

**The Industrial Relations Legislation
Amendment and Repeal Bill 1995**

SUMMARY

(Plain English)



PARLIAMENT OF WESTERN AUSTRALIA

Parliamentary Library

Parliament House

Perth 6000

Western Australia

Prepared by the Department of Productivity
and Labour Relations
November 1995

Strike Ballots

Unions intending to organise a strike must hold a secret ballot of their members.

If the proposed strike is supported by a majority of members intending to take the action, it can proceed lawfully. The ballot must be conducted in accordance with the provisions of the legislation and the strike, if endorsed, must take place within 28 days of the ballot result being declared.

It will be a breach punishable by a penalty of up to \$500 for members of an organisation to take part in a strike which contravenes these provisions. An organisation which takes part in, assists, incites or is knowingly concerned in the commission of the breach is liable to a penalty of \$2000.

Ballots can be sought by the organisation, a member of the organisation or the WA Industrial Relations Commission may decide without an application. They can be conducted by the Registrar of the Commission, a nominee of the Commission, the State Electoral Commission or the relevant union under supervision by the Registrar.

Political Donations

Unions must establish specific political funds if they want to make donations to political parties or candidates.

Money can be paid into the fund via a levy which is paid voluntarily by union members. Where members are to pay any levy to a political fund, they can direct those payments to specific parties or candidates of their individual choice. Ordinary union funds, (such as business income, dividends etc) can be paid into the fund, as can a portion of members' subscriptions, except where individual members do not wish to contribute.

Unions must file with the Registrar each financial year a statement detailing political donations totalling more than \$1500. Any monies paid unlawfully to a political party can be forfeited to the State. Where monies cannot be recovered from the recipient, the officials responsible can be ordered to pay the money to the State.

Political donations by a union must be made in accordance with its rules and with the specific approval of its state council.

Finance Obligations of Officials

Officers and employees of organisations who are involved in financial management are required to:

- act honestly at all times;
- exercise reasonable care and diligence;
- keep financial records in accordance with generally accepted accounting principles;
- refrain from using their position or information obtained in the position to seek for themselves or any other person, a pecuniary advantage or to cause detriment, loss or damage to the organisation;
- disclose any pecuniary interests at periodic intervals; and
- declare any conflicts of interest.

The rules of the organisation must be amended if necessary to impose these obligations. Contraventions can be dealt with by the Industrial Magistrate in various ways, including civil penalties of up to \$5000, further penalties of up to \$5000 plus \$500 per day or orders for restitution or compensation.

Rights to Inspect Employee Time and Wages Records

Union officials can inspect the time and wages records of members and non-members. However, non-members can object to such an inspection by notifying their employer. Employers must try to keep records in such a manner that prevents records of those employees who object to an inspection, being seen by an official during such an inspection. They must also try to determine if employees do not consent to inspections of their records by authorised union officials.

A person cannot seek to persuade, by threats or intimidation, an employee to give or not give consent to inspection of time and wages records.

The Commission is prohibited from inserting into awards and industrial agreements inconsistent provisions relating to rights of union officials to inspect time and wages records, and, existing provisions must be amended.

Deduction of Union Dues

The onus on employers under awards to deduct union dues on behalf of employees is being removed. The collection of dues becomes a matter which employers, unions and employees can deal with by agreement on an enterprise by enterprise basis, without it becoming a legal obligation under an award or industrial agreement.

Dispute Settlement Procedures

The Commission will insert dispute settlement procedures in each award and industrial agreement. Employers, employees and organisations should comply with the procedures before taking any matter before the Commission.

Choice of Superannuation Fund

Employees will be given the right to choose their own superannuation fund.

Where an award or industrial agreement contains a superannuation clause which does not allow the employee the choice of which fund the money is to be paid into, that provision is to be void. The Commission is to amend each award and agreement that is inconsistent, and, is prohibited from making an award or industrial agreement containing a superannuation provision unless it allows employees to choose the fund.

