



Western Australia

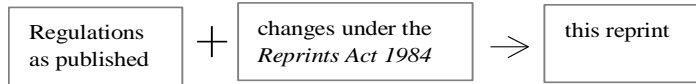
Industrial Relations Act 1979

# **Industrial Arbitration (Union Elections) Regulations 1980**

**Reprint 1: The regulations as at 16 January 2004**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions that would amend the text if they were to come into operation. The table refers to another endnote setting out the text of the amendments in full.

### *Notes amongst text (italicised and within square brackets)*

Editorial notes show if something has been omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything omitted can be found in an earlier reprint (if there is one) or the regulations as published.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as "Reprint 3" would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## **Industrial Arbitration (Union Elections) Regulations 1980**

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Reprinted under the  
*Reprints Act 1984* as  
at 16 January 2004

Western Australia

Industrial Relations Act 1979<sup>2</sup>

## Industrial Arbitration (Union Elections) Regulations 1980

### 1. Citation

These regulations may be cited as the *Industrial Arbitration (Union Elections) Regulations 1980*<sup>1</sup>.

### 2. Interpretation

In these regulations, unless the contrary intention appears —

“**regulation**” means a regulation of these regulations;

“**subregulation**” means a subregulation of the regulation in which the term is used;

“**the Act**” means the *Industrial Relations Act 1979*<sup>2</sup>;

“**union**” includes a branch, section or other division of a union.

### 3. Time for requesting conduct of election

A request for the conduct of an election under section 69 of the Act shall be made not less than one month before the commencement of the period for lodging nominations of candidates for election for an office in a union or association, but the Registrar may accept a request made less than one

month before the commencement of such period if he is satisfied that it is practicable for the election to be conducted under section 69 of the Act in pursuance of the request and a request so accepted shall be deemed to have been made in due time.

**4. Appeals to Full Bench**

An appeal to the Full Bench under section 69(12) of the Act against a decision of the Registrar shall be in accordance with Form 1 in the Schedule.

**5. Preliminary powers of returning officer**

The returning officer may determine —

- (a) the title of each office for which an election is to be held;
- (b) the term for which each officer is to be elected;
- (c) the title of each office which shall form the Committee of Management (by whatever name called);
- (d) the requirements, as to eligibility and otherwise, to be fulfilled by a person wishing to become a candidate for election to office, or any particular office;
- (e) the eligibility of members to vote at an election,

where any such matter is not provided for in the rules of the union or although provided for cannot be complied with.

**6. Times for nomination**

- (1) The returning officer shall determine the times and dates of the commencement and close of the period for lodging nominations of candidates for election for an office having regard to —
  - (a) the date of expiration of the term of office of the holder of the office;
  - (b) the time required to lodge nominations;
  - (c) the time required to complete the election; and

- (d) the provisions of the rules of the union relating to the times and dates of the commencement and close of the period for lodging nominations in respect of the election.
- (2) The returning officer shall determine the place for lodging nominations of candidates for election.

**7. Notice inviting nominations**

- (1) The returning officer shall, not less than 14 and not more than 21 days before the date of commencement of the period for lodging nominations of candidates for an election for an office, cause to be published in a newspaper or newspapers circulating widely within the State a notice setting out —
  - (a) the name of the union;
  - (b) the title of the office;
  - (c) the form in which nominations are to be made;
  - (d) the place for lodging nominations;
  - (e) the times and dates of the commencement and close of the period for lodging nominations, which shall be a period of not less than 7 days,

and inviting nominations of persons eligible for election for the office under the rules of the union to stand as candidates for election for the office.

- (2) Where the rules of a union provide for a notice inviting nominations of candidates for election to be published in a manner other than in such a newspaper, the returning officer, in addition to publishing the notice referred to in subregulation (1) in the manner provided by that subregulation, shall, if practicable, publish that notice in the manner provided by those rules.

**8. Signature of nomination**

- (1) A person is not eligible for election for an office unless the nomination is signed by that person signifying his willingness to

accept the office if elected and is also signed by the number of persons qualified and required under the rules of the union to nominate a candidate for that office.

- (2) A person nominated as a candidate may, by notice signed by him witnessed by an elector and addressed to and lodged with the returning officer before the time fixed for the expiry of the period for lodging nominations, withdraw his consent to the nomination and that person shall thereupon be deemed not to have been nominated.

**9. Declaration of election where one candidate nominated**

Where on expiry of the period for lodging the nomination of a candidate for election for an office, only one candidate is nominated for election for the office, the returning officer shall declare in accordance with these regulations that the candidate has been elected to that office.

**10. Duty of returning office where no nomination**

Where on the expiry of the period for lodging the nominations of a candidate for election for an office no nomination for that office has been received, the returning officer shall as soon as practicable after the expiry of that period so advise the union.

