



**The Western Australian
Industrial Relations Commission**

INFORMATION KIT FOR REGISTERED ORGANISATIONS

**PREPARED BY
THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

Contents

1.	About This Kit.....	1
1.1.	Glossary:.....	1
2.	About the Western Australian Industrial Relations Commission.....	1
3.	Overview of Information That Must Be Lodged with The Registrar	2
4.	Information Required to Be Lodged Annually.....	2
4.1.	Officers and Membership Returns.....	2
4.1.1.	Required Information for The Lodgement of an Officers and Membership Return	2
4.1.2.	What Should I Check Before Submitting?	3
4.2.	Financial Returns	3
4.2.1.	Required Information for The Lodgement of a Financial Return	3
4.2.2.	Financial Return Due Dates.....	4
4.2.3.	What Should I Check Before Submitting?	5
4.3.	Right of Entry Permit Returns.....	5
4.3.1.	Required Information for The Lodgement of a Right of Entry Permit Return.....	5
5.	Right of Entry Permits	5
5.1.	What Needs to Be Included in a Right of Entry Permit Request?.....	6
5.2.	Revoking a Right of Entry Permit	6
6.	Elections	6
6.1.	Offences Relating to Elections	7
6.2.	What Needs to Be Included in a Union Election Request?	8
6.3.	What Happens After the Election Request Is Submitted to The Registrar? ..	8
7.	Rule Alterations.....	8
7.1.	What Is Required Under the Act to Affect a Rule Alteration?	9
7.2.	What Is the Procedure for a Rule Alteration?	9
7.3.	Rule Alterations which Must Be Considered by the Commission in Court Session	10
7.4.	Rule Alterations which Can Be Considered by the Registrar	10
8.	Notification of Changes	10
9.	Section 71 Certificate Holders.....	11

1. About This Kit

This kit provides information about a registered organisation's legislative obligations under the *Industrial Relations Act 1979 (WA)* (**the Act**) and the *Industrial Relations Commission Regulations 2005 (WA)* (**the Regulations**).

The following information is provided to assist organisations in adhering to their legislative obligations under the Act and the Regulations. This kit is for general information purposes only and organisations are advised to seek their own legal assistance and advice as necessary.

1.1. Glossary:

- Unless otherwise specified, all references to 'organisation' within this document shall mean registered organisations.
- Unless otherwise specified, all references to 'sections' (and its abbreviation "s") within this document shall relate to sections of the *Industrial Relations Act 1979 (WA)*, for example; "s 59" shall mean section 59 of the *Industrial Relations Act 1979 (WA)*.
- Unless otherwise specified, all references to 'regulations' within this document shall relate to the *Industrial Relations Commission Regulations 2005 (WA)*, for example; "regulation 79" shall mean regulation 79 of the *Industrial Relations Commission Regulations 2005 (WA)*.

2. About the Western Australian Industrial Relations Commission

The Western Australian Industrial Relations Commission (**WAIRC**) is a quasi-judicial tribunal established under the Act to deal with industrial matters in the State of Western Australia by conciliation or, if necessary, arbitration. The WAIRC's main objectives are to prevent and settle industrial disputes.

Under the Act, the Commission in Court Session may authorise the Registrar to register unions and associations with the WAIRC. The registration of an organisation is affected by the Registrar registering the organisation's name, rules and the address of the office where the business of the organisation is conducted. A certificate of registration is then provided to the organisation which is, until cancelled, conclusive evidence of registration and compliance with the conditions of registration. Registration renders an organisation and its members subject to the jurisdiction of the WAIRC and the provisions of the Act, and subject to the Act, binds the members of an organisation to its rules.

You may contact the WAIRC Registry if you have questions about completing any applications, or about the processes of the WAIRC generally.

Please be aware, the WAIRC's Registry Services Officers cannot provide legal advice or express an opinion. If you feel that your organisation needs legal or specialist advice, the Registry can provide you with the contact details of organisations that may be able to assist you. You may contact the Registry by telephone; (08) 9420 4444, or by email; registry@wairc.wa.gov.au.

