

**Colin
Biggers
& Paisley**

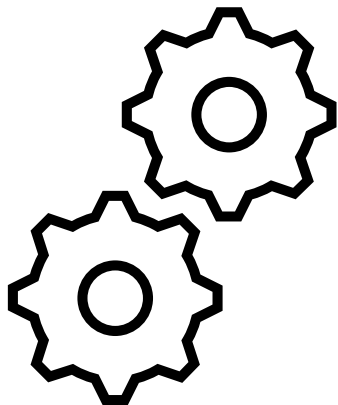
HR Highlights Series.

New Powers of the Union

17 June 2025



Contents



Reform Agenda	03
Expanded Union Powers	04
Expanded Delegate Rights	12
Implications and Best Practices for HR	17

Reform agenda

2022: Secure Jobs, Better Pay (SJBPA) Bill passed

2023: Closing Loopholes Act 1

2024: Closing Loopholes Act 2

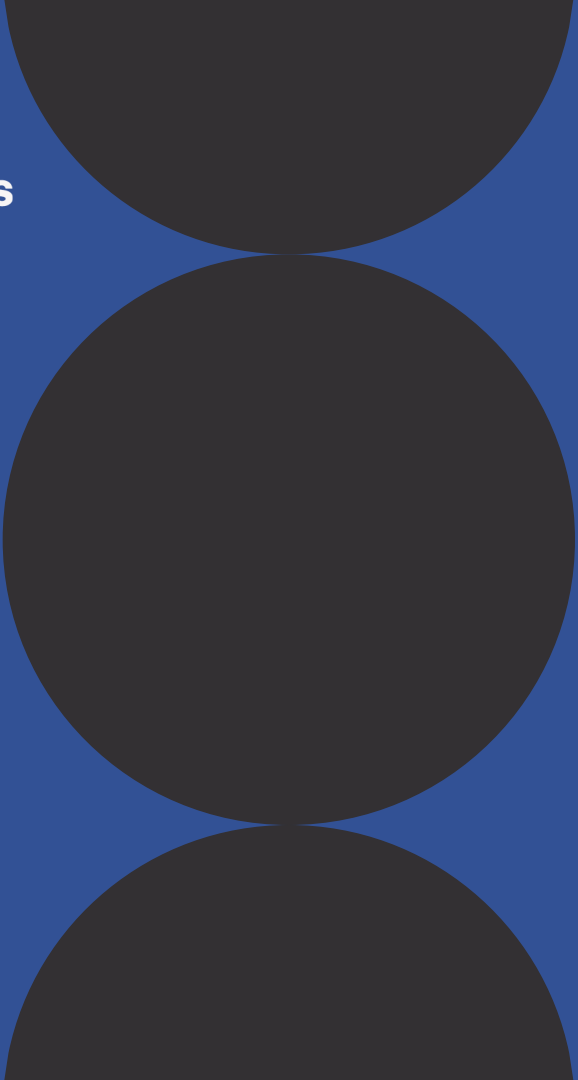
2024-25: Phased commencement of new union and workplace delegate rights

MAJOR CLOSING LOOPHOLES WIN!

THANKS TO PRESSURE FROM WORKERS, THE FEDERAL GOVERNMENT HAS JUST

- CRIMINALISED **WAGE THEFT**
- INTRODUCED **SAME JOB, SAME PAY** RULES TO TACKLE LABOUR HIRE EXPLOITATION
- ENSHRINED BETTER **PROTECTION FOR WORKPLACE DELEGATES**
- CRIMINALISED **INDUSTRIAL MANSLAUGHTER**

ETU
Elected Trade Union



**Colin
Biggers
& Paisley**

Expanded Union Powers

HR Highlights Series

June 2025

Right of Entry

Permit holders can exercise a legal right of entry:

Two types of permits:

1. **Right of Entry permit** issued by the Fair Work Commission.
 - Issued to an elected officer or employee of a union
2. **WHS entry permit**

Valid entry notice will contain:



New Commission powers over entry permits



Impose conditions

- On entry permits and exemption certificates



Suspend or revoke permits

- For misconduct or misuse



Set procedural rules

- E.g., on how unannounced visits are to be conducted



Intervene

- E.g., where a permit holder is subject to improper conduct

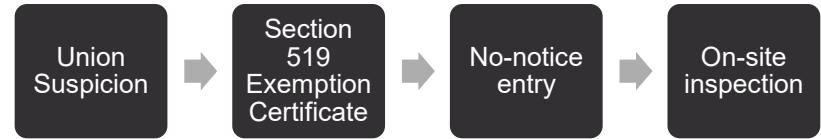
FWC may act to protect union officials from:

- **Obstruction or intimidation** by employers
- **Retaliation** for exercising lawful entry rights
- May issue **binding directions** to employers or third parties

Removal of notice for suspected contraventions

New Power: Union officials can enter workplaces without 24 hours' notice if investigating alleged wage underpayments.

