submits that in the interests of access to justice, the WAIRC should remain effectively a no costs jurisdiction, as discussed further below.

### *Additional comments - enforcement*

- 68. It is vital that enforcement processes be clearly set out in the legislation and appropriate for laypersons to undertake. They should be flexible and as informal as possible. In ELC's experience, procedural formality prevents vulnerable employees from accessing justice.
- 69. In ELC's view, members presiding over such matters should have relevant and specialist expertise in employment matters. Filing fees should be no more than \$50, with a means of waiving fees for low income earners. Enforcement processes should attract no other fees (such as mediation and teleconference fees, as can be the case in the Federal Magistrates Court).
- 70. Further, ELC submits that employees must be able to pursue their employment claims in a no costs jurisdiction, as is currently the case in the WAIRC and IMC.
- 71. ELC considers that employees in the state employment system should be able to enforce their claims in the WAIRC and the IMC.

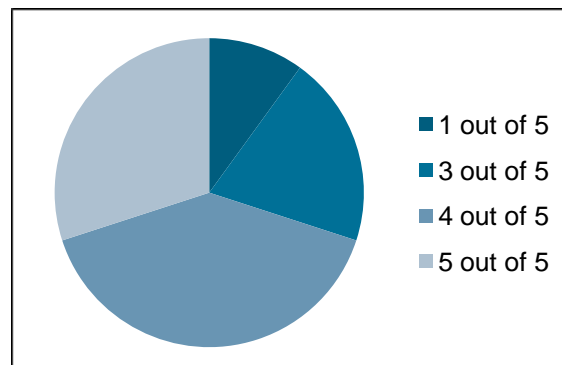
### *ELC's clients' experiences*

- 72. ELC has been asked to comment on its clients' experiences dealing with the WAIRC.
- 73. In order to provide such comment, ELC recently conducted a brief survey which asked clients who had dealt with WAIRC the following questions:
  - (a) whether they were satisfied with the service provided by the WAIRC;
  - (b) how satisfied they were on a scale of 1 to 5;

- (c) if they were satisfied, why they were satisfied;
- (d) if they were not satisfied, why they were not satisfied; and
- (e) how the WAIRC could improve its service.

74. Ten clients who had recently dealt with the WAIRC were interviewed over the telephone in March 2011.
75. Of these ten clients, nine (90%) were satisfied with the WAIRC's service and one (10%) was not satisfied.
76. The ratings provided by those surveyed on a scale of 1 to 5 is set out in the diagram below:

**Chart 2 – Clients' ratings of WAIRC's service**



77. As shown in the table above, 3 out of 10 people (30%) rated WAIRC's service 5 out of 5, 4 out of 10 (40%) rated the service 4 out of 5, 2 out of 10 (20%) rated the service 3 out of 5 and 1 out of 10 (10%) rated the service 1 out of 5. None of those interviewed rated the service 2 out of 5.
78. The clients who were satisfied with the WAIRC's service provided the following comments about why they were satisfied:
- (a) the WAIRC directed them elsewhere if they couldn't help;
  - (b) the WAIRC explained things in detail;
  - (c) the WAIRC rang when they said they were going to;
  - (d) the WAIRC was fair;
  - (e) the WAIRC was sympathetic;
  - (f) the client had confidence in dealing with the WAIRC; and
  - (g) when a client started to lodge an unfair dismissal claim, the WAIRC suggested that the client should make a constructive dismissal claim.
79. The one client interviewed who was unsatisfied with the WAIRC provided the following comments about why that client was unsatisfied:
- (a) everyone referred the client to someone else;
  - (b) the information the client was given was not very helpful; and

- (c) the client was forced to spend all day ringing, which was “frustrating beyond belief”.

80. The following comments were made about how the WAIRC could improve its service:

- (a) clients could be given more information about where they stood;
- (b) the WAIRC could provide the facility to leave messages;
- (c) the WAIRC could provide contact numbers [unclear for whom];
- (d) the WAIRC could be more friendly at the start;
- (e) the WAIRC could understand the frustration caused when a client is passed on to someone else, especially when the next person does not deal with that area any more.

81. Thus, based on the survey results above, it appears that ELC’s clients are generally very satisfied with the service provided by the WAIRC.

### **Other actions**

#### *Adverse action*

82. It is ELC’s view that unfair dismissal and unlawful termination claims do not go far enough in protecting employees from harsh and unjust conduct by an employer. Both unfair dismissal and unlawful termination require that the employee be dismissed before he or she may bring an action, whereas adverse action applies in relation to conduct falling short of dismissal.

83. Further, in circumstances where an employee complains to an employer or about an employer’s conduct in circumstances where the complaint is made to an entity other than a ‘competent administrative authority’ (as required by section 772(1)(e) of the FW Act), an employee in the state system will not be afforded protection under the unlawful termination provisions for any resulting dismissal.

84. ELC submits that the state workplace relations legislation should include provisions in relation to adverse action, as set out in sections 340, 351 and 352, as well as ancillary provisions, of the FW Act.

#### *Bullying and harassment*

85. ELC reiterates the view it outlined in the ELC Amendola Review Submission – that it is vital the reforms include adequate protections against workplace bullying and harassment.

### **Conclusion**

86. ELC supports reforming the Western Australian workplace relations system in accordance with this submission and the ELC Amendola Review Submission.