**11. Commencement and close of ballot**

Where more than one candidate is nominated for election for an office, the returning officer shall determine the date of commencement of issuing ballot papers and the time and date of the close of the ballot having regard to —

- (a) the date of expiration of the term of office of the holder of the office;
- (b) the time required to send and return ballot papers by post;
- (c) the time required to complete the election; and



- (d) the provisions of the rules of the union relating to the times and dates of the commencement and close of the ballot in respect of the election.

**12. Electoral roll**

- (1) The returning officer shall be provided by the union with a copy of the register of members referred to in section 63 of the Act which register shall form the electoral roll for the election and the returning officer shall enter a consecutive number against each name.
- (2) The returning officer shall be provided with by the union and shall add to the roll referred to in subregulation (1) the names and addresses of persons who, after the date of receipt by the returning officer of such rolls, become entitled to vote in the election.
- (3) The returning officer shall be provided with by the union and shall delete from the roll referred to in subregulation (1) the names of persons who, after the date of receipt by the returning officer of such roll, cease to be entitled to vote in the election.
- (4) The returning officer shall, at the place where he carries out his functions as returning officer, make the electoral roll applicable to an election for an office available for inspection by members of the union, or by any person authorised by the returning officer, during the ordinary hours of business until the day on which the result of the election is declared.

**13. Receipt of ballot papers**

- (1) Where an election is conducted by the Chief Electoral Officer appointed under the *Electoral Act 1907*, or by an officer holding office under that Act or by some other person authorised in writing by the Chief Electoral Officer, on behalf of a union, the returning officer shall use, for the purpose of receiving ballot papers in respect of an election —
  - (a) the permanent State Electoral Department<sup>3</sup> post office box; or

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- (b) a private box at a post office, being a private box used exclusively for that purpose.
- (2) Where a union conducts its own election for an office within a union, the returning officer shall use, for the purpose of receiving ballot papers in respect of that election, a private box at a post office, being a private box used exclusively for that purpose.

**14. Form of ballot paper**

- (1) The ballot paper for an election for an office shall be in a form that is in accordance with the rules of the union or, where there is no such or insufficient provision in those rules, in accordance with a form determined, subject to subregulations (2) and (3), by the returning officer.
- (2) Where the rules of the union do not provide for the order in which the names of candidates for election for an office shall appear on the ballot paper for that election, the full names shall appear in the alphabetical order of the surnames of the candidates or, in relation to candidates whose surnames are identical, in the alphabetical order of their Christian or given names.
- (3) The returning officer shall include on the ballot paper information and instructions to the voter with respect to the following matters and substantially in accordance with the following form —
  - (a) the title of the office to which the election relates;
  - (b) the time and date of the close of the ballot;
  - (c) how to mark the ballot paper in order to record a formal vote, so that such instructions shall comply with the rules of the union as far as possible;
  - (d) where the rules of the union do not provide for the method of counting of the ballot the returning officer shall count the ballot on the principle that the candidate with the largest number of votes shall be elected;

- (e) not to put on the ballot paper any mark or writing by which the voter can be identified;
  - (f) to place the ballot paper when completed in the envelope marked "ballot paper" and then to seal that envelope;
  - (g) to complete the details on the counterfoil; and
  - (h) to place the ballot paper envelope (and the counterfoil if a separate one is used) in the envelope addressed to the returning officer, and then to seal the envelope addressed to the returning officer and post it to reach the returning officer before the time of the close of the ballot.
- (4) The returning officer shall obtain from the printer of the ballot papers a certificate stating the number of ballot papers printed in respect of the election.

**15. Issue of ballot papers**

- (1) As soon as practicable after the date determined under regulation 11 for the commencement of issuing ballot papers in respect of an election, the returning officer shall issue, by posting by prepaid post, to each person —
- (a) whose name is on the roll referred to in regulation 12(1); or
  - (b) whose name is, under regulation 12(2) added to the roll; and
  - (c) whose name has not, before the issue of the ballot paper, been deleted from the roll under regulation 12(3),
- at the address shown on the roll, a ballot paper and the other ballot material in a sealed envelope and provide for the return of the ballot paper without expense to the voter.
- (2) The envelope referred to in subregulation (1) shall contain —
- (a) a ballot paper initialled by the returning officer or bearing a facsimile of those initials;
  - (b) an envelope marked "ballot paper"; and

