



Strengthening right of entry to investigate underpayments

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* amends the right of entry provisions in the *Fair Work Act 2009* to enhance the ability of entry permit holders to enter a workplace to investigate suspected wage underpayments.

What has changed?

The right of entry provisions in the *Fair Work Act 2009* (the Act) regulate the rights of registered organisations to enter workplaces or business premises to investigate suspected contraventions of the Act and for discussion purposes. In order to enter a workplace, an official of a registered organisation must have a valid entry permit from the Fair Work Commission (the Commission) and meet other entry requirements.

The amendments provide that an entry permit holder can apply to the Commission for an exemption certificate, waiving the usual 24-hour notice period for entry to workplaces, but only where the Commission is satisfied there is a suspected underpayment of wages affecting a member of the registered organisation, and reasonably believes that advance notice of entry would hinder an effective investigation into the suspected contravention.

Existing right of entry safeguards under the Act will continue to operate under the new provisions, including restrictions on the unauthorised use or disclosure of information, the prohibition on hindering or obstructing any other person, the obligation to comply with work health and safety requirements that apply in the workplace, and the prohibition on entering any part of a premises that is used mainly for residential purposes.

In the event of misuse, the Commission has the power to ban the issue of, or impose conditions on, exemption certificates relating to suspected underpayments for a specified period.

The amendments also prohibit other persons, including employers and occupiers, from acting in an improper manner towards a permit holder.

What do these changes mean?

The changes allow entry permit holders to seek the Commission's permission to enter a workplace without advance notice to investigate a suspected underpayment, in limited circumstances. These changes complement the Fair Work Ombudsman's existing role under the Act in detecting and addressing wage underpayments.

When will these come into effect?

These changes commence on 1 July 2024.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>