



Rights of Entry

1 WHS Entry Permits

Who may apply

Under the WHS Act an entry permit may be issued to a union official provided the official has completed the prescribed training and also holds or will hold an entry permit under the *Fair Work Act 2009* (Cth) (**FW Act**) or the *Industrial Relations Act 1996* (NSW) (**IR Act**).

Entry to a workplace under a WHS right of entry is not permitted unless the permit holder also holds the additional permit under the WHS Act. However, this requirement does not apply to the special power of entry for coal and mining workplaces (see below).

Term and Conditions

An entry permit has a term of 3 years and may be issued subject to conditions.

Available for inspection

A permit holder must at all times when exercising a right of entry under the WHS Act have their entry permit and photographic identification available for inspection on request. However, this requirement does not apply to the special power of entry for coal and mining workplaces (see below).[#]

2 Grounds for Exercising Rights of Entry

Suspected contraventions of WHS Act

If a permit holder reasonably suspects that a contravention of the WHS Act has or is occurring at a workplace, the permit holder may enter that workplace during its usual working hours to inquire into the suspected contravention if it relates to or affects a 'relevant worker'.

A 'relevant worker' means a worker who works at the workplace:

- who is a member, or eligible to be a member, of the permit holder's union, and
- whose industrial interests the permit holder's union is entitled to represent.

Consult and advise workers

A permit holder may also enter a workplace during its usual working hours to consult and provide advice on WHS matters to one or more relevant workers who wish to participate in the discussions.

Documents/employee records

If a permit holder is entitled to enter a workplace to inquire into a suspected contravention of the WHS Act (as above), the permit holder may also enter any workplace during its usual working hours for the purpose of inspecting or making copies of:

- employee records that are directly relevant to the suspected contravention, and
- other documents that are directly relevant to the suspected contravention that are not held by the PCBU concerned.

Special powers of entry for coal and mining workplaces

The WHS Act also contains a 'special power of entry' for coal and mining workplaces. Under the WHS Act, an officer or employee of an industrial organisation who holds an entry permit under the IR Act may for the purpose of investigating any suspected breach of the *Coal Mine Health and Safety Act 2002* (NSW) or the *Mine Health and Safety Act 2004* (NSW) (**Mining Acts**) enter any premises they have reason to believe is a place of work where members (or persons eligible to be members) of that organisation work.

An entry permit under the WHS Act is not required for the exercise of this right.

[#] Fair Work Act requirements to display a FW Act entry permit will apply.

3 Notice Requirements

Suspected contraventions of WHS Act

The WHS Act does not require a permit holder to provide prior notice before entering a workplace for the purposes of investigating a suspected contravention of the WHS Act. However, a permit holder must 'as soon as is reasonably practicable' **after entering** a workplace give notice to the PCBU and the person with management or control of the workplace of:

- the entry, and
- the suspected contravention.

BUT... the permit holder does **not** need to do this if it would:

- 'defeat the purpose' of the entry to the workplace, or
- unreasonably delay the permit holder in an urgent case.

Consult and advise workers

In order to enter a workplace to consult and advise workers, the WHS Act requires the permit holder to give at least 24 hours (but not more than 14 days) notice of the proposed entry to the PCBU. The notice must be given during the usual working hours of the workplace and must be in the form required by the WHS Regulations.

Documents/employee records

The WHS Act requires the permit holder to give at least 24 hours (but not more than 14 days) notice of the proposed entry to the person from whom the documents are requested and the PCBU concerned. The notice must be given during the usual working hours of the workplace and must be in the form required by the WHS Regulations.

Special powers of entry for coal and mining workplaces

This right of entry to investigate a suspected breach of the Mining Acts may be exercised without notice.

4 Powers that can be exercised on entry

Suspected contraventions of WHS Act

If a permit holder exercises this right of entry, they may while at the workplace:

- inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention

- consult with the relevant workers and/or the PCBU about the suspected contravention
- provided it would not breach any laws, require the PCBU to allow them to inspect, and make copies of, any document that is directly relevant to the suspected contravention that is kept at the workplace or accessible from a computer that is kept at the workplace
- warn any person of a risk if they reasonably believe the person is exposed to a serious risk to health or safety from an immediate or imminent exposure to a hazard arising from the suspected contravention.

Consult and advise workers

In addition to consulting and advising workers in relation to WHS matters, a permit holder may also warn any person of a risk if they reasonably believe the person is exposed to a serious risk to health or safety from an immediate or imminent exposure to a hazard.

Documents/employee records

If this right of entry is exercised, the permit holder may only inspect or make copies of:

- employee records that are directly relevant to the suspected contravention
- other documents that are directly relevant to the suspected contravention that are not held by the PCBU concerned.

Special powers of entry for coal and mining workplaces

While exercising this right of entry, the following powers may be exercised:

- make searches and inspections (and take photographs and make video and audio recordings)
- require the occupier of the premises to provide such assistance and facilities that are reasonably necessary to enable the official to exercise his or her functions
- require the production of and inspect any documents in or about those premises that directly affect or directly deal with the WHS of employees working at those premises
- take copies of or extracts from any such documents.

5 Obligations of PCBUs and WHS Entry Permit Holders

PCBU – Access to documents

If a permit holder is exercising a right of entry to inquire into a suspected contravention of the WHS Act, the PCBU must not, without reasonable excuse, refuse or fail to comply with a requirement to allow the inspection or copying of documents that are directly relevant to the suspected contravention and are kept at the workplace or accessible from a computer that is kept at the workplace.

PCBU – Refuse or delay entry

A person (including a PCBU) must not without reasonable excuse refuse or unduly delay entry into a workplace by a permit holder who is entitled to enter in accordance with a right of entry under the WHS Act. The obligation is on the person who refused or delayed entry to show they had a reasonable excuse for doing so.

PCBU – Hinder or obstruct

A person (including a PCBU) must not intentionally and unreasonably hinder or obstruct a permit holder in entering a workplace or in exercising any rights at a workplace.

Permit Holder – Hinder, obstruct or disrupt

A permit holder in exercising a right of entry must not intentionally and unreasonably delay, hinder or obstruct any person or disrupt any work at a workplace, or otherwise act in an improper manner. However, this requirement does not appear to apply to authorised representatives of an industrial organisation of employees exercising the special power of entry for coal and mining workplaces (as discussed above).[#]

Permit Holder – Where right may be exercised

An entry permit holder may only exercise a right of entry in:

- the area of the workplace where the 'relevant workers' work, or
- any other work area that directly affects the health or safety of those workers.

Permit Holder – Compliance with WHS requirements

A permit holder must comply with any reasonable request by the PCBU or the person with management or control of the workplace to comply with:

- any WHS requirement that applies to the workplace
- any other legislated requirement that applies to that type of workplace.

6 Guidance regarding WHS Entry Permit Holder Visits

- Understand the reason for the entry
- Check if proper notice is given
- Request to see authorising documents
- Request compliance with reasonable WHS requirements
- Accompany the WHS entry permit holder where appropriate
- Seek process improvements
- Understand permit holder's obligations and powers
- Understand obligations and prohibitions in relation to permit holders
- Involve the regulator where appropriate.

[#] Fair Work Act requirements to display a FW Act entry permit will apply.

The purpose of the document is to provide guidance on relevant provisions of the *Work Health and Safety Act 2011* (NSW) (WHS Act) and *Work Health and Safety Regulation 2011* (NSW) (WHS Regulation). This document should be read in conjunction with those laws. It does not constitute nor should it be relied on for the purposes of legal advice.