

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004**

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**Submission no:** 16

**Received:** 4/2/2005

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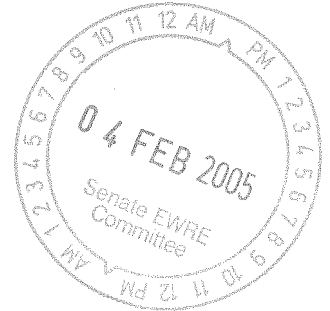


**Australian Government**  
**Department of Employment and  
Workplace Relations**

**National Office**

GPO Box 9879 CANBERRA ACT 2601

Mr John Carter  
Secretary  
Senate Employment, Workplace Relations  
and Education Legislation Committee  
Parliament House  
CANBERRA ACT 2600



Dear Mr Carter

Attached is the submission of the Department of Employment and Workplace Relations to the Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004.

I trust that the submission will be of use to the Committee in its deliberations regarding the Bill. I would appreciate your early advice as to our attendance at the Committee's hearing into this Bill which I understand is proposed to take place on 18 February 2005 in Canberra.

Yours sincerely

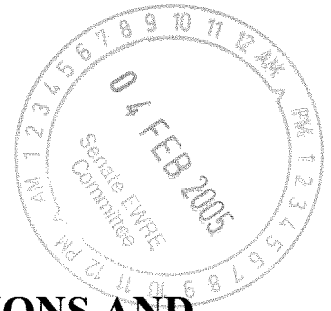
A handwritten signature in black ink, appearing to read 'James Smythe', written over a light blue horizontal line.

James Smythe  
Chief Counsel  
Workplace Relations Legal Group

4 February 2005



**Australian Government**  
**Department of Employment and  
Workplace Relations**



**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND  
EDUCATION LEGISLATION COMMITTEE**

***Inquiry into the provisions of the Workplace Relations  
Amendment (Right of Entry) Bill 2004***

**Submission by the Department of Employment and Workplace  
Relations**

**February 2005**

# WORKPLACE RELATIONS AMENDMENT (RIGHT OF ENTRY) BILL 2004

## OVERVIEW

1. The Workplace Relations Amendment (Right of Entry) Bill 2004 (RoE Bill) was introduced into the House of Representatives on 2 December 2004. The Bill has not been debated. It was referred to the Senate Employment, Workplace Relations and Education Legislation Committee on 8 December 2004.
2. The Bill repeals and replaces the existing right of entry provisions in Division 9 of the *Workplace Relations Act 1996* (WR Act). A table comparing the proposed and the existing provisions in Division 9 is at **Attachment A**.

## POLICY OBJECTIVES OF THE BILL

### Introduction

3. Federal statutory protection for right of entry (RoE) by union officials was introduced in 1973. These provisions were not significantly amended until the passage of the *Workplace Relations and Other Legislation Amendment Act 1996*. There have been no amendments passed to the WR Act provisions since 1996, although the Government did pursue amendments in the Workplace Relations (More Jobs, Better Pay) Bill 1999 and the Workplace Relations Amendment (Small Business and Other Measures) Bill 2001.
4. The Coalition's 2004 federal election workplace relations policy statement, *Flexibility and Productivity in the Workplace: The Key to Jobs*, committed the Government to introducing legislation to tighten up and clarify existing right of entry laws to protect businesses, particularly small businesses, against union entry to the workplace for improper purposes. It further specified that the legislation would exclude the operation of State right of entry laws where federal right of entry laws also apply.
5. The Workplace Relations Amendment (Right of Entry) Bill 2004 will meet that election commitment, addressing significant concerns of business and the Government regarding the current federal right of entry (RoE) statutory regime, including the present scope for unions to exploit the overlap in federal and State laws. In broad terms, the Bill has two primary objectives: improving and expanding the federal RoE regime.

### Improvement of the Federal RoE Regime

6. The Government believes there is a need to further tighten and clarify the current provisions of the WR Act to ensure a federal statutory RoE regime which balances:
  - the right of unions to represent their members in the workplace, hold discussions with potential members and investigate suspected breaches of industrial laws and instruments; and
  - the right of employers and occupiers of premises to conduct their business without undue interference or harassment.
7. The Government believes that there exists a legitimate role for unions to represent their members in the workplace, provided that the statutory rights conferred on them are exercised in a responsible manner. Unfortunately, there is evidence to suggest that some permit holders are misusing the rights currently conferred on them by the WR Act.

8. There is anecdotal evidence of unions entering workplaces, nominally for investigative purposes, despite having no actual evidence of any breach of an industrial instrument by the relevant employer. These ‘fishing expeditions’ can cause unwarranted disruption and economic damage to innocent businesses. The Bill aims to protect businesses from this type of irresponsible behaviour by requiring that a union be able to demonstrate reasonable grounds for entering to investigate a suspected breach.

9. The Government’s view is that unions should operate as membership-based service organisations. Accordingly, the Bill contains measures to ensure that permit-holders entering the workplace to investigate suspected breaches will generally be prohibited from accessing non-member records. This is particularly important given that fewer than one in four employees is a union member. The Government’s view is that in most circumstances its own agencies, rather than unions, are the appropriate bodies to investigate breaches relating to non-members..

10. Under current legislative arrangements, the possibility exists for unions to repeatedly harass non-members to join a union during frequent workplace visits where the stated purpose is to hold discussions with employees. In order to address this concern, the Bill provides that entry and subsequent conduct is not authorised if the conduct is for the purpose of recruitment and the entry notice does not specify recruitment as a purpose for entry or any permit holder for the union entered the premises in the preceding six months for the purpose of recruitment.

11. The Bill places further explicit limitations on entry, such as the requirement for a permit holder to comply with reasonable requests by an occupier or employer. The Government is particularly concerned that unions’ presently unrestricted choice of location to hold discussions or interviews, and free choice of route to that location, can result in unnecessary disruption within the workplace. Accordingly, the Bill requires a permit holder to comply with reasonable requests by an occupier or employer regarding the location of discussions and the route to this location. This is matched by the requirement that an employer or occupier must not obstruct or interfere with a permit holder exercising his or her rights under the Act.

12. An effectively functioning and balanced federal RoE regime requires that permit holders, employers and occupiers responsibly exercise and properly observe their rights and obligations under the legislation. The WR Act’s current RoE provisions, however, lack sufficiently robust and flexible measures to properly safeguard against abuse of the permit system.

13. The Bill will redress this through appropriately measured civil penalty provisions, as well as new arrangements for the issue, suspension and revocation of permits. These are designed to ensure that permits are only held by persons who understand their rights and obligations under the Act, and that only fit and proper persons exercise those rights. Permits are to be suspended or revoked where the provisions are abused.

