

RIGHT OF ENTRY

What is right of entry?

'Right of entry' is the right of union officials who hold an entry permit to lawfully enter a workplace or business premises:

- to hold discussions with employees at the workplace; and
- to investigate suspected contraventions of workplace laws such as underpayments, modern and enterprise agreements; and
- for work health and safety (**WHS**) purposes.

In exercising right of entry a union official cannot interrupt the rights of employers and occupiers of premises to carry out their work or business (i.e. rehearsals or set up for a show could not be interrupted).

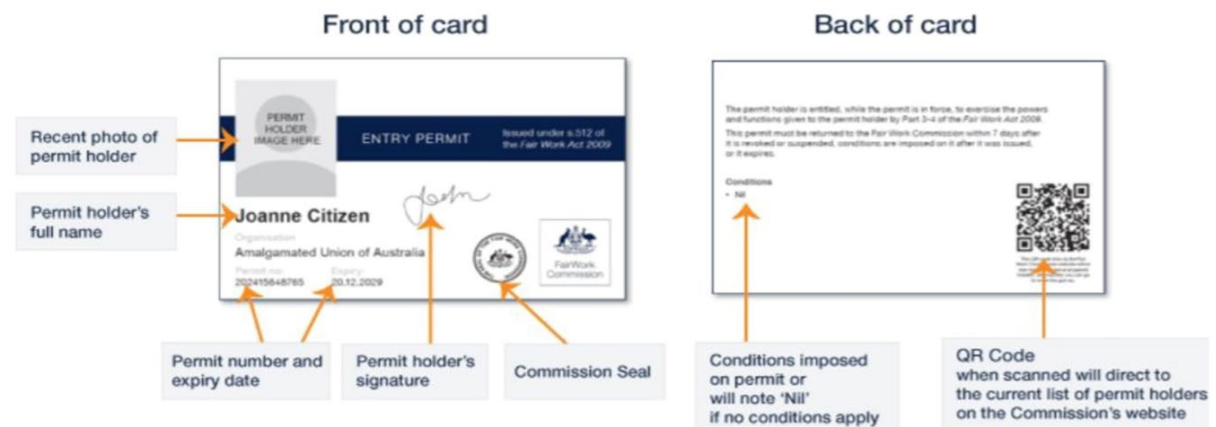
Union officials who are permit holders **must give written notice to enter** at least 24 hours, but not more than 14 days, before their visit, unless they have an exemption certificate.

What is an entry permit?

An entry permit can be issued by the Fair Work Commission (**Commission**) to an elected union officer or employee of a union where the union is registered in accordance with the *Fair Work (Registered Organisations) Act 2009 (RO Act)*. The individual applying for the permit must have completed training on their rights and responsibilities as a permit holder and the Commission must consider them a 'fit and proper person'.

Union officials cannot enter a workplace unless they hold an entry permit issued by the Commission.

An entry permit is pictured below:



What are the rules for giving notice of entry?

A permit holder must give written notice to the person in charge of the building or premises they seek to enter and any other affected employers before entering, unless the Commission grants an exemption certificate.

The notice must be given:

- no less than 24 hours before; and
- no more than 14 days after

the permit holder is entering the premises.

It must specify:

- the premises to be entered;
- the day of entry;
- the organisation/union the permit holder belongs to;
- which section of the *Fair Work Act 2009 (FW Act)* authorises the entry:
 - to hold discussions – [section 484](#);
 - to investigate a suspected breach – [section 481](#), [section 483A](#) or [section 483D](#);
 - details of the breach the permit holder suspects (for entry under [section 481](#) and [section 483A\(1\)\(a\)](#) only).

The permit holder must declare:

- their organisation/union is entitled to represent the industrial interests of an employee or worker who works on the premises (for [section 481](#), [section 483A\(1\)\(a\)](#) and [section 484](#) only);
- they may represent the industrial interests of Textile, Clothing and Footwear Award workers (for [section 483A\(1\)\(b\)](#) only) (unlikely to be relevant in the live performance/entertainment industry);
- who the suspected contravention relates to, or who the suspected contravention affects (for [section 481](#) and [section 483A\(1\)\(a\)](#) only);
- which part of the union's rules gives them the right to represent the workers (this will be found in the union's eligibility rules).

What can an official do when they enter the workplace?

Union officials can meet with employees, use the rights under WHS/OHS law and conduct investigations of suspected contraventions.

When exercising their rights, permit holders must:

- produce their permit upon request and follow any conditions imposed on their permit;
- obey reasonable WHS/OHS requirements on request;
- only hold discussions during meal or break times;
- comply with reasonable requests to hold discussions in particular areas or follow certain routes at the workplace; and
- act in a proper manner and not intentionally hinder or obstruct others.

When can right of entry occur without notice?

For a union official to enter without notice they must receive an exemption from the Commission in the form of an exemption certificate.

An exemption certificate can be issued if the Commission is satisfied that giving notice of entry may result in evidence that may be needed for an investigation being changed, destroyed or concealed.

The exemption certificate must be given to the employer as soon as practicable after entry.

Can entry be refused?

It is an offence under the FW Act for employers to improperly refuse or delay entry, or to hinder or obstruct a permit holder from exercising their rights of entry.

An employer cannot refuse or delay legitimate entry rights or refuse a permit holder from inspecting records or documents regarding a suspected breach following a legitimate request.

If a person refuses or unduly delays entry of a permit holder, or intentionally hinders or obstructs a permit holder exercising their rights, this can result in a penalty of \$18,780 as at the date of this document.