



RO POD episode 50 – Changes to right of entry permit applications

Speaker Key

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NL: Hello and welcome to RO pod. My name is Nara Lovisa and I'm an Adviser in the Fair Work Commission's Registered Organisations Services Branch. In today's episode we will be talking about right of entry permits, the permit application process and recent changes that have been made.

Here with me today is Cynthia Lo-Booth, who is a Senior Adviser in the Governance and Protected Disclosures Team and has vast experience across the Branch's functions. Welcome Cynthia.

CLB: Hi Nara, thank you for having me.

NL: So before we get into the recent changes to the application process, let's talk a little bit about right of entry permits in general and the Commission's role in issuing them, for those who might not be so familiar with this area.

CLB: Sure thing Nara. Well, as a bit of background, right of entry permits are issued under the Fair Work Act and the Commission issues around 1,100 and 1,400 permits each year, so it's quite a large part of our functions. When issued, a right of entry permit grants the permit holder the lawful right to enter work premises to investigate suspected breaches of the Fair Work Act and associated instruments, and that includes accessing member records. It also enables the permit holder to exercise rights under workplace safety laws and hold meetings with employees.



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NL: So, a permit holder doesn't have unfettered access to a workplace – is that correct?

CLB: No, they don't. They can only exercise these rights in specific circumstances. First, the suspected contravention must relate to or affect a member of the permit holder's organisation and second, there must be at least one member performing work on the premises, and then lastly, the organisation must be entitled to represent the industrial interests of the member.

NL: Can a permit be granted to anyone, Cynthia, or do prospective permit holders need to meet any particular requirements?



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- CLB:** No, a permit can only be issued to an employee or officer of a federally registered association of employees (a union). In addition to that, the Commission can only issue an entry permit to an employee or officer if it is satisfied that they are a fit and proper person. Under section 513 of the Fair Work Act, that sets out what the Commission needs to take into account in determining whether the official is a fit and proper person. These are known as ‘permit qualification matters’. Some of the matters include whether the official has received training about their rights and responsibilities as a permit holder and whether the official has ever been convicted of an offence against an industrial law.
- NL:** You mentioned that one of the reasons for entering a place of work is to meet with employees. Does that mean right of entry permits are only available to employees and officials of unions and not employer associations?
- CLB:** That’s correct Nara, only employees and officials of unions are eligible to be granted a permit. That said, it’s also useful for employees and officers of employer organisations to have an understanding of the rights and obligations surrounding entry permits, because employers have rights and obligations of their own.



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- NL:** What kind of rights and obligations do employers have – can you expand on this point?
- CLB:** For instance, an official is not authorised to remain at a premises if they fail to comply with any reasonable request by the occupier of the premises concerning workplace health and safety or occupational health and safety requirement that applies.

Employers can also direct a permit holder to take a particular route to reach a particular room or area to meet with their members. In addition, a permit holder must also show their permit, if requested by the occupier of the premises or an affected employer, or when seeking records. Permit holders also need to comply with any condition imposed on their entry permit.



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So, during working hours, permit holders need to give the occupier and any affected employer at least 24 hours' notice before the entry, but not more than 14 days' notice. However, this can be waived if the Commission has issued an exemption certificate in a specific circumstance.



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NL: You've mentioned some of the rights of employers there, but what about their obligations to allow a permit holder entry onto their premises?

CLB: Well, an employer can't refuse or delay entry to a permit holder seeking to enter the work premises and they cannot intentionally hinder or obstruct a permit holder who is lawfully exercising their rights. Employers are also required to comply with a permit holder's request to produce or provide access to records or documents.

NL: Moving on...let's have a look at the application process. Most permit applications are routine and are approved by a Commission member or staff member under a delegation from the President of the Commission.

It's worth noting that the application itself is made by the registered organisation, on behalf of the proposed permit holder. We currently have two forms that need to be completed. One is the Form F42, which consists of three parts - the permit application, a declaration from a committee of management member and a declaration from the proposed permit holder.