14. The Bill does not introduce any new criminal sanctions.

### **Expansion of the Federal Statutory Union Right Of Entry Regime**

15. The Government believes that, as far as possible, a single statutory scheme for RoE should apply to workplaces. At present, however, some workplaces are subject to a complex regulatory web of differing RoE standards under concurrent federal and State industrial laws and instruments. Companies with premises in more than one State may therefore have to comply with multiple and different State and federal laws. A table outlining the different regimes under the WR Act and State industrial laws is at **Attachment B**.

16. The Government is concerned at the scope for confusion and uncertainty resulting from this regulatory overlap. Unions, employers and employees will benefit from having a single scheme that sets out their rights and obligations. Additionally, the Bill will prevent this

uncertainty being exploited by union officials to enter workplaces for improper purposes and subsequently engage in inappropriate or otherwise unlawful behaviour.

17. The problems of regulatory overlap, and the potential it provides for ‘jurisdiction shopping’ was highlighted in *Boral Masonry Ltd v CFMEU* (23 July 2004, PR934904). In this case, the CFMEU had no right of entry under the WR Act to the particular Boral premises. The State-based Federated Brick Tile and Pottery Industrial Union of Australia' (New South Wales Branch) (the BTPU), which the Commission described as the ‘State emanation of the CFMEU’, then sought entry under the New South Wales *Industrial Relations Act 1996*.

18. The Commission (Ross VP, Cartwright SDP and Harrison C) found that “*the proper inference and conclusion to be drawn from the evidence is that the CFMEU used it's State emanation, the BTPU, to exploit the differences between the State and Federal jurisdictions in order to get right of entry to a Federally regulated site in circumstances where it does not have such a right under the WR Act*” (paragraph [37]). The Full Bench went on to say that “*the conduct of the officers of the BTPU is, in reality, an attempt at jurisdiction shopping by persons who hold concurrent positions as officers of a federally registered organisation (the CFMEU)*” (paragraph [72])

19. Union officials may also use State laws to circumvent the federal RoE obligations by claiming to enter workplaces under their State powers and subsequently engaging in conduct that would otherwise be in breach of federal obligations.

20. The concurrent application of federal and State RoE laws can also undermine the ability to bring sanctions against union officials who abuse their statutory rights. Union officials found to have intentionally hindered and obstructed business have been able to avoid having their federal right of entry permits revoked by claiming that they were exercising right of entry powers under a State law.

21. This was demonstrated by an AIRC decision in an appeal by two CFMEU officials against a Registrar’s decision revoking their RoE permits (24 October 2001, PR910502). Messrs Ferguson and French’s RoE permits were revoked due to their conduct after entering premises. On appeal the Commission found that the right of entry on the latter of two occasions was not pursuant to the WR Act but under a State law and overturned the revocation. However, the Commission noted that if entry had been authorised by a federal permit, the conduct of the two officials was such that it would have breached the WR Act in that it “intentionally hindered or obstructed any employer or employee or otherwise acted in an improper manner”.

22. Even where a federal permit has been revoked, union officials may still retain entry rights under State law. This undermines the effectiveness of the compliance mechanisms in the federal right of entry system.

## **SUMMARY OF AMENDMENTS**

23. The RoE Bill would repeal and replace the existing right of entry provisions in Division 9 of the *Workplace Relations Act 1996* (WR Act).

24. It will enhance the right of entry system to clearly spell out rights and responsibilities, and limit scope for State law to be used to circumvent the Federal requirements.

25. The Bill ‘covers the field’ to the exclusion of any State industrial laws and industrial instruments for union entry to private business premises where the employer is a “constitutional corporation” or the premises are in a Territory or Commonwealth place. (A “constitutional corporation” is corporation for the purposes of section 51(20) of the Commonwealth

Constitution, i.e. a foreign, trading or financial corporation formed within the limits of the Commonwealth.)

26. State unions will not be precluded from entering an employer's premises for purposes relating to State industrial laws where the employer is not a constitutional corporation or the premises are not located in a Territory or in a Commonwealth place.

27. The Bill will not prevent unions from exercising any existing entry rights under federal or State occupational, health and safety legislation.

28. Significantly, the Bill deals only with minimum and legally enforceable rights to enter premises. Nothing in the Bill prevents a union official from otherwise entering premises where the owner or occupier voluntarily consent to the entry.

### **Details of Amendments**

#### *Division 1 – Preliminary*

29. These amendments would insert Objects for new Part IXA that reflect the intention of the new provisions.

30. The Industrial Registrar will be required to approve a form of entry notice to be used by persons seeking to exercise a right of entry. The form must provide details of the relevant premises and the union in respect of which the relevant entry permit was issued. Other matters that may be prescribed by regulation.

#### *Division 2 – Issue of Entry Permits*

31. These amendments detail the processes by which a right of entry permit may be issued.

32. The Government considers that, in light of the significant rights conferred by a permit, permits should only be issued to fit and proper persons who understand their rights and obligations under the provisions.

33. The Bill therefore provides that the Industrial Registrar must not issue a RoE permit to a union official unless the Registrar is satisfied that the official is a fit and proper person. To assist the Registrar in making the decision, the Bill identifies a number of matters that the Registrar must take into account, including whether the official has:

- received appropriate training about their rights and responsibilities as a permit holder;
- been convicted of an offence against an industrial law; or
- held a permit under the WR Act or under a State industrial law that was revoked, suspended or made subject to conditions.

34. A person cannot be issued with a permit at any time when they have been suspended or disqualified from exercising a right of entry under a State industrial law.

35. Any decision or action by a Registrar regarding the issuing of a permit may be appealed to the Commission under existing section 81 of the WR Act.

#### *Division 3 – Expiry, revocation, suspension etc. of entry permits*

36. These provisions expand and clarify the existing provisions concerning revocation of a RoE permit.

37. Under the current provisions, the only means of addressing improper behaviour is through revocation of a permit. The Bill will allow for permits to be either suspended or made subject to

limiting conditions. These alternatives to outright revocation provide scope to address less serious examples of improper behaviour.

38. If conditions are imposed on a permit, then those conditions must be endorsed on the permit. The Bill ensures that whenever a union official seeks to enter premises, they must disclose to the relevant employer that any entry permit is to conditions.

39. Where a permit holder has had his or her right of entry under a State industrial law cancelled or suspended, or has been disqualified from exercising or applying for a right of entry under a State industrial law, their federal permit may either be suspended or revoked. The Bill provides for minimum disqualification periods, which increase for each occasion that a State right of entry is suspended or revoked.

40. Any decision or action by a Registrar concerning the revocation, suspension or imposition of conditions on a permit may be appealed to the Commission under existing section 81 of the WR Act.

