Finance Sector Union

Draft Report of the Review of the Closing Loopholes Acts

Submission by the Finance Sector Union on the Draft Report of the Independent Statutory Review into the operation of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023 and the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*

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Closing Loopholes Review

Following the Closing Loopholes Review – Employee Group Roundtable held on 25 May 2026, the Finance Sector Union (FSU) wishes to provide further material to supplement what we discussed in that meeting regarding delegates' rights to communicate.

The FSU supports the submission of the Australian Council of Trade Unions. In particular, regarding delegates' rights, the FSU endorses the ACTU's recommendation on providing for a right to direct and private communication for delegates to assist to resolve ambiguity around "reasonable communication" and to give full effect to this important right.

Delegates Rights and Work from Home

Delegates' rights have particular importance in the finance sector, where many workers routinely work from home. This means that FSU officials are generally unable to access these workers face-to-face as they are not working in a location where union officials have a right of entry. This has the potential to limit workers' access to their union.

In these circumstances, delegates' rights take on greater importance, as the only contact a worker might have with a union is through their delegate. Where work from home is a feature of the workplace, often the main forms of communication between workers are electronic. This means that delegates' rights to communicate are essential to ensure that delegates are able to make contact with union members and prospective union members.

The attached paper, "Right to Enter or Right to Access? Right of Entry in the Digital Age" discusses these themes further.

Delegates' Rights to Communicate in the Finance Sector

The following are a small number of examples of how delegates' rights to communicate are currently being implemented in the finance sector. We would be pleased to provide further examples or information.

Example 1 – access to staff email

During negotiations for a new enterprise agreement, a delegate wrote to the employer representative to ask for the required IT permissions to be able to email employees about the bargaining process and to provide union updates.

Management responded stating that his right to communicate with his colleagues under the Fair Work Act was only to the extent his actions complied with his employer's Code of Conduct and IT Acceptable Use Standard. The delegate was concerned that these policies did not allow broadcast emails to be sent and he would face disciplinary action if he were to do so.

Management then proposed to send an email to all employees covered by the Enterprise Agreement to ask if they wanted to expressly consent to receiving emails from the delegate.

Ultimately, the delegate was not able to email their colleagues.

Example 2 – access to staff email

During enterprise agreement negotiations, a delegate had been emailing employees with union updates.

After the union secured a “no” vote when the employer put the agreement to ballot, the delegate had their permissions to email groups of employees removed. When this was questioned, the employer either denied it had happened, or said that it was required for consistency with their IT policies.

Example 3 – access to Microsoft Teams chats

When a delegate put messages about Union meetings and communication in Teams chats, they received replies stating that chats were for “operational messages” and that the delegates’ message would be removed.

When the delegate queried this decision and asserted their rights to communicate with colleagues, they were told that Teams chats were not a channel they had access to.

Example 4 – physical access

Union materials that delegates have put on noticeboards and in other areas of workplaces are routinely removed. Employers have given reasons for this including that the cleaners removed the posters without instruction to do so, and that they could be confused with safety-related posters.

Example 5 - induction access

Many large companies have refused to allow delegates access to new starter inductions to discuss the union.

We negotiate collective agreements with induction access rights but where these do not exist or employers refuse, we have generally been unable to gain access for delegates to new starter inductions.

The rationale for this is generally that there is no explicit right for delegates to address new starters in an induction format, that they can speak to them via other channels in the workplace.

Example 6 – enterprise agreement clauses

Employers are now trying to put clauses into EAs to limit or give shape to the delegates’ rights clause.

One example is “[the delegates’ right to communication clause] does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.”

Any access to any form of communication would necessarily involve the provision of some contact details, given that workers’ email addresses are generally in the format of their first and last name. These types of clauses effectively remove the right of a delegate to reasonable communication.

We have also seen examples of employers contending that they are required to include the Award delegates' rights terms rather than a more beneficial term that had been negotiated.

