

Comparative Analysis of Key Right of Entry Requirements – Industrial Relations Act to Fair Work Bill

Issue	Fair Work Bill 2008	Work Choices 2005 – 2008	Workplace Relations Act 1996 – 2005	Industrial Relations Act 1988 – 1996
Entry to workplaces where no members employed – discussion purposes	Yes ¹	Yes ²	Yes ³	N/A [entry for discussion provided for in individual awards].
Entry to workplaces where no member employed – investigation purposes	No ⁴	No ⁵	No ⁶	Yes ⁷
Union can access non-member records	Yes, but with limitations ⁸	No, but subject to an exception ⁹	Yes ¹⁰	Yes ¹¹

¹ If entitled to represent the industrial interests of employees at the workplace: cl. 484

² If employee(s) at the workplace covered by an award or agreement that binds the union: s. 760. Note that a non-union collective agreement excludes the operation of an award.

³ If employee(s) at the workplace covered by an award that binds the union: s. 285C. Note that collective agreements did not exclude the operation of the award meaning that a right of entry remained even when the collective agreement was in operation.

⁴ cl. 481

⁵ s. 747

⁶ s. 285B

⁷ Included requirement that union must be bound to the award or agreement being investigated: s. 286

⁸ Can only look at records that are relevant to a suspected breach that affects or relates to a member: cl 482

⁹ However, Commission may order access if necessary to investigate breach: s. 748(9)

Issue	Fair Work Bill 2008	Work Choices 2005 – 2008	Workplace Relations Act 1996 – 2005	Industrial Relations Act 1988 – 1996
Express Privacy protections	Yes ¹²	No, although Privacy Act may apply	No, although Privacy Act may have applied	No
Requirement to be a fit and proper person to receive permit	Yes ¹³	Yes ¹⁴	No ¹⁵	No ¹⁶
Union must give notice of entry	Yes ¹⁷	Yes ¹⁸	Yes ¹⁹	No
Employer can request location of discussions/ interviews	Yes ²⁰	Yes ²¹	No	No
Mandatory Revocation / Suspension of Permits	Yes ²²	Yes ²³	No	N/A – no permit system.

¹⁰ Provided relevant to the suspected breach: s. 285B(3)

¹¹ For purpose of ensuring compliance with award or order: reg 131L of IR Regulations

¹² cl. 504

¹³ cl. 512

¹⁴ s. 742(2)

¹⁵ Registrar could issue a permit to any officer or employee of a union: s. 285A(1)

¹⁶ Secretary of union could authorise any officer to enter premises: s. 286(1)

¹⁷ at least 24 hours: cl. 487

¹⁸ at least 24 hours: ss. 749 & 763

¹⁹ at least 24 hours: s. 285D(2)

²⁰ s. 492

²¹ ss. 765(3) & 751(3)

²² Two additional grounds for mandatory revocation relating to breaches of NPP2 of the Privacy Act: Cl. 510(b)&(c)

²³ s. 744(5)

Issue	Fair Work Bill 2008	Work Choices 2005 – 2008	Workplace Relations Act 1996 – 2005	Industrial Relations Act 1988 – 1996
Suspension or Revocation of any or all permits issued to a union or branch of union for misuse of rights	Yes ²⁴	Yes ²⁵	No	N/A – no permit system.
RoE in Agreements	Not allowed ²⁶	Not allowed ²⁷	Allowed ²⁸	Allowed

²⁴ cl. 508

²⁵ s. 770

²⁶ Cannot include term that entitles entry of a sort set out in the right of entry chapter for discussion purposes or to investigate a breach

²⁷ Prohibited content – see Workplace Relations Regulation 8.5(1)(g), Chapter 2, Part 8, Division 7.1

²⁸ To the extent such clauses pertained to the employment relationship