

▪ UNION RIGHT OF ENTRY	
Workplace Relations Act	Fair Work Bill
Entry Permits	
<p>A union official must have a valid permit issued by the Industrial Registrar</p> <p>A permit will not be issued to a union official unless they are a “fit and proper person”</p> <p>Permits remain valid for maximum 3 years from date of issue unless revoked or permit holder ceases to be a union official with his/her union</p>	<p>Permit requirements remain the same</p>
Entry to Investigate Suspected Breaches	
<p>Entry allowed to investigate a suspected breach of:</p> <ul style="list-style-type: none"> ▪ The Workplace Relations Act ▪ Award <u>binding the union</u> ▪ Union collective agreement <u>binding on the union</u> ▪ Employee collective agreement <u>binding on a member of the union</u> ▪ Employer greenfields agreement <u>binding on a member of the union</u> ▪ AWA or ITEA, but only if the union is <u>requested to do so in writing</u> <p>The breach must relate to or affect an employee performing work on the premises and who is a member of the union</p> <p>Entry must occur during working hours only</p> <p>The permit holder must have “reasonable grounds” for suspecting a breach has occurred or is occurring. The permit holder has the onus of proving that the suspicion is reasonable</p>	<p>Entry allowed to investigate a suspected breach of:</p> <ul style="list-style-type: none"> ▪ The Fair Work Act ▪ Modern Award ▪ Enterprise agreement (an agreement made under the Fair Work Act) <p>The award or enterprise agreement does not have to be binding on the union, but</p> <ul style="list-style-type: none"> ▪ the union must be entitled to represent the industrial interests of that member (this is determined by the union’s membership eligibility rules) and ▪ The instrument must apply or have applied to the member <p>The requirement that the breach relate to or affect a member of the union who performs work on the premises remains the same</p> <p>It will not be known how right of entry to investigate existing agreements or awards will be dealt with until the release of the government’s transitional and consequential legislation</p> <p>Entry must also occur only during working hours</p> <p>“Reasonable grounds” are also required and the burden of proving the reasonableness of the suspicion remains with the permit holder</p>
Rights while on Premises to Investigate a Suspected Breach	
<p>While on premises, the union may:</p>	<p>Rights while on premises remain largely the same.</p>

<ul style="list-style-type: none"> ▪ Inspect or view any work, material, machinery, or appliance relevant to the suspected breach; ▪ Interview employees who are members/eligible to be members, about the suspected breaches (refusal is not a breach of the Act); and ▪ Inspect and make copies of any records relevant to the suspected breach which are kept on those premises or are accessible from a computer that is kept on the premises by the employer <p>Later access to relevant records at the premises or agreed location is allowed where the union official gives the employer written notice at the time of entry or within 5 days of entry; however this later access must not occur within 14 days of the date of notice</p> <p>This does not include access to non-member records, unless by order of the Australian Industrial Relations Commission</p>	<p>This right to later access to records remains the same</p> <p>Access is extended to all relevant records, including non-member records</p>
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Entry to Hold Discussions

<p>Entry allowed to hold discussions with any employees if:</p> <ul style="list-style-type: none"> ▪ The employees carrying out work are covered by an award or collective agreement that is <u>binding on the union</u>; ▪ The employees are members or eligible to become members of the union; and ▪ The employees wish to participate in the discussions <p>This means that entry cannot be made to hold discussions with employees covered by AWAs/ITEAs or employee collective agreements</p> <p>Entry must occur during working hours only and discussions must only be held during the employees' mealtime or other breaks</p>	<p>Entry to hold discussions with employees has changed:</p> <ul style="list-style-type: none"> ▪ There is no requirement that the instrument applying to the employees be binding on the union; ▪ Entry depends solely on the union's right to represent the employee's industrial interests (can be members/eligible members); and ▪ The requirement that employees must wish to participate continues <p>This means that entry is available to any workplace where the union has an entitlement to represent the employees. It will not be clear how workplaces with AWAs/ITEAs or employee collective agreements will be dealt with for the purposes of entry under the Fair Work Bill until the release of the Transitional and Consequential legislation</p> <p>Entry must also occur only during working hours and during mealtime or other breaks</p>
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Entry for OHS Purposes