Right to Enter or Right to Access? Right of Entry in the Digital Age

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At the height of the COVID-19 pandemic, the Finance Sector Union was engaged in enterprise bargaining with an employer. At that stage, it was not legally permissible for union organisers to visit worksites, and in any event, all workers of this employer had been directed to work from home. The union submitted a right of entry notice seeking entry to the "digital environment" of the employer, as that was the work "premises"[2] *of the workers at the time. Unsurprisingly, the employer did not permit the visit to occur as the Fair Work Act only provides access to "premises" which they said do not extend beyond physical locations. In the context of a global pandemic, the union opted not to take the matter further and instead organised workers from outside the workplace.*

Restrictions in response to COVID-19 saw around 40% of workers directed to work from home. These rates of working from home persist today and despite ongoing commentary and opposition from some employers, appear to be a permanent feature of the Australian working landscape.

The shift to working from home has been accompanied by a dramatic rise in technology-enabled work. How workers perform their work and interact can now be entirely digital and performed external to employer-controlled premises.

Trade unions in Australia have no clear right to access workers working from home, or in digital environments. For trade unions seeking to access workers through exercising right of entry and for workers looking to engage with their union, this presents a significant challenge.

The Fair Work Act 2009 (FW Act) acknowledges the importance of facilitating contact between unions and workers and seeks to achieve this through a right of entry which allows unions access to workplaces.

This paper will examine whether right of entry laws are sufficient to facilitate the access between workers and unions in the context of high rates of working remotely, and in digital environments. We will examine the nature of working in Australia today and then look to the regulatory regime and whether it is fit for the contemporary nature of work. Finally, we will examine the new workplace delegates' rights laws, and whether reconceptualising right of entry as a right of access to workers provides a more accurate and sustainable method by which workers and unions can interact.

Australian workplaces today

Where are people working?

In any consideration of right of entry, an examination of work location is critical as the entitlement is to enter work premises rather than to access workers.

The Australian Bureau of Statistics reported that in August 2023, 37% of employed people regularly worked from home. This has increased from 20–30% between 1989 and 2008 and has reduced from a peak of 40% in August 2021.[3] The Household, Income and Labour Dynamics in Australia (HILDA) Report supports these findings. Their 2023 Report states that there was a 12.2% increase between 2019 and 2021 of people working from home to any extent, and a 17.8% increase over the same period of people working at least 50% of the time from home.[4] There is also an increasing trend of workers having an entitlement to work from home, with a 10.2% increase between 2019 and 2021.[5] This may be a trailing indicator due to the timing of cycles of enterprise agreement bargaining providing this entitlement to workers. In the sectors with the highest rates of working from home entitlements like financial and insurance services,[6] many enterprise agreements now contain working from home rights.[7]

The Australian Bureau of Statistics reported that in 2015, 13% of people said that they worked from home due to flexible working arrangements, which increased to 39% in 2023.[8] It is likely that the survey respondents were referring to flexibility arrangements in the broad sense of the term, not flexible working arrangements under the FW Act. In the 2021 data set, the most common reason for working from home was "other reasons", which was likely to be the COVID-19 lockdowns, as the "other reasons" category dropped back to its pre-2021 rate in 2023. This data suggests that a significant proportion of those who worked from home in 2021 for "other reasons" make up a large proportion of the increase in people who continued working from home due to "flexible working arrangements" in 2023. This

data demonstrates that there is increasing flexibility about where people perform their work supported by legally enforceable entitlements.

How does the FW Act contemplate work locations?

The FW Act variously describes the places people work as "premises"[9] and "workplaces"[10] but also contemplates that work may be performed from locations other than employer-controlled sites through flexible working arrangements.[11] Flexible working arrangements are not a new feature of the FW Act, but in 2023, the introduction of the ability to have the Fair Work Commission hear disputes on flexible working arrangement requests[12] significantly strengthened this right. We are therefore likely to see an increase in flexible working arrangements providing legal rights for workers to work from a range of locations other than those controlled by employers.

