

# Industrial relations

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Public sector industrial relations are often subject to relatively higher levels of public scrutiny, regulation, and unionisation than non-government workplaces. It is important that properly functioning industrial relations arrangements are in place at sector and agency level.

As a senior executive you are likely to interact with the industrial relations framework on:

- determining the approach for consulting with employees and relevant representatives as part of the planning process for an agency or program change
- ensuring your agency has policies and systems and procedures in place for handling grievances, work health and safety and performance management
- ensuring your agency has effective arrangements with relevant employee representatives to meet consultation requirements
- making decisions on individual employee grievances, misconduct or unsatisfactory performance.

How you interact with the industrial relations framework will depend on your role and workplace environment. Industrial relations considerations tend to be more prominent in front-line areas which are generally more unionised.

The industrial relations framework determines salaries and conditions of employment. It also provides a means to resolve disputes between unions and employers about conditions of employment and individual claims, such as unfair dismissal.

Your agency's human resources team can assist you with any specific requirements you have when dealing with industrial matters.

# Industrial relations legislation and related laws

Employers and employees have certain obligations or duties to each other under common law, statutes, and their accompanying regulations. Some key laws regulating employment matters for the NSW government sector are:

- **Government Sector Employment Act 2013**
- **Work Health and Safety Act 2011**
- **Industrial Relations Act 1996**

The **NSW Public Service Industrial Relations Guide** provides further information on employment conditions applying to NSW Public Service employees.

## NSW Industrial Relations

**NSW Industrial Relations** (NSW IR) provides strategic and expert advice and counsel on industrial relations issues, including wages policy, conditions of employment and the broader implications of industrial relations policy and practice on delivery of government services.

The Industrial Relations Secretary (who is the Secretary of the Premier's Department under the GSE Act) acts as the employer of Public Service employees for industrial purposes including matters that come before industrial tribunals. These functions are delegated to agency heads in certain circumstances, for example where the:

- matter does not involve significant costs as a component of the agency's funds
- issue in dispute is clearly a local matter and has no sector-wide implications - for example, it would not create new industrial standards and does not have the potential to flow-on to other areas of the sector.

For more information on delegation of functions, see the Premier's Department circular: **C2023-01 Instruments of Authorisation and Delegation 2023**.

## Union membership

Large concentrations of union membership tend to be in front-line areas of the health system, transport, education and among uniformed emergency services agencies. Unions often approach ministers or members of parliament, seeking their support on behalf of groups of public sector employees. Unions often also have some level of public campaigning capacity. In most public sector workplaces, there will be a procedure for dealing with individual employee grievances and these are often regulated through awards or agreements arrived at with unions through the industrial relations system.

Your agency may have a joint consultative committee or similar forum which regularly meets with union representatives about local industrial relations matters. These forums provide employee representatives with information, opportunities to express their views on workplace matters and to have those views properly considered.

For more information on consultative arrangements, see **C2020-03 Consultative Arrangements Policy and Guidelines 2012**.

## Employee misconduct and unsatisfactory performance

As a senior executive, you are responsible for your employees' ethical behaviour and performance. Where employees are alleged to have engaged in misconduct, you may be asked to decide on an appropriate response. A range of responses may be available including systemic action designed to prevent misconduct from occurring. In specific cases, you might need to decide if the evidence of alleged misconduct is strong enough and if it is, decide or recommend what action should be taken. This could involve acting under legislation to terminate a person's employment or take other disciplinary action (for example, if the behaviour constitutes misconduct under the GSE Act).

Your agency should have policy and procedures for dealing with misconduct and it is important that they are followed. Employees who are subject to disciplinary action may be able to appeal through an external tribunal like the Industrial Relations Commission of NSW or the Fair Work Commission. Before a decision is made which adversely affects an employee, the person needs to be afforded procedural fairness, including an opportunity to be heard.

Similar considerations apply in the case of under-performing employees where the agency's best efforts have not been successful in getting an employee's work performance to required standards. Work closely with your internal HR business partners on matters of employee misconduct and unsatisfactory performance.

**There are resources available to support you in effectively managing individual, team and organisational performance.**