- The FWC can issue a Right-of-Entry Exemption Certificate to a union official investigating alleged wage underpayments of a member. This allows entry without the usual 24 hours' notice.
- In practice, this means unions can carry out unannounced inspections of payroll and other wage records.



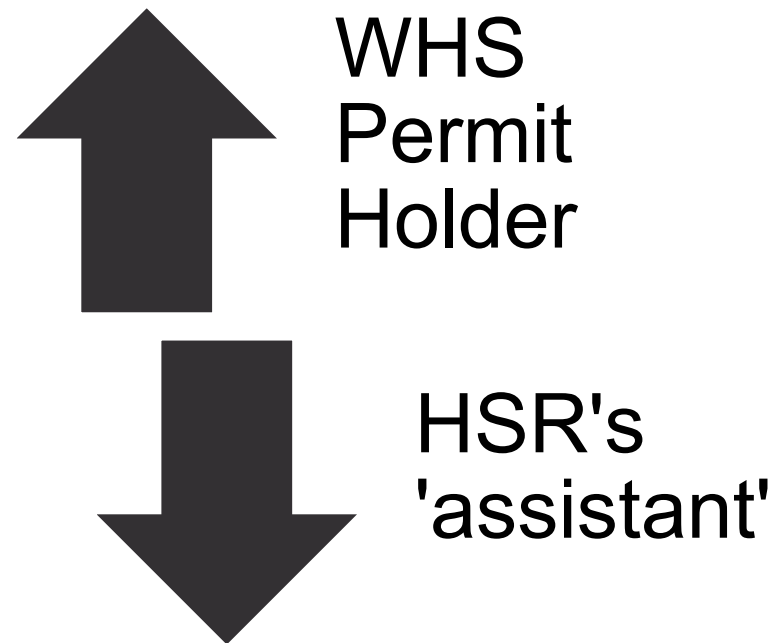
A union official arrives at 9:00 AM with an FWC exemption certificate. They request access to payslips and rosters for five employees.

How to respond?

Compare: *WHS Act 2011* (Qld)

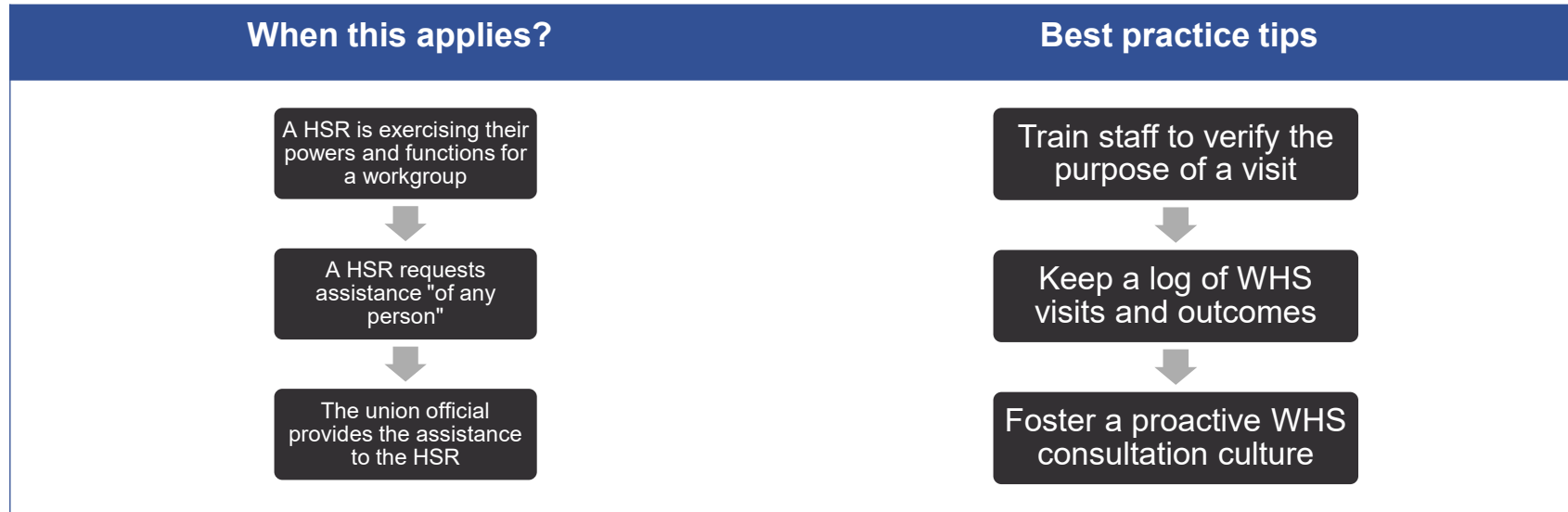
In contrast, the Qld WHS Act now requires WHS entry permit holders to:

