

Industrial Relations Reform Act 1993 (Commonwealth) - A Pathfinder



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Scope

This pathfinder to the *Industrial Relations Reform Act 1993* is intended for students, researchers and practitioners in the field of industrial relations. It goes beyond the *Industrial Relations Reform Act 1993* and includes background material pertinent to the industrial relations reform process which has taken place over the past several years.

The Pathfinder covers government and employer association publications, monographs, journals, treatises, reports and pamphlets. General media coverage is not included although details of access to sources are provided.

Introduction

The Commonwealth Government has introduced a range of reforms to the federal industrial relations system. The reforms have been incorporated into the *Industrial Relations Act 1988* through the *Industrial Relations Reform Bill 1993* which was proclaimed on 28 March, 1994. The *Industrial Relations Reform Act 1993* became operative on 30 March 1994.

The principal areas of reform enshrined in the new legislation involve enterprise bargaining, awards, unfair dismissal, secondary boycotts and the right to strike. As well, the Act establishes the new Industrial Relations Court of Australia to oversee the operation of the new system at the judicial level.

The Government's reforms provide the framework for the further spread of enterprise bargaining throughout the Australian economy. The legislative changes will have an impact on all employers. There are six main elements to the legislation:

- new objects for the *Industrial Relations Act 1988* and a restructuring of the Act to better reflect the revised framework;
- the maintenance and strengthening of the safety net for employees, through the award system and minimum entitlements;
- more effective arrangements for direct bargaining, including the establishment of a new stream of enterprise flexibility agreements and

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the creation of a sanction-free bargaining period in the negotiation of certified agreements;

- a more effective regime for regulating industrial action and enforcing agreements, including amendments to the current secondary boycott provisions of the *Trade Practices Act*;
- the establishment of a specialist Industrial Relations Court;
- more effective institutional arrangements, including the encouragement of industry consultative councils, and revised requirements for union registration ²

Proposed Changes

Amendments to the legislation were announced in a statement from the Minister for Industrial Relations, Mr Brereton, on 31 May 1994. The amendments, which the Government rushed through by the end of June, *Industrial Relations Amendment Act (No 2) 1994* (Act No. 97 of 1994), assent 30 June, proclamation on assent, limit compensation for unfair dismissal. The move was apparently brought about by a flood of exceedingly high claims for compensation including one by a Melbourne executive for \$19 million.

LEGISLATIVE HISTORY - *INDUSTRIAL RELATIONS REFORM ACT 1993*

House of Representatives

1st Reading, 28 10 1993

2nd Reading, 28 10 1993

Debate continued on 17,18,22 November 1993

3rd Reading, 22 11 1993

Senate

1st Reading, 24 11 1993

2nd Reading, 24 11 1993

Debate continued on 6,7,8,13,14 December 1993

3rd Reading, 14 December 1993

The Bill received the Royal Assent on 22 December 1993

GOVERNMENT AND OTHER PUBLICATIONS

Australia Department of Industrial Relations *1993 Industrial relations reforms* Canberra: AGPS, 1993

December 1993 overview of the new legislation and the reforms effected thereby

² Australia Department of Industrial Relations *1993 Industrial Relations Reforms* Canberra: The Department, 1993 p 1

Australia Department of Industrial Relations. *Working better - your guide to reforms in the workplace*. Canberra: AGPS, 1994.

Government pamphlet which attempts to explain industrial relations law reforms that affect the workplace. The Department of Industrial Relations in Canberra has also published the following range of pamphlets

- Improving Workplace Flexibility
- Workplace Agreements With Employees
- Parental Leave Entitlements
- Terminating Employment - Rights and Responsibilities
- Minimum Wages And Equal Pay For Work Of Equal Value
- Ending Discrimination
- Benefits For Women
- Benefits For Small Business

Australia Parliament Senate Standing Committee on Employment, Education and Training. *Inquiry concerning aspects of the Industrial Relations Reform Bill 1993*. Canberra: Parliament, 1993

Senate report on the proposed legislation. Chairman A Olive Zakharov (Parliamentary Paper no 272 of 1993)

Australian Chamber of Commerce and Industry. *The federal Industrial Relations Reform Act 1993 - an employer review*. Melbourne: ACCI, 1994.