41. The Bill seeks to limit instances of systematic abuse of right of entry laws. The AIRC will be given the ability to make orders if it is satisfied that a union or one of its officials has engaged in such conduct.

42. The type of orders the Commission may make include revoking or suspending all permits that have been issued in respect of the union or imposing limiting conditions on some or all of the permits.

43. Reflecting the gravity of this particular sanction, the powers will only be able to be exercised by the President of the Commission, a Presidential Member nominated by the President or a by Full Bench.

#### *Division 4 – Right of entry to investigate suspected breaches*

#### *Division 5 – Right of entry to hold discussions with employees*

44. These Divisions deal with when and how RoE permits may be exercised. The proposed changes improve on current arrangements, simplifying and clarifying the rights and obligations of union permit holders, employees and business.

#### When RoE may be exercised

45. As with the current WR Act provisions, a permit holder may enter to investigate breaches of the WR Act, a federal award or certified agreement or an order of the Commission.

46. However, a permit holder may only enter to investigate a breach of an Australian Workplace Agreement (AWA) if the employee party to the AWA requests in writing that the union investigate the breach. This is consistent with AWAs being an individual agreement between an employee and his or her employer. There is no basis for a union official to enter premises to investigate a breach of an AWA in circumstances where the employee has not requested, and may in fact oppose, the union doing so.

47. A union official will only be able to enter premises if he or she has reasonable grounds to suspect that a breach requires rectification. This will ensure that permit holders are genuinely investigating a breach, rather than entering for another purpose.

48. The proposed amendment places the onus on the official seeking entry to demonstrate that they have reasonable grounds for suspecting a breach. It is appropriate to place the onus on the person seeking entry as only they know the basis for their belief that an industrial agreement has been or is being breached.



49. As under the current provisions, a permit holder will *usually* be expected to provide at least 24 hours notice before entering premises to investigate a breach.

50. If there are reasonable grounds to believe that providing advance notice might result in evidence being destroyed, concealed or altered then the Industrial Registrar may issue a certificate waiving the statutory notice period.

51. The permit holder must provide an entry notice that specifies the particulars of the suspected breach or breaches. Currently a permit holder is not required to particularise the suspected breach. Particularising the details of suspected breaches will enable the employer or occupier of premises to make an independent assessment as to whether proposed entry is for a valid purpose. It will also enable them to gauge in advance what sort of information or records are to be made available.

52. A permit holder will only be able to inspect records relating to employees who are members of the permit holder's union, unless the Commission makes an order allowing them to inspect non-member records. As discussed above, the Government considers that unions should operate as membership-based service organisations and so should not be granted automatic access to non-member records.

53. Where it is necessary, however, to examine non-member records to investigate breaches, a permit holder will still be able to do so if they apply for, and receive, an order from the Commission. This will ensure that unions are not unnecessarily restricted in investigating suspected breaches.

54. Unions will continue to be able to enter premises for discussion purposes but will only be able to enter for the purposes of recruitment once every six months.

55. Unlike amendments proposed previously in the Workplace Relations (More Jobs, Better Pay) Bill 1999 and the Workplace Relations Amendment (Small Business and Other Measures) Bill 2001, there is no requirement that a union can only enter when invited to do so by an employee.

#### Conduct after entering premises

56. In relation to entry for both investigative and discussion purposes, the permit holder must comply with any reasonable request by an employer or occupier of premises regarding:

- occupational health and safety requirements;
- the venue for discussions between the union and employees; and
- the route to be taken to reach the venue where staff discussions are to be held.

57. The current provisions do not provide any guidance on where discussions or interviews may be held, which has given rise to disputes. The new provisions will ensure that both parties know what is permitted once a permit holder enters premises and will reduce the risk of disputes over the exercise of their RoE powers.

58. The Government believes that this strikes an appropriate balance between the rights of permit holders to enter premises and hold discussions and the rights of employers to conduct their business without unnecessary disruption. This element of the Bill was a specific commitment in the Coalition's 2004 federal election workplace relations policy statement, *Flexibility and Productivity in the Workplace: The Key to Jobs*.

59. These amendments were prompted by the AIRC's decision in *ANZ Banking Group Ltd v Finance Sector Union of Australia* (8 September 2004, PR951766). In that case, the ANZ was concerned, for privacy and other reasons, about the intention of the FSU to interview employees

at their desks, rather than in interview rooms provided by the ANZ. The Commission observed that if Parliament had intended that employers could place conditions on an exercise of RoE, such as specifying a meeting room, it would have identified and specified any further limitations. These new provisions will do this, by identifying when an employer may appropriately impose reasonable conditions concerning the location of the meeting or interview or the route to be taken to reach that location.

60. The Bill includes provisions to deal with cases where the employer may make an unreasonable request. If a union or permit holder considers a request to be unreasonable, an application may be made to the Commission. If the Commission considers the request to be unreasonable, it may make whatever orders it considers appropriate.

#### *Division 6 – Contravention of Civil Penalty Provisions*

61. This Division sets out the penalties that may be imposed and other orders that may be made by the Federal Court in relation to contraventions of the civil penalty provisions contained in the amendments.

62. The Bill does not increase the quantum of the current penalties. However, it does extend the types of orders that the Court may make. The Court will be able to make orders requiring a person or organisation who has contravened the provisions to pay monetary compensation to another person who has suffered damage as a result of the contravention. The Court will also be able to make any other orders it considers necessary. As noted above, the Bill does not provide for any new criminal sanctions.

63. Allowing the Court to award financial damages recognises that, in some cases, abuse of guaranteed union RoE rights may harm a business or adversely affect innocent parties. It is appropriate that persons responsible for such losses should compensate those affected by their actions.

64. The Bill includes new provisions that protect a person from being subject to a pecuniary penalty if they have been convicted of an offence, or are subject to criminal proceedings, that relate to substantially the same conduct as would give rise to the imposition of a pecuniary penalty.

#### *Division 7 – Miscellaneous*

65. The majority of civil penalty provisions contained in the Bill are set out in this Division.

66. These are substantially the same as the existing civil penalty provisions contained in the WR Act. The additional civil penalty provisions involve:

- extending the existing prohibition on permit holders intentionally hindering or obstructing any person to also cover instances where a permit holder otherwise acts in an improper manner;
- extending the existing prohibition on intentionally hindering or obstructing a permit holder to cover instances of obstruction that occur after an entry notice is given but before premises are entered. (A legislative note makes it plain that intentionally destroying, concealing or manufacturing evidence relating to a suspected breach will amount to hindering or obstructing); and
- limiting the potential for permit holders to misrepresent or exceed the scope of their authority.

