Department of **Consumer and Employment Protection**
Government of **Western Australia**

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CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 14 OF 2002

LABOUR RELATIONS REFORM ACT 2002

The Labour Relations Reform Act 2002 was proclaimed on the 1st August 2002 and has amended the Industrial Relations Act 1979 and the Minimum Conditions of Employment Act 1993.

Changes in the following areas impact on the public sector and have effect from 1st August 2002:

a) keeping of and access to employment records – **Attachment A;**

b) right of entry and inspection by authorised representatives – **Attachment A;**

c) collective bargaining – **Attachment B**;

d) unfair dismissal – **Attachment C**; and

e) minimum conditions of employment – **Attachment D**.

The attachments provide a summary of the changes.

Changes in the following areas will have effect from 15 September 2002 and will be the subject of further advice:

a) employer – employee agreements; and

b) transitional provisions for workplace agreements.

c) repeal of the Workplace Agreements Act, 12 months from 15 September 2002.

Agencies should familiarize themselves with the detail of these and other changes to the legislation. A copy of the legislation is located on the department's website at www.docep.wa.gov.au.

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LABOUR RELATIONS

16 September 2002

Attachment A

RECORDS AND RIGHT OF ENTRY

Part 8 of the Labour Relations Reform Act 2002 amends the Industrial Relations Act 1979 (the Act) in regard to right of entry, record keeping and inspection of records.

The following summary of the amendments should be read in conjunction with the relevant legislation and Government policy.

Record Keeping

The Act now stipulates minimum record keeping requirements for employees covered by an industrial instrument. An industrial instrument is defined as a state award, order of the State Industrial Commission, industrial /enterprise bargaining agreement or employer-employee agreement.

The requirements apply in conjunction with any record keeping requirements of the relevant industrial instrument.

It is the employer's responsibility to ensure that true and accurate records are maintained and retained for a minimum of 7 years from the time of entry.

In addition to previous requirements the legislation now requires that the following be recorded for each employee:

1. On a daily basis:
    a) start/finish time;
    b) paid time; and
    c) breaks.
2. For each pay period:
    a) designation;
    b) gross and net pay; and
    c) deductions, including reasons for these deductions.
3. The Act also requires the following records to be kept:
    a) employees name
    b) date of birth if under 21 years of age;
    c) start date;
    d) relevant industrial instrument;
    e) all leave paid, partly paid or unpaid;
    f) relevant information for LSL calculations;
    g) any additional information required by the industrial instrument; and

h) any other information necessary to show remuneration and benefits comply with the industrial instrument.

For employees not covered by an industrial instrument it should be noted that the requirements of the Minimum Conditions of Employment Act 1993 have been broadened where this act has effect.

Inspection of Records

The amended Act provides access to an employees records to the following:

a) union representatives through right of entry provision; and

b) relevant persons on written request.

A relevant person is defined as:

a) the employee;

b) representative of a person with a decision making disability under the EEA system who is represented for the purposes of making an EEA.;

c) a person authorised in writing by the employee;

d) an industrial inspector.

Authorised union representatives are not entitled to access the employment records when the employee:

a) is a party to an employer – employee agreement and has made a written request to the employer that the records not be made available to the union; or

b) is covered by a state workplace agreement.

For the production of records held on the employer's premises 24 hours notice is required and for records held off site 48 hours notice is required.

Right of Entry

The right of entry provisions of the Act will generally prevail over provisions in an industrial instrument, except with regard to notice periods. For employers within the public sector with employees employed pursuant to an industrial instrument, the following is relevant;

1. Union representatives will have right of entry to premises subject to:

a) employees working at the premises being members or eligible to be members of the union;

b) the union representative:

i) holding an authority issued by the Western Australian Industrial Relations Commission;

ii) shows the authority if requested to do so;

iii) is entering to either hold discussions with those employees

iv) or investigate a suspected breach; and

v) giving the employer the appropriate notice if they are entering to hold discussions.

2. For discussions with employees:

The following notice periods apply to authorised union representatives intending to enter a premises during working hours:

a) no notice where the industrial instrument that extends to relevant employees does not require notice to be given;

b) the specified notice period when the industrial instrument that extends to relevant employees requires a specific notice period; or

c) 24 hours notice in all other situations.

For investigations of breaches no notice period is required to enter the premises during working hours however, the notice periods for access to employment records apply.

Attachment B

COLLECTIVE BARGAINING

Part 6 of the Labour Relations Reform Act 2002 has amended various sections of the Industrial Relations Act 1979 in regard to industrial agreements and introduced good faith bargaining.

The following summary of the amendments should be read in conjunction with the relevant legislation and Government policy.

These amendments have changed the rules and requirements for enterprise bargaining agreements, to ensure that they are a flexible and simple option for the parties. The parties can be a union, or unions and a single employer, or a group of employers or an employer association.

These changes apply to employers and employees employed pursuant to a state award or industrial/enterprise bargaining agreement (EBA).

