



Right of entry

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, help to resolve workplace complaints, conduct investigations, and enforce relevant Commonwealth workplace laws.

What is right of entry?

Right of entry refers to the part of Commonwealth workplace laws which regulate the rights of organisation officials (such as a trade union) to enter premises.

These laws seek to balance:

- the right of organisations to represent their members in the workplace, hold discussions with potential members, and investigate suspected contraventions of workplace laws and instruments, including occupational health and safety laws
- the right of occupiers of premises and employers to go about their business without undue inconvenience
- the rights of employees and textile, clothing and footwear award workers ('TCF award workers') to receive, at work, information and representation from organisation officials.

For the purpose of the right of entry provisions under *The Fair Work Act 2009*, an organisation must be federally registered by the Fair Work Commission in accordance with the *Fair Work (Registered Organisations) Act 2009*. An organisation can be an employee association (e.g. a trade union), employer association, or an enterprise association (an association where the majority of members are performing work in the same enterprise).

There is a special set of rights and obligations for organisation officials when seeking to enter premises and whilst on premises in relation to TCF award workers under the *Fair Work Act 2009*. For more information about right of entry provisions and entry permits, visit www.fwc.gov.au.

Who can enter a workplace?

Organisation officials

In order to enter premises, an organisation official must have a valid and current entry permit from the Fair Work Commission. When issuing a permit, the Fair Work Commission may impose certain conditions, which limit the use of the entry permit.

The Fair Work Commission can only issue an entry permit to an official of an organisation if they are satisfied they are a fit and proper person. In deciding whether to issue a permit, the Fair Work Commission must take into account factors such as whether the official has received training about their rights and responsibilities as a permit holder, and whether the official has ever been convicted of an offence against an industrial law. The Fair Work Commission can revoke, suspend or impose conditions on an entry permit.

Government officials

Fair Work Inspectors are Commonwealth Government officials. Their job is to ensure compliance with workplace rights and obligations under relevant Commonwealth workplace laws, including the *Fair Work Act 2009*, the *Fair Work Regulations 2009*, or a fair work instrument (e.g. an award or an industrial agreement, including agreements made under the former *Workplace Relations Act 1996*). Fair Work Inspectors are appointed by the Fair Work Ombudsman in accordance with the *Fair Work Act 2009*.

Fair Work Inspectors are authorised to enter premises, without force, when the Fair Work Inspector has reasonable cause to believe that:

- people are performing work under the *Fair Work Act 2009* or a fair work instrument
- there are records or documents that are relevant to compliance with relevant Commonwealth workplace laws.

The powers of a Fair Work Inspector to enter premises are not regulated by the right of entry provisions under the *Fair Work Act 2009*. Rather, their powers to enter premises are regulated under separate provisions of the *Fair Work Act 2009*.

For more information on the powers of Fair Work Inspectors, including the ability to enter premises and the conditions surrounding these powers, please see the *Fair Work Ombudsman Fact Sheet – Powers of Fair Work Inspectors*.

What rights can be exercised whilst on the premises by an organisation official?

An organisation official who has a right of entry permit (called a permit holder) may enter premises, and exercise rights whilst on the premises, for the purpose of investigating a contravention of the *Fair Work Act 2009*, the former *Workplace Relations Act 1996*, or a fair work instrument. The permit holder must have reasonable grounds for suspecting a contravention has occurred or is occurring.

The permit holder can only exercise these rights if all the following are met:

- the suspected contravention relates to or affects at least one member of the permit holder's organisation
- the organisation is entitled to represent the industrial interests of that member
- the member performs work on the premises
- unless the Fair Work Commission has issued an exemption certificate, an entry notice is given to the occupier of the premises and any affected employer, during working hours at least 24 hours, but not more than 14 days, before the entry.

If an exemption certificate has been issued, although notice does not need to be given, the certificate must be given to the occupier and the affected employer as soon as practicable after entry.

Note: the forms relating to entry to premises such as an entry permit, entry notice or exemption certificates are available at www.fwc.gov.au.

The entry notice must specify:

- the premises to be entered
- the day of entry
- the organisation the permit belongs to
- the section of the *Fair Work Act 2009* that authorises the entry
- particulars of the suspected contravention
- a declaration by the permit holder that they are entitled to represent the industrial interests of an employee who performs work at the premises
- the provision of the organisation's rules which entitles the organisation to represent the member or TCF outworker.

Whilst on the premises, the permit holder may do the following:

- inspect any work, process, or object relevant to the suspected contravention
- interview any person about the suspected contravention:
 - who agrees to be interviewed *and*
 - whose industrial interests the permit holder's organisation is entitled to represent.

A permit holder must not enter any part of a premises that is mainly used for residential purposes.