67. As with the existing WR Act provisions, the Commission retains the ability to resolve industrial disputes about the operation of the right of entry provisions.

## Comparison of provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004 with existing Right of Entry provisions in the Workplace Relations Act 1996

| Topic                                    | Effect of proposed provision (new Part IXA)   | Corresponding current provision (Part IX)   |
|--|---|---|
| <i>Transitional provisions</i>           | Permits currently in force will continue and be subject to new Part IXA arrangements  | Transitional  |
| Agreement certification                  | 170LU(2B) – AIRC not to certify agreement if contains provision dealing with union right of entry within the meaning of Part IXA  | New   |
| <b>Division 1</b>                        | <b>Preliminary</b>  |   |
| Objects of Part IXA                      | 280A – sets out objects for the Part, in addition to the objects of the WR Act  | New   |
| Definitions                              | 280B defines a number of terms used in this Part  | New   |
| Form of entry notice                     | 280C – Registrar must approve a form of entry notice specifying premises, union and any other matters prescribed by the Regulations   | New   |
| <b>Division 2</b>                        | <b>Issue of entry permits</b>   |   |
| Registrar may issue permit               | 280D – new requirement that permit must include any <u>conditions imposed by Registrar (280E)</u> and any limiting conditions ordered by AIRC for abuse of permit system (280J)   | 285A(1)   |
| Imposition of permit conditions          | 280E – Registrar may impose conditions at time of issue - must have regard to 280F(2) matters   | New   |
| Permit not to be issued in certain cases | 280F – Registrar must be satisfied that official is fit and proper person, having regard to specified matters (280F(2) matters)   | 285A(6) – prior revocation must be taken into account, otherwise additional requirements are new.                           |
| <b>Division 3</b>                        | <b>Expiry, revocation, suspension etc. of entry permits</b>   |   |
| Permit expiry                            | 280G  | 285A(2) - no change   |
| Revocation of permit                     | 280H<br>– Registrar may revoke, suspend or impose conditions on a permit - must have regard to 280F(2) matters<br>– Registrar must revoke or suspend permit if official disqualified /has an entry permit cancelled or suspended under a State industrial law | 285A(3) allows for revocation if hindered /obstructed/acted improperly in exercising powers. Otherwise, provisions are new. |
| Orders by Commission for abuse of system | 280J – If satisfied that union or union official has abused rights conferred by Part IXA the AIRC (President/Presidential member or Full Bench) may make whatever orders it considers appropriate to restrict the rights of the union/officials               | New   |
| Return of permit to Registrar            | 280K(1)<br>– must be returned within 7 days of expiry/revocation/suspension/conditions imposed<br>– Civil penalty applies   | 285A(5), 285F<br>– must be returned within 14 days, civil penalty   |

| Topic   | Effect of proposed provision (new Part IXA)  | Corresponding current provision (Part IX)   |
|---|--|---|
| Return of suspended permit                                | <p>280K(2)</p> <ul style="list-style-type: none"> <li>- On application by permit holder/union, the Registrar must return suspended permit to permit holder at end of suspension, if Registrar is satisfied permit is still in force</li> <li>- Note: Permit may have expired/been revoked in meantime</li> </ul>   | New   |
| Extra conditions endorsed on permit                       | 280L – If conditions are imposed by Registrar (280H) or by AIRC (280J) permit ceases to have effect until Registrar endorses conditions on permit  | New   |
| <b>Division 4</b>   | <b>Right of entry to investigate suspected breaches</b>  |   |
| Suspected breach - Application and circumstances of entry | <p>280M allows entry during working hours to investigate a suspected breach:</p> <ul style="list-style-type: none"> <li>- where a Commonwealth union permit holder suspects on reasonable grounds that a breach has occurred of the WR Act, or an award, AIRC order, or CA binding on the union and the suspected breach relates to or affects members or their work.</li> <li>- no right to investigate AWA breach unless employee party to the AWA requests the union in writing to investigate the breach</li> <li>- where the employer is a constitutional corporation and/or the premises are in a Territory or Commonwealth place and a State union permit holder suspects on reasonable grounds that a breach has occurred of a State industrial law/State industrial instrument binding on the union and the suspected breach relates to or affects members or their work</li> </ul> | 285B(1)-(2)<br>- allows permit holder entry during working hours to premises where members work to investigate suspected breach of the WR Act or award, AIRC order, or CA that is in force and binding on their union |
| Suspected breach - Rights after entering premises         | <p>Additional provisions, under 280N:</p> <ul style="list-style-type: none"> <li>- A permit holder has to make application to the AIRC in order to access 'non-member records' (defined in 280N(12))</li> <li>- A refusal/failure of a person to participate in an interview is not to be treated as conduct covered by section 149.1 of the <i>Criminal Code</i> (which relates to the obstruction of officials).</li> <li>- A permit holder may issue a notice requiring an affected employer to produce records at the premises or another agreed place on a later day - at least 14 days after notice given</li> <li>- Permit holder must show authority documents to the employer before requiring inspection of documents</li> </ul>   | 285B(3)-(5)   |
| Suspected breach - Entry notice                           | 280P – A permit holder must give at least 24 hours, but not more than 14 days, notice to the occupier of the premises, identifying particulars of breach, unless there is a 280Q exemption certificate   | 285D(2)<br>- 24 hours' notice required  |
| Suspected breach - Exemption from notice                  | <p>280Q</p> <ul style="list-style-type: none"> <li>- Registrar must exempt union from notice requirement if satisfied there are reasonable grounds for believing advance notice might result in destruction/concealment/alteration of relevant evidence</li> <li>- Exemption certificate must specify particulars of the suspected breach</li> </ul>   | New   |
| Suspected breach - Requests of occupier/employer          | <p>280R – Entry is not authorised unless permit holder:</p> <ul style="list-style-type: none"> <li>- complies with specific request of occupier/employer to produce permit</li> <li>- complies with reasonable request to observe OHS requirement</li> <li>- complies with reasonable request to conduct interview in particular area/take particular route</li> </ul>   | 285D(1) – permit must be shown on request   |

