



Australian Government
Fair Work Building
& Construction

RIGHT OF ENTRY

Union officials may have a right to enter building worksites under certain circumstances. The following pages outline when and how union officials are able to enter workplaces.

INVESTIGATING A BREACH OF WORKPLACE LAW

Information on when a union official has the right to enter building sites and other premises to investigate a breach of a workplace law.

HOLDING DISCUSSION WITH EMPLOYEES

Information on when a union official has the right to enter building sites and other premises to hold discussions with employees.

PERFORMING INSPECTIONS UNDER WHS LAW

A union official may have a right to perform WHS inspections under state or territory WHS legislation. In order to perform WHS inspections, union officials must ensure they meet certain requirements.

RIGHTS AND RESPONSIBILITIES WHEN ON SITE

Information on the rights and responsibilities of union officials and employers when a union official exercises a right to enter a building site or premises.

NO PERMIT LIST

A list of current union officials who do not hold a valid federal entry permit is available below. This list has been limited to include persons who hold executive, organiser or field officer positions in building associations whose rules allow for membership by building employees.

FWBC INTERNET – ROE INFORMATION

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RIGHTS AND RESPONSIBILITIES WHEN ON SITE

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NO PERMIT LIST

A list of current union officials who do not hold a valid federal entry permit is available below. This list has been limited to include persons who hold executive, organiser or field officer positions in building associations whose rules allow for membership by building employees.

INVESTIGATING A BREACH OF A WORKPLACE LAW

A union official, who holds a right of entry permit, is known as a permit holder. A permit holder has the right to enter building sites and other premises to investigate a suspected breach of:

- the *Fair Work Act 2009*
- a term of a fair work instrument.

WHAT MUST BE SATISFIED TO ENTER A SITE?

A permit holder can only exercise these rights on a specific site if all the following conditions are met:

- the suspected breach affects at least one member of that union
- the union is entitled to represent the industrial interests of that member
- the member works on that site
- the union official reasonably suspects that a breach has occurred or is occurring.
- a modern award or enterprise agreement must apply or have applied to a member of the union

WHAT MUST A UNION OFFICIAL DO BEFORE ENTERING A SITE?

An entry notice must be given to the occupier of the site at least 24 hours but not more than 14 days before the entry. The permit holder must also produce the entry notice to the occupier of the site on request when entering the site.

The Fair Work Commission is able to issue an exemption from this requirement, however the exemption certificate must be given to:

- the site occupier, or
- another person who apparently represents the occupier and any affected employer.

The exemption certificate must be provided as soon as possible after going on site if the relevant person is present at the site.

WHAT MUST BE INCLUDED IN THE ENTRY NOTICE?

The entry notice must include:

- the site or premises to be entered
- the day of entry
- which union the union official belongs to
- the section of the *Fair Work Act 2009* that authorises entry
- a declaration by the union official that they are entitled to represent the industrial interests of an employee who performs work on the site
- the provision of the union's rules that entitles the union to represent the employee.

NEED TO KNOW MORE ABOUT HOLDING DISCUSSIONS WITH EMPLOYEES?

Contact Fair Work Building & Construction on 1800 003 338 for more information.

NOTE: Forms relating to entry to premises such as an entry permit, entry notice or exemption certificates are available on the Fair Work Commission website.

PERFORMING INSPECTIONS UNDER WHS LAW

A union official may have a right to perform WHS inspections under State or Territory WHS legislation. In order to perform WHS inspections, union officials must ensure they meet certain requirements under

- the relevant State or Territory WHS legislation, and
- the *Fair Work Act 2009*.

An official must not exercise a State or Territory WHS right unless the official is a federal permit holder.

WHAT MUST A UNION OFFICIAL DO BEFORE ENTERING SITE TO USE A STATE OR TERRITORY WHS RIGHT?

A permit holder must, on request, show the occupier of the premises or an affected employer their federal permit.

A permit holder:

- may only exercise a State or Territory WHS right during working hours

Australian Capital Territory	<u>WorkSafe</u>	(02) 6207 3000
New South Wales	<u>Workcover</u>	13 10 50
Northern Territory	<u>WorkSafe</u>	1800 019 115
Queensland	<u>Workplace Health and Safety</u>	1300 362 128
South Australia	<u>SafeWork</u>	1300 365 255
Tasmania	<u>WorkSafe</u>	1300 366 322
Victoria	<u>WorkSafe</u>	(03) 9841 1444 or 1800 136 089 (toll free)
Western Australia	<u>WorkSafe</u>	1300 307 877

NEED TO KNOW MORE ABOUT WHS INSPECTIONS?

Contact Fair Work Building & Construction on 1800 003 338 for more information.

RIGHTS AND RESPONSIBILITIES WHEN ON SITE

Union officials have specific rights once they are lawfully on site.