- **Minimum notice:** give at least 24 hours' written notice (no more than 14 days) before entering a workplace to inquire into a suspected safety breach, effective from 29 November 2024.
- **Exception:** The only exception is where there is an immediate or imminent serious risk to health or safety, such as an electric shock or structural collapse, which allows immediate entry.
- **Reasoning:** This notice rule aims to ease tensions over union entry, ensuring employers have time to prepare and respond, while also addressing concerns about potential misuse of WHS entry rights.



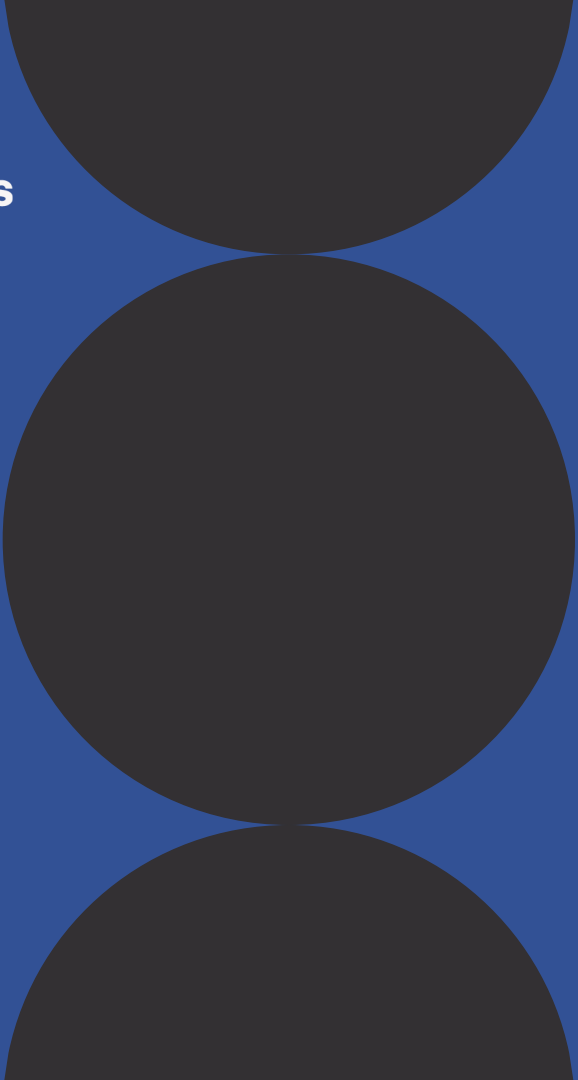
"*whenever necessary*" - The HSR workaround

New Right: Union officials can now enter workplaces to assist Health and Safety Representatives (HSRs) without holding a Fair Work entry permit.