| Topic   | Effect of proposed provision (new Part IXA)  | Corresponding current provision (Part IX)                |
|---|--|--|
| Entry – no entry to residential premises                  | 280S – A person is not authorised to enter any part of the premises that is used for residential purposes  | 285D(3) – no change                                      |
| Suspected breach - Permit conditions                      | 280T – Other than in relation to entry authorised by AIRC to access non-members' records, the rights of a permit holder are subject to any conditions that apply to the permit   | New  |
| Suspected breach - Exclusion of other entry rights        | 280U – Excludes all rights to enter under other industrial laws (other than OHS laws) or State industrial instruments where there is a right of entry (or would be a right of entry if otherwise not limited) under 280M to investigate suspected breach   | New  |
| Burden of proving reasonable grounds for suspected breach | 280V – The burden of proving the existence of reasonable grounds for suspecting a breach is on the person asserting the existence of those grounds, at the time of the purported exercise of the right of entry  | New  |
| <b>Division 5</b>   | <b>Right of entry to hold discussions with employees</b>   |  |
| Discussions with employees                                | 280W sets out the circumstances in which a union official for a Commonwealth or State union may enter premises to hold discussions with any eligible employees who wish to participate in those discussions:<br>– a permit holder for a Commonwealth union may hold discussions with employees eligible to be members of that union who carry out work on premises covered by a Commonwealth award or certified agreement binding that union<br>– a permit holder for a State union may hold discussions with employees eligible to be members of that union who carry out work on premises covered by a State industrial instrument that binds the permit holder's union, where the employer is a constitutional corporation and discussions relate to employment/industrial issues, or where the premises are in a Territory or Commonwealth place | 285C(1) – limited to unions registered under the WR Act. |
| Times of entry  | 280X   | 285C(2) – no change                                      |
| Conscientious objection certificates                      | 280Y   | 285C(3)-(7) – no change                                  |
| Discussions - Entry notice                                | 280Z<br>– permit holder must give at least 24 hours, but not more than 14 days, notice to the occupier of the premises, identify 280W as the section authorising entry and enter on the day specified on the notice.   | 285D(2)<br>– 24 hours' notice required                   |
| Recruitment purposes                                      | – Entry for recruitment purposes is not authorised if either the notice does not specify recruitment as purpose of entry or if a permit holder has entered for that purpose in the preceding 6 months  |  |
| Entry – no entry to residential premises                  | 281A – A person is not authorised to enter any part of the premises that is used for residential purposes  | 285D(3) – no change                                      |
| Discussions - Requests of occupier/employer               | 281B – Entry is not authorised unless permit holder:<br>– complies with specific request of occupier/employer to produce permit<br>– complies with reasonable request to observe OHS requirement<br>– complies with reasonable request to hold discussions in particular area/take particular route  | 285D(1) – permit must be shown on request                |
| Permit conditions   | 281C – The rights of a permit holder are subject to any conditions that apply to the permit  | New  |

| Topic  | Effect of proposed provision (new Part IXA)  | Corresponding current provision (Part IX)  |
|--|--|--|
| Discussions - Exclusion of other entry rights                                      | 281D – Excludes all rights to enter to hold discussions under other industrial laws (other than OHS laws) or State industrial instruments where there is right of entry (or would be right of entry if not limited) to enter premises and hold discussions (either generally or in relation to particular matters) under 280W  | New  |
| <b>Division 6</b><br>Civil penalties   | <b>Contravention of civil penalty provisions</b><br>281E, 281F<br>– Federal Court may impose penalty, require payment of compensation for damage, grant injunction, any other appropriate order<br>– penalty is payable to Commonwealth or as Court directs. Penalty may be recovered as debt<br>– applications can be made by inspector/authorised officer or by person affected by the contravention<br>– regulations may prescribe additional persons who are able to bring civil penalty provision proceedings, and limit the circumstances in which the person may make an application<br>Maximum penalty that can be imposed is the same as under current WR Act provisions. | 285F<br>– Federal/District/County/Local /magistrate’s court may make order imposing a penalty or grant injunction<br>– application may be made by any person |
| Multiple proceedings for same conduct  | 281G<br>– The Court is prevented from making a pecuniary penalty order if the person has already been convicted of an offence in respect of same conduct<br>– if criminal proceedings have commenced the civil penalty proceedings are stayed and either dismissed if person is convicted, or otherwise resumed<br>– if order has been made in respect of civil penalty proceedings, criminal proceedings may still be instituted  | New<br>Same as 311-313 of RAO Schedule, which do not apply to Part IX  |
| Evidence given in civil penalty proceedings not admissible in criminal proceedings | 281H<br>– prevents admission of evidence in criminal proceedings where evidence previously given in civil penalty proceedings, except for criminal proceedings regarding false evidence given in the civil penalty proceedings   | New<br>Same as 314 of RAO Schedule, which does not apply to Part IX  |
| <b>Division 7</b>  | <b>Miscellaneous</b>   |  |
| Conduct attracting penalties   | 281J Additional provisions:<br>– a person may be found to have hindered/obstructed a permit holder by engaging in conduct after the entry notice is given but before the permit holder enters (e.g. if person destroys, conceals or manufactures evidence)<br>– a person may be found to have hindered/obstructed a permit holder whether or not they know at the time which permit holder will be exercising the rights in respect of the entry notice  | 285E, 285F<br>– penalty provisions in relation to hindering/obstruction etc  |
| Unreasonable requests by occupier/employer   | 281K<br>– AIRC (President/Presidential member/Full Bench) may make appropriate orders if satisfied the employer/occupier has made a request to the permit holder that is not reasonable<br>– orders may include order authorising access to premises<br>– an unreasonable request might be a breach of 281J  | New  |

| Topic                                   | Effect of proposed provision (new Part IXA)   | Corresponding current provision (Part IX)  |
|---|---|--|
| Misrepresentations about right of entry | 281L<br>– person is prohibited from intentionally/recklessly giving impression to second person that they or another person are authorised to exercise particular rights<br>– civil penalty provision | New  |
| Powers of AIRC                          | 281M – in addition to existing powers, AIRC can suspend a permit or impose limiting conditions on a permit for the purpose of preventing/settling industrial dispute                                  | 285G – can revoke a permit, making any order appropriate for the purpose of preventing/settling industrial dispute |
| Delegation by Industrial Registrar      | 281N – Industrial Registrar can delegate powers and functions under this Part (other than those prescribed) to a Deputy Industrial Registrar and give directions on how they are exercised.           | New  |