RIGHTS OF A UNION OFFICIAL WHILE ON SITE

When investigating suspected contraventions site union officials have the right to:

- inspect any work, process or object relevant to a suspected breach
- interview any person about a suspected breach
 - who agrees to be interviewed
 - the union must be entitled to represent that person
- inspect and make copies of records of union members that are directly relevant to the suspected contravention and that are kept on the site or are accessible on a computer kept on the site
- inspect and make copies of any record of a person who is not a union member that is directly relevant to the suspected contravention and that is kept on the site or accessible on a computer provided the non-member has consented in writing or an order has been made by the Fair Work Commission
- serve a notice on the employer to produce records of union members at a later date
- use the employees regular meal room to hold discussions or interviews
- exercise these rights without being hindered or obstructed.

All union officials who wish to exercise a right to enter a site must hold a valid federal entry permit issued under the *Fair Work Act 2009*.

A list of current union officials who do not hold a valid federal entry permit is available below. This list has been limited to include persons who hold executive, organiser or field officer positions in building associations whose rules allow for membership by building employees.

A list of current union officials who have had conditions imposed on their federal entry permit is available.

Results 1 - 10 of 23

<u>Name</u>	<u>State</u>	<u>Union</u>
<u>Aaron Cartledge</u>	SA	CFMEU
<u>Andrew Temoho</u>	QLD	CFMEU
<u>Brendan Pill</u>	National	CFMEU
<u>Cam McCullough</u>	WA	CFMEU
<u>Derek Christopher</u>	VIC	CFMEU
<u>Elias Spernovasilis</u>	VIC	CFMEU
<u>Gareth Stephenson</u>	VIC	CFMEU
<u>Gerard Benslead</u>	VIC	CFMEU
<u>Joe Myles</u>	VIC	CFMEU
<u>Joe McDonald</u>	WA	CFMEU

Results 11 - 20 of 23

<u>Name</u>	<u>State</u>	<u>Union</u>
<u>John Perkovic</u>	VIC	CFMEU
<u>John Selka</u>	VIC	CFMEU
<u>Kane Pearson</u>	QLD	CFMEU



Right of Entry - What to do when a union official comes on your site

A union official who wishes to exercise the right to enter a workplace must hold a federal right of entry permit and comply with the provisions in the *Fair Work Act 2009* (FW Act).

BEFORE A UNION OFFICIAL ENTERS A SITE

Union officials do not have an automatic right to enter workplaces. The FW Act provides permit holders with a right to enter sites for particular purposes and sets out the requirements they must comply with when on a site.

Before entering your site, a union official must:

- hold a valid federal permit, and
- provide at least 24 hours written notice of entry unless entry is under an work health and safety (WHS) law.

The FW Act does not require 24 hours written notice if entry is under a WHS law, except to inspect employment records. Where entry is under a WHS law, the official must hold a federal permit and comply with the right of entry provisions in the FW Act. In addition the official must comply with requirements in the relevant State or Territory WHS law.

REASONS FOR UNION OFFICIALS TO ENTER YOUR SITE

A union official who is a federal permit holder may enter your site during working hours to:

- **investigate** a suspected contravention of the FW Act, or a term of a fair work instrument, provided that:
 - the official reasonably suspects that a contravention has occurred, and
 - the suspected contravention relates to, or affects, a member of the official's union who performs work on the site, and
 - the official's union is entitled to represent the member's industrial interests.

On request, the federal permit and a copy of the entry notice must be shown by the official to the occupier of the site or an affected employer.

- **hold discussions** during meal times or other breaks with employees who:
 - perform work on the site, and
 - whose industrial interests the official's union is entitled to represent, and
 - who wish to participate in those discussions.

On request, the federal permit and a copy of the entry notice must be shown by the official to the occupier of the site.

- **perform inspections** and other functions under an WHS law of a State or Territory.

On request, the federal permit must be shown by the official to the occupier of the site or an affected employer.

ENTRY NOTICE REQUIREMENTS

The FW Act details information that must be provided in an entry notice. All entry notices must specify:

- the site to be entered
- the day of entry
- the union the permit holder belongs to
- the section of the FW Act that authorises the entry.

Additionally, when the entry is to investigate a suspected contravention the entry notice must:

- specify the particulars of the suspected contravention
- contain a declaration by the permit holder that the union is entitled to represent the industrial interests of a union member who performs work on the site and is affected by the suspected contravention
- specify the provision of the union's rules that entitles the union to represent the member.

When the entry is to hold discussions with employees, the entry notice must:

- contain a declaration by the permit holder that the union is entitled to represent the industrial interests of an employee who performs work on the site
- specify the provision of the union's rules that entitles the union to represent the employee.

If a union official does not meet these requirements or produce a federal permit/entry notice when required, you have the right to refuse entry.

If these requirements are met, you must not refuse or unduly delay entry.

ENTERPRISE AGREEMENTS AND ENTRY ON SITE

You should check your enterprise agreement as it may contain specific information about actions that a union official can perform on site. This includes:

- representing employees
- dealing with disputes
- attending induction meetings for new employees

For further information, please contact Fair Work Building & Construction on 1800 003 338.

