

WORKPLACE RELATIONS AMENDMENT (RIGHT OF ENTRY) BILL 2004

SECOND READING SPEECH

The Government is committed to continuing a program of workplace relations reform that will improve living standards, increase jobs, boost productivity and enhance international competitiveness.

This Bill fulfils an election commitment to reform the union right of entry laws and to exclude the operation of State right of entry laws where federal right of entry laws also apply.

The right of entry provisions in the Workplace Relations Act confer significant rights and privileges on unions to enter workplaces to represent their members. The Government strongly believes that these significant rights must be carefully balanced with the rights of employers and occupiers of premises to conduct their business without undue interference or harassment.

The Government also considers that as far as possible a single statutory scheme should apply across Australia. In workplaces where both federal and State right of entry laws apply, confusion about rights and responsibilities may arise. This uncertainty can leave employers vulnerable to abuse of unions' statutory right to enter the workplace.

I turn now to the details of the Bill.

The Bill will amend the *Workplace Relations Act 1996* to expand the Commonwealth system for union right of entry and override State systems within constitutional limits. Where the relevant employer is a constitutional corporation or the premises are in a Territory or Commonwealth place, a union will only be able to exercise a right of entry under the new WR Act provisions. It will not prevent a State union from entering premises for purposes relating to State industrial laws. The scheme will allow for unions

to continue to exercise existing entry rights under State Occupational, Health and Safety legislation.

The powers conferred by a right of entry permit are significant and wide-ranging. They allow a person to enter premises with a 'shield' against trespass. This is a significant right and should only be enjoyed by persons who exercise it responsibly.

The Bill contains measures designed to ensure that more appropriate and stringent criteria must be satisfied before a person can be granted a right of entry permit, so that only 'fit and proper persons' may be permit holders.

The grounds for suspension and revocation of permits will be expanded.

The Australian Industrial Relations Commission will be empowered to make orders where a union, or an official of a union, has abused the rights conferred on them.

The Bill seeks to limit inappropriate union entry and to ensure that entry is less intrusive and disruptive when it does occur. For example, the requirement that a union must have reasonable grounds for suspecting a breach of an industrial law or instrument before entering will operate to prevent 'fishing expeditions' by unions which can result in unnecessary and costly disruption to business, while ensuring appropriate access for legitimate investigations.

Permit holders will be required to provide entry documentation to the occupiers of premises. This will assist both parties to better understand their rights and responsibilities regarding union entry. It will also assist employers in being able to determine whether the requirements of the legislation are being complied with.

The Bill contains safeguards for permit holders. For example, an exemption from the notice requirements for investigating a breach must be granted if the Industrial Registrar is satisfied that providing advance notice of entry might result in the destruction, concealment or alteration of relevant evidence.

Repeated union entry to the workplace to recruit new members can result in non-members suffering unfair pressure and harassment. Accordingly the Bill limits entry for recruitment discussions to once every six months.

To minimise disruption at the workplace, permit holders will have to comply with reasonable requests of the employer regarding the location of interviews and discussions. The Commission will be given the power to make orders if the request by the employer or occupier of the premises is unreasonable. The Bill includes protections to ensure that union permit holders are not hindered or obstructed in relation to the legitimate exercise of rights of entry.

The Government considers that union access to non-member records should be restricted, consistent with less than one in four employees being union members and the role of unions as membership-based service organisations. Unions will only be able to access the records of their members, unless the Commission orders otherwise. Similarly, a permit holder will only be able to enter to investigate a breach of an AWA if they receive a written request from the employee party to the AWA.

The measures in this Bill reflect the Government's continued commitment to improving the current union right of entry framework. By providing clear processes for when permits can be issued and clear procedures for how rights of entry should be exercised, the proposed measures will increase confidence in the right of entry system.

The Bill strikes an appropriate balance between the rights of unions to enter workplaces and the rights of employers to carry out their business without unwarranted disruptions.