



## Fact Sheet 13

# Union right of entry

The right of entry provisions in the *Fair Work Act 2009* largely replicate the provisions in the *Workplace Relations Act 1996* (WR Act).

The key difference with the WR Act is that right of entry is now linked to the right of the union to represent the industrial interests of the relevant employees, rather than coverage by an instrument such as an award or enterprise agreement. Fair Work Australia can advise employers regarding the eligibility of a union to represent their employees.

### **When does a union have right of entry?**

Under the *Fair Work Act 2009*, a Union Official who holds an Entry Permit may enter an employer's premise without consent to:

1. Investigate a suspected breach of the *Fair Work Act 2009* or the term of a fair work instrument;
2. Hold discussions with employees; and
3. Exercise a State/Territory OHS Right.

### **Right of entry comes with strict obligations**

Whether entering for discussion purposes or to investigate a possible breach of the *Fair Work Act 2009* or a fair work instrument, unions must comply with strict conditions of entry:

- A union official must hold a valid right of entry permit, issued by Fair Work Australia. Permits can only be issued to a "fit and proper person".
- The permit holder must give at least 24 hours notice before entering and entry can only occur during working hours.
- The permit holder must set out the basis on which he or she has entry rights, including by referring to the relevant parts of the union's rules that gives the union the right to represent the employees.
- A permit holder must comply with any reasonable request from an employer that discussions or interviews take place in a particular part of the premises and that they take a particular route to reach that location. Similarly, he or she must comply with any reasonable occupational health or safety request.

Members (and potential members) of a union are able to meet with the union eligible to represent their interests at the workplace during meal times or other breaks for the purpose of holding discussions. In such discussions, employees and the union might canvass workplace issues as diverse as superannuation, workplace training and development, information on new laws, forthcoming bargaining, union services or health and safety issues.

There are penalties for anyone who misuses these entry rights or provides misleading information about their eligibility to enter a worksite. Fair Work Australia can resolve disputes about right of entry issues and will have the power to revoke or suspend the entry permits of officials who abuse their rights or who are no longer a fit and proper person to hold a permit.

### **Access to employee records only in specific circumstances and with strong penalties for misuse**

Compliance with legal obligations is an important component of the new workplace relations system. Unions have a longstanding role in helping to ensure compliance with workplace laws. Unions can look at and copy the employment records of employees only where those records are relevant to the suspected breach of the law being investigated. This is the position that existed prior to the Work Choices legislation.

***Non-member records cannot be inspected or copied by a permit holder unless the non-member gives written consent or if Fair Work Australia agrees that access to the records is necessary to investigate the breach.*** Furthermore, an employer is not required to provide documents if doing so would otherwise breach a state or federal law.

There are protections against misuse of information obtained by a union in the course of investigating suspected breaches. In particular a person cannot disclose information obtained under the right of entry for a purpose other than rectifying the alleged breach or in specific limited circumstances where there is a public interest in the information being disclosed (e.g. to report potential serious threat to public health or safety). Controls on the use of information contained in the *Privacy Act 1988* also apply to any personal information collected during investigations. A fine of up to \$6,600 for individuals and \$33,000 for unions will apply where information is misused, and any permit holder found to have breached these provisions must have their permit revoked or suspended.

### **Entry to exercise a State or Territory OHS right**

The *Fair Work Act 2009* also imposes additional conditions on a permit holder when entering premises under a State or Territory OHS law. When seeking to enter premises on these grounds, it is not necessary that the permit holder provide advance notice of entry. A permit holder must, however, provide at least 24 hours notice before exercising a State or Territory OHS right to inspect or access an employee record. Like the other forms of entry, a State or Territory OHS right may only be exercised during working hours and a permit holder must comply with any reasonable request by an employer to comply with an occupational health and safety requirement that applies to the premises.