



Powers of Fair Work Inspectors

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

Who are Fair Work Inspectors?

Fair Work Inspectors are government officials appointed by the Fair Work Ombudsman under the *Fair Work Act 2009*. The *Fair Work Act 2009* gives Fair Work Inspectors certain powers to perform their role to promote and monitor compliance with relevant Commonwealth workplace laws.

A Fair Work Inspectors role includes:

- conducting targeted education campaigns in industries and regions
- conducting compliance audits
- investigating workplace complaints
- providing assistance in resolving workplace complaints
- investigating suspected contraventions of relevant Commonwealth workplace laws and fair work instruments (e.g. an award or an industrial agreement including agreements made under the *Workplace Relations Act 1996*)
- taking steps to enforce relevant Commonwealth workplace laws and fair work instruments through the court system (where necessary).

All Fair Work Inspectors are issued with an identity card that they must carry with them at all times when performing functions or exercising their powers. You can request to see a Fair Work Inspectors identity card to confirm their identity.

What are their powers?

Powers to enter premises

A Fair Work Inspector may enter certain premises if they reasonably believe:

- the *Fair Work Act 2009*, the former *Workplace Relations Act 1996* or a fair work instrument applies to the workplace
- records or documents relevant to compliance are on the premises (including documents on a computer).

Before entering a premises, a Fair Work Inspector must show their identity card to the occupier of the premises or their representative. If this isn't possible, the Fair Work Inspector must show their identity card as soon as possible after entering.

In gaining entry to a premises, a Fair Work Inspector must not use force, but does not need permission from the occupier. However, they must not enter a part of a premises that is used for residential purposes unless they reasonably believe that work is being performed on that part of the premises.

A Fair Work Inspector may enter premises at any time during working hours, or at any other time that the Fair Work Inspector believes is necessary for compliance purposes.

Powers while on the premises

A Fair Work Inspector may exercise one or more of the following powers while on the premises:

- inspect any work, process or object
- interview anyone (with their consent)
- require a person to tell them who has or who can access a record or document
- require the person with access to a record or document to hand it over while the inspector is on the premises or within a specific timeframe
- inspect and make copies of any record or document kept on the premises (hardcopy or on computer)
- take samples of any goods or substances after informing the owner or other relevant person in charge of the goods or substances.

To assist an investigation, a suitably qualified and experienced person may accompany a Fair Work Inspector onto the premises. For example, assistants may include information technology specialists, forensic accountants or interpreters. Such assistants can attend the premises with a Fair Work Inspector only if the Fair Work Ombudsman is satisfied that the assistance is necessary and reasonable.

Powers to ask for a person's name and address

If a Fair Work Inspector reasonably believes that a person has contravened the *Fair Work Act 2009*, the former *Workplace Relations Act 1996*, or a fair work instrument, and the contravention may attract a monetary penalty, the Fair Work Inspector can require that person to tell them their name and address.

The Fair Work Inspector may also require a person to provide evidence that the name and address provided is correct, for example, a drivers licence.

The Fair Work Inspector must show their identity card and tell the person that they may be liable for penalties of up to \$3,300 should they not comply.

The person must comply with these requirements unless they have a reasonable excuse (eg. if they are asked to provide evidence and they do not have a form of identification available).

Powers to require a person to produce records or documents

In the course of an investigation, a Fair Work Inspector can issue a written Notice to Produce Records or Documents, requiring a person to provide records or documents at a particular location, within a specified time period (at least fourteen days).

It is a contravention of the *Fair Work Act 2009* if a person fails to comply with a written Notice to Produce Records or Documents and has no reasonable excuse. A person cannot refuse to comply with a Notice to Produce Records or Documents on the grounds that providing the requested records or documents may incriminate them.

Where a person has contravened a written Notice to Produce Records or Documents, the Fair Work Inspector may recommend litigation against the person for penalties.

If this occurs, the following maximum penalties may apply:

- \$6,600 (for an individual)
- \$33,000 (for a corporation).

A Fair Work Inspector can keep any Records or Documents provided to a Fair Work Inspectors under a written notice for any period that is considered necessary. A Fair Work Inspector must make the Records or Documents available at all reasonable times to the person who produced them, or anyone else entitled to their possession, for inspection or to copy.

What can their powers be used for?

A Fair Work Inspector may use their powers in order to determine whether the rights and obligations under relevant Commonwealth workplace laws are being complied with.

A Fair Work Inspector may investigate matters such as:

- underpayments of wages and entitlements, including entitlements related to terminating an employee
- pay slip, time and wages record-keeping obligations
- freedom of association
- right of entry by trade unions
- undue influence or pressure in relation to individual flexibility arrangements, guarantees of annual earnings, and deductions from wages

- contraventions of general protections provisions including adverse action, coercion and misrepresentations in relation to a persons workplace rights
- transfer of business arrangements
- sham contracting arrangements
- unprotected industrial action
- unlawful discrimination.

The Fair Work Ombudsman can ask a court to make orders for an injunction for the imposition of penalties and/or for the payment of compensation (the payment of outstanding monies) to a worker in relation to contraventions of relevant Commonwealth workplace laws. Further, if a person seeks to hinder or obstruct a Fair Work Inspector in the course of their duties, they may face criminal charges.

For more information, please see the *Fair Work Ombudsman Guidance Note 1 – Litigation Policy*, which is available on the Fair Work Ombudsman's website www.fwo.gov.au

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94