



Australian Government

Comcare

NOTICE OF ENTRY BY WHS ENTRY PERMIT HOLDER

Work Health and Safety Act 2011 (Cth)

A WHS entry permit in the WHS Act 2011 (Cth) includes a WHS entry permit issued under a corresponding WHS law. Another page may be attached to this form if extra room is needed for details and/or descriptions.

Full name of WHS entry permit holder

Name of union represented

Provision in union's rules that entitles the union to represent the industrial interests of a worker

Name and address of workplace being entered

Date of entry or proposed entry

You must tick **all** of the check boxes within the relevant section below.

Section 117 – Entry to inquire in suspected contraventions of the WHS Act

Details of the suspected contravention to which this notice relates: (e.g. what are the suspected acts/omissions, what provisions of the WHS Act or Regulations, what is the risk created by the suspected contravention etc.)

- The above union is entitled to represent the industrial interests of a relevant worker who carries out work at this workplace. The relevant worker is a member, or eligible to be a member, of the above union
- I have reasonable suspicions that the suspected contravention(s) of the WHS Act relates to, or affects, a relevant worker

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

Details of the suspected contravention to which this notice relates: (e.g. what are the suspected acts/omissions, what provisions of the WHS Act or Regulations, what is the risk created by the suspected contravention etc)

Description of the employee records and other documents (or the class of records or documents) directly relevant to the suspected contravention, that are proposed to be inspected or copied:

- The above union is entitled to represent the industrial interests of a relevant worker who is a member, or eligible to be a member, of the above union
- The records and documents are required for the purposes of inquiring into the above suspected contravention(s) of the WHS Act
- I have reasonable suspicions that the suspected contravention(s) of the WHS Act relates to, or affects, a relevant worker

Section 121 – Entry to consult and advise relevant workers on WHS matters

- The above union is entitled to represent the industrial interests of a relevant worker who carries out work at this workplace. The relevant worker is a member, or eligible to be a member, of the above union

I reasonably believe and declare that the information in this form is true.

WHS entry permit holder signature Date

NOTE: the legislation provides for civil penalties of up to \$10,000 for individuals and \$50,000 for a body corporate relating to breaches of right of entry laws.

WORK HEALTH AND SAFETY ACT 2011 (Cth)

WHS Entry Permits

1. Fair Work Australia is responsible for issuing WHS entry permits. An applicant for a WHS entry permit must either hold an office in, or be an employee of, a relevant union and have completed the prescribed training (see section 131 of the WHS Act and regulation 25 of the WHS Regulations).
2. An entry permit is valid for a maximum of 3 years from the date it was issued (see section 137 of the WHS Act)
3. The permit entry holder must also hold an entry permit under the *Fair Work Act 2009* (Cth). This means that the person entering the workplace must hold **both** a WHS entry permit and a Fair Work entry permit (see section 124 of the WHS Act).
4. The WHS entry permit holder must have the WHS entry permit and photographic identification available for inspection for the duration of their entry at the workplace (see section 125 of the WHS Act).
5. The WHS entry permit holder may enter a workplace:
 - > to inquire into suspected contraventions of the WHS Act that relate to, or affects, a relevant worker (section 117), or
 - > to inspect employee records or information in relation to a suspected contravention of the WHS Act (section 120), or
 - > to consult and to provide advice on WHS matters to relevant workers (section 121).
6. The WHS entry permit holder may only enter a workplace and exercise their rights during the usual working hours at the workplace.
7. The WHS entry permit holder may only exercise their right of entry to the area of the workplace where the relevant workers work, or any other area of the workplace that directly affects the health and safety of a relevant worker. Any part of the workplace that is used only for residential purposes may not be entered (see sections 127 & 129 of the WHS Act)
8. The WHS entry permit holder may only inquire, advise or consult in relation to a relevant worker(s) as defined in section 116 of the WHS Act.
9. The WHS entry permit holder must comply with any reasonable request by the relevant PCBU or PMCW to comply with health and safety requirements or any legislative requirements. An example of this may be a requirement to wear safety goggles, a hard hat or attend a site induction (see section 128 of the WHS Act).
10. The WHS entry permit holder is prevented from disclosing a worker's name to the PCBU or the PMCW unless they have that worker's consent. (see section 130 of the WHS Act)

Entry to a workplace to inquire into a suspected contravention under section 117 (& section 120) of the WHS Act (see section 118)

11. While at a workplace, the WHS entry permit holder may, in relation to the suspected contravention of the WHS Act:
 - > Inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention,
 - > Consult with relevant workers in relation to the suspected contravention,
 - > Consult with relevant PCBU about the suspected contravention,
 - > Require the relevant PCBU to allow the 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 (unless to do so would contravene a law of the Commonwealth or a State - see point 16 below), and
 - > Warn any person whom the permit entry holder reasonably believes to be exposed to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard, of that risk.

12. No prior notice is required to be given to the relevant PCBU or PMCW if the WHS entry permit holder enters the workplace under section 117 to inquire into a suspected contravention of the WHS Act. However, once the WHS entry permit holder has entered the workplace, they must, as soon as is reasonably practicable, give written notice of the entry (ie. this completed form) to the relevant PCBU and the PMCW. This written notice is not required if to give the notice would defeat the purpose of the workplace entry or would unreasonably delay the WHS entry permit holder in an urgent case (see section 119 of the WHS Act).
13. The WHS entry permit holder must 'reasonably suspect' that a contravention of the WHS Act has occurred or is occurring before they enter the workplace. The entry permit holder must be able to identify objective facts or material to support that their suspicion was reasonable at the time of seeking entry (see section 117(2) of the WHS Act).
14. A person entitled to enter a workplace under section 117 may also enter the workplace under section 120 for the purpose of inspecting employee records that are directly relevant to the suspected contravention, or other documents that are directly relevant to a suspected contravention that are not held by the relevant PCBU.
15. If a WHS entry permit holder plans to enter a workplace under section 120, they must give notice of the proposed entry to the person from whom the documents are requested and the relevant PCBU. The notice must be given during usual working hours and must be given at least 24 hours, but not more than 14 days, before the entry.
16. In relation to a suspected contravention of the WHS Act, the WHS entry permit holder may not require the relevant PCBU to allow them to inspect or make copies of a document if to do so would contravene a Commonwealth or State law. An example of this is the provisions of the Privacy Acts (see section 118(2) of the WHS Act)

Entry to a workplace to consult and advise workers under section 121 of the WHS Act

17. The WHS entry permit holder may enter a workplace to consult and provide advice on work health and safety matters to relevant workers, provided they wish to participate in the discussions (see section 121 of the WHS Act)
18. The WHS entry permit holder must give notice of the proposed entry to the relevant PCBU. The notice must be given during usual working hours and must be given at least 24 hours, but not more than 14 days, before the entry (see section 122 of the WHS Act).

For queries about WHS entry permits or other health and safety matters, contact Comcare on

1300 366 979 or by email on WHS.help@comcare.gov.au

website: www.comcare.gov.au