



Western Australia

## **Industrial Relations (General) Regulations 1997**

Compare between:

[10 Sep 2004, 01-a0-06] and [01 Aug 2009, 01-b0-04]





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10 September 2004**

Western Australia

Industrial Relations Act 1979

## **Industrial Relations (General) Regulations 1997**

### **Part 1 — Preliminary**

**1. Citation**

These regulations may be cited as the *Industrial Relations (General) Regulations 1997*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on the day on which section 34 of the *Labour Relations Legislation Amendment Act 1997* comes into operation<sup>1</sup>.

## **Part 2 — Time and wages records**

[3. Deleted in Gazette 26 Jul 2002 p. 3460.]

### **4. Form of records**

- (1) An employer is to ensure that the employment records of the employer are kept —
  - (a) by —
    - (i) making entries in the English language in or on a separate page of a bound or loose-leaf book kept specifically for that purpose; or
    - (ii) recording or storing the particulars required to be entered in the employment records by means of a mechanical, electronic or other device, but so that the particulars so recorded or stored will remain in the form in which they were originally recorded or stored and will be capable of being reproduced in written form in the English language;
  - (b) with only one employee's records appearing on any one page;
  - (c) so that the record for each pay period of each employee is identifiable; and
  - (d) in a manner that enables compliance with section 49D of the Act to be readily ascertained.
- (2) A person is not to alter employment records unless the alteration is annotated so as to identify —
  - (a) the nature of the alteration;
  - (b) the person making the alteration; and
  - (c) the date on which the alteration was made.

[Regulation 4 amended in Gazette 26 Jul 2002 p. 3460.]

## **Part 3 — Unfair dismissal and contractual benefit claims**

*[Heading inserted in Gazette 26 Jul 2002 p. 3460.]*

### **5. Prescribed amount — section 29AA**

- (1) For the purposes of paragraph (b) of the definition of “prescribed amount” in section 29AA(5) of the Act the specified salary is \$90 000, or that amount as affected by indexation in accordance with regulation 6.
- (2) For the purposes of paragraph (b) of the definition of “prescribed amount” in section 29AA(5) of the Act the salary provided for in an employee’s contract of employment is to be worked out as follows —
  - (a) for an employee who was continuously employed by an employer and was not on leave without full pay at any time during the period of 12 months immediately before the dismissal or claim — the greater of —
    - (i) the salary that the employee actually received in that period; and
    - (ii) the salary that the employee was entitled to receive in that period;
  - (b) for an employee who was continuously employed by an employer and was on leave without full pay at any time during the period of 12 months immediately before the dismissal or claim — the total of —
    - (i) the actual salary received by the employee for the days during that period that the employee was not on leave without full pay; and
    - (ii) for the days that the employee was on leave without full pay an amount worked out using the formula —

remuneration mentioned in subparagraph (i)  
$$\frac{x \text{ days on leave without full pay}}{\text{days not on leave without full pay;}}$$

or

- (c) for an employee who was continuously employed by an employer for a period less than 12 months immediately before the dismissal or claim — the amount worked out using the formula —

$$\frac{\text{remuneration received} \times 365}{\text{days employed.}}$$

[Regulation 5 inserted in Gazette 26 Jul 2002 p. 3460-1.]

## **6. Annual indexation**

- (1) This regulation prescribes a formula under which the amount mentioned in regulation 5(1) (the “**indexable amount**”) is to be varied annually by the indexation factor (if any).