- (c) an envelope addressed to the returning officer at the private box referred to in regulation 13, being an envelope that may be posted without expense to the voter, the back of which envelope may be used as a counterfoil and, where the back of that envelope is not so used, a separate counterfoil, the counterfoil being numbered to coincide with the number shown against the name of that person on the electoral roll.
- (3) The counterfoil shall be numbered with a number coinciding with the voter's consecutive number on the electoral roll, and shall make provision for the endorsement thereon of —
  - (a) the office or offices to which the election relates;
  - (b) the full name of the voter;
  - (c) the address of the voter; and
  - (d) the signature of the voter.
- (4) The envelope referred to in subregulation (1) shall bear an instruction that, if it is not delivered to the addressee,
  - (a) in the case of an election conducted by the person referred to in subregulation (1) of regulation 13, it should be returned to the private box referred to in that subregulation;
  - (b) in the case of an election conducted by the person referred to in subregulation (2) of regulation 13, it should be returned to the private box referred to in that subregulation.
- (5) Where in respect of an election the returning officer has, under subregulation (1) issued a ballot paper to a person whose name is after the issue of the ballot paper, deleted from the roll under regulation 12(3), the person shall be deemed to be entitled to vote in the election.

**16. Issue of duplicate ballot paper or return envelope**

- (1) Where, on application before the time of the close of the ballot in an election, the returning officer is satisfied that a ballot paper

or return envelope issued to a person whose name is on the electoral roll, has not been received or has been lost, destroyed or spoilt, he shall issue to that person a duplicate ballot paper, or return envelope, as the case may be.

- (2) An application under subregulation (1) by a person for a duplicate ballot paper, or return envelope, for an election shall be in writing setting out the grounds on which the application is made and declaring that the person has not voted in the election and shall, if practicable, be accompanied by any evidence that is available of that non-receipt, loss, destruction or damage.

**17. Ballot boxes**

- (1) The person referred to in regulation 13(1) may, at any time up to and including the hour of the close of the ballot for an election for an office within a union —
- (a) place unopened into a locked and sealed ballot box or ballot boxes allocated to the election envelopes, addressed to the private box referred to in regulation 13(1), received by him before the time of the close of the ballot;

and shall —

- (b) keep each of the ballot boxes in safe custody until the ballot boxes are opened in accordance with regulation 19;
- (c) as soon as practicable after the time of the close of the ballot, and in the presence of the scrutineers, or where a scrutineer has been informed in accordance with regulation 18 but is not present at the appointed time in his absence —
- (i) take the ballot box or boxes referred to in subregulation (1)(a) to the place of count and proceed to make the count; and
- (ii) keep all envelopes collected in safe custody until the count is complete.

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- (2) The person referred to in regulation 13(2) shall, at the time of the close of the ballot but not before, and in the presence of the scrutineers, or where a scrutineer has been informed in accordance with regulation 18 but is not present at the appointed time in his absence —
- (a) collect all envelopes from the private box at the post office;
  - (b) take all the envelopes so collected to the place of count and proceed to make the count; and
  - (c) keep all those envelopes in safe custody until the count is complete.

**18. Scrutineers**

- (1) Each candidate nominated for election may, by written notice given to the returning officer not less than 7 days prior to the close of the ballot, appoint to be a scrutineer a person who is eligible, under the rules of the union, to be a scrutineer in respect of that election, being a person other than a candidate, and may by notice in like manner appoint another such person to carry out the functions of scrutineer where the first-mentioned person does not carry out those functions.
- (2) Where an election is conducted by the person referred to in regulation 13(1), a scrutineer appointed under subregulation (1) shall be given sufficient notice in writing by the returning officer prior to the date and time when the returning officer opens the ballot box or boxes referred to in regulation 17(1)(a) and (b), to enable him to be present while the returning officer performs his functions.
- (3) Where an election is conducted by the person referred to in regulation 13(2), a scrutineer appointed under subregulation (1) shall be given sufficient notice in writing by the returning officer prior to the date and time when the returning officer opens the private box at the post office, to enable him to be present while the returning officer performs his functions.

- (4) Subject to subregulation (5), a scrutineer appointed under this regulation may —
  - (a) be present while the returning officer carried out his functions under regulation 17(2) and regulation 19;
  - (b) direct the attention of the returning officer to any irregularity concerning the issue of ballot papers, the admission of any envelope to scrutiny, the admission of a ballot paper as formal, the rejection of a ballot paper as informal or the counting of the vote; and
  - (c) carry out any other functions of a scrutineer under the rules of the union.
- (5) Where a scrutineer appointed under subregulation (1) —
  - (a) interrupts the scrutiny otherwise than in accordance with of subregulation (4)(b) or (c); or
  - (b) fails to carry out a lawful request by the returning officer, the returning officer may direct the scrutineer to leave the place where the scrutiny is being conducted.
- (6) A scrutineer appointed under subregulation (1) shall comply with a direction by the returning officer given under subregulation (5).  
Penalty: \$40.00

**19. Duties of returning officer**

- (1) The returning officer before proceeding to count the number of votes to ascertain which candidate is successful in the election shall —
  - (a) check each counterfoil against the member's name on the electoral roll and, if the voting papers are in order, mark the roll;
  - (b) remove the ballot paper envelope from the envelope addressed to the returning officer and place the ballot paper envelope unopened into a separate container until all counterfoils are checked; and