RIGHTS AND OBLIGATIONS WHEN A UNION OFFICIAL IS ON YOUR SITE

Union officials have specific rights once they are lawfully on site. When investigating suspected contraventions, an official is entitled to:

- inspect any work, process or object relevant to the suspected contravention
- interview any person about the suspected contravention who agrees to be interviewed and whose industrial interests their union is entitled to represent
- inspect and make copies of records of union members that are directly relevant to the suspected contravention and that are kept on the site or are accessible on a computer kept on the site
- inspect and make copies of any record of a non-union member that is directly relevant to the suspected contravention and that is kept on the site or accessible on a computer provided the non-member has consented in writing or an order has been made by the Fair Work Commission
- serve a notice on the affected employer requiring the production of records of union members at a later date
- request a room to hold discussions or interviews in. You should consider their request and, where possible, provide a room that is suitable
- exercise these rights without being hindered or obstructed.

Union officials also have specific obligations while on site. They must:

- comply with the employer's reasonable requests about:
 - the rooms or areas they may use on the site for holding discussions or interviews
 - the route they should take to access particular rooms or areas
 - WHS
- not use or disclose any information or document obtained when investigating a suspected

contravention for an unrelated purpose, unless authorised to do so by the FW Act

- not hold discussions with employees other than at meal times or other breaks
- not misrepresent the authority granted to them under the FW Act
- not intentionally hinder or obstruct any person or act in an improper manner in exercising, or seeking to exercise, their rights.

WHAT TO DO IF A UNION OFFICIAL DOES NOT HAVE A RIGHT TO ENTER AND IS ON YOUR SITE WITHOUT YOUR CONSENT

- Make it clear the union official does not have your consent to enter and ask the official to leave.
- Contact the Fair Work Building & Construction (FWBC) Hotline for assistance regarding right of entry issues on 1800 003 338.
- Your local state police may also be able to provide assistance if a trespass has occurred.

FURTHER INFORMATION

Fact sheets and other reference material are available from Fair Work Building & Construction:

- Hotline: 1800 003 338
- Website: www.fwbc.gov.au
- Email: enquiry@fwbc.gov.au

Need language help?
Contact the Translating and
Interpreting Service (TIS) on 13 14 50





Fair Work Act 2009

RIGHT OF ENTRY

3-step guide

1 Reason

A UNION OFFICIAL WHO IS A PERMIT HOLDER MAY ENTER A SITE TO:

Investigate a suspected contravention of the *Fair Work Act 2009* (FW Act) or a fair work instrument provided that:

- there are reasonable grounds to believe a contravention has occurred, and
- it relates to or affects a member of the union who performs work on the site, and
- the union is entitled to represent the member's industrial interests.

Hold discussions with employees:

- who work on the site, and
- whose industrial interests the union is entitled to represent, and
- who wish to participate in those discussions.

Perform inspections and functions under an OHS law.

- The right to enter a workplace for OHS reasons is primarily governed by State and Territory laws.
- If entry is under an OHS law 24-hours written notice may not be required.

2 Requirement

TO ENTER A SITE A UNION OFFICIAL MUST:

- Provide at least 24-hours written notice specifying particulars of the suspected contravention.
 - Show the official's federal permit and entry notice detailing the suspected contravention to the occupier or an affected employer on request.
 - Only visit during working hours.
-
- Provide at least 24-hours written notice.
 - Show the official's federal permit and entry notice to the occupier of the site on request.
 - Only hold discussions during meal times or other breaks.
-
- Show the official's federal permit to the occupier of the site or an affected employer on request.
 - Only visit during working hours.

3 Entry

ASSESSMENT OF THE REASON AND REQUIREMENTS FOR ALLOWING OR REFUSING ENTRY:

YES ✓ ALLOW ENTRY

If the union official:

1. has a valid reason to enter, and
2. meets all the requirements for entry
3. **YOU MUST ALLOW ENTRY.**

You must not refuse or unduly delay the official.

NO ✗ YOU MAY REFUSE ENTRY

If the union official:

1. does not have a valid reason to enter, or
2. does not meet the associated requirements for entry
3. **YOU MAY REFUSE ENTRY.**

SEE BELOW FOR INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES AND THOSE OF THE UNION OFFICIAL ONCE THEY ARE LAWFULLY ON SITE.

YOUR RIGHTS WHEN A UNION OFFICIAL IS ON SITE

Union officials must:

- Comply with your reasonable requests about:
 - the rooms or areas they may use on the site for holding discussions
 - the route they should take to access those rooms or areas
 - OHS.
- Not misrepresent the authority granted to them under the FW Act.
- Not intentionally hinder or obstruct any person or otherwise act in an improper manner.

RIGHTS OF UNION OFFICIALS WHEN THEY ARE ON YOUR SITE

Union officials have specific rights once they are lawfully on site. In investigating suspected contraventions they may:

- Inspect any work, process or object relevant to the suspected contravention.
- Interview any person whose industrial interests the union represents and who agrees to be interviewed about the suspected contravention.
- Inspect and make copies of directly relevant records of their members kept on the premises or accessible on a computer.
- In order to inspect and make copies of any record of a non-member that is directly relevant to the suspected contravention, the union official must have either the written consent of the non-member or an order of the Fair Work Commission.
- Serve a notice requiring the production of member records at a later date.