**Prepared 4 February 2005**

## COMPARISON OF FEDERAL AND STATE PROVISIONS CONCERNING RIGHT OF ENTRY

|                                  | Commonwealth   | Queensland   | New South Wales  | Tasmania  | Western Australia   | South Australia  |
|----------------------------------|--|--|--|---|---|--|
| <b>Right of Entry provisions</b> | Part IX, <i>Workplace Relations Act 1996</i> .   | Part 1 of Chapter 11, <i>Industrial Relations Act 1999</i> .   | Part 7 of Chapter 5, <i>Industrial Relations Act 1996</i> .  | <i>Industrial Relations Act 1984</i> , section 77; and <i>Industrial Relations Regulations 1993</i> , regulation 26-27.   | Divisions 2F and 2G of Part II, <i>Industrial Relations Act 1979</i> and <i>Industrial Relations Commission Regulations 1985</i> .  | Section 140, <i>Industrial and Employee Relations Act 1994</i> .   |
| <b>Who may enter</b>             | <p>Person who holds a permit.</p> <p>Permit issued by Registrar to officers/employees of organisations (285A(1)).</p> <p>When deciding whether to issue a permit, the Registrar must take into account whether a previous permit has been revoked (285A(6)).</p> | <p>Authorised Industrial Officer (AIO) – officer or employee of an organisation.</p> <p>Authority issued by the registrar (364).</p> | <p>Authorised Industrial Officer (AIO) – officer or employee, or any person who is concerned in or takes part in the management of an organisation (296 and 299).</p> <p>Instrument of authority issued by the Industrial Registrar (299).</p> | <p>An officer of an organisation of employees (77).</p> <p>No authority or permit is required. However, a declaration of secrecy is required to exercise some powers (77(3)). For details, see “Other limitations” below.</p> | <p>Authorised Representative (AR) of an organisation who has an Authority issued by the Registrar (s49J).</p> <p>The application for an Authority must be made by the secretary of the organisation (49J(1)).</p> <p>The Registrar must not issue the Authority if the person has previously had an Authority revoked and not re-issued by order of the Commission in Court Session (49J(2)). Otherwise the Registrar must issue the Authority (49J(1) and r94B(4)).</p> <p>The Authority must include a reference to sections 49H and 49I (r94B(5)).</p> <p><b>For the purposes of inspecting records only:</b> A person authorised in writing by an employee or the representative of a person with a mental disability, upon</p> | <p>Official of an association of employees, if authorised to do so by an award or enterprise agreement (140(1)).</p> |



|   | Commonwealth  | Queensland   | New South Wales  | Tasmania   | Western Australia   | South Australia  |
|---|---|--|--|--|---|--|
| <b>For what purposes is entry allowed</b>   | <p>To investigate suspected breaches of the WR Act, or an award, certified agreement or order that binds the organisation (285B).</p> <p>To hold discussions with employees who wish to participate (285C).</p>   | <p>To inspect and copy time and wage records (372, 373).</p> <p>Discussions with employer or employee (372, 373).</p> <p>For details, see ‘Powers upon entry’ below.</p> | <p>To investigate a suspected breach of the industrial relations legislation or any industrial instrument which applies to employees who are members or eligible to be members (298).</p> <p>To hold discussions with the employees at the premises (297).</p> | <p>To investigate any alleged breach of the Act, an award or a registered agreement (77(1)(b)).</p> <p>To talk with or interview employees at the premises (77(1)(a)).</p>   | <p>To investigate suspected breaches of the IR Act, certain prescribed acts, or an award, order, industrial agreement or employer-employee agreement that applies to members or employees who are eligible to be members (49I(1)).</p> <p>To inspect employment records of an employee or former employee (49E).</p> <p>To hold discussions with employees who are members or eligible to be members (49H).</p> | <p>To inspect time and wages records at the premises (140(1)(a)).</p> <p>To inspect the work being carried out by members and note the conditions under which work is carried out (140(1)(b)).</p> <p>If specific complaints of non-compliance with the award or enterprise agreement have been made, to interview members about the complaints (140(1)(c)).</p> <p>Section 140 ‘prescribes the only circumstances in which a union has the right of entry into an employer’s premises’: <i>AMWU v Seeley International</i> [1998] SAIRC 13; (1998) 80 IR 253.</p> |
| <b>What type of premises may be entered</b> | <p><b>For the purposes of investigation only:</b><br/>Any premises where employees work who are members of the organisation (285B(2)).</p> <p><b>For the purposes of discussions only:</b><br/>Any premises on which work is being carried on to which an award applies that is binding on the organisation and where there are</p> | <p>A workplace at which an employer carries on a regular calling of the organisation (372(1)).</p>   | <p>Any premises where employees, who are members or eligible to be members of the organisation, are engaged (297 and 298).</p> <p>AIO cannot enter premises for investigations or discussions if:<br/>(a) the employer holds a religious</p>                   | <p><b>For the purposes of investigation only:</b><br/>Any premises where members are or were employed (77(1)(b)).</p> <p><b>For the purposes of discussion only:</b><br/>Any premises where members are employed (77(1)(a)).</p> | <p>Any premises where employees work who are members or eligible to be members of the AR’s organisation (49H and 49I).</p> <p>AR cannot enter premises of an employer that is principally used for habitation by the employer and his or her household (49K).</p> <p><b>For the purposes of</b></p>   | <p>An employer’s premises at which one or more members of the association are employed (140(1)).</p>   |

|                        | Commonwealth   | Queensland  | New South Wales   | Tasmania  | Western Australia   | South Australia                    |
|------------------------|--|---|---|---|---|------------------------------------|
|                        | <p>employees who are members or eligible to become members of the organisation (285C)</p> <p>Permit holder cannot enter premises for discussions if:</p> <p>(a) there are no more than 20 employees; and</p> <p>(b) the employer holds an endorsed conscientious objection certificate; and</p> <p>(c) there are no members (285C(3)).</p> <p>Permit holder cannot enter any part of premises used for residential purposes, except with the permission of the occupier (285D(3)).</p> |   | <p>conscientious objection certificate; and</p> <p>(b) there are no members; and</p> <p>(c) there are no more than 20 employees at the premises (296(2)).</p> <p>AIO cannot enter any part of premises used for residential purposes, except with the permission of the occupier (300).</p>   |   | <p><b>inspecting records only:</b></p> <p>Premises of the employer (49E).</p>   |                                    |
| <b>Notice required</b> | <p>24 hours (285D)</p>   | <p>No notice required.</p> <p>On entering the workplace, if employer or employer's representative is present, AIO is required to notify employer or employer's representative of AIO's presence (372(2)).</p> | <p><b>For the purposes of investigations only:</b></p> <p>24 hours notice required, except that:</p> <p>(a) 48 hours notice is required for the production of documents that are not on the employer's premises (298(3));</p> <p>(b) no notice is required if the Commission or the Industrial Registrar gives the AIO a warrant authorising the exercise of the power without notice (298(4) and (5)).</p> <p><b>For the purposes of discussions only:</b></p> | <p>No notice is required for entry for talking with or interviewing employees, or entry for investigating breaches not involving inspection and copying of records.</p> <p><b>For the purposes of discussions only:</b></p> <p>Notice of 2 working days (not including a Saturday, Sunday or public holiday) is required to inspect or copy records, unless the employer agrees otherwise (77(2) and (2A)).</p> | <p>The Commission cannot make an award or order or register an agreement relating to powers of entry and inspection, other than in relation to the period of notice required (s49N).</p> <p><b>For the purposes of investigation only:</b></p> <p>24 hours notice is required for production of employee records held on the employers premises, and 48 hours notice is required for production of employee records not held on the employer's premises (49I(6)).</p> <p>No notice is required if the Commission gives AR a certificate authorising the exercise of the power without</p> | <p>Reasonable notice (140(2)).</p> |