This is supported by the current variation on the Commission's own initiative concerning the *Clerks — Private Sector Award 2020* (Clerks Award). In this matter, the Commission is developing a new working from home term in the Clerks Award and has foreshadowed that this term may "serve as a model for incorporation into other modern awards".[13] The Commission has now published a list of questions to be determined as part of this process including how "working from home" should be defined.[14] Business NSW and Australian Business Industrial wrote to the Commission to raise the issue of whether the proceedings should consider workers working remotely, rather than just from their residential home.[15] In response, the Commission said that:

> . . . this appears to be beyond the scope of the proceedings. It may in any event arise for incidental consideration in relation to the issue of defining 'working from home' (issue (2)).[16]

However, in the Final Report on the *Modern Awards Review 2023–24* (Final Report), the Commission noted that "the increase in opportunities to work remotely has expanded employment opportunities and provided more flexibility to balance work and caring responsibilities".[17] While even in the Final Report many of the references are to working from home, the focus is on the benefit of flexibility of work location. It would therefore be helpful if in the Clerk's Award variation case, there is a genuine consideration of the various locations in which a worker can perform their work. This has the potential to provide a regulatory basis for different work locations which supports the need for a more contemporary approach to right of entry laws.

As more and more work are performed online with teams spread across the country and the world, it is increasingly possible to work in some roles without any in-person contact. The rise of the concept of "digital nomads" reflects this trend, with people able to work anywhere they can access an internet connection.[18] More than 40 countries are now offering digital nomad visas to allow remote workers to work from their country.[19] In addition, some companies are now offering their workers the ability to perform their role from any location either permanently or for a set period each year.[20] While some employers remain insistent that work from home is a "fad" and workers will ultimately all return to the office,[21] the increasing prevalence of legally enforceable remote working rights suggests that working from home or remotely is now an ongoing feature of work in Australia.

For workers, the right to work from home or remotely continues to be a high priority, with it consistently ranking as a high priority leading into enterprise agreement negotiations.[22] As some employers attempt to force workers back to the office, even under the threat of performance management and adverse performance ratings,[23] workers continue to prioritise working remotely. The COVID-19 lockdowns caused many workers to have to work from home, and their perception is that they are not trying to create a new right here. Rather, they are seeking to maintain the flexibility that was foisted upon them, that they have demonstrated helps with their work/life balance and has caused no efficiency losses for employers.[24]

It is clear that we can no longer accurately conceptualise the workplace as a physical location that workers attend to perform their work. When over one third of workers are working from home (or another location that is not controlled by their employer), how we think about a workplace must expand to reflect the reality of where workers perform their role. This is especially the case with some workers now having a legal right to work from locations other than the office. The challenge of how to provide a right for unions to access workers who are working outside an office environment is one that we must confront in order to protect the rights that the right of entry regime seeks to support.

Right of entry, and digital and remote work

Right of entry refers to the right for union officials to enter a workers' workplace.[25]

In 2020 when COVID-19 rates were increasing, around 40% of workers were directed by their employers to work from home.[26] While this radically changed the working environment for working people, it also changed how unions perform their role. Exercising right of entry to visit with workers is a critical part of trade union operations,[27] whether to hold discussions with workers,[28] investigate suspected contraventions,[29] or exercise a state or territory occupational health and safety right.[30] These visits allow trade unions to access

members and potential members and are also a critical way for workers to engage with their trade union officials.[31]

The object of Pt 3-4 of the FW Act concerning right of entry reflects this, stating that the right of entry framework balances:

> (a) the right of organisations to represent their members in the workplace, hold discussions with potential members and investigate suspected contraventions of:
> (i) this Act and fair work instruments; and
> (ii) State or Territory OHS laws; and
> (b) the right of employees and TCF outworkers to receive, at work, information and representation from officials of organisations; and
> (c) the right of occupiers of premises and employers to go about their business without undue inconvenience.[32]

This supports two of the objects of the FW Act as right of entry is a key enabler to the ability of unions to access workers to enable freedom of association and enterprise bargaining:

> (e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and
> (f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action.[33]

Right of entry laws centre on providing access to a permit holder to "premises" which are defined in the FW Act as:

> (a) any land, building, structure, mine, mine working, aircraft, ship, vessel, vehicle or place; and
> (b) a part of premises (including premises referred to in paragraph (a)).[34]

In ordinary circumstances, these premises are uncontroversial as they are the employer-controlled location where the worker performs their role. However, when large numbers of workers are working from home, this demonstrates the need for a more detailed consideration of the "premises" at which workers perform their work, and how this definition applies to a worker's own home.