An organisation official is not authorised to remain at a premises if they fail to:

- produce the permit holder's authority documents for inspection when requested to do so by the occupier of the premises or an affected employer, or when seeking records as set out below
- comply with any reasonable request by the occupier of the premises to:
 - comply with a work health and safety (WHS) or occupational health and safety (OH&S) requirement that applies
 - take a particular route to reach a particular room or area.

In limited circumstances, a permit holder may be able to enter premises, or exercise certain rights on premises, if the right is conferred by a State or Territory Occupational Health and Safety law.

For more information, visit www.fwc.gov.au.

What records can be accessed?

Whilst on the premises, the permit holder may require the occupier or affected employer to allow the permit holder to inspect, and make copies of, any record or document that is directly relevant to the suspected contravention, and that:

- is kept on the premises
- is accessible from a computer kept on the premises.

A permit holder may give a written notice to an affected employer requiring them to produce, or provide access to, a record or document that is directly relevant to the suspected contravention on a later day or days specified in the notice.

The notice must:

- be provided on the premises or within five days of the entry to the premises
- allow at least 14 days from the date of the notice for the records or documents to be provided.

However, records relating solely to employees who are not members of the permit holder's organisation may only be accessed with the written consent of those non-members, or by order of the Fair Work Commission.

The *Fair Work Act 2009* provides generally that information or documents collected in the course of investigating a suspected contravention can only be used or disclosed in relation to the investigation or rectifying the suspected contravention. However, there are some other limited circumstances where the disclosure is allowable.

These include where the disclosure is:

- necessary to lessen or prevent a serious threat to an individual or the public's health and safety
- necessary for crime investigation, prevention, prosecution, or for the enforcement of proceeds of crime legislation
- necessary for the investigation of other unlawful activity or improper conduct
- necessary to protect the public revenue
- necessary for the preparation of court proceedings
- required or authorised by or under law
- with the consent of the individual.

Further, the use or disclosure of information or documents collected is strictly controlled subject to the above exceptions and is regulated under the *Privacy Act 1988*.

Finally, an affected employer is not required to produce, or provide access to, a record or document if this would contravene a Commonwealth or State or Territory law.

Can an organisation official hold discussions with employees at the workplace?

An organisation official who is a permit holder may enter premises to hold discussions with one or more employees:

- who perform work on the premises
- whose industrial interests the permit holder's organisation is entitled to represent
- who wish to participate in those discussions.

A permit holder must provide an entry notice to the occupier providing at least 24 hours notice, but no more than 14 days notice, before entering premises to hold discussions.

A permit holder may only enter premises during working hours and may hold discussions only during mealtimes or other breaks.

A permit holder must hold discussions or conduct interviews in rooms or areas of the premises agreed to with the occupier of the premises. If an agreement can't be reached the discussions or interviews may be held in the room or area that is provided by the occupier for taking meals or other breaks.

There are specific provisions that apply to the provision of accommodation and transport for permit holders travelling to remote locations. See sections 521A-D of the *Fair Work Act 2009* for more information.

What can permit holders and employers not do?

The *Fair Work Act 2009* sets out certain rights and obligations of both permit holders and employers in relation to right of entry provisions.

A permit holder must not:

- intentionally hinder or obstruct any person or otherwise act in an improper manner when exercising or seeking to exercise their rights
- misrepresent themselves by intentionally or recklessly giving the impression they are authorised to do things they are not authorised to do.

An employer (or other person) must not:

- refuse or unduly delay entry to a permit holder's entitled to enter the premises
- refuse or fail to comply with a permit holder's request to produce or provide access to records or documents
- intentionally hinder or obstruct a permit holder who is exercising their right of entry powers
- misrepresent themselves by intentionally or recklessly giving the impression they are authorised to do things they are not authorised to do.

What can be done if there are right of entry contraventions?

A person, such as an employer, occupier of a premises, workers, or organisation officials who believe that the right of entry provisions have been contravened can contact the Fair Work Commission for assistance.

The Fair Work Commission can deal with a dispute about right of entry, including by arbitration. In dealing with the dispute, the Fair Work Commission may make any order it considers appropriate, including by making one or more of the following orders:

- an order to suspend or revoke an entry permit
- an order to impose conditions on entry permits
- an order about the future issue of entry permits to one or more persons.

The Fair Work Ombudsman may inquire into or investigate right of entry complaints. Penalties can apply for proven contraventions of right of entry laws.

If you are in the building and construction industry, Fair Work Building & Construction (FWBC) may investigate and seek penalties for right of entry contraventions. Contact FWBC on **1800 003 338** or online at www.fwbc.gov.au.

Right of entry provisions are provided for by sections 481–521 of the *Fair Work Act 2009*.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94