

Union Right of Entry

Introduction

This guideline outlines the appropriate response by the University to a notice from a union official to enter the university's premises or other location where work is being conducted.

Notice may be received from unions we have regular contact with e.g. the NTEU or the PSA or a union whose members are performing work for the university or on the University's grounds as contractors or sub contractors.

Definition

'Right of entry' is a process under the *Work Health and Safety Act 2012 (SA)* (WHS Act) where a permit holder, usually a union official, who has the appropriate entry permit, can enter a workplace on safety grounds and hold discussions with workers or investigate suspected contraventions of the WHS Act.

General Guidelines For Valid Right Of Entry

To exercise right of entry, a registered union official must hold a WHS entry permit (Permit) these are issued by the Industrial Relations Commission. SafeWork SA may accompany the Permit holder during the investigation depending on the severity of the situation.

The Permit holder can enter a workplace for two purposes:

- investigating suspected contraventions of the WHS Act; or
- consulting and advising workers on work health and safety matters.

Permit holders must produce their Permit and photographic identification if requested for inspection, and enter only during 'usual working hours' of the workplace.

Permit holders must also comply with any health and safety or legislated requirements specific to the workplace (for example, wearing personal protective equipment or completing required induction procedures).

Entry For Suspected Contraventions

Before a Permit holder enters a workplace to investigate a suspected contravention, they must hold a reasonable suspicion that the WHS Act has been contravened or is being contravened, and that contravention involves a risk to health and safety of a union member or someone who is eligible to be a member.

Evidence of the alleged breach may be provided by the Permit holder, for example photographs showing unsafe equipment or a written complaint from a worker. However, this is not mandated by the WHS Act.

While on site, the Permit holder may talk to anyone and inspect anything relevant to the alleged breach, including inspecting and making copies of documents.

The Permit holder may also inspect or make copies of employee records for the purpose of investigating a suspected contravention (although additional notification requirements need to be met – see below).

Notice

Where a WHS Permit holder enters to inquire into a suspected contravention, written notice of the entry including the particulars of the suspected contravention, must be given to the University. The notice must be provided as soon as reasonably practical, however it does not need to be provided in advance of the entry.

If 'employee records' are to be inspected or copied, at least 24 hours notice must be given, and that notice given during usual working hours. Employee records are records of personal information relating to the employment of an employee, including training, terms and conditions of employment and leave entitlements (see the *Privacy Act 1988* (Cth) for more examples of 'employee records').

Entry To Consult And Advise Workers

A Permit holder can also enter the workplace to consult and advise 'relevant workers' on work health and safety matters. A 'relevant worker' is a member of the particular union represented by the Permit holder, or someone who is eligible to be a member.

While on site, the Permit holder can consult and provide advice on work health and safety matters to those workers, and also warn any person whom the Permit holder reasonably believes to be exposed to a serious risk to their health.

Notice

Where a Permit holder enters to consult and advise, written notice of the entry must be given to the University at least 24 hours beforehand and during usual working hours of the workplace.

The University must allow WHS Permit holder's access to the workplace provided the WHS Act's requirements have been met.

Managers are advised that intentionally and unreasonably refusing entry to a Permit holder or unreasonably hindering their investigation may expose them to penalties under the WHS Act (\$10,000 for an individual, \$50,000 for a body corporate).

Direction to Managers

While the Permit holder is at the workplace, the manager must provide documents as requested that are relevant, except where the inspection and copying of documents would breach other laws (for example inspecting employee records that are not relevant to the suspected contravention as detailed by the Permit holder).

In addition the managers should:

- immediately contact their local Senior OHSW&IM Consultant (where there is one) and the Safety and Wellbeing Unit to advise them of the notified entry;
- establish whether the Permit holder needs to comply with health and safety requirements of the workplace (for example, wearing PPE or completing required induction procedures); and
- accompany the Permit holder during their investigation of a suspected breach to ensure they only investigate the circumstances they have detailed in the notice;

Following completion of the WHS Permit holder's investigation or consultation, the manager should advise the Safety and Wellbeing Unit of the following:

- the union entry to the workplace and the suspected contravention that was investigated
- the reason the union entered the workplace to consult with workers
- if WHS Permit holder has failed to comply with their obligations as a Permit holder (e.g. they have not given notice as required under the WHS Act); or
- if WHS Permit holder intentionally or unreasonably disrupted work while at the workplace.

If the WHS Permit holder believes that the alleged contravention of the WHS Act requires further information or referral to SafeWork SA, each case will be managed according to the University's obligations under the WHS Act.

Note – Information highlighted in **bold** (other than titles) is mandatory.

References

[Work Health and Safety Act 2012 \(SA\)](#)

[Fair Work Act 2009 \(Cth\)](#)

[Fair Work Act 1994 \(SA\)](#)

[Privacy Act 1988 \(Cth\)](#)