- Exercise these rights without being intentionally hindered or obstructed.
- You should check your enterprise agreement as it may contain specific information about actions that a union official can perform on site.

IF A UNION OFFICIAL ENTERS YOUR SITE WITHOUT RIGHT OR CONSENT:

- Make it clear the union official does not have your consent to enter and ask them to leave.
- Contact the FWBC hotline on 1800 003 338 for assistance.
- Your local state police may also be able to provide assistance if a trespass has occurred.



If a union official enters your site without right or consent:

- Make it clear the union official does not have your consent to enter and ask them to leave.
- Contact the FWBC hotline on 1800 003 338 for assistance.
- Your local state police may also be able to provide assistance if a trespass has occurred.

3-step pocket guide

SEE OVER FOR 3-STEP RIGHT OF ENTRY CHECKLIST

1 Reason

2 Requirement

3 Entry

Attachment 4



DISCLAIMER This is intended as an information guide only, not as legal advice. You should seek independent legal advice as required. The Australian Government, its employees and agents do not accept any liability for action taken in reliance on this document and disclaim all liability arising from any error or omission. This information is correct as at 1 January 2013. Produced by Fair Work Building & Construction. ABN 68 003 725 098



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& Construction

RIGHTS OF UNION OFFICIALS WHEN THEY ARE ON YOUR SITE

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- inspect any work, process or object relevant to the suspected contravention.
- interview any person whose industrial interests the union represents and who agrees to be interviewed about the suspected contravention.
- inspect and make copies of directly relevant records of their members kept on the premises or accessible on a computer.

- Comply with your reasonable requests about:
 - the rooms or areas they may use on the site for holding discussions
 - the route they should take to access those rooms or areas
 - SHS.
- Not misrepresent the authority granted to them under the FW Act.
- Not intentionally hinder or obstruct any person or otherwise act in an improper manner.

YOUR RIGHTS WHEN A UNION OFFICIAL IS ON SITE

Union officials must:

- In order to inspect and make copies of any record of a non-member that is directly relevant to the suspected contravention, the union official must have either the written consent of the non-member or an order of the Fair Work Commission.
 - Serve a notice requiring the production of member records at a later date.
 - Exercise these rights without being intentionally hindered or obstructed.
- You should check your enterprise agreement as it may contain specific information about actions that a union official can perform on site.**

RIGHT OF ENTRY

3-STEP POCKET GUIDE

1 Reason

A UNION OFFICIAL WHO IS A PERMIT HOLDER MAY ENTER A SITE TO:

Investigate a suspected contravention of the *Fair Work Act 2009* (FW Act) or a fair work instrument provided that:

- there are reasonable grounds to believe a contravention has occurred, and
- it relates to or affects a member of the union who performs works on the site, and
- the union is entitled to represent the member's industrial interests.

Hold discussions with employees:

- who work on the site, and
- whose industrial interests the union is entitled to represent, and
- who wish to participate in those discussions.

Perform inspections and functions under an OHS law.

- The right to enter a workplace for OHS reasons is primarily governed by State and Territory laws.
- If entry is under an OHS law 24-hours written notice may not be required.

2 Requirement

TO ENTER A SITE A UNION OFFICIAL MUST:

- Provide at least 24-hours written notice specifying particulars of the suspected contravention.
- Show the official's federal permit and entry notice detailing the suspected contravention to the occupier or an affected employer on request.
- Only visit during working hours.

- Provide at least 24-hours written notice.
- Show the official's federal permit and entry notice to the occupier of the site on request.
- Only hold discussions during meal times or other breaks.

- Show the official's federal permit to the occupier of the site or an affected employer on request.
- Only visit during working hours.

3 Entry

ASSESSMENT OF THE REASON AND REQUIREMENTS FOR ALLOWING OR REFUSING ENTRY:

YES ✓ ALLOW ENTRY

If the union official:

1. has a valid reason to enter, and
2. meets all the requirements for entry
3. **YOU MUST ALLOW ENTRY.**

You must not refuse or unduly delay the official.

NO ✗ YOU MAY REFUSE ENTRY

If the union official:

1. does not have a valid reason to enter, or
2. does not meet the associated requirements for entry
3. **YOU MAY REFUSE ENTRY.**

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One-time disclaimer

FWBC does not invite reliance upon, nor accept responsibility for, the information on this app. Precautions have been taken to ensure that the information on this app is accurate. However, FWBC does not guarantee, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any material contained on this app or on any linked site or that the information will apply to your circumstances. This app is not a substitute for independent professional advice and users should obtain any appropriate professional advice relevant to their particular circumstances.

The content of this app is up-to-date as at **[insert current date each time an app update is pushed]**

Employee – Right of entry

I am a: Employee

I am interested in: Right of entry

Definition: Union officials may have a right to enter building worksite under certain circumstances, for example when investigating a breach of workplace law, to hold discussions with employees, and to perform functions under a State or Territory OHS law. Both union officials and site managers have rights and obligations related to Right of Entry.