Right of entry to residential premises

The FW Act specifically excludes a permit holder from entering "any part of the premises that is mainly used for residential purposes".[35] Where a worker is working from home, it is clear that their home would meet the definition of "premises". However, a permit holder would not be able to enter the premises to the extent they are mainly used for residential purposes. This leads to the possibility that where a worker has a dedicated working space at their home, this may be able to be entered by a permit holder.

During the peak of COVID-19 cases, union officials who were permit holders generally did not seek to visit worker homes as it would likely have been in breach of the various public health orders in force at the time.[36] Many union officials were themselves working from home, so there was simply no ability to visit workplaces in the traditional sense or worker homes. There are also practical issues associated with exercising right of entry at individual worker homes.

Firstly, the right of entry entitlement to hold discussions entitles a permit holder to hold discussions with, inter alia, a person "whose industrial interests the permit holder's organisation is entitled to represent".[37] This means that permit holders may hold discussions with both current and prospective members of the trade union which is critical for union organising and growth. However, unions are very unlikely to have home addresses for non-union members and therefore would not be able to issue the required right of entry notice.[38] In addition, it is not practical for most unions to conduct visits at the homes of individual union members and prospective union members as the time it would require is not available given the numbers of staff of most unions compared to the numbers of members and people in their sectors.[39]

Secondly, the prohibition on entering premises mainly used for residential purposes presents a practical challenge. Unless a working space were accessible from the outside of the property, it would be necessary to enter or pass through part of the property solely or predominately used for residential purposes in order to reach the part of the premises used for work. This would potentially be in breach of the prohibition in s 493 of the FW Act. However, there is an argument to be made that the permit holder is not "entering" the residential parts of the premises pursuant to the FW Act, but merely "passing" through it to access the area which they have a right to access. This is analogous to when a permit holder visits an employer's premises and passes through a range of areas they do not have a right to enter in order to reach the site for the visit. It may be that the Fair Work Commission would view this differently when a permit holder needed to pass through residential premises to reach the site for a visit, as opposed to an employer's premises, but this is an open question.

There has been limited judicial consideration of the scope of right of entry laws in relation to residential premises. In 2023, Commissioner Platt was asked to consider whether right of entry could be exercised by the

United Workers Union to access workers engaged in providing personal support services in residential care facilities (the "CARA case"). The Applicant, the Community and Accommodation Respite Agency Inc considered that because the workplace is a residential facility, s 493 of the FWA applies and right of entry cannot be exercised.[40] Ultimately, the matter could not be determined as Commissioner Platt considered that he did not possess the jurisdiction power to do so.[41]

Demi Pnevmatikos from the United Workers Union said:

> Access is essential to ensure disability support workers are provided with the appropriate workplace rights and protections available through their union, regardless of the nature of the facility that they are providing support in.[42]

This raises the question of how the FW Act would be applied in a situation where premises are used for both residential and work purposes. In the CARA case, the premises were a residential facility for the residents of that facility, whereas in the situation of workers working from home, the residential facility is that of the workers themselves.

It does not appear that the FW Act provisions regarding premises used for residential purposes were designed either for the CARA case situation, or workers working from home. However, the Explanatory Memorandum to the Fair Work Bill 2009 (Cth) states that "a permit holder could enter a converted garage where outwork is being conducted, but not the living quarters of the residence".[43] This suggests that in the CARA case, United Workers Union organisers may have been able to visit a staff room at the site as it would not have been used as living quarters. The Explanatory Memorandum goes on to state that:

> For premises or parts of premises that are used for both residential and work purposes, it is intended that a permit holder will only have an entry right where the premises are mainly used for work purposes on a regular and substantial basis.[44]

This leads to the question of when a worker is working from home part of the time, would this mean that their home is being used "mainly for work purposes on a regular and substantial basis"? Many employers are requiring workers to attend the office for work but are still allowing some ability to work from home.[45] It is an open question as to whether working from home one or two days each week would constitute a home office being used for work purposes on a regular and substantial basis.

It is clear that the right of entry provisions in the FW Act are not designed to address a situation where workers are working from home. More specifically, the FW Act attempts to grant a right of access between unions and workers by providing a right of entry to work premises. The contortions required to apply the FW Act right of entry provisions to workers working remotely demonstrates the need for a specific right of access to workers, rather than a right of entry to work premises.