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- (c) when all the counterfoils are checked and cleared, open the ballot paper envelopes,  
and shall then proceed with the count.
- (2) Where any voting papers are rejected, the returning officer shall replace the counterfoil and the envelope marked “ballot paper” in the envelope in which they were received, endorse the latter envelope “rejected” with the reasons for rejection and set it aside for safe keeping.
- (3) The returning officer shall reject as informal a ballot paper that —
  - (a) does not bear the initials of the returning officer or the facsimile of those initials that is referred to in regulation 15(2)(a);
  - (b) has upon it a mark or writing by which the voter can be identified; or
  - (c) is not marked substantially in accordance with the instructions referred to in regulation 14(3)(c).
- (4) Where, during the scrutiny, the returning officer is informed by a scrutineer appointed under regulation 18 that the scrutineer objects to a ballot paper being admitted as formal, or rejected as informal, as the case may be, the returning officer shall decide the matter and endorse his decision on the ballot paper.

**20. Declaration of result**

- (1) Where practicable, the returning officer shall, in accordance with the rules of the union, declare the result of an election.
- (2) Where it is not practicable for the returning officer to declare the result of an election under subregulation (1), the returning officer shall declare the result of the election by giving notice of the result in writing to the union at its registered office.



- (3) The returning officer shall, in the manner and at the time of declaring the result of an election under subregulation (1) or (2), as the case may be, declare in respect of the election —
- (a) the number of ballot papers, other than duplicate ballot papers, issued;
  - (b) the number of duplicate ballot papers issued;
  - (c) the number of ballot papers admitted as formal;
  - (d) the number of ballot papers rejected as informal;
  - (e) the number of unused ballot papers;
  - (f) the number of ballot papers certified by the printer pursuant to regulation 14(4); and
  - (g) the number of votes admitted as recorded in favour of each candidate.

**21. Preservation of ballot papers**

The returning officer in consultation with the Committee of Management (by whatever name called) of the union shall make provision for the preservation in the custody of the union of —

- (a) all nomination papers;
- (b) all ballot papers admitted as formal;
- (c) all ballot papers rejected as informal;
- (d) all counterfoils relating to the ballot papers, whether formal or informal;
- (e) all envelopes received after the close of the ballot;
- (f) the marked electoral roll against which the counterfoils were checked; and
- (g) unused ballot papers, counterfoils and other documents prepared in connection with the election,

which shall be respectively placed in separate containers each endorsed with the name of the union and the office to which the election relates and shall be sealed, signed and dated by the returning officer and retained for a period of not less than one year after the date of the election.

**22. Exemption from section 57**

An application by a union for exemption from the application of section 57 of the Act in respect of an election shall be made by the Secretary or President of the union or association in writing stating the grounds for the application and shall be accompanied by a statutory declaration to the effect that the person making the declaration is the person authorised to make that application and further that the information contained in the application is true and correct.

Schedule

[Reg. 4]

Form 1

Industrial Relations Act 1979<sup>2</sup>

IN THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION<sup>4</sup>

No. .... of 20.....

BETWEEN

.....

.....

Appellant.

and

.....

.....

Respondent.

NOTICE OF APPEAL TO FULL BENCH FROM A DECISION OF THE REGISTRAR

1. Take notice that the abovenamed appellant hereby appeals against the decision of the Registrar dated the ..... day of ..... 20.....

2. The matters appealed against should be set aside or varied in the following manner —

.....  
.....  
.....

3. The grounds of appeal are —

.....  
.....  
.....

(Here set out with particularity the grounds of appeal on each matter)

Dated this ..... day of ..... 20.....

Affix seal where necessary.

.....

Appellant.

Filed in my office this ..... day of ..... 20.....

.....

Registrar.



### Notes

- <sup>1</sup> This is a reprint as at 16 January 2004 of the *Industrial Arbitration (Union Elections) Regulations 1980*. The following table contains information about these regulations and any reprint.

#### Compilation table

Citation	Gazettal	Commencement
<i>Industrial Arbitration (Union Elections) Regulations 1980</i>	4 Mar 1980 p. 747-53	4 Mar 1980
<b>Reprint 1: The <i>Industrial Arbitration (Union Elections) Regulations 1980</i> as at 16 Jan 2004</b>		

- <sup>2</sup> Formerly referred to the *Industrial Arbitration Act 1979* the short title of which was changed to the *Industrial Relations Act 1979* by the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 4. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- <sup>3</sup> Under the *Public Sector Management Act 1994* the names of departments may be changed. The former State Electoral Department is now known as the Western Australian Electoral Commission.
- <sup>4</sup> Now known as the Western Australian Industrial Relations Commission.