What would you like to do?

More information on right of entry > launch website: <http://www.fwbc.gov.au/right-of-entry>

Employer – Right of entry

I am a: Employer

I am interested in: Right of entry

Definition: Union officials may have a right to enter building worksite under certain circumstances, for example when investigating a breach of workplace law, to hold discussions with employees or to perform functions under a State or Territory OHS law. Officials of federally registered unions must hold a valid federal entry permit to exercise any of these powers. Both union officials and site managers have rights and obligations related to Right of Entry.

What would you like to do?

Right of Entry assessment > next

More information on right of entry > launch website: <http://www.fwbc.gov.au/right-of-entry>

Does the union official hold a valid federal entry permit?

Pop up message: A union official must show you their entry permit on request.

No > You may refuse entry. An official of a union cannot exercise their right to enter a site without a valid federal entry permit.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > next

Pop up notification:

FWBC maintains a list of officials that do not have Federal permits for entry onto work sites > launch no permits list

FWBC maintains a list of officials with conditions on their federal entry permits > launch conditional permit list

Check for any conditions on the official's federal entry permit, and ensure compliance with any conditions.

What is the union official's reason for being on site?

Industrial Purpose

1. To hold discussions with employees
2. To investigate a breach of workplace law
3. Neither of the above

If 1 or 2:

Has the union official provided at least 24 hours written notice?

No > You may refuse entry. A union official must provide written notification outlining the reasons for a visit at least 24 hours prior to their arrival on site.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > next (to 1 or 2 below as appropriate)

1. Are the discussions being held in normal working hours, and during a meal or other break time?

No > You may refuse entry. A union official only has a right to hold discussions on site with employees in normal working hours, and during a meal break or other break times.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry. The official has a valid reason to enter and meets all requirements for entry. You must not refuse or unduly delay entry.

For information about right of entry, please contact FWBC.

2. Is the union official entering during normal working hours?

No > You may refuse entry. A union official must provide written notification outlining the reason for a visit at least 24 hours prior to arrival on site, and must attend during normal working hours. If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry. The official has a valid reason to enter and meets all requirements for entry. You must not refuse or unduly delay entry. If the official has come on to investigate a breach of workplace law, the official while on site, can inspect documents that are relevant to the breach set out in their entry notice, unless any of those documents do not relate to the employment of a member of the relevant union. The official must have a reasonable suspicion that the breach has occurred. For information about right of entry, please contact FWBC.

If 3: Go to OHS purpose

OHS purpose

4. To assist an OHS representative on site (all states and territories except WA)
5. To inspect or access an employee record
6. For reasons related to a suspected safety concern or breach on site
7. None of the above

If 4:

Is the official attending during normal working hours?

No > You may refuse entry. A union official can only exercise a State or Territory OHS entry right during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry if the right for the union official to enter has been validly exercised under the relevant State or Territory OHS legislation. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work.

For information about right of entry, please contact FWBC.

If 5:

Has the union official provided at least 24 hours written notice detailing their intention to inspect or access employee records and their reasons for doing so?

No > You may refuse entry. A union official must provide written notification outlining the reasons for inspecting or accessing an employee record at least 24 hours prior to arrival on-site.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > Next

Is the official attending during normal working hours?

No > You may refuse entry. A union official can only exercise a State or Territory OHS entry right during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry if the right for the union official to enter has been validly exercised under the relevant State or Territory OHS legislation. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work.

For information about right of entry, please contact FWBC.

If 6:

Is the official attending during normal working hours?

No > You may refuse entry. A union official must attend the site during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry if the right for the union official to enter has been validly exercised under the relevant State or Territory OHS legislation. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work.

For information about right of entry, please contact FWBC.

If 1 or 2 – industrial purpose

Has the official produced their permit for inspection?

If the official is entering for an industrial purpose they must produce their Federal permit and either a copy of the entry notice or an exemption certificate. If they do not produce them they do not have a right to remain on your site.

If 4, 5, Or 6 OHS purpose

If the official is entering for OHS they must produce their Federal permit and their state/Territory OHS permit upon request. If they do not produce them they do not have a right to remain on your site and may be in breach of workplace laws.

Pop-up message to be displayed after scenarios 4-6:

Rights to enter for OHS purposes are governed by State or Territory laws, which may vary. For more information about the exercise of those powers, you should contact the relevant OHS body – for contact details, click here (link: <http://fwbc.gov.au/work-health-and-safety-2>). Call us now to speak to an Investigator about your specific query.

7. You may refuse entry. The official does not have a valid industrial or OHS purpose to enter the site. For more information on when you should refuse or allow entry to a site, please contact FWBC.

Contact FWBC.

Site manager – Right of entry

I am a: **Site manager**

I am interested in: **Right of entry**

Definition: Union officials may have a right to enter building worksite under certain circumstances, for example when investigating a breach of workplace law, to hold discussions with employees or to perform functions under a State or Territory OHS law. Officials of federally registered unions must hold a valid federal entry permit to exercise any of these powers. Both union officials and site managers have rights and obligations related to Right of Entry.