- (2) In this regulation —

**base weekly earnings** means the last amount published by the Australian Statistician before 1 July 2002 as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month;

**current weekly earnings**, in relation to an indexation day, means the last amount published by the Australian Statistician before that day as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month;

**indexation day** means 1 July 2003 or 1 July in a later year;

*indexation factor*, for an indexation day, means the number, worked out to 3 decimal places, resulting from the following formula —

$$\frac{\text{current weekly earnings average in relation to the indexation day}}{\text{base weekly earnings average.}}$$

- (3) If at any time (whether before or after the commencement of this regulation) the Australian Statistician publishes an estimate of the average total weekly earnings (seasonally adjusted) for full-time adult employees in a particular month in substitution for such an estimate (except a preliminary estimate) previously published by the Australian Statistician for that month, the publication of the later estimate is to be disregarded for the purposes of this regulation.
- (4) Subject to subregulation (5), if, on any indexation day, the indexation factor is greater than 1, then, on and after that day, until a later application of this subregulation, an indexable amount is taken to be replaced by the amount worked out by multiplying the indexable amount by the indexation factor.
- (5) If an amount worked out under subregulation (4) is not \$100, or a multiple of \$100 —
  - (a) if the amount is not \$50, or a multiple of \$50 — it is to be rounded up or down to \$100, or the nearest amount that is a multiple of \$100 as appropriate; or
  - (b) if the amount is \$50, or a multiple of \$50 — it is to be rounded up to \$100, or the next highest amount that is a multiple of \$100 as appropriate.

*[Regulation 6 inserted in Gazette 26 Jul 2002 p. 3461-2.]*

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**[Part 4 — Trainees**

~~———— [Heading inserted deleted in Gazette 2631 Jul 20022009  
p. 3462.]~~

**7. — Definition of trainee — section 7 of the Act**

~~———— Persons participating in a traineeship scheme within the  
meaning of the *Industrial Training Act 1975* are to be treated as  
trainees for the purposes of the Act.~~

~~———— [Regulation 7 inserted in Gazette 26 Jul 2002 p. 3462 3026.]~~



## Part 5 — Fees

*[Heading inserted in Gazette 26 Jul 2002 p. 3462.]*

### 8. Interpretation

In this Part —

**Clerk** means the Clerk of the Court appointed under section 85(7) of the Act.

*[Regulation 8 inserted as regulation 6 in Gazette 26 Jul 2002 p. 3462; renumbered as regulation 8 in Gazette 29 Jun 2004 p. 2517.]*

### 9. Fees to be charged

- (1) Subject to the Act and the provisions of these regulations —
  - (a) the fees specified in Schedule 1 are to be charged in respect of the matters before the Commission in relation to which they are specified; and
  - (b) the fees specified in Schedule 2 are to be charged in respect of the matters before the Court in relation to which they are specified.
- (2) No fee is payable for any of the following matters —
  - (a) the registration of a treasurer, trustee, secretary or any other officer of an organisation;
  - (b) the cancellation of a certificate of registration;
  - (c) filing of notice of a change of registered office;
  - (d) filing of a warrant to appear as an agent;
  - (e) any document in respect of which a fee is already chargeable under the Act or any other written law;
  - (f) filing of notice of discontinuance of an application.

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- (3) The Registrar and the Clerk may determine the means, in addition to cash, by which fees may be paid.

*[Regulation 9 inserted as regulation 7 in Gazette 26 Jul 2002 p. 3463; renumbered as regulation 9 in Gazette 29 Jun 2004 p. 2517.]*

**10. Registrar and Clerk may waive certain fees**

- (1) The Registrar or a Deputy Registrar may waive a fee referred to in Schedule 1 when the Registrar or Deputy Registrar considers it reasonable to do so.
- (2) The Clerk may waive a fee referred to in Schedule 2 item 9 when the Clerk considers it reasonable to do so.
- (3) The Clerk may waive a fee referred to in Schedule 2 item 10 when permission to do so has been given by the Presiding Judge.

*[Regulation 10 inserted as regulation 8 in Gazette 26 Jul 2002 p. 3463; renumbered as regulation 10 and amended in Gazette 29 Jun 2004 p. 2517.]*

**11. Fees paid to Consolidated Fund**

All fees received by the Clerk, Registrar or any other officer are to be credited to the Consolidated Fund.

