



LEGAL EXPERT

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UNION REPS ENTERING YOUR WORKPLACE: KNOW YOUR RIGHTS

Recent nationwide media attention regarding union officials entering workplaces without an entry permit or giving notice has been a hot topic. In 2013, the Fair Work Review Panel reported that the Pluto LNG Project received over 200 right of entry visits within three months and BHP Billiton's Worsley Alumina plant had approximately 676 visits in one year.

In December 2013, the Construction, Forestry, Mining and Energy Union and Joe McDonald, WA branch secretary of the CFMEU construction and general division, were fined \$193,600, after McDonald ignored the request of an industrial relations consultant to leave a site owned by Citic Pacific's Sino Iron Ore in Western Australia. When asked by the consultant to leave the site due to not having an entry permit, McDonald replied, "I haven't had one for seven years, and that hasn't fucking stopped me". However, it is not just the large companies that are affected. Small businesses that have little or no union membership can also be targeted. The right of entry conferred by the Fair Work Act is often abused and can be disruptive to the workplace. It is alleged that after talks of union membership are exhausted, the unions are halting major construction works due to work health and safety complaints involving alleged "immediate or imminent risks to workers". The purported work health and safety complaints are usually unfounded.

Under the Fair Work Act and the Work Health and Safety Act, permit holders (such as union officials, including employees of a union) can be given the right to enter workplaces for specified purposes, subject to meeting certain requirements. To exercise this right of entry, the union official must hold a current and valid entry permit and must

also be entitled to represent workers at the workplace. The ability to enter a workplace is given by way of an entry permit issued by the Fair Work Commission. Depending on the nature of the proposed entry, the union official will be required to hold a valid and current Fair Work entry permit. If the entry deals with any issue with respect to work health and safety, a WHS entry permit will also be required. You can check on the website of the Fair Work Commission to see whether someone holds a current and valid Fair Work entry permit or WHS entry permit. The Fair Work entry permit allows the permit holder to:

- Investigate suspected breaches of the Fair Work Act and other instruments.
- Investigate breaches relating to textile, clothing and footwear industry outworkers.
- Meet with employees to hold discussions.
- Exercise rights under relevant work health and safety laws.

The WHS entry permit allows the permit holder to:

- Inquire into suspected contraventions of the WHS Act.
- Inspect documents directly relevant to a suspected contravention.

Importantly, the holder of a WHS permit cannot attempt to enter a workplace for another purpose and then later decide to "investigate a suspected WHS contravention". In addition to holding a current and valid entry permit, union officials must provide written notice of entry no less than 24 hours and no more than 14 days before the proposed entry. If you suspect that a Fair Work entry permit holder and or WHS entry permit holder is intentionally disrupting your workplace, an application may be made to the Fair Work Commission.

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