Right of entry to the digital environment

Regardless of where workers are physically located, at employer-controlled premises, their home or another location, many workers perform some part of their role in a digital environment. This is particularly the case for white-collar workers, and those in financial and insurance services, public administration and safety, and information media and telecommunications.[46] This has long been the case, but has escalated dramatically post-COVID with workers now experiencing days where all interactions are via digital channels. This suggests that for unions to be able to interact with workers in their workplace, this must necessarily include digital environments.

While the object of Pt 3-4 of the FW Act focuses on the importance of access between unions and workers,[47] the right of entry provisions themselves provide no ability to access workers unless they are located at "premises" which are physical locations. The definition of "premises" is not exhaustive leaving open the possibility of arguing that digital spaces could be included. However, when applying the maxim of *ejusdem generis* to this definition, the genus of the examples included is that they are all physical locations. Therefore, it may be the case that including a non-physical space is not consistent with this definition. However, *ejusdem generis* is not applicable where it would create an outcome inconsistent with the purpose of the act.[48] In this case, construing "premises" narrowly may exclude digital spaces which is arguably inconsistent with the purpose of this part of the FW Act — to facilitate contact between unions and workers.

The current right of entry regime pre-dates COVID-19 and the rise of working from home, so it is not surprising that it does not contemplate a situation where a significant minority of workers are working from home. On the face of it, practical and legal reasons effectively exclude these workers from the scope of right of entry laws. This is inconsistent with the object of Pt 3-4 of the FW Act, which involves providing workers and unions the ability to interact. However, when considering the object and current working from home arrangements, there is a reading of the current right of entry provisions in the FW Act which would allow a permit holder to access workers in their own residential property. This highlights the need for reform to ensure that these crucial trade union rights to access workers are contemporary and fit for purpose, in particular in white collar, knowledge-based industries with high digital participation.

Do workplace delegates' rights provide a pathway?

This year, the Closing Loopholes amendments to the FW Act have created new rights for workplace delegates.[49] The FW Act sets out some of these rights including to reasonable communication with union members and persons eligible to be members,[50] and reasonable access to the workplace and workplace facilities.[51] The right to communication is helpful as it is not limited to communication in person and could be via a range of channels including online.

The right of access to the workplace and workplace facilities potentially provides an option for workplace delegates to access online workplaces and facilities as "workplace" is not defined. Specifically, the term "premises" is not used, as in the right of entry provisions of the FW Act which clearly refers to physical locations.

The FW Act provisions in this regard are intentionally "specified at the level of principle", as the expectation is "that for most employees, modern awards and enterprise agreements would provide greater detail for particular industries, occupations, or enterprises".[52]

The model work delegates' rights clause that has been inserted into all modern awards provides further assistance. The model clause requires that an employer must provide workplace delegates with access to or use of the following workplace facilities:[53]

- a physical or electronic noticeboard;
- electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi.

The inclusion of access to electronic means of communication alongside more traditional rights like access to an appropriate room or area to hold discussions[54] demonstrates a more accurate and contemporary conception of the workplace and the role of the workplace delegate. In order for a workplace delegate to perform their role of representing the industrial interests of union members and people eligible to be members[55] they must be able to access workers. It is clear in workplaces today that accessing members and people eligible to be members involves connecting with people both in physical workplaces and in digital environments.

It is also interesting to note the right to disconnect laws in modern awards also contemplate the digital work environment where an employer tries to contact a worker outside working hours, or expects them to monitor work systems.[56] This demonstrates a more contemporary understanding of the nature of work, which may be instructive when considering right of entry laws.

Both the workplace delegates' rights to digital access and the right to disconnect provide helpful analogies when considering right of entry laws. When the Fair Work Commission received submissions from interested parties on the proposed model workplace delegates' rights clause as a result of the Closing Loopholes amendments to the FW, it was clear that in order for these rights to achieve their stated purpose, they would need to exist in both a physical and digital environment.[57] To the extent that workplace delegates require this access, so too do right of entry permit holders. This provides a statutory precedent for conceptualising the workplace as more than a physical location and recognises the importance of accessing workers in digital spaces.