Comparison: Before and After

Power	Before	After
Entry notice	24 hours' written notice required for all entries	Exemption certificates allow no-notice entry for wage underpayment investigations
Permit requirement (WHS)	Entry permit required for all purposes	No permit required when assisting a Health and Safety Representative (HSR) under WHS laws
Scope of entry	Limited to specific breaches (e.g. award, agreement)	Broader scope including document production and WHS support
FWC oversight	Limited to issuing permits	FWC can now impose conditions, suspend/revoke permits , and intervene in cases of misuse or victimisation



**Colin
Biggers
& Paisley**

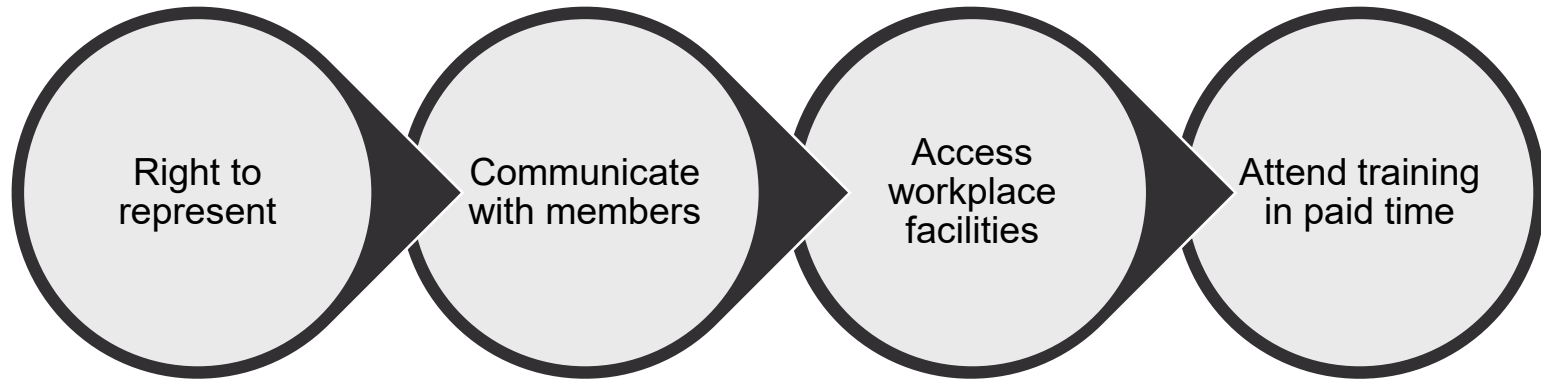
Expanded Delegate Rights

HR Highlights Series

June 2025

Workplace delegate rights

The workplace delegate is entitled to represent the industrial interests of those members, and any other persons eligible to be such members, including in disputes with the employer or regulated business concerned - Fair Work Act Section 350C(2)



"reasonable"

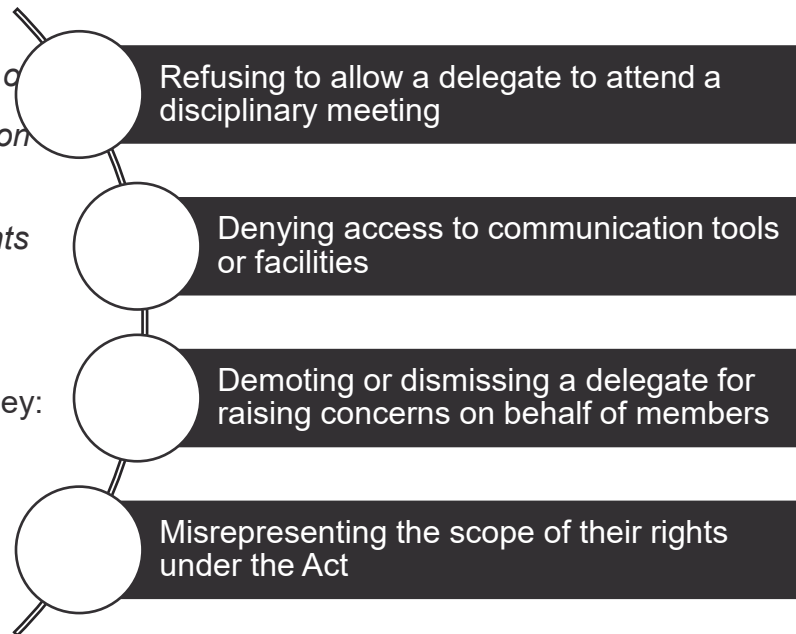
Protections for Workplace Delegates

An employer **must not**:

- (a) unreasonably fail or refuse to deal with the workplace delegate; or*
- (b) knowingly or recklessly make a false or misleading representation to the workplace delegate; or*
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.*

Delegates are protected from **adverse action** taken because they:

- *Exercise their delegate rights*
- *Represent or support union members*
- *Participate in industrial activities*



Model clauses: Delegates' rights

7A. Workplace delegates' rights

[7A inserted by [PR774828](#) from 01Jul24]

7A.1 Clause 7A provides for the exercise of the rights of workplace delegates set out in section 350C of the [Act](#).

