

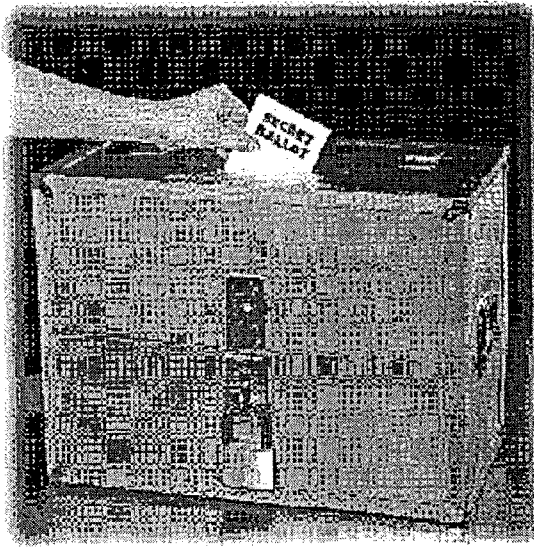
# Labour Relations Legislation Amendment Bill 1997

## A Summary



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The Labour Relations Legislation Amendment Bill was passed by the Western Australian Parliament on 15 May 1997. However, it is yet to become law.

The WA Government intends to delay the Bill's proclamation to allow a public information program.

This document does not provide a comprehensive analysis, rather a summary of the key points. It also does not include the bulk of the amendments made to the Bill in the Legislative Council. Those amendments will be incorporated during this week (commencing 19.5.97).

Printed copies can also be ordered.

Copies of the Bill are available from the State Law Publisher, 10 William Street, Perth, telephone: (08) 9321 7688.

### Pre-Strike Ballots

The proposed laws provide for pre-strike ballots which are designed to empower rank and file union members.

A strike is defined broadly as a stoppage, ban or limitation on work by five or more union members.

However, there are various types of stoppages, bans and limitations which do not qualify as a strike, such as:

- those taken on grounds of safety
  - stop work meetings authorised by the employer
  - a stop work meeting which lasts less than four hours in any day and less than 12 hours in a year
  - a ban or limitation which is carried out in accordance with the dispute settlement procedures in the award
  - a ban or limitation carried out in accordance with the dispute settling procedures, but not extending beyond 48 hours in any seven days and which is not the subject of a hearing by the State Industrial Relations Commission.
- A pre-strike ballot must be conducted before members of unions can participate in strike action.
  - The ballot must be secret.
  - The Industrial Relations Commission (IRC) can order a ballot on the application of a relevant union, a union member, a relevant employer or an employer organisation.
  - The IRC can conduct the ballot or supervise one conducted by a union or the electoral commission.
  - Strike action can proceed if the pre-strike ballot is endorsed by a majority of union

members involved.

- If the pre-strike ballot is endorsed, the strike action must occur within 28 days of the announcement of the result.
- Employers and employees must be informed of the results of the ballot. Directions relating to ballot procedure will be given by the IRC

## Political Expenditure

The proposed laws will ensure that members of organisations will have control over political expenditure.

Political expenditure is defined as:

- Payments to a political party, such as membership subscription or affiliation fees.
- Payments to an election candidate or group of candidates.
- Paying the expenses incurred by a political party.
- Paying expenses incurred by candidates or groups of candidates in connection with a parliamentary election.
- Payments to a person on the understanding the money will be used in the manner outlined above by that person or another person.

Under the proposed laws:

- Organisations will not be able to use funds for political expenditure unless the money has come from a designated political fund.
- Members will be able to make voluntary contributions to the fund.
- Membership subscriptions cannot be credited to the fund.
- Members will be able to specify to which political party or election candidate they wish their contribution to be paid.
- Money which is illegally spent can be recovered by the Government.
- Breaches of these provisions can lead to severe penalties for officials who participated in the breach.

## Duties of officials of organisations

Employees of organisations (employee and employer) who are directly involved in the financial management, will be required to observe the same standards as those required of officials under existing laws, and similar to those demanded of business managers, office bearers and employees of other organisations.

Officials and employees involved in financial management are required to act honestly, exercise care and diligence, keep proper financial records, disclose any financial interests, declare conflicts of interest and not use their position to seek financial advantage or cause detriment, loss, or damage to the organisation.

- A breach of these requirements will result in orders by the Industrial Magistrate's Court to remedy the breach. A failure to comply with such an order is an offence with a penalty of \$5000 and a daily penalty of \$500.
- An officer of an organisation found guilty of a breach of these provisions can be disqualified from holding or acting in any office in the organisation for up to three years

## Federal award coverage

The proposed laws make a clear choice between the federal and state systems.

- Unions will have to choose between state and federal award coverage and may not be able to move to federal awards and retain state award coverage.

- When federal award coverage is being sought, the relevant state union must notify the Registrar of the State Industrial Relations Commission.
- An advertisement will be put in a newspaper inviting other unions or state employers to apply to the Commission to cancel that state union's representational rights under the relevant award and give those rights to another union.
- The Full Bench of the Commission may cancel, partly or fully, the rights of the state organisation to represent the relevant employees.

## **Unfair Dismissal**

State laws will be changed to accommodate the amended termination provisions of the federal Workplace Relations Act 1996.

The onus of proof is to revert to the applicant in claims of unfair dismissal. If the Industrial Relations Commission determines that the dismissal was unfair it must order reinstatement or re-employment unless the employer agrees to compensation.

## **Return to work orders**

The proposed laws will enable the Industrial Relations Commission to order striking employees to return to work if a strike:

- constitutes a breach of an award or industrial agreement, or an undertaking given by the union
- is contrary to the pre-strike ballot laws and
- is not about wages and conditions of employment or will have significant effects on the public.

## **Workplace agreements**

- Employees and employers covered by a federal award will be able to enter into a WA collective workplace agreement.
- The workplace agreement entered into will override the federal award.
- The Commissioner of Workplace Agreements must be satisfied the employees are not disadvantaged in comparison with their entitlements under the relevant federal award.

## **Miscellaneous provisions relating to awards**

### **Collection of Union Dues**

- Employers are no longer required to collect union membership dues because of an award, however, there is no obstacle to the employer and the union making an administrative agreement for the collection of dues.
- Any awards or industrial agreements which contain requirements for collection of union dues will be amended by the Industrial Relations Commission.

### **Right of entry**

- Access by union officials to workplaces will be required only where the employer employs, or has employed, a member of the relevant union.
- Union officials will only have access to deal with an industrial matter involving a union member.

### **Dispute settling procedures**

- Dispute settling procedures, as required under awards and agreements, are being upgraded.

- The procedures must provide for the parties in disagreement to try to resolve the matter before they go to the Industrial Relations Commission.

### **Inspection of time and wages records**

- Employers will be able to stop union representatives inspecting time and wages records if they are of the opinion this would infringe the privacy of non-union employees. However, those records must then be provided to an industrial inspector within 48 hours.
- The inspector must give the union any relevant extracts of the record as soon as possible.

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