3. Overview of Information That Must Be Lodged with The Registrar

The Act requires organisations to provide certain information to the Registrar each year or when specific circumstances change.

Each organisation must lodge annually to the Registrar:

- a declaration regarding the register of officers and number of members of the organisation as at 1 January, as required by s 63(2) and regulation 78;
- a financial return comprising certain audited financial statements as provided in s 65; and
- right of entry to premises returns must be submitted bi-annually in January and July, providing a list of the names of the current permit holders under regulation 82(13).

If any of the following records change, the Registrar must be notified of the change, including:

- the name and/or status of a right of entry permit holder;
- the address of the organisation; and/or
- the office bearer(s).

4. Information Required to Be Lodged Annually

Under the Act and the Regulations, organisations have legislative obligations to lodge certain information with the Registrar each year.

4.1. Officers and Membership Returns

Under s 63(2) and regulation 78(1), organisations must submit an officers and membership return to the Registrar during the month of January each year, containing information that is current as at 1 January of that year.

Please note: Organisations that hold a section 71 certificate must ensure their office positions are consistent with the rules of the counterpart Federal body prescribing the offices which exist in the Branch under s 71(4). Under s 71(2), organisations holding a section 71 certificate are also deemed to have the same rules as its counterpart Federal body relating to the qualifications of persons for membership.

4.1.1. Required Information for The Lodgement of an Officers and Membership Return

The annual officers and membership return must include the following information:

- A statutory declaration by the Secretary or other prescribed officer of the organisation certifying it “to be a correct statement of the information contained therein”.
- The statutory declaration must be completed on the correct form, referencing the [Oaths, Affidavits and Statutory Declaration Act 2005 \(WA\)](#).
- A record of the list of names, **residential addresses**, and usual occupations of the persons holding offices in the organisation. The Regulations specify that the residential address of the office holders is required to be provided, not PO Boxes or Locked Bags.
- A record of the number of members in the organisation as at 1 January of the relevant year.

4.1.2. What Should I Check Before Submitting?

- The organisation has been fully and correctly named in the return, including grammar and punctuation.
- The information required for the annual officers and membership return has been submitted on the correct statutory declaration form, referencing the [Oaths, Affidavits and Statutory Declarations Act 2005 \(WA\)](#).
- The statutory declaration has been completed by either the President or the Secretary of the organisation and witnessed by an authorised person as provided in Schedule 2 of the [Oaths, Affidavits and Statutory Declarations Act 2005 \(WA\)](#).
- The list of persons holding office in the organisation includes their **residential addresses** (not PO Boxes or Locked Bags) and their usual occupations.
- The office bearer positions provided in the return are the same as the positions listed in the organisation's rules. Any positions which are vacant are included in the return and marked as such.
- The record of the number of members as at 1 January of that year has been provided.

4.2. Financial Returns

In accordance with s 65(b), organisations must submit an annual financial return to the Registrar.

Unlike the officers and membership return, the Act does not specify a month in which all financial returns must be submitted to the Registrar. As each organisation's rules provides for the financial year of that organisation, the due date for each organisation's financial return is dependent upon what is stipulated in its rules.

The financial audit must have been completed within six months of the end of the organisation's financial year and submitted to the Registrar within one calendar month after the completion of a proper audit of the organisation's accounting records (provided under s 65).

4.2.1. Required Information for The Lodgement of a Financial Return

The financial return submitted to the Registrar must include the following documents:

- A proper audit of the organisation's accounting records by a person registered as an auditor under the *Corporations Act 2001 (Cth)*¹, completed within six months of the end of the financial year. The records must be itemised with sufficient particularity to show the financial affairs of the organisation have been conducted in accordance with its rules.
- Related to the relevant financial year, this must include:
 - a. an audited balance sheet of the assets and liabilities;
 - b. an audited statement of the receipts and expenditure; and

¹ If you are unsure whether an auditor is registered under the [Corporations Act 2001 \(Cth\)](#), you can confirm this via the Professional Register database on the [Australian Securities and Investments Commission website](#).

