



## Changes to state employment laws in WA

# Right of entry

The *Industrial Relations Legislation Amendment Act 2021* has made changes to the right of entry provisions under the *Industrial Relations Act 1979* (IR Act). These changes commenced on 20 June 2022.

Part II Division 2G of the IR Act enables authorised representatives of state registered unions to enter workplace premises for certain purposes, and to exercise certain powers.

An authorised representative may enter premises during working hours to:

- investigate a suspected breach of a state industrial law, award or agreement;
- investigate a suspected breach of a state work health and safety law; and
- hold discussions with employees who are members of the union, or who are eligible to become members.

The right of entry provisions under the IR Act generally only apply to employers and employees covered by the state industrial relations system. However, they also apply to employers and employees in the national industrial relations system where an authorised representative is investigating a suspected breach of:

- a state work health and safety law; or
- the *Long Service Leave Act 1958*.

### State employment laws have changed

This fact sheet is part of a suite of information on the changes to state employment laws that commenced 20 June 2022. For details on the changes visit [www.dmirs.wa.gov.au/new-employment-laws](http://www.dmirs.wa.gov.au/new-employment-laws).

### Right to investigate a suspected breach of construction industry long service leave laws

The right of entry provisions have been amended to enable authorised representatives to enter premises to investigate a suspected breach of the *Construction Industry Portable Paid Long Service Leave Act 1985*. This Act applies to employers and employees in the construction industry.

Right of entry to investigate a suspected breach of the *Construction Industry Portable Paid Long Service Leave Act* applies to employers and employees in both the national and state industrial relations systems.

## Right to use electronic means when investigating a suspected breach

The right of entry provisions have been amended to expressly enable authorised representatives to make electronic recordings of any work, material, machinery or appliance that is relevant to the suspected breach being investigated. An electronic recording could include a photograph, video or audio taken with a mobile phone.

Any electronic recording made must be relevant to the suspected breach, and must be used for the purpose of investigating and/or rectifying the suspected breach. The ability to electronically record will assist authorised representatives to capture and preserve evidence. This is especially relevant to a suspected breach of a workplace health and safety law.

The right to use electronic means when investigating a suspected breach is subject to other legal requirements and protections, such as:

- the *Surveillance Devices Act 1998*, which prohibits the intentional recording or publishing of a private conversation or activity as defined in that Act;
- work health and safety laws, which broadly require persons at a workplace to:
  - take reasonable care to avoid adversely affecting the health and safety of others; and
  - comply with any reasonable instruction of the person conducting the business or undertaking, in order to allow that person to comply with their own work health and safety obligations; or
- common law and statutory rights relating to intellectual property, patents, copyright, defamation, injurious falsehood and the like.

In the event of a dispute about right of entry, including the power for an authorised representative to electronically record, the relevant union or the employer could apply to the Western Australian Industrial Relations Commission (the Commission) for a compulsory conference to deal with the dispute.

## Right of entry to a workplace that is also an employer's residence

There is no automatic right of entry to a workplace that is also used for habitation by the employer or a member of their household ("habitation premises"). However, the IR Act has been amended to enable an authorised representative to apply to the Commission for an order permitting them to enter habitation premises to investigate a suspected breach.

The Commission will only be able to make an order if satisfied that **exceptional circumstances** exist warranting the making of the order. Whether such circumstances exist will be determined on a case-by-case basis. The Commission will firstly try to resolve the matter by conciliation. If this is not successful, then the Commission will hear and determine the matter after hearing from both parties.

Many workplaces are now home-based. The amendments seek to strike a balance between protecting an employer's privacy, and protecting the rights of employees who work in a home.

## Disclaimer

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