Reconceiving right of entry as a right to access

When looking at the object of Pt 3-4 of the FW Act, some of the key elements are for organisations to be able to represent members and hold discussions with potential members, and for workers to receive (at work) information and representation from officials of organisations.[58] When around 40% of people are working from home, this simply is not possible when unions are only permitted to enter physical premises.

If the fundamental intention of right of entry laws is to allow contact between workers and unions, it is critical that that contact is facilitated in a way that is cognisant of where and how work is being performed in practice. Allowing union officials to visit premises that few workers attend does not meet the object of the Act.

Kimberley and McCrystal use a labour agency lens to consider the social regulation of work spaces and although their analysis largely pertains to geographical locations it is equally applicable to digital spaces. They state that "when labour agency is translated into questions around the control of work spaces, the social regulation of these spaces is clearly a matter of power relations".[59] This is a fundamental consideration with right of entry. The concept of an employer-controlled geographical site (or premises) as the foundation of right of entry is fraught as it inextricably links workers with their employer's physical workplace.

With the changing nature of work, it is time for us to reconsider right of entry at a fundamental level. Is right of entry a right to enter a workplace, or is it a right to access a worker? Currently it is a right to access premises, but in order to give effect to the object of Pt 3-4 of the FW Act, unions must be able to access workers and vice versa. While there is a role for employers to play in facilitating this access, the right should be conceived of as being to a relationship between a union and a worker, not to access an employer's premises. By considering right of entry as a right to

access a worker and not a geographical location, we can overcome many of the challenges and obstacles to access presented by workers working from home or remotely, and in digital environments.

The object of Pt 3-4 of the FW Act requires a consideration of the right of occupiers of premises and employers to go about their business without undue inconvenience.[60] It is likely that employers would object to any expansion of right of entry laws to a right to access workers, as Kimberley and McCrystal state:

> Employers have benefited from restrictions on union access to work spaces because access presents the opportunity to inform workers of their rights and in turn organise workers collectively to improve their working lives. This is why employers are persistent in attempts to further regulate union access to work spaces.[61]

While this objection would be inconsistent with the objects of the FW Act, it will need to be contended with in any legislative reform.

A right of union access to workers is a developing trend in Europe, with some collective agreements stating that remote workers should have the same access to worker representatives as those not working remotely. Some collective agreements provide that the employer will provide trade unions with detailed employee information to allow the union to make contact. In addition, some countries such as Italy and Spain have laws allowing trade unions to access all workers, which includes those working remotely.[62]

These examples demonstrate that it is possible for right of entry to be recast as a right for workers and unions to have access wherever their location or whatever their mode of work may be. This conception decentres the physical location and prioritises the intention of right of entry laws in Australia, which is to facilitate access between workers and unions.

Concluding remarks

Revisiting the example provided at the start of this paper, much has changed since the Finance Sector Union submitted that entry notice to access the employer's digital environment and was refused entry; remote and digital working is now commonplace and workplace delegates' rights and the right to disconnect acknowledge the physical and digital working environments. Right of entry laws, however, remain unchanged.

Right of entry laws presume workers attend a physical location to perform their work, which means that to facilitate access between a worker and a union, the laws merely grant union officials, as permit holders, a right to enter the physical location. These right of entry laws ignore the reality of workplaces today, which is that they are fluid in terms of physical work location, and work mode, between in-person and the digital environment.

Both the object of the FW Act to support freedom of association and collective bargaining, and the object of Pt 3-4 to facilitate access between unions and workers are undermined by a right of entry regime that fails to facilitate genuine access between workers and unions.

There is a clear legislative intent in the FW Act to ensure unions and workers can access each other. To achieve this, we must consider a right of access rather than a right of entry. It is critical that the FW Act genuinely contemplates the nature of work today and facilitates unions and workers contacting and communicating with each other in any location or medium.

Looking ahead, there are a number of potential pathways to provide a genuine right of access including reforming the FW Act along the lines of the laws we see in Europe, or to have these rights included in awards, which may serve to de-politicise right of entry to some degree.[63] Workers may also look to negotiate these rights into enterprise agreements,[64] which is likely quicker than legislative reform and allows the rights to be tailored to the specific workplace, however it does rely on a level of power in the workplace which may not exist. Indeed, it is groups of workers with low union membership who are most in need of right of access to be able to access their union.