- c. an audited cash flow statement.
- A statutory declaration made by the Secretary of the organisation stating to the effect that “the secretary placed at the disposal of the auditor all relevant books and documents in relation to the financial affairs of the organisation” (regulation 79(2)). The statutory declaration must be completed on a correct form, referencing the [Oaths, Affidavits and Statutory Declaration Act 2005 \(WA\)](#).
- A section 75 Auditor Statement, which requires the auditor of the financial return to express an opinion as to whether any financial officials of the organisation have contravened or failed to comply with their s 74² duties.

4.2.2. Financial Return Due Dates

The due date for the lodgement of financial returns is different for each organisation depending on what is stipulated in their rules. The financial return must have been audited by a registered auditor within six calendar months of the end of the financial year and must be returned to the Registrar **within one calendar month of the audit date**.

The lodgement timeline for each financial audit will be dependent upon the organisation’s financial year period and how long it takes to complete the audit. Provided below are some examples of end of financial year dates, audit completion dates and their corresponding due dates for submission to the Registrar.

Table- examples of lodgement dates for the Registrar based on financial year end and audit completion dates.

Financial Year End (FYE)	Audit Completion Date (must be within 6 months of FYE)	Last Date for submission to the Registrar (within one month of audit completion date)
30 June 2019	10 September 2019	10 October 2019
31 March 2019	30 September 2019	30 October 2019
30 September 2019	29 March 2020	29 April 2020
15 December 2019	15 February 2020	15 March 2020

² Section 74 defines a finance official as “an officer of an organisation who is entitled to participate in the financial management of the organisation” and it sets out their obligations and duties in their financial roles. The auditor is required to express an opinion as to the organisation’s compliance with this criterion.

4.2.3. What Should I Check Before Submitting?

- The registered organisation is wholly and correctly named in the financial return.
- The financial return has been prepared for the appropriate financial year period in accordance with what is set out within the rules.
- The financial returns were audited within six calendar months of the financial year end and submitted to the Registrar within one calendar month of the audit date.
- The Secretary has included a statutory declaration with the financial return stating that they “*placed at the disposal of the Auditor all relevant books and documents in relation to the financial affairs of the organisation or association*” for the relevant financial year.
- The statutory declaration is on the appropriate form, referencing the [Oaths, Affidavits and Statutory Declarations Act 2005 \(WA\)](#) and has been witnessed by an authorised witness under Schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.
- The Auditor is recognised as a “proper auditor” registered under the [Corporations Act 2001 \(Cth\)](#). If unsure, this can be confirmed on the [Australian Securities and Investments Commission website](#).
- The section 75 Auditor Statement has been included.

4.3. Right of Entry Permit Returns

A return which details the current right of entry permit holders for registered organisations is required to be submitted to the Registrar every six months under regulation 82(13). The Regulations do not specify the months in which the returns must be filed, therefore the Registrar has taken the due dates to be within the months of January and July each year.

4.3.1. Required Information for The Lodgement of a Right of Entry Permit Return

The right of entry permit returns must be submitted by the Secretary of the organisation and include the names of the person(s) who currently hold(s) authorisation to represent the organisation.

A record of right of entry permit holders is kept as a public register and made available via the WAIRC website.

5. Right of Entry Permits

A right of entry permit allows an authorised representative of an organisation to enter, during work hours, any premises where relevant employees work, for the purposes of:

- holding discussions at the premises with any of the relevant employees who wish to participate in those discussions (under s 49H(1)); and
- investigating any suspected breach of the Act, the [Long Service Leave Act 1958 \(WA\)](#), the [Minimum Conditions of Employment Act 1993 \(WA\)](#), the [Occupational Safety and Health Act 1984 \(WA\)](#), the [Mines Safety and Inspection Act 1994 \(WA\)](#) or an award, order, industrial agreement or employer-employee agreement that applies to any such employee (under s 49I(1)).

When used in connection with the exercise of a power by an authorised representative of an organisation, *relevant employee* means an employee who is a member of the organisation or who is eligible to become a member of the organisation.

5.1. What Needs to Be Included in a Right of Entry Permit Request?

Where the Secretary of an organisation wishes to have a Right of Entry Authority issued to a person, they may make an application to the Registrar under s 49J(1) of the Act. This must be submitted on a *Form 16 – Application to the Registrar to Issue or Revoke a Person’s Right of Entry Authority* (under regulation 82(1)).