*[Regulation 11 inserted as regulation 9 in Gazette 26 Jul 2002 p. 3463; renumbered as regulation 11 in Gazette 29 Jun 2004 p. 2517.]*

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## **Part 6 — Bargaining for industrial agreement**

*[Heading inserted in Gazette 29 Jun 2004 p. 2517.]*

### **12. Notice initiating bargaining**

A notice given under section 42(1) of the Act —

- (a) may be given in the form of GFB 1 in Schedule 3; and
- (b) must be accompanied by all of the particulars set out in that form.

*[Regulation 12 inserted in Gazette 29 Jun 2004 p. 2517.]*

### **13. Response to notice initiating bargaining**

A person to whom a notice is given under section 42(1) of the Act may notify the initiating party of his or her response in the form of GFB 2 in Schedule 3.

*[Regulation 13 inserted in Gazette 29 Jun 2004 p. 2517.]*

### **14. Notice and response to be given to Commission**

- (1) A notice given under section 42(1) of the Act, or a response under section 42A(1) of the Act, cannot be admitted in any proceeding or conference before the Commission unless a copy of that notice or response has been filed in the office of the Registrar of the Commission at least 7 days before the proceeding or conference.
- (2) Subregulation (1) does not apply in respect of an application under section 42A(2).

*[Regulation 14 inserted in Gazette 29 Jun 2004 p. 2517.]*

**Schedule 1 — Fees to be taken by the Registrar**

[r. 9]

<b>Item</b>	<b>Matter</b>	<b>Fee \$</b>
1	For filing a claim under section 29(1)(b) of the Act	50.00
2	For a photographic copy of a transcript of proceedings — for each page	3.00
3	For a search of a record or database of the Commission (other than a search of a proceeding made by or on behalf of a party to the proceeding) — for each name or item in respect of which a search is made	20.00

*[Schedule 1 inserted in Gazette 26 Jul 2002 p. 3463-4; amended in  
Gazette 29 Jun 2004 p. 2518.]*

**Schedule 2 — Fees to be taken by the Clerk**

[r. 9]

<b>Item</b>	<b>Matter</b>	<b>Fee \$</b>
1	For filing an affidavit, statutory declaration or any document not otherwise provided for in this Schedule	1.00
2	For filing an application or notice of motion	5.00
3	For filing a notice of appeal	5.00
4	For sealing an order	1.00
5	On the issue of a Chamber summons or summons to witness	1.50
6	For the issue of a warrant of any kind	2.50
7	For the execution of a warrant of any kind	8.50
8	For every document required to be authenticated by the Clerk or other officer	4.00
9	For every inspection on the same day of one or more documents in the custody of the Clerk	1.00
10	For a photographic copy of the transcript of proceedings — for each page	1.00
11	For a photographic copy of reasons for judgment consisting of not more than 10 pages — for each copy issued to a person not a party to the proceedings or a person, who although a party, did not appear or who was not represented at the proceedings and for each copy in excess of one copy issued to a represented party to the proceedings	2.75
	And for each page in excess of 10	0.20
12	For photographic copies of exhibits or other documents — for each page	0.20

*[Schedule 2 inserted in Gazette 26 Jul 2002 p. 3464; amended in Gazette 29 Jun 2004 p. 2518.]*

**Schedule 3 — Forms**

**GFB 1**

[r. 12]

*Industrial Relations Act 1979*

**NOTICE TO INITIATE BARGAINING**

To .....

.....

.....

(name of party being given notice)<sup>1</sup>

Take notice that .....

.....

(name of party giving notice)

has this .....day of .....given notice initiating bargaining for an industrial agreement.

1. Types of employment to be covered by agreement<sup>2</sup>
  
2. Area in which agreement is to operate<sup>3</sup>
  
3. Intended parties to the agreement<sup>4</sup>

.....

Signature of party giving notice

<sup>1</sup> This notice is not to be given to an organisation or association of employers unless that organisation or association has given written consent to being given such notice.