|                          | Commonwealth  | Queensland  | New South Wales   | Tasmania  | Western Australia  | South Australia  |
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|                          |   |   | No notice required.   |   | notice and AR gives a copy of the certificate to the person in charge of the premises upon entry (49I(7) and (8)).<br><br><b>For the purposes of discussions only:</b><br>For discussion purposes, 24 hours notice is required unless an award, order or industrial agreement does not require notice or requires a specified period of notice (49H(2) and (3)).<br><br><b>For the purposes of inspecting records only:</b><br>The employer must comply with the request for production and inspection not later than the end of the next pay period or 7 days after the request (49E(2)). |  |
| <b>Other limitations</b> | Entry and exercise of powers upon entry is permitted only during working hours (285B(2) and (3) and 285C(2)).<br><br>Permit must be produced on request of occupier (285D(1)).<br><br>Cannot hinder or obstruct employer or employee – civil penalty (285E(1) and 285F).<br><br><b>For the purposes of discussions only:</b><br>Only permitted in the employee’s meal time or | Entry only during employer’s business hours (372(1)).<br><br>AIO must produce the authority if required by the employer or employer’s representative (372(2)).<br><br>AIO must not wilfully obstruct employer, or employee during employee’s working time – offence (373(9)). | Entry permitted only during working hours (297 and 298).<br><br>While exercising right of entry, AIO must produce the authority if requested by occupier or person required to produce anything or answer question (299(2)).<br><br>It is an offence for an AIO to deliberately hinder or obstruct employer or employees during | Entry permitted only during working hours (77(1)).<br><br>Officers may only enter if they identify themselves to the person in charge of the premises (r26).<br><br>The officer must make a declaration of secrecy before inspecting a record (77(3), r27(1) and Form 16 of Regulations). It is an offence to | Entry permitted only during working hours (s49H and 49I).<br><br>If requested by the occupier or person in charge of the premises to show the Authority, AR cannot enter or remain on premises unless AR shows the Authority (49L).<br><br><b>For the purposes of investigations only:</b><br>AR cannot require production of an employment record of an employee if the employee is party to an employer-   | An official must comply with any other requirement imposed by the award or enterprise agreement (140(2)).<br><br>It is an offence for an official to:<br>(a) harass an employer or employee; or<br>(b) hinder or obstruct an employee in carrying out a duty of employment (140(3)). |

|                          | Commonwealth  | Queensland   | New South Wales  | Tasmania   | Western Australia   | South Australia   |
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|                          | other breaks (285C(2)).   |  | <p>their working time (301(1)).</p> <p><b>For the purposes of investigations only:</b><br/>Inspection of documents can only occur during the usual business hours at the employer's premises, or at a mutually convenient time and place (298(2)).</p> <p><b>For the purposes of discussions only:</b><br/>Can only be held in lunch time or non-working time (297).</p> | <p>disclose information contrary to the declaration (77(4)). Officers can only require the employer to produce documents for inspection and copying:<br/>(a) with the employee's approval;<br/>(b) during usual office hours; and<br/>(c) at the employer's office (77(1)(c)).</p>     | <p>employee agreement and has made a written request that the record not be available for inspection by an AR (49I(3)).<br/>AR cannot investigate a suspected breach of an employer-employee agreement unless authorised by the employee (49I(5)).</p>  |   |
| <b>Powers upon entry</b> | <p><b>For the purposes of investigations only:</b><br/>(a) Inspect and make copies of time sheets/pay sheets and any other documents other than an AWA;<br/>(b) Inspect or view any work, material etc relevant to the suspected breach;<br/>(c) Interview employees who are members or eligible to become member's of the organisation (285B(3)).</p> <p>With or without entering premises, permit holder may also require employer to produce time sheets/pay sheets and any other documents other than an AWA for inspection and</p> | <p>Inspect and copy time and wages records of:<br/>(a) current and past members;<br/>(b) employees who are eligible to be members; and<br/>(c) employees on a QWA who consent in writing to the inspection (373(2)).</p> <p>AIO cannot inspect record for an employee who has made a written request that the record not be available for inspection by AIO (373(3)).</p> <p>Discuss matters under</p> | <p><b>For the purposes of investigations only:</b><br/>The employer is required to produce any employees' records and other documents related to the suspected breach (298(2)). The AIO can make copies of these documents (298(2)).</p>   | <p><b>For the purposes of investigations only:</b><br/>With or without entry, an officer may require the employer to produce records and make copies of such records, for the purpose of investigating a breach of the Act, an award or a registered agreement (77(1)(c) and (d)).</p> | <p><b>For the purposes of investigations only:</b><br/>Require the production of any employment records of employees or other documents kept by the employer that are related to the suspected breach (49I(2)(a)). AR can make copies of the employment records or documents related to a suspected breach (49I(2)(b)). AR can inspect or view any work, material, machinery or appliance that is relevant to the suspected breach (49I(2)(c)).</p> <p><b>For the purposes of discussions only:</b><br/>Hold discussions with</p> | <p>Inspection of time and wages records and work; interview members (140(1)).</p> |