The first part, the permit application, includes the permit holder's legal name and either their job title or office (if they are an elected officer), along with details about their previous permit (if they had one) and it's return to the Commission.



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CLB: And the second part requires a committee of management member to assess and make proper inquiries into whether the proposed permit holder is a fit and proper person to hold an entry permit, that is, looking into the permit qualification matters that I mentioned before.



These inquiries can be made by doing things such as having a discussion with the proposed permit holder about whether there are any relevant matters that may go to them being a fit and proper person. They should also review any previous permit applications and previously issued permits for conditions, as well as checking the union's internal records and searching their name through Federal Court and Commission judgments, decisions and orders.

As well as making these inquiries, they must attest to seeing evidence that the proposed permit holder has completed approved right of entry training. After that, if the committee of management member believes 'to the best of their knowledge' that the proposed permit holder is a fit and proper person, they can sign the declaration.



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NL: The third and final part is the declaration of the proposed permit holder, where they provide their legal name and job title or the office they were elected to if that applies, plus the name and address of their union and their signature. Additionally, they must declare they have completed right of entry training and disclose on the form any matters relevant to whether they are a fit and proper person under section 513 of the Fair Work Act.

CLB: That's right, Nara. The second of the two forms is the Form F42C, which requires a committee of management member to ask the permit holder to sign it and provide a recent passport-sized photograph to be displayed on the physical permit. The permit holder's signature will also be included on the permit.



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NL: The proposed permit holder is then required to obtain a Digital iD from Australia Post, and Commission staff will then arrange a video call during which the Digital iD will be used to check and confirm the person's identity. Once this and the rest of the assessment is complete and no further action is required, the entry permit is then issued and posted to the union's address, or any alternative address, if requested.



CLB: Prior to a permit being issued and as part of the application process, the proposed permit holder is required to complete approved right of entry training that informs them of their rights and responsibilities and a certificate of completion is provided to the proposed permit holder as evidence that the training has been completed.

Now, it's essential that the proposed permit holder's correct legal name appears on the evidence of training. If the name on the evidence of training doesn't match the name on the application, then it's likely we will ask for further information, and this can delay the issuing of the permit.



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NL: That's a great tip Cynthia. Can you tell us who offers the training?

CLB: Well, there are a range of unions, peak bodies and even some law firms that have been approved to deliver the training. Currently we have 14 approved training providers, and the list with relevant links can be found on our website under 'Entry Permits' and the 'Registered Organisations' section.

NL: If I've previously been a permit holder and I'm re-applying for a permit when my previous permit is about to expire, do I have to do the training again?

CLB: Well, we advise all permit holders that are re-applying for a permit to complete training again prior to lodging an application for a new permit. This will ensure the training isn't out of date and that after three years from the previous training the delegate or member issuing the permit can be satisfied that the permit holder is aware of their rights and responsibilities.



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NL: Just on that note, Cynthia, right of entry permits expire three years from the date of issue or on the day a permit holder ceases to be an employee or office holder of that particular union. At that point, the permit holder has an obligation to return the permit to the Commission within 7 days. We also encourage organisations to apply for a renewal permit at least four weeks before their current permit expires.



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CLB: Absolutely Nara. Our listeners might be aware that the Registered Organisations Review conducted this year by former Commission members Anna Booth and Jonathan Hamberger, recommended that the process for obtaining a right of entry permit should be ‘significantly’ streamlined. The Commission has undertaken a thorough review of the processes related to the application and approval process for right of entry permits, and we’re happy to say that we have implemented some changes to simplify the process for registered organisations.

NL: That’s right, and not only is the process simplified for organisations, but these changes also mean that the time it takes for the Commission to issue a new permit after receiving an application has been markedly reduced.



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CLB: Yes, and I think one of the most helpful changes that has been made relates to the two forms we have just spoken about. Nara, would you like to explain that change to us?

NL: Sure. So previously the Form F42 declaration was completed by the organisation’s contact person, proposed permit holder and committee of management member, and later lodged with the Commission. We would then send the committee of management member making the declaration a second form - the F42C - for them to complete and provide confirmation that they had lodged the application.