This review is an outline for employers of the provisions of the Act with respect to issues such as secondary boycotts, minimum entitlements, enterprise bargaining and right to strike

Australian Chamber of Manufacturers. *Guide to the federal Industrial Relations Reform Act 1993*. Melbourne: ACM, 1994

Cover title of this guide is 'ACM human resources'. The guide aims to provide assistance to employers in understanding the new obligations imposed by the Industrial Relations Act

Australian Mines and Metals Association Inc. *National Industrial Reports*. Melbourne: AMMA, 1993-

The AMMA produces a regular National Industrial Report. Issues published during 1993 and 1994 are of particular relevance to the new legislation. See e.g. August, 'Industrial Relations Act - proposals for amendments', October, 'Industrial Relations Reform Bill 1993', November, 'Industrial Relations Reform Bill 1993', December 1993/January 1994, 'The Industrial Relations Reform Act 1993'

Australian Trade Union Training Authority. *Changes in industrial relations summary of the Industrial Relations Reform Act 1993*. 2nd ed. Melbourne: Australian Trade Union Training Authority, 1994

TUTA overview of the impact of the Industrial Relations Reform Act 1993. Summary content - The Role of the Industrial Relations Commission, - The Award System, - New Minimum Protections, - Enterprise Bargaining - Sanctions, - Industrial Relations Court, - Other Issues

Boland, R. *MTIA comprehensive guide to federal industrial relations reforms*. Canberra: Metal Trades Industry Association of Australia, 1994.

The aim of the guide is 'to provide employers with a general understanding of the reforms that will impact on them'

JOURNAL ARTICLES

Brooks, A. "The Industrial Relations Legislation Amendment Act 1992" (1992) 20 *Australian Business Law Review* 522-529

The author elaborates on the two main areas of the legislation which 'relate to the power of the Australian Industrial Relations Commission with respect to independent contracts, and to the procedure for certifications of 'voluntary' agreements. Other changes are also briefly outlined.

Brooks, A. "Federal industrial relations legislation reform : independent contracts and recovery of wages" (1993) 6 *Australian Journal of Labour Law* 69-73

The author discusses the provisions dealing with contracts for services (independent contracts) and for the recovery of wages

Ludeke, J. "Enterprise bargaining and its consequences" (1992) 66 *Australian Law Journal* 509-522

Analyses the broad support for introducing enterprise bargaining into the Australian workplace but also how 'it became obvious that this apparently clear concept meant different things to different organisations'

McCallum, R. "Industrial law and relations under federal wigs" (1992) 14 *Sydney Law Review* 401-431

Argues that over the last decade Federal Court judges have played 'a significant part in re-asserting the role of the law in federal industrial relations'. The paper also looks at the issue of whether this industrial jurisdiction should now be reposed in a labour court or remain with the Federal Court of Australia

McCallum, R. "Enhancing federal enterprise bargaining: the Industrial Relations (Legislation Amendment) Act 1992" (1993) 6 *Australian Journal of Labour Law* 63-68.

The author comments on the primary purpose of the above Act which was 'to enhance enterprise bargaining for trade unions and employers whose industrial relationship comes within federal jurisdiction'

McCallum, R. "The internationalisation of Australian industrial law: The Industrial Relations Reform Act 1993" (1994) 16 *Sydney Law Review* 122-135
The author focuses upon the two issues which make up the centrepiece of the Reform Act the broadened scope of enterprise bargaining and the established 'mechanisms to ensure that most Australian workers are protected by a safety net of minimum employment rights'

Stewart, A. "Procedural flexibility, enterprise bargaining and the future of arbitral regulation" (1992) 5 *Australian Journal of Labour Law* 101-134
Elaborates on three concepts which have dominated debates as to the future of labour law and relations in this country deregulation enterprise bargaining and flexibility

Teicher, J. "Confederation of Australian Industry proposals for a new industrial relations system" (1992) 5 *Australian Journal of Labour Law* 198-202

Discusses the attempt by the Confederation of Australian Industry (CAI) to reassert its leadership among employers and employer organisations through its publication of 'A New Industrial Relations System for Australia' (ANIRS)

SELECTED BACKGROUND ARTICLES AND TEXTS

The following items are not annotated. They are pertinent to the industrial law reform process which forms the background to the new legislation and are included to assist researchers

Australia Department of Industrial Relations *Labour market reform the industrial relations agenda* Canberra, AGPS, 1988