What would you like to do?

Right of Entry assessment > next

More information on right of entry > launch website: <http://www.fwbc.gov.au/right-of-entry>

Does a union official hold a valid federal entry permit?

Pop up message: A union official must show you their entry permit on request.

No > You may refuse entry. An official of a union cannot exercise their right to enter a site without a valid federal entry permit. They must show you their permit and the notice if you ask to inspect them. If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > next

Pop up notification:

FWBC maintains a list of officials that do not have Federal permits for entry onto work sites > launch no permits list

FWBC maintains a list of officials with conditions on their federal entry permits > launch conditional permit list

Check for any conditions on the official's federal entry permit, and ensure compliance with any conditions.

What is the union official's reason for being on site?

Industrial Purpose

1. To hold discussions with employees
2. To investigate a breach of workplace law
3. Neither of the above

If 1 or 2:

Has the union official provided at least 24 hours written notice?

No > You may refuse entry. A union official must provide written notification outlining the reasons for a visit at least 24 hours prior to their arrival on site.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > next (to 1 or 2 below as appropriate)

2. Are the discussions being held in normal working hours, and during a meal or other break time?

No > You may refuse entry. A union official only has a right to hold discussions on site with employees in normal working hours, and during a meal break or other break times.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry. The official has a valid reason to enter and meets all requirements for entry. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work.

For information about right of entry, please contact FWBC.

2. Is the union official entering during normal working hours?

No > You may refuse entry. A union official must provide written notification outlining the reason for a visit at least 24 hours prior to arrival on site, and must attend during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry. The official has a valid reason to enter and meets all requirements for entry. You must not refuse or unduly delay entry. While on site the official can inspect documents that are set out in their entry notice, unless any of those documents do not relate to the employment of a member of the relevant union. The official must comply with reasonable directions from site management, and not hinder or obstruct work.

For information about right of entry, please contact FWBC.

If 3: Go to OHS purpose

OHS purpose

1. To assist an OHS representative on site (all states and territories except WA)
2. To inspect or access an employee record
3. For reasons related to a suspected safety concern or breach on site
4. None of the above

If 5:

Is the official attending during normal working hours?

No > You may refuse entry. A union official can only exercise a State or Territory OHS entry right during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry if the right for the union official to enter has been validly exercised under the relevant State or Territory OHS legislation. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work. The union official must also produce both their Federal and state or territory OHS permits if asked by you. If a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators.

If 6:

Has the union official provided at least 24 hours written notice detailing their intention to inspect or access employee records and their reasons for doing so?

No > You may refuse entry. A union official must provide written notification outlining the reasons for inspecting or accessing an employee record at least 24 hours prior to arrival on-site.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > Next

Is the official attending during normal working hours?

No > You may refuse entry. A union official can only exercise a State or Territory OHS entry right during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local state police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry if the right for the union official to enter has been validly exercised under the relevant State or Territory OHS legislation. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work. The union official must also produce both their Federal and state or territory OHS permits if asked to do so. If a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators.

If 7:

Is the official attending during normal working hours?

No > You may refuse entry. A union official must attend the site during normal working hours.

If you have refused entry to a site and a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators. Your local police may also be able to provide assistance if a trespass has occurred.

Yes > You should allow entry if the right for the union official to enter has been validly exercised under the relevant State or Territory OHS legislation. You must not refuse or unduly delay entry. The official must comply with reasonable directions from site management, and not hinder or obstruct work. The union official must also produce both their Federal and state or territory OHS permits if asked to do so. If a union official has not complied with your direction, please contact FWBC now to talk to one of our investigators.

Pop-up message to be displayed after scenarios 4-6:

Rights to enter for OHS purposes are governed by State or Territory laws, which may vary. For more information about the exercise of those powers, you should contact the relevant OHS body – for contact details, click here (link: <http://fwbc.gov.au/work-health-and-safety-2>). Call us now to speak to an investigator about your specific query.

8. You may refuse entry. The official does not have a valid industrial or OHS purpose to enter the site. For more information on when you should refuse or allow entry to a site, please contact FWBC.

Union official – Right of entry

I am a: Union official

I am interested in: Right of entry

Definition: Union officials may have a right to enter building worksite under certain circumstances, for example when investigating a breach of workplace law, to hold discussions with employees, and to perform functions under a State or Territory OHS law. Both union officials and site managers have rights and obligations related to Right of Entry.

What would you like to do?

Right of Entry assessment > next

More information on right of entry > launch website: <http://www.fwbc.gov.au/right-of-entry>

Do you hold a valid federal entry permit?

No > You may be refused entry. You cannot exercise a right to enter a site without a valid federal entry permit.

For information about acquiring a right of entry permit, please contact FWBC or visit the FWC website.

Yes > next

Pop up message: You must show the site manager your federal entry permit on request.

Are you complying with all conditions on your federal entry permit?

No > You may be refused entry. You cannot exercise a right to enter a site if you are not complying with all conditions on your federal entry permit.