NOTE: Under section 350C(4) of the [Act](#), the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 7A.

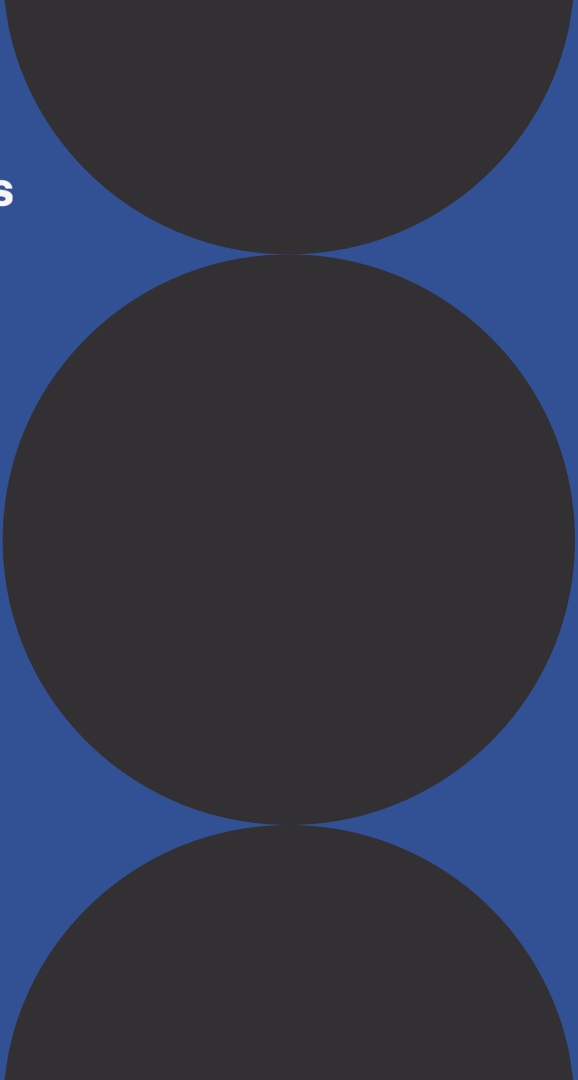
7A.2 In clause 7A:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and
- (c) **eligible employees** means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.



Comparison: Before and after

Reform	Before	After
Representational rights	Based on custom, policy, or agreement	Workplace Delegate rights to represent - in the Fair Work Act, the Awards and Agreements
Right to communicate with members	Often restricted or informal	Right to communicate with members and potential members during work hours (s.350C(3)(b))
Access to facilities	Discretionary; not enforceable	Minimum access rights to private meeting rooms, noticeboards, email, Wi-Fi, and office equipment (model clause)
Training leave	Rarely formalised; often unpaid. Usually in bargained in an EA	Up to 5 days paid leave in first year; 1 day/year thereafter (model clause + s.350C(3)(d))
Protection from adverse action		Specific protections for delegates under s.350A and s.350B