<sup>2</sup> If all employment is intended to be covered then state that. If is not intended to cover all the employment, specify by classification or occupation and specify whether full-time, part-time and casual employment is to be covered.

<sup>3</sup> Nominate the area of the State (eg. whole State or metropolitan area or north of the 26<sup>th</sup> parallel) as well as any particulars relating to the employers' premises.

<sup>4</sup> If the intention is for the initiating party to bargain as a collective group, specify the other parties who will comprise that group.

### INFORMATION FOR RECIPIENTS OF NOTICE TO INITIATE BARGAINING

The party who gave you this notice (the "initiating party") is seeking to negotiate an industrial agreement which will bind you in respect of the employees in the employment identified in the particulars of the notice.

The initiating party is also seeking to negotiate the agreement within the requirements of the good faith bargain provisions of the *Industrial Relations Act 1979*. These provisions place certain procedural requirements on the negotiating parties to assist them to reach agreement. These procedural requirements can be enforced by the Western Australian Industrial Relations Commission.

If you wish to enter into negotiations for an industrial agreement, you should notify the initiating party within 21 days of receiving this notice.

Note: Documents served by post are deemed received 2 working days after they are posted. The response may be in the form of the attached GFB 2.

If there are other parties identified in the notice as intended parties to the agreement and you wish to negotiate separately with the initiating party, you may make an application to the Western Australian Industrial Relations Commission for a direction that you may negotiate separately.

Note: You must still respond to the initiating party within 21 days of receiving the notice if you wish to enter into negotiations for an industrial agreement.

If you do not wish to enter into negotiations for an industrial agreement, you do not need to take any action. Alternatively, you may notify the initiating party that you will not enter into negotiations for an industrial agreement. You may use GFB 2 for the notification.

If you do not enter into negotiations for an industrial agreement, the initiating party may apply to the Western Australian Industrial Relations Commission for an enterprise order which will determine the pay and conditions for employees who were proposed to be covered by the industrial agreement.

**GFB 2**

[r. 13]

***Industrial Relations Act 1979***

**RESPONSE TO INITIATION OF BARGAINING**

To .....

.....

.....

(name of party who provided notice initiating bargaining)

Take notice that .....

.....

(name of party responding to notice)

has this .....day of.....responded to the notice and:

- wishes to enter into negotiations for an industrial agreement.
- does not wish to enter into negotiations for an industrial agreement.

(tick appropriate box)

.....  
Signature of party responding to notice

*[Schedule 3 inserted in Gazette 29 Jun 2004 p. 2518-20.]*



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## Notes

- <sup>1</sup> This ~~reprint~~ is a compilation ~~as at 10 September 2004~~ of the *Industrial Relations (General) Regulations 1997* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Industrial Relations (General) Regulations 1997</i>	30 Sep 1997 p. 5440-1	17 Oct 1997 (see r. 2 and <i>Gazette</i> 30 Sep 1997 p. 5415)
<i>Industrial Relations (General) Amendment Regulations 2002</i>	26 Jul 2002 p. 3459-64	1 Aug 2002 (see r. 2 and <i>Gazette</i> 26 Jul 2002 p. 3459)
<i>Industrial Relations (General) Amendment Regulations 2004</i>	29 Jun 2004 p. 2516-20	29 Jun 2004
<b>Reprint 1: The <i>Industrial Relations (General) Regulations 1997</i> as at 10 Sep 2004</b> (includes amendments listed above)		
<a href="#"><i>Industrial Relations (General) Amendment Regulations 2009</i></a>	<a href="#">31 Jul 2009</a> <a href="#">p. 3026</a>	<a href="#">r. 1 and 2: 31 Jul 2009</a> <a href="#">(see r. 2(a));</a> <a href="#">Regulations other than r. 1 and 2:</a> <a href="#">1 Aug 2009 (see r. 2(b))</a>

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