A request for a right of entry permit must be submitted to the Registrar on a *Form 16*, including the following:

- the names of the person(s);
- their residential address(es); and
- a current passport size and style photograph of the person to be authorised, certified by the Secretary of the organisation that the person in the photograph is the person nominated in the application.

Please note: the Registrar is not able to issue a right of entry permit to a person who has previously held one which has been revoked under s 49J(5). This section provides that the WAIRC may revoke or suspend the authority for a period determined by the WAIRC, where the person has:

- acted in an improper manner in the exercise of any power conferred on the person by Division 2G of the Act; or
- intentionally and unduly hindered an employer or employees during their working time.

You may contact the WAIRC Registry by telephone; (08) 9420 4444, or by email; registry@wairc.wa.gov.au if you have questions about completing the *Form 16*.

5.2. Revoking a Right of Entry Permit

Where the Secretary of an organisation wishes to have a Right of Entry Authority revoked, they may make an application to the Registrar under s 49J(6) of the Act. This must be submitted on a *Form 16 – Application to the Registrar to Issue or Revoke a Person’s Right of Entry Authority* (under regulation 82(2)).

A person to whom an authority has been issued under s 49J of the Act must return the authority to the Registrar within 14 days after revocation of the authority (under regulation 82(12)).

6. Elections

The Act aims to ensure that registered organisations are effectively regulated. The requirement that every office in an organisation is elected is an important part of ensuring organisations function in a democratic manner. The process for conducting an election for office bearers within an organisation varies according to the organisation’s rules.

Under s 69, a request for an election for office holders must be made to the Registrar, unless stated otherwise in the organisation’s rules.

The general requirements for elections are as follows:

- All elections for office holders of organisations and branches must be conducted by a returning officer from the Western Australian Electoral Commission (**WAEC**) who is not connected to the organisation (s 56(1)(a)).
- Elections must be conducted by secret ballot (as provided in s 55(4)(e) & s 56(1)(d)(i)).
- The rules must ensure as far as possible that no irregularity can occur in connection with the election (as provided in s 55(4)(e), s 56(1)(d)(iii) & s 69(5)).
- The rules must provide the ability for the returning officer to allow candidates with defective nominations to be able to rectify the defect (as per s 56(1)(b)).
- The election of each office holder position is to be by:
 - a. direct voting system by secret postal ballot (s 57(1)); or
 - b. a one tier collegiate voting system for full time officers (s 56(1)(c)).
- The rules of the organisation must make provision for:
 - a. absent voting;
 - b. the manner in which persons can become candidates for elections;
 - c. the appointment, conduct and duties of returning officers (must not be a holder of an office nor an employee of the organisation);
 - d. the conduct of the ballot;
 - e. the appointment, conduct and duties of scrutineers to represent the candidates at the ballot (see [Industrial Arbitration \(Union Elections\) Regulations 1980 \(WA\)](#) regulation 18; and
 - f. the declaration of the result of the ballot (s 56(1)(d)(ii)).
- The period of office for any elected position is not to exceed four years (s 56(1)(e)).
- The rules of the organisation must provide for the filling of a casual vacancy (s 56A) including the filling of these vacancies in an alternative manner (s 56A(3)). Casual vacancies are not to exceed a period beyond the unexpired term of the person who has vacated the office (s 56(1)(f)).

6.1. Offences Relating to Elections

There are various offences which exist in relation to the conduct of an election.

Some examples of offences relating to elections include:

- Recording more than one vote or recording a vote that the person is not entitled to.
- Forging a nomination paper, ballot paper or envelope.
- Influencing candidature and voting.
- Destroying, taking, opening or in any way interfering with a ballot box.
- Using violence or intimidation to generate support or opposition.
- Obstructing or hindering the person conducting an election.

Refer to s 70 for further information about offences relating to elections.

6.2. What Needs to Be Included in a Union Election Request?

An election for an office in an organisation may be conducted where the Registrar decides that a request for the conduct of an election has been duly made. It is advised that the election request be made to the Registrar as soon as practicable to allow time for an assessment to be made of the request.

