

# Workplace entry by work health and safety entry permit holders

## Guidance about workplace entry by work health and safety entry permit holders to inquire into suspected contraventions

### Overview

This document provides guidance about how the *Work Health and Safety Act 2011* (WHS Act) gives certain rights to workplace entry by work health and safety (WHS) entry permit holders inquiring into suspected contraventions (see sections 117, 118 and 119 of the WHS Act).

This document provides general advice and information about how the WHS Act should apply and operate, and the role of an inspector when requested to assist in resolving a right of entry dispute.

### Entry to inquire into suspected contraventions (section 117 of the WHS Act)

A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of the WHS Act or the *Electrical Safety Act 2002* (ES Act) that relates to, or affects, a [relevant worker](#).

A relevant worker is a person who is a member of a union that the WHS entry permit holder represents, and who works at the workplace the WHS entry permit holder intends to enter. A relevant worker also includes a worker who is eligible to be a member (i.e. they are not currently a member of the union).

To enter the workplace, the WHS entry permit holder must have a reasonable suspicion that a contravention has occurred, or is occurring, before entering.

To have a reasonable suspicion, a WHS entry permit holder must have some information about events at the workplace that would lead to a belief that there has been a contravention of the WHS Act or ES Act, or that there is a contravention occurring. A reasonable suspicion may be based on a complaint from a worker or someone familiar with the workplace that includes detail of incidents or events at the workplace. A reasonable suspicion may also be formed from a direct observation by the WHS entry permit holder while outside the workplace (i.e. viewing a construction site) of an incident or event that is likely to constitute a contravention.

## **Notice of entry (section 119 of the WHS Act)**

Before entering a workplace under section 117 of the WHS Act, a WHS entry permit holder must give notice of the proposed entry and the suspected contravention to the person conducting the business or undertaking (PCBU) and the person with management or control of the workplace (PVMC).

The notice must be given:

- during usual working hours at that workplace, and
- at least 24 hours, but not more than 14 days, before the entry.

There is no prescribed way that a notice of entry must be provided to a PCBU and PVMC. For example, the notice of entry may be provided via email or mail to the PCBU and PVMC.

## **Where there is an immediate or imminent exposure to a hazard (section 119(4) and 119(5) of the WHS Act)**

If a WHS entry permit holder reasonably believes that a relevant worker is exposed to a serious risk to their health and safety emanating from an immediate or imminent exposure to a hazard, under section 119(5) of the WHS Act, the notice of entry may be given to the PCBU and PVMC as soon as reasonably practicable after entering the workplace.

A serious risk refers to a situation where a relevant worker's life is threatened, or their health and safety is seriously threatened. The serious risk must be the result of exposure to a hazard that is occurring, or is about to occur.

For a WHS entry permit holder to form a reasonable belief of a serious risk emanating from an immediate or imminent exposure to a hazard, there must be sufficient information, evidence or facts for a reasonable person to form the same belief. This may include:

- information relied upon by the WHS entry permit holder in relation to the risk
- details of the hazard giving rise to the serious risk
- whether any work is being carried out that may be related to the serious risk.

## **Details required in a notice of entry (sections 27-28 of the WHS Regulation)**

The *Work Health and Safety Regulation 2011* (WHS Regulation) outlines the details required for an entry notice to be valid, including that the notice must:

- be in writing
- include the full name of the WHS entry permit holder, the name of the union that they represent, the date and time of entry or proposed entry and the name and address of the workplace entered or to be entered
- specify the section of the WHS Act under which entry to the workplace is proposed, and
- so far as is practicable, include the particulars of the suspected contravention.

The notice must provide enough information to enable the PCBU and PWMC (or their representatives) to determine the scope of the inquiry, including general location(s). For example, 'suspected contravention in the provision of safe plant within production areas of the workplace'.

A WHS entry permit holder is not required to provide such specific detail that individual workers may be identified.

However, an inability to provide some particulars of the suspected contravention may call into question the reasonableness of the asserted belief.

There is no requirement that the notice specify the provisions of the Act or the Regulation, provided that the notice indicates how the legislation is suspected to have been contravened. For example, if a WHS entry permit holder receives a call from a relevant worker advising of a risk of falling objects, the WHS entry permit holder would describe this risk of a falling object and some description of the location as their suspicion of a contravention, rather than specifically stating section 54 of the WHS Regulation in the notice of entry.

A notice given under section 119 is not invalid only because of a formal defect or irregularity in the notice, or a failure to use the correct name of a person or union mentioned in the notice, as long as the notice sufficiently identifies the person or union.

### **Rights that may be exercised by a WHS entry permit holder while at a workplace (section 118 of WHS Act)**

While at a workplace under section 117 of the WHS Act, a WHS entry permit holder may do all or any of the following in relation to the suspected contravention:

- inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention
- consult with the relevant workers in relation to the suspected contravention
- consult with the relevant PCBU about the suspected contravention
- require the relevant PCBU to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to the suspected contravention and that is kept at the workplace, or is accessible from a computer that is kept at the workplace
- warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk, and
- remain at the workplace for the time necessary to achieve the purpose of the entry, subject to the usual working hours at the workplace.

### **Assisting parties to resolve a right of entry dispute**

Where an inspector is requested to attend the workplace to assist with resolving a right of entry dispute, inspectors will use a balanced approach to give advice and assistance to the parties.

For example, if a WHS entry permit holder is seeking immediate entry to a workplace without first providing at least 24 hours' notice, the inspector will consider information the WHS entry permit holder has relied on to assess that there is a serious risk resulting from an imminent or immediate exposure to a hazard.

Where an inspector finds an immediate or imminent risk exists, they will cease assisting to resolve the dispute and instead exercise their compliance powers to address identified risks. Validating an immediate or imminent risk may require the inspector to exercise their powers.

Should the dispute remain unresolved, the inspector will inform the parties that they can take the matter to the Queensland Industrial Relations Commission (QIRC) for resolution.



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