<p>Entry allowed for OHS purposes if:</p> <ul style="list-style-type: none"> ▪ The union official has a right under state or territory OHS law; ▪ The union official has a right of entry permit 	<p>Entry requirements remain the same, however notice of intention to inspect or access employee records must also be provided to the employer of the employees that are performing work on the premises, as well as the occupier of the premises</p>
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<p>under the Workplace Relations Act; and</p> <ul style="list-style-type: none"> ▪ Entry occurs during working hours <p>Access or inspection of employee records cannot occur unless:</p> <ul style="list-style-type: none"> ▪ The state or territory law gives that right; and ▪ 24 hours before entry, notice of intention to exercise that right and reasons for doing so is given to the occupier of the premises <p>There is otherwise not requirement to provide 24 hours notice</p>	
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Entry Notices

<p>Entry is not allowed unless preceded by a notice to the occupier of the premises and entry occurs on the day specified in the notice. The notice must:</p> <ul style="list-style-type: none"> ▪ Be given at least 24 hours and not more than 14 days before entry (except for OHS entry); ▪ Be given during working hours; ▪ Specify the section of the Act authorising the entry (entry to investigate suspected breach or to hold discussions); ▪ Specify the particular of the breach (if applicable); and ▪ Specify the date of entry <p>An exemption certificate may be obtained if there are reasonable grounds to believe advance notice may result in the destruction, concealment or alteration of relevant evidence</p>	<p>Entry requirements remain largely the same except these additions:</p> <ul style="list-style-type: none"> ▪ Notice to investigate a suspected breach must specify who the suspected contravention relates to or who is affected by it ▪ All notices must contain a declaration of the union's right to represent the industrial interests of the employee and must specify the provision of the union's rules that entitles the union to represent that employee <p>New affected member certificates are available to unions to support entry for investigation purposes. This certificate shows that FWA is satisfied a member is on the premises to which a suspected breach relates to or affects</p> <p>Exemption certificates remain available</p>
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Requests of Employers/Occupiers
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<p>An occupier of premises (or employer also, in the case of investigations for suspected breaches) can request the union to produce their permit, entry notice or exemption certificate for inspection</p> <p>Union official exercising entry must comply with any reasonable request by the employer or occupier to comply with an occupational health and safety requirement</p> <p>A union official must comply with a reasonable request by the employer or occupier to conduct interviews in a particular room or area or to take a</p>	<p>This requirement remains the same; however a union investigating a suspected breach must also produce these documents before accessing records</p> <p>This requirement remains the same</p> <p>This requirement remains the same however it is limited to reasonable requests by the occupier only and particular examples of what might be an</p>
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particular route to that room or area	'unreasonable' request have been provided, including that the room or area is not fit for purpose, or the request is made with the intention of intimidation, discouragement or making it difficult for persons to participate in interviews or discussions
Prohibitions	
<p>The Act prohibits permit holders who exercise or seek to exercise their rights of entry from intentionally hindering, or obstructing any person, or otherwise acting in an improper manner</p> <p>The Act prohibits a person (such as an employer) from refusing or unduly delaying entry by a permit holder who is entitled to enter the premises, and intentionally hindering or obstructing a permit holder in exercising their rights of entry</p>	This requirement remains the same
Powers of AIRC and FWA	
<p>The AIRC can make orders it considers appropriate to resolve disputes relating to an abuse of right of entry or dealing with unreasonable requests by occupier or employer</p> <p>A permit will be revoked if the official</p> <ul style="list-style-type: none"> ▪ made misrepresentations about entry rights ▪ was ordered to pay a penalty due to contravention of right of entry provisions ▪ a right of entry was suspended under state or territory industrial law ▪ the permit holder was disqualified from exercising, or applying for, a right of entry under state or territory industrial law ▪ the permit holder engaged in conduct not authorised under state or territory OHS law while exercising a right under that law 	<p>FWA powers remain the same.</p> <p>Revocation of permits remains largely the same, with an additional factor relating to breaches of the Privacy Act in respect to employee records</p>