For the purposes of s 69, a request is duly made if it is made in writing within the time prescribed:

- by an office of the registered organisation on its behalf; or
- by a person authorised to make the request by and on behalf of not less than 1/20th of the members of, or 250 of the members of the organisation, whichever is the lesser number.

The request should stipulate the office positions that are to be elected and the length of their term.

6.3. What Happens After the Election Request Is Submitted to The Registrar?

- The Registrar shall decide whether or not the request has been duly made in accordance with s 69(2).
- The Registrar will determine whether the request has been made according to relevant rules of the organisation.
- If it is decided that a request has been duly made and in accordance with the relevant rules, the Registrar will notify the organisation and if relevant, the person authorised to make the request.
- The Registrar will then make arrangements with the Electoral Commissioner under the [Electoral Act 1907 \(WA\)](#) for the conduct of the election.

The conduct of the election will be made by either an officer holding office under the [Electoral Act 1907 \(WA\)](#) or by some other person as authorised by the Electoral Commissioner.

7. Rule Alterations

Section 62 provides for the alteration of registered rules. A rule alteration must be requested where an organisation seeks to alter or substitute its registered rules by submitting a *Form 13 – Application to Alter or Substitute the Rules of an Organisation or Industrial Association, Change its Name, or Suspend or Cancel its Registration* to the WAIRC.

The majority of rules of organisations are able to be altered by way of an application made to the Registrar and approved by them, in consultation with the WAIRC. In those instances, there is no need for parties to attend the WAIRC. The proposed rule alterations will be authorised and made administratively by the Registrar, after consultation with the WAIRC. Any alterations to registered rules are not effective until a certificate of alteration has been issued by the Registrar (under s 62(1)).

Rules of organisations which relate to their name, qualifications or eligibility for membership, the area of the State in which the organisation intends to operate, or rules relating to the inclusion of provisions concerning counterpart Federal bodies (organisations registered under the [Fair Work Act 2009 \(Cth\)](#)), cannot be altered by the Registrar. Applications to alter those

rules must be made to the Commission in Court Session of the WAIRC, and parties will be required to attend a hearing before it.

7.1. What Is Required Under the Act to Affect a Rule Alteration?

The Act requires reasonable notice to be provided to members regarding a desire to initiate a rule alteration application under s 55(4)(d) and s 62(3). This must include:

- Notice of any proposed alteration.
- Specification about the reasons for the proposed alteration.
- Advice to members of the right to object to any such proposal to the Registrar and provide for reasonable opportunity for the members to do so (s 55(4)(d) and s 62(3)).

The Act does not specify a particular time period as to what constitutes “reasonable notice”. Each organisation’s rules should nominate a “reasonable” time frame in which objections must be lodged. In general, 21 days is considered a reasonable time frame.

Under s 62 of the Act, the Registrar must not register an alteration to any rule unless:

- the application has been authorised in accordance with the rules of the organisation;
- reasonable steps have been taken to adequately inform the members of the proposal for alteration and the reason;
- reasonable steps have been taken to adequately inform the members that they may object to the proposed alteration by forwarding a written objection to the Registrar;
- the members have been afforded a reasonable opportunity to object to the alteration; and
- less than 5% of the members of the organisation have objected to the proposed alteration, or a majority of the members who voted in a ballot conducted in a manner approved by the Registrar have approved the proposed alteration.

7.2. What Is the Procedure for a Rule Alteration?

The procedure for altering rules varies from organisation to organisation as provided in their rules. An organisation must comply with its individual procedures when changing its rules.

Some factors that may be provided for in the rules include:

- Which branch, body or person can alter the rules in question.
- Subject to the requirements in s 55(4)(d) and s 62(3) of the Act, how much, and to whom should notice of the alterations be given.
- Whether rule alterations must be done at a meeting, which may include the following factors:
 - whether they must be altered at a special meeting;
 - who has the authority to call the meeting;
 - the process for calling the meeting;
 - how much notice must be given of the meeting;
 - the content, format and manner in which notice can be given; and
 - the quorum requirements of the meeting.