For information about federal entry permit conditions, please contact FWBC.

Yes > next

Why are you on site?

Industrial Purpose

1. To hold discussions with employees
2. To investigate a breach of workplace law
3. Neither of the above

If 1 or 2:

Have you provided at least 24 hours written notice?

No > You may be refused entry. You must provide the site manager with written notification outlining the reasons for your visit at least 24 hours prior to your arrival on-site.

For information about your requirements to provide notice, please contact FWBC.

Yes > next (to 1 or 2 as appropriate)

1. Are the discussions being held in normal working hours, and during a meal or other break time?

No > You may be refused entry. On-site discussions with employees must be conducted during normal working hours and over a meal break or other break time.

For information on your requirements and rights to enter a site, please contact FWBC.

Yes > You should be allowed entry. You have a valid reason to enter and meet all requirements for entry. You must not be refused or unduly delayed.

If you are being refused entry to a site, please contact FWBC to talk to one of our investigators.

2. Are you attending during normal working hours?

No > You may be refused entry. You need to provide the site manager with written notification outlining the reason for your visit at least 24 hours prior to your arrival on-site, and you must attend during normal working hours.

For information on your requirements and rights to enter a site, please contact FWBC.

Yes > You should be allowed entry. You have a valid reason to enter and meet all requirements for entry. You must not be refused or unduly delayed. While on site you can inspect your members' records however, if required, you must be able to prove to the site occupier that you reasonably suspect that the breach relates to your members. However you must comply with any reasonable request by the site occupier to comply with an OHS requirement that applies to the site.

If you are being refused entry to a site, please contact FWBC to talk to one of our investigators.

If 3: Go to OHS purpose

OHS purpose

4. To assist an OHS representative on-site
5. To inspect or access an employee record
6. For reasons related to a suspected safety concern or breach on site
7. None of the above

If 4:

Are you on-site at the request of a designated health and safety representative?

No > You may be refused entry. Your attendance to assist an OHS representative on-site must be at the request of that OHS representative.

For information about right of entry for OHS purposes, please contact FWBC.

Yes > You should be allowed entry. You have a valid reason to enter and meet all requirements for entry. You must not be refused or unduly delayed. While on-site you must comply with reasonable directions from site management, and not hinder or obstruct work. You must also produce both your Federal permit and your state or territory OHS permit if asked by the site occupier.

If you are being refused entry to a site, please contact FWBC to talk to one of our investigators.

If 5:

Have you provided at least 24 hours written notice detailing your intention to inspect or access employee records and your reasons for doing so?

No > You may be refused entry. You do not meet the requirements for entry. You must provide the site manager with written notification outlining the reasons for inspecting or accessing an employee record at least 24 hours prior to your arrival on-site.

For information about right of entry for OHS purposes, please contact FWBC.

Yes > next

Are you attending during normal working hours?

No > You may be refused entry. You must attend the site during normal working hours.

For information about right of entry for OHS purposes, please contact FWBC.

Yes > You should be allowed entry. You have a valid reason to enter and meet all requirements for entry. You must not be refused or unduly delayed. You must comply with reasonable directions from site management, and not hinder or obstruct work. You must also produce both your Federal permit and your state or territory OHS permit if asked by the site occupier.

If you are being refused entry to a site, please contact FWBC to talk to one of our investigators.

If 6:

Are you attending during normal working hours?

No > You may be refused entry. You must attend the site during normal working hours.

For information about right of entry for OHS purposes, please contact FWBC.

Yes > You should be allowed entry. You have a valid reason to enter and meet all requirements for entry. You must not be refused or unduly delayed. You must comply with reasonable directions from site management, and not hinder or obstruct work. You must also produce both your Federal permit and your state or territory OHS permit if asked by the site occupier.

If you are being refused entry to a site, please contact FWBC to talk to one of our investigators.

Message to be displayed after scenarios 4-6:

Rights to enter for OHS purposes are governed by State or Territory laws, which may vary. For more information about the exercise of those powers, you should contact the relevant OHS body – for contact details, click here (link: <http://fwbc.gov.au/work-health-and-safety-2>). Call us now to speak to an investigator about your specific query.

7: You may be refused entry. You do not have a valid industrial or OHS purpose to enter the site. For information on when you have a right to enter a site, please contact FWBC.

Right of Entry

What we'll cover today

- Different reasons for entry
- Requirements for entry
- When you should allow entry
- Entry under WHS legislation
- Role of FWBC

What is right of entry?

- Laws that regulate rights of organisation officials to enter premises and seek to balance:
 - rights of organisations to represent their members
 - rights of employers to go about their business

Determine the type of entry

- Entry to Investigate a Suspected Breach
- Entry to hold discussions
- Entry to Exercise State or Territory WHS Right

Requirements

Has proper notice been given?

- Entry notice must be given to the occupier of the premises and any affected employer:
 - a) During working hours; and
 - b) At least 24 hours, but not more than 14 days, before the entry.

Requirements (cont'd)

Is the entry notice in the approved form?

