

## Powers of Fair Work Inspectors

- [Who are Fair Work Inspectors?](#)
- [What are their powers?](#)
- [Intentionally hindering or obstructing a Fair Work Inspector](#)
- [Providing false or misleading information or documents](#)
- [Potential consequences of not complying with obligations](#)
- [What can their powers be used for?](#)
- [Contact us](#)

Download the fact sheet:

- [Powers of Fair Work Inspectors \(PDF 90.1KB\) \(www.fairwork.gov.au/ArticleDocuments/723/Powers-of-fair-work-inspectors.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/723/Powers-of-fair-work-inspectors.pdf.aspx)

### 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 Inspector's 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 (eg. 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 Inspector's identity card to confirm their identity.

[Back to top](#)

### 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 business premises (including documents on a computer).

Before entering 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 practicable after entering.

In entering 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 (including in hardcopy or accessible from a 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 to a civil penalty 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 failed to comply with a written Notice to Produce Records or Documents, the Fair Work Inspector may recommend litigation against the person for civil penalties.

A Fair Work Inspector can keep any Records or Documents provided with 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.

[Back to top](#)

## **Intentionally hindering or obstructing a Fair Work Inspector**

The Fair Work Act 2009 prohibits a person from intentionally hindering or obstructing a Fair Work Inspector in the course of performing functions or exercising powers, or a person assisting a Fair Work Inspector on premises. This includes denying or delaying entry to a premises or intentionally withholding documents.

A person will not contravene this obligation if:

- there was a reasonable excuse for the hindrance or obstruction
- the inspector didn't comply with a requirement to show their identity card when asking for a person's name and address or entering premises
- the inspector failed to tell the person they may be contravening the Act.

Intentionally hindering or obstructing a Fair Work Inspector may also be a serious offence, which can attract higher penalties.

[Back to top](#)

## **Providing false or misleading information or documents**

The Fair Work Act 2009 prohibits a person from knowingly or recklessly providing false or misleading information or documents to a Fair Work Inspector exercising powers or performing functions under Commonwealth law.

The Fair Work Inspector must take reasonable steps to tell the person that they may be liable to a civil penalty for providing false or

misleading information or documents.

Knowingly providing false or misleading information or documents to a Commonwealth official may also be a serious offence, which can attract higher penalties.

[Back to top](#)

## Potential consequences of not complying with obligations

Civil penalties under the Fair Work Act 2009 may be sought where a person has:

- failed to comply with a Notice to Produce Records or Documents
- intentionally hindered or obstructed a Fair Work Inspector
- knowingly or recklessly provided false or misleading information or documents to a Fair Work Inspector

The maximum civil penalties which can be imposed by a court in relation to these contraventions are:

- \$12,600 per contravention for an individual
- \$63,000 per contravention for a corporation.

[Back to top](#)

## 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 termination of employment
- 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 person's workplace rights
- an employer's obligations under the Paid Parental Leave Scheme for matters referred to the Fair Work Ombudsman by the Department of Human Services
- transfer of business arrangements
- sham contracting arrangements
- unprotected industrial action
- unlawful discrimination.

The Fair Work Ombudsman can ask a court to make orders in relation to contraventions of relevant Commonwealth workplace laws. This can include orders for the imposition of financial penalties, the payment of compensation (e.g. payment of outstanding monies to employees), injunctions, or that a person or business undertake specific steps such as training or an audit.

For more information, please see the [FWO Guidance Note 1 – Litigation Policy \(www.fairwork.gov.au/about-us/our-policies/our-policies\)](http://www.fairwork.gov.au/about-us/our-policies/our-policies).

Fair Work Inspectors functions and powers are provided for by sections 703–717 of the Fair Work Act 2009.

[Back to top](#)

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

### 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

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Page reference No: 2434

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