If the employee does not nominate a fund or nominates a fund that is not a complying fund under the Federal Government's superannuation laws, the employer can choose the fund. Once a fund is chosen by the employee it cannot be changed except by agreement with the employer.

For existing employees who have not been given a choice of fund, the existing provisions will become invalid and the employees will be given a choice. Regulations will specify what action employers and employees must take to meet this requirement.

Publication of the Details of Industrial Agreements

The Industrial Relations Act 1979 is being amended to require the WA Industrial Relations Commission to publish in full, details of industrial agreements registered under section 41 of the Act. To be registered, an agreement must include a schedule showing the number of employees intended to be covered by the agreement.

Registration of Agents

A person who wishes to conduct business as an industrial or bargaining agent will have to be registered and have professional indemnity insurance.

It is intended that regulations will be drawn up under which the Registrar of the WA Industrial Relations Commission will administer the registration process. The relevant regulations will impose a Code of Conduct to be observed by agents.

Registered persons and their employees may charge fees for their services or for appearing on behalf of parties in the Industrial Relations Commission, Industrial Magistrate's Court or Industrial Appeal Court. They can also charge fees for acting as bargaining agents in the negotiation of workplace agreements or providing advice on industrial matters.

Productivity Criterion to be Considered

The Industrial Relations Act 1979 will be amended to require the WA Industrial Relations Commission in any decision leading to an improvement in wages or conditions of employment, to have regard for any changes, or likely changes, in productivity.

Entitlement to Annual Leave

Section 24 of the Minimum Conditions of Employment Act 1993 is being amended to give employees no entitlement to pro rata annual leave on termination, where the employee terminates unlawfully or where termination arises because of misconduct by the employee. This amendment will bring the provisions relating to these matters into line with those in awards.

The change will overcome the present provisions which have caused problems for some employers, namely, those provisions relating to annual leave which require employers to pay pro rata annual leave on termination regardless of the reasons for termination. Hence, an employer who has dismissed an employee for misconduct, even where that misconduct involved theft from the employer, must pay the employee all pro rata entitlements. With the passage of the new provisions, this anomaly will no longer exist.

On Call and Sleep-Over Time Excluded

The time a person spends "on call", or as a result of a requirement to sleep-over at an employer's premises in order to be available for an emergency, does not count as time worked for the purposes of an entitlement to a minimum rate of pay under the Minimum Conditions of Employment Act 1993.

Extended Industrial Coverage for Australian Medical Association

The Australian Medical Association's restriction to industrial coverage of only those government medical practitioners employed in public hospitals, is being removed. The AMA will be able to represent all medical practitioners as defined in the Medical Act 1894, but will not have exclusive rights of coverage.

Magistrates

The provisions relating to the practices and procedures of the Industrial Magistrate's Court are being collected together in the legislation to make them more easily understood and user friendly.

Flexible Long Service Leave

The Long Service Leave Act 1958 is being updated with provisions allowing for greater flexibility in the taking of leave. Employees can trade-off the leave for another benefit, such as extra pay, if they so choose.

Repeal of Redundant Legislation

The legislation repeals various statutes which are either redundant, overlap with other laws or contain provisions which should be adapted to modern workplace requirements and re-enacted in the Minimum Conditions of Employment Act 1993, or related legislation.

The Truck Act 1899, the Trade Unions Act 1902, the Masters and Servants Act 1892, the Salaries and Wages Freeze Act 1982, the Temporary Reduction of Remuneration (Senior Public Officers) Act 1983 and the Factories and Shops Act 1963, are being repealed.

Certain protections under the Truck Act are being retained in the Minimum Conditions of Employment Act 1993. Restrictions in the Truck Act on the ways in which employees can be paid have been updated and included as minimums. Allowable payments include cash and, with the employee's approval, cheque, postal order, money order and direct credits to bank accounts. Other flexible arrangements can also be authorised by the employee.

Provisions in the Factories and Shops Act prohibiting the employment of children will be retained in the Child Welfare Act 1947.