Right of entry laws in Australia no longer reflect how we work, or the needs of workers. It is essential that unions and workers develop methods to connect and organise that accommodate both remote and digital work. A genuine right of access is essential to the protection of worker's rights in Australia.

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Footnotes

1. National Assistant Secretary, Finance Sector Union of Australia.
2. Fair Work Act 2009 (Cth) (FW Act), s 12.
3. Australian Bureau of Statistics, "Working Arrangements — Reference period August 2023", (online, 13 December 2023) 22, www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release.
4. R Wilkins, E Vera-Toscano and F Botha *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1–21* Melbourne Institute: Applied Economic and Social Research, the University of Melbourne) (2024) (HILDA Results) 105.

5. Above, at 104.
6. Above, at 104–5.
7. See, for example, *Australian Super Enterprise Agreement 2023–2026* [2023] FWCA 3572, 1; *Australian Retirement Trust Enterprise Agreement 2022* [2024] FWCA 1410, 1.
8. Above n 3, at 10.
9. Above n 2, s 12.
10. Above n 2, s 350C(3)(b).
11. Above n 2, s 65(1).
12. Above n 2, ss 65B and 65C.
13. Statement of Hatcher P, O'Neill DP, Commissioner McKinnon in *Variation on the Commission's own initiative — Clerks — Private Sector Award 2020* (AM2024/34), 29 August 2024 [2024] FWCFB 357, 3
14. Statement and Directions of Hatcher P, O'Neill DP, Commissioner McKinnon in *Variation on the Commission's own initiative — Clerks — Private Sector Award 2020* (AM2024/34), 24 October 2024 [2024] FWCFB 407, 1.
15. Business NSW and Australian Business Industrial, "AM2024/34 — Clerks Private Sector Award — Working from Home Arrangements", Submission in *Variation on the Commission's own initiative — Clerks — Private Sector Award 2020* (AM2024/34), 11 September 2024.
16. Above n 14, at 8.
17. Hatcher P, Gostencnik DP, Millhouse DP, O'Neill DP, Commissioner Tran *Modern Awards Review 2023–24* Final Report (AM2023/21) (July 2024) 25 at [101], citing Productivity Commission *Working from home* Research Paper (September 2021) 4–5.
18. P Choudhury "Our Work-from-Anywhere Future" *Harvard Business Review* (online, November- December 2020) https://hbr.org/2020/11/our-work-from-anywhere-future.
19. H Dervisevic "What is a digital nomad visa and which countries offer them? Here's a breakdown plus the barriers for entry" *Australian Broadcasting Corporation* (online, 30 March 2024) www.abc.net.au/news/2024-03-30/what-countries-offer-digital-nomad-visas/103515820.
20. See, for example, Atlassian, "Team Anywhere" (Web Page), www.atlassian.com/practices/use-cases/team-anywhere.
21. See, for example, C Kruger "Australian CEOs keen to pull the plug on working from home" (online, 24 September 2024) www.smh.com.au/business/workplace/australian-ceos-keen-to-pull-the-plug-on-working-from-home-20240918-p5kbix.html.
22. See, for example, Finance Sector Union, "Suncorp Insurance Log of Claims" (Web Page), www.fsunion.org.au/ContentBuddyDownload.aspx?DocumentVersionKey=8f5d272b-8c86-4fa8-8a43-070924a75eab; Finance Sector Union, "People First Log of Claims" (Web Page), https://fsu.imiscloud.com/ContentBuddyDownload.aspx?DocumentVersionKey=d416ba24-9448-45e7-9fa4-642d4703ce62.
23. L Baird "CBA threatens to cut bonuses in return to office push" *Australian Financial Review* (online, 25 October 2025) www.afr.com/companies/financial-services/cba-threatens-to-cut-bonuses-in-return-to-office-push-20241025-p5kla4.
24. D Hensher, C Balbontin, M J Beck and E Wei "Commuting mode choice and work from home in the later stages of COVID-19: Consolidating a future focused prediction tool to inform transport and land use planning" (2024) 187 *Transportation Research Part A: Policy and Practice* 7.
25. Above n 2, Pt 3-4.
26. D Ziffer "The coronavirus pandemic has forced million to work from home — and the office will never be the same" *ABC* (online 24 November 2020) www.abc.net.au/news/2020-11-24/coronavirus-pandemic-working-from-home-changes-office-forever/12909160.
27. N Kimberley and S McCrystal "Contested Spaces: Unions and Access to Employer Controlled Space for Organising under the Fair Work Act 2009 (Cth)" (2020) 33 *Australian Journal of Labour Law* 139 at 152.
28. Above n 2, s 484.
29. Above n 2, ss 481, 483A.
30. Above n 2, s 494
31. The Fair Work Commission was required to determine many disputes concerning right of entry during the COVID-19 pandemic, particularly in relation to employers denying union officials entry on health and safety grounds. This is examined in K McFarlane "Danger, keep out! Trade union rights of entry during the COVID-19 pandemic" (2023) 33(1) *Labour and Industry* 86.
32. Above n 2, s 480.
33. Above n 2, s 3.
34. Above n 2, s 12.
35. Above n 2, s 493.
36. See, for example, *Stay Safe Directions* (Victoria) (No 14) (13 February 2021).
37. Above n 2, s 484.
38. Above n 2, s 487.
39. For example, the Finance Sector Union has around 85 staff members, 30,000 members, with coverage of a sector with around 500,000 employees.
40. *Community Accommodation and Respite Agency Inc T/A CARA v United Workers Union* [2002] FWCA 2309 at 1 and 3.
41. Above, at 29.
42. D Marin-Guzman "Union officials want access to private homes" *Australian Financial Review* (online, 6 March 2023) www.afr.com/work-and-careers/workplace/union-officials-want-access-to-private-homes-20230306-p5cprt.
43. Explanatory Memorandum, Fair Work Bill 2009 (Cth), 1972.
44. Above, at 1973.
45. See, for example, E Black "Why it's still so hard to get staff back to the office" *Australian Financial Review* (online, 12 June 2023) www.afr.com/work-and-careers/workplace/why-it-s-still-so-hard-to-get-staff-back-to-the-office-20230608-p5df57.
46. Above n 4, at 104. It is worth noting that right of entry laws are difficult to apply to gig or platform workers, which is an area requiring further research.
47. Above n 2, s 480.

