

Part 7 Workplace entry by WHS entry permit holders

Notes

- 1 See the jurisdictional note in the Appendix.
- 2 Division 7 of Part 13 sets out the procedure in relation to the bringing of proceedings in relation to WHS civil penalty provisions.

Division 1 Introductory

116 Definitions

In this Part:

official of a union means a person who holds an office in, or is an employee of, the union.

relevant person conducting a business or undertaking means a person conducting a business or undertaking in relation to which the WHS entry permit holder is exercising or proposes to exercise the right of entry.

relevant State or Territory industrial law means:

Note

See the jurisdictional note in the Appendix.

relevant union means the union that a WHS entry permit holder represents.

relevant worker, in relation to a workplace, means a worker:

- (a) who is a member, or eligible to be a member, of a relevant union; and
- (b) whose industrial interests the relevant union is entitled to represent; and
- (c) who works at that workplace.

**Division 2 Entry to inquire into suspected
 contraventions**

117 Entry to inquire into suspected contraventions



- (1) A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, a relevant worker.
- (2) The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

118 Rights that may be exercised while at workplace

- (1) While at the workplace under this Division, the WHS entry permit holder may do all or any of the following in relation to the suspected contravention of this Act:
 - (a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention;
 - (b) consult with the relevant workers in relation to the suspected contravention;
 - (c) consult with the relevant person conducting a business or undertaking about the suspected contravention;
 - (d) require the relevant person conducting a business or undertaking 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:
 - (i) is kept at the workplace; or
 - (ii) is accessible from a computer that is kept at the workplace;

- (e) 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.
- (2) However, the relevant person conducting the business or undertaking is not required under subsection (1)(d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.
- (3) A relevant person conducting a business or undertaking must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1)(d).

WHS civil penalty provision.

Maximum penalty:

In the case of an individual—\$10 000.

In the case of a body corporate—\$50 000.

- (4) Subsection (3) places an evidential burden on the defendant to show a reasonable excuse.

Notes

- 1 At least 24 hours notice is required for an entry to a workplace to inspect employee records or other documents held by someone other than a person conducting a business or undertaking. See section 120.
- 2 The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988* of the Commonwealth.

119 Notice of entry




- (1) A WHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this Division, give notice of the entry and the suspected contravention, in accordance with the regulations, to:

- (a) the relevant person conducting a business or undertaking; and
 - (b) the person with management or control of the workplace.
- (2) Subsection (1) does not apply if to give the notice would:
- (a) defeat the purpose of the entry to the workplace; or
 - (b) unreasonably delay the WHS entry permit holder in an urgent case.
- (3) Subsection (1) does not apply to an entry to a workplace under this Division to inspect or make copies of documents referred to in section 120.

Note

See the jurisdictional note in the Appendix.

120 Entry to inspect employee records or information held by another person

- (1) This section applies if a WHS entry permit holder is entitled under section 117 to enter a workplace to inquire into a suspected contravention of this Act. 
- (2) For the purposes of the inquiry into the suspected contravention, the WHS entry permit holder may enter any workplace for the purpose of inspecting, or making copies of:
 - (a) employee records that are directly relevant to a suspected contravention; or
 - (b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.
- (3) Before doing so, the WHS entry permit holder must give notice of the proposed entry to the person from whom the documents are requested

and the relevant person conducting a business or undertaking.

- (4) The notice must comply with the regulations.
- (5) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

Note

The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988* of the Commonwealth.

Division 3 Entry to consult and advise workers

121 Entry to consult and advise workers

- (1) A WHS entry permit holder may enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, 1 or more relevant workers who wish to participate in the discussions.
- (2) A WHS entry permit holder may, after entering a workplace under this Division, 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.

122 Notice of entry

- (1) Before entering a workplace under this Division, a WHS entry permit holder must give notice of the proposed entry to the relevant person conducting a business or undertaking.
- (2) The notice must comply with the regulations.
- (3) The notice must be given during the usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

Division 4 Requirements for WHS entry permit holders

123 Contravening WHS entry permit conditions

A WHS entry permit holder must not contravene a condition imposed on the WHS entry permit.

WHS civil penalty provision.



Maximum penalty: \$10 000.

124 WHS entry permit holder must also hold permit under other law

A WHS entry permit holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act [or the relevant State or Territory industrial law].

WHS civil penalty provision.

Maximum penalty: \$10 000.

Note

See the jurisdictional note in the Appendix.

125 WHS entry permit to be available for inspection

A WHS entry permit holder must, at all times that he or she is at a workplace under a right of entry under Division 2 or 3 of this Part, have his or her WHS entry permit and photographic identification available for inspection by any person on request.

WHS civil penalty provision.

Maximum penalty: \$10 000.

126 When right may be exercised

A WHS entry permit holder may exercise a right under Division 2 or 3 of this Part only during the usual working hours at the workplace.

WHS civil penalty provision.

Maximum penalty: \$10 000.