|  | Commonwealth  | Queensland   | New South Wales  | Tasmania   | Western Australia   | South Australia  |
|--|---|--|--|--|---|--|
|  | <p>copying (285B(4)).</p> <p><b>For the purposes of discussions only:</b><br/>Hold discussions with those employees who wish to participate (285C).</p>   | <p>the IR Act with the employer, members or employees eligible to become members during working or non-working time (373(6)). Discuss other matters with members or employees eligible to become members during non-working time (373(7)).</p> <p>An authority may be subject to conditions stated in it (364).</p> <p>On application by employer, QIRC may revoke, suspend or attach conditions to an AIO's authority if the AIO has:</p> <p>(a) breached a condition of the authority;</p> <p>(b) on entry, failed to notify employer and produce authority;</p> <p>(c) exercised power to enter in unreasonable or vexatious way; or</p> <p>(d) made unreasonable, vexatious or inappropriate use of information obtained (365).</p> <p>Authority ceases being in force:<br/>(a) at the end its term; or<br/>(b) on revocation;</p> | <p>Registrar may, on application, revoke authority if satisfied that AIO:</p> <ul style="list-style-type: none"> <li>intentionally hindered or obstructed employers or employees during their working time;</li> <li>otherwise acted in an improper manner in the exercise of the right of entry power (299(4)).</li> </ul> <p>AIO must return authority to the Industrial Registrar within 14 days of expiry or revocation of the authority – offence (299(6)).</p> | <p>There is no provision restricting individual officers from exercising right of entry.</p> | <p>members and employees who are eligible to be members who wish to participate in the discussions (49H).</p> <p><b>For the purposes of inspecting records only:</b><br/>Require the production of, inspect and make copies of employment records (49E).</p>  |  |
| <b>Revocation, suspension or conditions on use</b> | <p>Registrar may revoke permit if satisfied permit holder has intentionally hindered or obstructed employer or employee or otherwise acted in improper manner (285A(3)) or to prevent or settle industrial dispute (285G(2)).</p> <p>If permit is not revoked, it expires if the person ceases to be an employee/officer of that organisation, or after 3 years (285A(2)).</p> <p>Permit must be returned to Registrar within 14 days of being revoked/expiring – civil penalty (285A(5) and 285F).</p> |  | <p>Registrar may, on application, revoke authority if satisfied that AIO:</p> <ul style="list-style-type: none"> <li>intentionally hindered or obstructed employers or employees during their working time;</li> <li>otherwise acted in an improper manner in the exercise of the right of entry power (299(4)).</li> </ul> <p>AIO must return authority to the Industrial Registrar within 14 days of expiry or revocation of the authority – offence (299(6)).</p> | <p>There is no provision restricting individual officers from exercising right of entry.</p> | <p>Authority remains in force unless revoked or suspended (49J(4)).</p> <p>Commission, on application by any person, may revoke or suspend an AR's Authority if the AR:</p> <ul style="list-style-type: none"> <li>acted in an improper manner in the exercise of any power conferred on the person by the right of entry provisions; or</li> <li>intentionally and unduly hindered an employer or employees during their working time (49J(5)).</li> </ul> <p>Registrar may, on application by the Secretary of the organisation, revoke Authority (49J(6)).</p> <p>AR must return Authority to the Registrar within 14 days of revocation – civil penalty (49J(9) and 49O).</p> | <p>Commission may withdraw the powers of an official if the official abused powers under section 140 (140(4)).</p> |

|  | Commonwealth  | Queensland   | New South Wales  | Tasmania   | Western Australia   | South Australia   |
|--|---|--|--|--|---|---|
|  |   | <p>(c) during the period of a suspension; or</p> <p>(d) if the AIO ceases to be an officer/employee of the organisation or ceases to be acceptable to be an AIO to the organisation (364(4)).</p> <p>Organisation must notify the registrar within 14 days if the AIO ceases to be an officer / employee of the organisation or ceases to be acceptable to be an AIO to the organisation – offence (364(5)).</p> <p>Organisation must surrender the authority on the registrar’s request – offence (364(5)).</p> |  |  |   |   |
| <b>Sanctions against employers / occupiers</b> | <p>(a) Occupier must not refuse or unduly delay entry (285E(2));</p> <p>(b) Employer must not refuse or fail to comply with requirements for production of documents (285E(3));</p> <p>(c) Person must not intentionally hinder or obstruct permit holder (285(4)).</p> <p>Sanction:<br/>(a) civil penalty - 300pu (\$33,000 - body corporate) or 60pu (\$6,600 - other) (285F(3));</p> | <p>(a) Employer must not refuse entry (372(3));</p> <p>(b) Employer must allow or not allow (as appropriate) AIO to inspect records (373(3));</p> <p>(c) Person must not threaten or intimidate employee to make or refuse to make a written request about availability of record for inspection (373(4));</p> <p>(d) Person must not obstruct AIO having discussions (373(8)).</p>  | <p>(a) Person must not deliberately hinder or obstruct AIO (301(2));</p> <p>(b) Person must not, without lawful excuse, fail to comply with requirement of an AIO (301(3)).</p> <p>Sanction: Offence - 100pu (\$11,000).</p> | <p>Employer must comply with notice to produce record for inspection (77(6)).</p> <p>Sanction: Offence - 10pu (\$1,000).</p> | <p>(a) Occupier must not refuse, or intentionally and unduly delay, entry (49M(1));</p> <p>(b) Person must not intentionally and unduly hinder or obstruct an AR (49M(2));</p> <p>(c) Employer must comply with request for production and inspection of documents, including allowing entry and copying (49F).</p> <p>Sanction:<br/>(a) civil penalty - \$5,000 (employer, organisation or association) or \$1,000 (other)</p> | <p>Contravention or failure to comply with award or enterprise agreement (224).</p> <p>Sanction: Offence - \$2,500.</p> |

|                                    | Commonwealth  | Queensland   | New South Wales   | Tasmania  | Western Australia   | South Australia  |
|------------------------------------|---|--|---|---|---|--|
| <b>Entry for OH&amp;S purposes</b> | <p>(b) injunction (285F(5)).</p> <p>Commonwealth: No general right of entry.</p> <p><b>Victoria:</b> No current right of entry. However, Part 8 of <i>Occupational Health and Safety Act 2004</i> (Vic) commences on 1 July 2005 - it creates a regime which may allow entry by authorised representative (trained officer or employee) of organisation to enquire into suspected contravention of the Act.</p> <p><b>Northern Territory:</b> No general right of entry for unions. However, <i>Work Health Act 1986</i> allows inspection on reasonable notice of workplaces by person (who may be a union official or employee) nominated by a health and safety committee (44D).</p> <p><b>ACT:</b> Division 5.4 of <i>Occupational Health and Safety Act 1989</i> allows entry by a trained, authorised officer or employee of a union to investigate a suspected contravention of the Act.</p> | <p>Sanction: offence - 27pu (\$2,025).</p> <p><i>Workplace Health and Safety Act 1995</i> allows entry to workplaces by inspectors. There is no right of entry for unions.</p> | <p>Division 3 of Part 5 of <i>Occupational Health and Safety Act 2000</i> allows AIO under the IR Act a limited right to enter workplaces without notice to investigate suspected breach of OH&amp;S legislation.</p> | <p><i>Workplace Health and Safety Act 1995</i> allows entry to workplaces by inspectors. There is no right of entry for unions.</p> | <p>(83E(1));<br/>(b) order to prevent further contravention (83E(2)).</p> <p>AR may enter to investigate breach of the <i>Occupational Safety and Health Act 1984</i> or <i>Mines Safety and Inspection Act 1994</i> on same basis as entry to investigate other breaches (49I(1)).</p> | <p><i>Occupational Health, Safety and Welfare Act 1986</i> allows entry by inspector or person authorised by the Director or the Corporation. There is no right of entry for unions.</p> |

Information is correct as at 4/2/05