- Whether rule alterations can be done by a ballot vote.
- Any procedures for passing the required vote or resolution, which may include:
 - voting procedures such as ballot vote or show of hands; and
 - any requirements regarding the declaration of the vote.
- Whether there are multiple avenues for altering the rules;
 - what reasons must exist for these to be available; and
 - whether the appropriate avenue has been selected.
- Whether approval of the alterations by other bodies is required, for example a branch.

7.3. Rule Alterations which Must Be Considered by the Commission in Court Session

An application pursuant to s 62 is referred to the Commission in Court Session of the WAIRC only if it seeks to alter rules in relation to:

- eligibility of persons for memberships (regulation 69(1));
- the name of the organisation (regulation 71);
- the area of the State within which the organisation operates or intends to operate (regulation 69(1)); or
- matters referred to in s 71(5) of the Act ie. rules relating to the inclusion of provisions concerning counterpart Federal bodies (organisations registered under the [Fair Work Act 2009 \(Cth\)](#)).

7.4. Rule Alterations which Can Be Considered by the Registrar

All other rule alterations, except for those listed above, can be considered by the Registrar.

It is recommended that organisations seek consultation with Registry Services through the Deputy Registrar prior to initiating the rule alteration request. The Deputy Registrar can assist with ensuring the rule alteration request meets the technical requirements prior to lodgement.

8. Notification of Changes

As records change, organisations have an obligation to report these changes to the Registrar under the Act and Regulations.

The following changes must be reported to the Registrar within 14 days of the date of the change:

- A change of address of the organisation – as provided in regulation 81, the Secretary of an organisation must notify the Registrar of any change of address of the organisation's registered office.
- A change in office bearer(s) – under s 63(3) and regulation 78(3), the notification of a change in office bearer(s) must be lodged with the Registrar.

A change of name and/or status of a right of entry permit holder must be reported to the Registrar as soon as practicable after the change.

Please note: the notification of change must be lodged by the Secretary on the organisation's letterhead.

The notification can be provided to Registry Services via email; registry@wairc.wa.gov.au or by post addressed to the Registrar, Level 17, 111 St Georges Terrace, Perth WA 6000.

9. Section 71 Certificate Holders

Where the Commission in Court Session determines that the rules of the counterpart Federal body are deemed to be the same as the rules of the State organisation;

- (a) relating to the qualifications of persons for membership; and
- (b) prescribing the offices which shall exist within the Western Australian Branch of the counterpart Federal body,
a section 71 certificate may be issued by the Registrar.

A section 71 certificate provides that each office in the State organisation may be held by the person who, in accordance with the rules of the State organisation's counterpart Federal body, holds the corresponding office in the counterpart Federal body. A State organisation which holds a section 71 certificate is no longer subject to the election provisions under the *Industrial Relations Act 1979 (WA)* and is not required to conduct elections for office bearers.

In order to apply for a section 71 certificate, two separate applications are required to be made to the Commission in Court Session of the WAIRC seeking:

- (a) a s71 declaration from the Commission in Court Session. This application is made by filing a *Form 13A – Employee Organisation Coverage and Provisions Relating to State Branches of Federal Organisations*; and
- (b) alterations to the rules pursuant to s62 to enable the holders of an office in the counterpart Federal body to hold an office in the State organisation. This is informally known as an enabling clause in accordance with s71(5)(a) of the Act. This application is made by filing a *Form 13 – Application to Alter or Substitute the Rules of an Organisation or Industrial Association, Change its Name, or Suspend or Cancel its Registration*.

State organisations that hold a section 71 certificate must ensure their office positions remain consistent with the rules of the counterpart Federal body prescribing the offices which exist in the Western Australian Branch under s 71(4). State organisations must also ensure that pursuant to s 71(2), the State organisation's rules relating to the qualifications of persons for membership remain the same as its counterpart Federal body.

Once a section 71 certificate has been issued it is up to the State Organisation to monitor any changes to the rules of the counterpart Federal body. Any changes relating to office positions or qualifications of persons for membership in the counterpart Federal body's rules may result in the State Organisation's rules being out of alignment and thereby potentially invalidating the section 71 certificate.