- "Bargaining in good faith" (1994) 11 *Industrial Relations & Management Letter* 20-22
- Belchamber, G. "Why the unions said no on wages" (1991) *Workplace*, 28-30.
- Benson, J, Griffin, G and Smith, G "The public interest and the Industrial Relations Act 1988" (1992) 3 *Public Law Review* 113-126
- Blain, N. "Enterprise bargaining: an overview" (1993) 4 *Economic and Labour Relations Review* 77-97.
- Boland, R and Piterman, H "Enterprise bargaining in Australia - collection of two articles" (1993) 2 *Management* 9-11, 19-20
- "Competition, structural change and labour market reform" (1992) 88 *Business Council Bulletin* 36-39.
- Dabscheck, B. "The Coalition's plan to regulate industrial relations" (1993) 4 *Economic and Labour Relations Review* 1-26
- Hancock, K and Rawson, D. "The metamorphosis of Australian industrial relations" (1993) 31 *British Journal of Industrial Relations* 489-513.
- Hilmer, F "Employee relations: the way forward: outline of remarks" (1993) 97 *Business Council Bulletin* 54-59.
- Keating, P "Election 1993: the government's agenda" (1993) 65 *Australian Quarterly* 465-481
- MacIntosh, M "Australian industrial relations in 1992: another turning point?" (1993) 21 *Asia Pacific Journal of Human Resources* 52-64
- Naughton, R "Australian employment law in 1992" (1993) 31 *Asia Pacific Journal of Human Resources* 39-51.
- Ronfeldt, P and McCallum, R (eds) *A new province for legalism: legal issues and the deregulation of industrial relations* (proceedings from a conference held in Sydney, April 30th 1993) Sydney: University of Sydney, Australian Centre for Industrial Relations Research and Teaching, 1993
- Ross, I "How two Johns made IR reform possible" (1993) *Workplace*, 6-8,10
- "The Industrial Relations Reform Bill - new rules in bargaining" (1994) 11 (2) *Industrial Relations & Management Letter* 9-12.

"The Industrial Relations Reform Bill 1993 takes shape" (1993) 10(10)
Industrial Relations & Management Letter 13-16

"What Brereton's industrial relations reforms mean to you - special report"
(1993) *Industrial Relations & Management Letter* (Special Report, October
1993), 1-12

INFORMATION SOURCES

1. Monographs

The *Australian Bibliographic Network* (ABN) was the primary source utilised
in the compilation of this Pathfinder - for monograph publications

Use: F S Industrial relations--Law and legislation--Australia

2. Journal Indexes

The following are the indexes used in the compilation of the research guide
A number of online alternatives exist for most of the indexes ALLI is only
available online

Australian Legal Literature Index (ALLI) (via AARNet, CITEC, LINK)

Use: Q Industrial and Reform

Attorney-General's Information Service a digest of legal journals (AGIS)
(via SCALE, OZLINE, LEXIS, KIWIWEI, AARNet, AUSTROM CD)

Use: Q Industrial and Reform

Australian Public Affairs Information Service (APAIS) (via OZLINE,
AUSTROM CD)

Use: Industrial and Reform

American Business Index/Inform (ABI/Inform)

Use: Industrial and Reform and Australia

3. Digests, Encyclopaedias and Looseleaf Services

Australian Current Law Reporter (Butterworths)

Use: Title 230 - Industrial Law

Australian Digest 3rd Ed (Law Book Co)

Use: Title 43 - Industrial Law

[Note: Refer to both white pages and yellow pages supplement]

UPDATE the *Australian Digest* by using recent issues of the *Australian
Legal Monthly Digest* under the same reference, i.e. Industrial Law

Halsbury's Laws of Australia (Butterworths)

Use: Volume 14: Chapter 230 - Industrial Law [65-75]

Australian Labour Law Reporter (CCH) Four volume looseleaf service
which contains all legislation, decisions, etc, with annotations

Federal Industrial Law (Butterworths) One volume looseleaf service.
Includes annotated *Industrial Relations Act* and *Regulations*

4. Directories

Directory of Australian Associations March 1994 - July 1994, Edition 19
(Melbourne: Information Australia, 1994)

5. Personal Contacts

Federal Department of Industrial Relations, Public Affairs Branch. Canberra

NEWSPAPER AND MAGAZINE ACCESS

This research guide does not attempt to provide coverage of the articles, columns and items in newspapers and news magazine of the *Federal Industrial Relations Reform Bill 1993*. Articles on that topic are, however, easily located either in full text or abstracts through a variety of online databases and two CD-ROMs. Means of online access to material contained in the major national newspapers are as follows:

Brisbane Courier Mail
QNIS

Business Review Weekly
AUSINET (file name: BRWT)

The Advertiser
PRESSCOM

The Age
Reuters Textline via DIALOG, LEXIS/NEXIS, DATASTAR, MAID or FT-Profile

The Australian (Business Section only)
PRESSCOM

The Australian Financial Review
AUSINET (file name: AFRIEXT)

The Bulletin
AUSINET (file name: BULI)

The Herald/Sun (Melbourne)
PRESSCOM

The Sydney Morning Herald
AUSINET (file name: SMHT)

The Age, Australian, Herald-Sun and Independent Monthly
ECHO-VIEW CD-ROM

The Age, Herald-Sun
EXTRA CD-ROM