48. *Quazi v Quazi* [1980] AC 744 at 823–24.
49. Above n 2, ss 350A–350C.
50. Above n 2, s 350C(3)(a).
51. Above n 2, s 350C(3)(b).
52. Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth), 731.
53. Banking, Finance and Insurance Award 2020 (Cth) MA000019, s 27A.8(a)(ii)–(iii) (*BFI Award*).
54. Above, s 27A.8(a)(i).
55. Above n 2, s 350C(2).
56. Above n 53, s 13A.s
57. See, for example, Australian Council of Trade Unions, "ACTU Submission — Delegates Rights Term" Submission in *Variation of Modern Awards to insert a Delegates' Rights Term* AM2024/6 (1 March 2024).
58. Above n 2, s 480.
59. Above n 27, at 142–43.
60. Above n 2, s 480.
61. Above n 27, at 152.
62. B Dedden, S De Spiegelaere and M Hick "Remote work: ensuring trade union and workers' rights through collective bargaining" in N Countouris, V De Stefano, A Piasna and S Rainone (Eds), *The Future of Remote Work*, European Trade Union Institute, 2023, p 127 and 130–31.
63. However, there is a risk associated with new rights in awards which is that they set a ceiling not a floor, which serves to limit what can be negotiated in enterprise agreements. See D Peetz "Employee voice and the new right for workplace union delegates" *Centre for Future Work* (1 July 2024) 28 https://futurework.org.au/wp-content/uploads/sites/2/2024/07/Peetz-union-delegates-CFW-report-FINAL-1-July-corrected.pdf.
64. Noting the restrictions in s 194 of the FW Act, however, an additional right to access workers in a digital space would unlikely offend s 194(f) as it in addition to and does not conflict with the rights in ss 481 and 484.