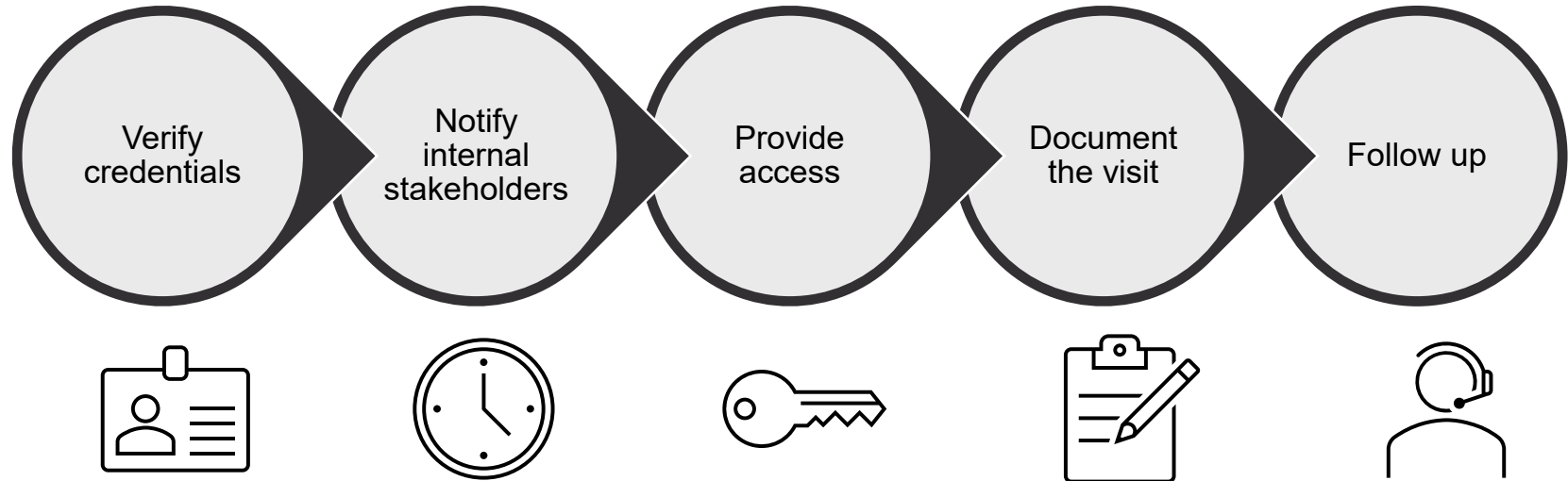
**Colin
Biggers
& Paisley**

Implications and best practices for HR

HR Highlights Series

June 2025

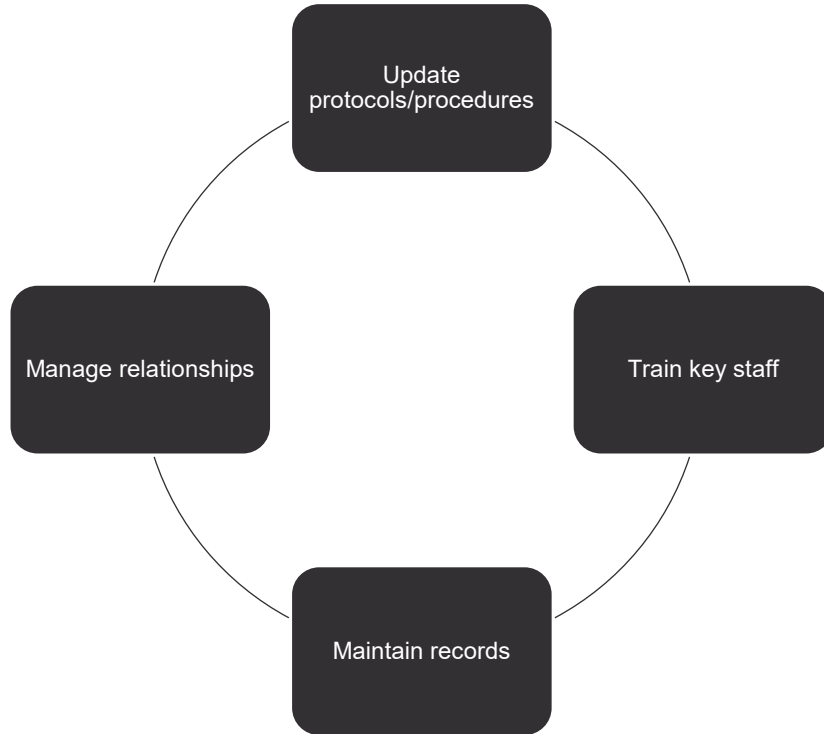
Responding to union right-of-entry



Supporting delegates in the workplace



Key takeaways



Respect, readiness and engagement are key for maintaining positive employer-union relationships

Contact



Tyrone Prisk

Senior Associate

0481 217 307

tyrone.prisk@cbp.com.au

**Colin
Biggers
& Paisley**

Thank you.

© 2025 Colin Biggers & Paisley Lawyers

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means—electronic, mechanical, photocopying, recording, or otherwise—without the permission of Colin Biggers & Paisley Lawyers.

This document provides an outline of a presentation and is incomplete without the accompanying oral commentary and discussion.

COMPANY CONFIDENTIAL

cbp.com.au