CLB: That seems like it would have required quite a bit of back and forth.

NL: It sure did! So the good news is, that now unions can complete both Forms F42 and F42C at the same time and lodge them with the Commission at the same time, as long as they copy the committee of management member into the email lodging the two forms.

CLB: So that eliminates the need for multiple email communications with the Commission. Nara, there’s also been a significant change to the identity verification process when an organisation applies for another entry permit for an employee or officer who already holds a permit, but it may be about to expire.



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- NL:** Yes, the re-identification process previously required for people applying to renew an entry permit has been removed. The Registered Organisations Review had cited this process as a source of much frustration for unions, their employees and their officials, so now the identity verification process is only required for those who have not previously held an entry permit that was issued after July 2019 – so that means a permit in a card format and bearing a photograph of the permit holder.
- CLB:** It does make a lot of sense, especially where their identity has already been verified by the Commission during a video call three years earlier. In addition to that, the committee of management member will have verified that they sighted the photographic identity of the proposed permit holder and confirmed that the photograph accompanying the F42C form is of the proposed permit holder.
- NL:** That's right, and the committee of management member has also declared that they have compared the permit holder's signature on the F42C form with the signature appearing in another signed document such as a driver's licence, for instance. In any event, due to their familiarity with the proposed permit holder, the member is well placed to verify their identity.
- CLB:** For sure, and we are already finding that removing this identity verification for renewed permits, combined with other changes has drastically improved the turnaround time in processing entry permits, so permit holders won't find themselves with an expired permit while waiting to be issued with a new one and not able to enter workplaces.



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- NL:** Yes, however the scenario you just mentioned, where an employee or official may be “in between” permits, is rare in any event. This is because there actually is an avenue to extend the expiration date of an old permit via an organisation making an application under section 516 of the Fair Work Act. The Commission is able to grant this extension as long as it's been lodged at least one month before the initial expiry date of the old permit, a new one has been applied for, and the old permit is likely to expire before the new permit is granted.
- CLB:** Does the Commission receive a lot of these section 516 applications to extend right of entry permits?



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NL: Some organisations, as a matter of course, would lodge a section 516 application to extend an old permit at the same time as lodging an application for new permit, as the one-month requirement lined up with the time within which we would encourage organisations to lodge their new permit application. However, with the Commission's decreasing processing times for right of entry permits, we no longer consider these section 516 applications necessary in most cases.



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CLB: So organisations shouldn't automatically lodge section 516 applications to extend anymore?

NL: No, we are processing right of entry permits in such a timely manner that a section 516 application can actually increase the time it takes to process and issue a new one. Now, there can be exceptions to this, for instance if the permit application is less straight forward and may need to be referred to a tribunal member if there are questions such as whether the permit holder is still a fit and proper person. This could, for instance, include findings that have recently been made against a permit holder, or penalties recently imposed. Basically, any matter that could be relevant to the section 513 requirements which has not previously been considered by a Commission member, would absolutely warrant the lodging of a section 516 application - pending the Commission member's decision to issue a new permit to that person.



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CLB: Thanks for that information Nara. Can organisations expect any other changes being made to the process in the near future?

NL: There are always ongoing discussions on how to make all our processes less cumbersome for organisations. We are currently consulting with the Commission's Rules Committee and other stakeholders about other improvements to the right of entry process and we are hopeful that we may be able to announce some further changes in the new year. So yes, I would definitely encourage everyone to keep watching this space in the near future!

Before we finish today's episode, is there anything else our listeners should know or be reminded of?



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CLB: I'd just like to remind our listeners that our email address where you can lodge your permit application is regorgs@fwc.gov.au. And if you have any questions about right of entry permits, the application process or anything else, our phone number is 1300 341 665.

NL: Thanks for your time today Cynthia, and for sharing your knowledge of permits with us.

CLB: It's been my pleasure, Nara.

NL: Please tune in to our next episode of RO pod, which will be released in February next year. We hope you have an amazing holiday season.



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