The entry notice must specify:

1. The premises to be entered
2. The day of the entry
3. The union of which the permit holder is an official
4. That section 481 or 484 is the provision that authorises entry
5. If under 481, the particulars of the suspected contravention
6. A declaration by the permit holder.

Does the official hold a Federal Permit?

A union official has the right to enter premises if they:

- hold a valid and current right of entry permit issued by the Fair Work Commission and
- they comply with the relevant provisions of the Fair Work Act 2009

Right to Investigate suspected contravention

A permit holder may enter provided that:

1. The permit holder reasonably suspects a contravention, and
2. The suspected contravention relates to, or affects, a member of their union, and
3. The union is entitled to represent the member's industrial interests

Entry for suspected breach

When can the entry and exercise of rights occur?

- On a day specified in the entry notice and only during working hours

Entry for suspected breach (cont'd)

What can the permit holder do?

- Inspect work
- Conduct interviews

Entry for suspected breach (cont'd)

What can the permit holder do?

- Inspect records while on the premises
- Inspect records at a later time

Entry for suspected breach (cont'd)

What is the permit holder prohibited from doing?

- Investigate a breach that does not relate to, or affect members of the permit holders union.
- Take any documents (excluding copies) from the premises.
- Disclose information or a document obtained.

Entry for suspected breach (cont'd)

What is the permit holder prohibited from doing?

- Misrepresentation
- Hinder or obstruct any person, or otherwise act in an improper manner
- Act in disregard to an WHS requirement

What are you prohibited from doing?

- Refuse or unduly delay entry onto premises
- Misrepresentation
- Intentionally hinder or obstruct a permit holder exercising their rights

Right to enter to hold discussions

A permit holder can enter premises to hold discussions with one or more employees:

- who perform work on the premises and
- whose industrial interests their union is entitled to represent
- who wish to participate in those discussions

Entry to hold discussions

When can the entry and exercise of rights occur?

- On a day specified in the entry notice and during meal times or other breaks.

Entry to hold discussions (cont'd)

What can the permit holder do?

Hold discussions with one or more persons:

- who perform work on the premises
- whose industrial interests the permit holders the union is entitled to represent
- who wish to participate in those discussions

What is the permit holder prohibited from doing?

- Misrepresentation
- Hinder or obstruct, or otherwise act in an improper manner
- Act in disregard to an WHS requirement
- Hold discussions during work times

What are you prohibited from doing?

- Refusing or unduly delaying entry
- Misrepresentation
- Intentionally hindering or obstructing a permit holder

Penalties

The Court may make one of the following orders:

- A pecuniary penalty (up to \$51,000 for a body corporate and \$10,200 in other cases)
- Compensation
- Any other order the Court thinks is appropriate

Entry for an work, health and safety purpose

Entry to exercise State or Territory WHS right – Section 494

- 'Notice of suspected contravention' must be given
- 24 hours notice required for access to employee records

Is the entry notice in the approved form?

- A notice of suspected contravention must be given to the occupier of the site and affected employers

State WHS Permit

- A union official requires a state right of entry permit
- A union official exercising a State/Territory WHS right must hold a permit under the *Fair Work Act 2009*

Entry for an WHS right

When can the entry and exercise of rights occur?

- During working hours only

Entry for an WHS right (cont'd)

What can the permit holder do?

- Exercise the rights conferred by a State or Territory
- Obtain documents

Entry for an WHS right (cont'd)

What is the permit holder prohibited from doing?

- Misrepresentation
- Hinder or obstruct or act in an improper manner
- Act in disregard to an WHS requirement

What is acting in an improper manner?

Examples

- Not showing permit on request
- Holding discussions with employees at a time other than a meal break
- Abusive behaviour, including yelling abuse and threats
- Making threats to have a business shut down

What are you prohibited from doing?

- Refuse or unduly delay entry onto premises
- Misrepresentation
- Intentionally hinder or obstruct a permit holder exercising their rights

Important note

- Refer to your Enterprise Agreement to check that all the safety management related processes and procedures are adhered to

What should you do in preparation?

- Set aside a room
- Work out the route to be taken
- A request to use a particular room, area or route must be reasonable

What should you do on the day of entry?

- 1) Check entry permit and entry notice – the permit holder must produce these documents for inspection on request
- 2) Confirm that it is only the permit holder who is entering the premises

What should you do on the day of entry (cont'd)?

- 3) Conduct a visitor safety induction and inform the permit holder that they must comply with all WHS policies whilst on the premises – obtain acknowledgement
- 4) Accompany the permit holder at all times

What can FWBC do about the abuse of right of entry?

- Institute civil penalty proceedings
- Apply to the Fair Work Commission to revoke or suspend the right of entry permit of a permit holder
- Take other action where appropriate

Summing Up

Reason

- Why a union official may enter a site

Requirement

- What a union official must do

Entry

- When you should allow or refuse entry

Questions?

FWBC Contact Details

www.fwbc.gov.au

1800 003 338

7.00 am – 5.00 pm
Eastern Standard Time
Monday to Friday