In summary the changes are:

1. a process of good faith bargaining has been introduced, promoting openness and honesty in the bargaining process;

2. parties can agree to negotiate outside the good faith bargaining process;

3. an arbitrated agreement, or enterprise order is now a possible outcome when bargaining is not successful;

4. EBAs will now be automatically cancelled by a new enterprise bargaining agreement unless the new agreement makes specific provisions for them to continue; and

5. EBA's will now be limited to a maximum nominal term of three years. However, they will continue to operate after the nominal expiry date until either party formally withdraws by giving 30 days notice to the Registrar of the Commission;

Key elements of the process of good faith bargaining:

1. Any party can issue a notice to initiate bargaining;

2. The other party can choose to respond and advise whether they will or will not enter into a bargaining period. An employer or union who is requested to bargain as a group with others can request the Commission to determine that it may bargain separately rather than as part of a group;

3. If a party chooses not to bargain the other party can apply to the commission for an enterprise order;

4. If a party bargains they must bargain in 'good faith'. Without limiting the meaning of the expression, bargaining in good faith requires the bargaining parties to do the following things:

    a) state their position on matters at issue, and explain that position;

    b) meet at reasonable times, intervals and places for the purpose of conducting face-to-face bargaining;

    c) disclose relevant and necessary information for bargaining;

d) act honestly and openly, which includes not capriciously adding or withdrawing items for bargaining;

e) recognise bargaining agents;

f) provide reasonable facilities to representatives of organisations and associations of employees necessary for them to carry out their function;

g) bargain genuinely and dedicate sufficient recourses to ensure this occurs; and

h) adhere to agreed outcomes and commitments made by the parties.

5. If bargaining does not succeed the Commission can:

a) with the consent of the parties arbitrate to make an agreement; or

b) on application of a party end the obligation to bargain.

Enterprise Orders

The Commission, on application of a party, has the power to arbitrate an outcome in the form of an enterprise order:

a) following a declaration by the Commission that it has ended a period of bargaining; or

b) when another party has refused to commence bargaining; or

c) another party has not responded to a request to initiate bargaining.

Enterprise orders:

a) prevail over applicable awards or agreements;

b) can include all matters subject to negotiations or that would normally appear in an enterprise order;

c) are limited to a maximum nominal term of 2 years but will continue to operate after expiry until replaced by an industrial instrument;

d) can only cover a single employer; and

e) can be replaced during its term, but only by an EBA.

Employer – employee agreements can be registered during the life of an enterprise order.

Attachment C

UNFAIR DISMISSAL

The Labour Relations Reform Act 2002 has amended the Industrial Relations Act 1997 in regard to unfair dismissal.

The following summary of the amendments should be read in conjunction with the relevant legislation and Government policy.

Changes only have effect for unfair dismissal claims that can be heard by the Western Australian Industrial Relations Commission through s29(1)(b)(i) of the IR Act. In the public sector this is generally restricted to wages employees and does not include government officers and/or salaried officers as defined in Part IIA of the Act.

Key changes:

1. Reinstatement is the primary remedy for the Commission. The Commission still has the power to award compensation (capped at 6 months) where it is not practicable to reinstate, or re-employ.

2. The Commission can make orders for wages between dismissal and reinstatement.

3. The Commission will be required to have regard for probationary periods of up to three months.

4. Orders are available through the industrial magistrates court to ensure unfair dismissal orders are complied with.

5. The application filing fee has increased to $50.00. The registrar can waive the fee in cases of economic hardship.

6. The Commission has discretion to extend the current application time limit of 28 days where it is of the opinion it would be unfair not to do so.

7. Employees not subject to an industrial instrument and earning in excess of $90,000 per annum will not have access to the Commission for unfair dismissal.

8. The Act seeks to prevent third party interference in the employment relationship in certain circumstances. Third parties include but are not limited to clients of labour hire companies or principal contractors who may seek to exercise an unfair influence on an employment relationship. Such influence could include refusal to employ a person, transfer of a person to a site unfairly or refusal to reinstate of employ a dismissed employee.

9. For claims advanced through s44 the Commission can now issue appropriate interim orders in relation to unfair dismissal claims.

10. The Registrar is empowered to mediate unfair dismissal claims.

Attachment D

MINIMUM CONDITIONS

Part 10 of the Labour Relations Reform Act 2002 has amended the Minimum Conditions of Employment Act 1993 (MCE Act).

The MCE Act applies to all employers and employees in the state labour relations system. Except as provided for in sections 8 and 9 of the MCE Act, the minimum conditions are an implied part of any state award, industrial agreement, employer – employee agreement, contract of employment or workplace agreement. The minimum conditions have no effect where a more favourable provision is provided.

The following summary of the amendments should be read in conjunction with the relevant legislation and Government policy.

Minimum rates of pay

The minimum wage is now based on a 38 hour week rather than a 40 hour week.
The calculation for a 40 hour week employee's rate of pay would be as follows:

a) minimum weekly wage divided by 38 = hourly rate of pay; or
b) hourly rate of pay multiplied by 40 = weekly rate of pay for a 40 hour week employee.

Junior rates are calculated as a percentage of the adult rate.

Casual Loading

The loading for casual employees has increased to 20% which is payable on top of the minimum hourly rate.

The Commission has the power to increase the loading annually.

Carers Leave

All employees will now have access to up to 5 days of carers leave per annum, from their sick leave entitlement, to be the primary care giver for an ill or injured member of the employees family who is in need of immediate care or attention.

A member of the employees family is defined as:

a) the employee's spouse or defacto spouse;
b) a child for whom the employee has parental responsibility as defined by the Family Court Act 1997;
c) an adult child of the employee; and
d) a parent, a sibling or grandparent of the employee.

Annual Leave – Cashing Out

The provision is facilitative only. If the relevant award or agreement does not provide for cashing out of annual leave, this provision of the MCE Act has no application.

Where applicable, in any one year, employees can cash out up to two weeks of their accrued annual leave.

Time Keeping

In addition to existing requirements employers must now keep a record of the total number of hours worked each week if the employee's salary is $45,000 or less.