

# MODEL OPERATING PROCEDURE

## Dealing with requests for assistance to resolve right of entry disputes and other matters relative to entry permit holders

### 1. PURPOSE

To provide guidance to inspectors and other SWSA staff when dealing with a request under s141 of the WHS Act for assistance in resolving a dispute about entry; or an allegation that a WHS civil penalty provision has been contravened.

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## 2. DEFINITIONS

Word	Meaning unless the contrary appears
<b>Assist</b>	The inspector provides support, help and aid to the parties to encourage the parties to reach agreement
<b>Authorising body</b>	Industrial Relations Commission of South Australia
<b>Commission</b>	Industrial Relations Commission of South Australia
<b>Department, the</b>	SafeWork SA
<b>EP</b>	Entry Permit issued pursuant to the WHS Act
<b>EPH</b>	WHS Entry Permit Holder
<b>Fair Work Act 1994 (SA)</b>	South Australian Fair Work Act 1994
<b>Fair Work Act 2009 (Cth)</b>	Commonwealth Fair Work Act 2009
<b>Industrial Permit</b>	An entry permit issued under the <i>Fair Work Act 2009</i> (Cth) or the <i>Fair Work Act 1994</i> (SA)
<b>Official of a union</b>	Is defined in s116 of the WHS Act
<b>PCBU</b>	Means person conducting a business or undertaking as described in s5 of the <i>Work Health &amp; Safety Act 2012</i> (SA)
<b>Person</b>	Any human being or artificial body of people, having rights and duties before the law that have the power to act, hold property, enter into legal contracts, sue and be sued in their own name
<b>PMCW</b>	Means the person with management or control of the workplace
<b>Regulator</b>	Executive Director SafeWork SA
<b>Relevant PCBU</b>	For the purposes of this procedure is defined at s116 of the WHS Act
<b>Relevant union</b>	Is defined at s116 of the WHS Act
<b>Relevant worker</b>	Is defined at s116 of the WHS Act
<b>SWSA</b>	SafeWork SA
<b>WHS Act</b>	<i>Work Health &amp; Safety Act 2012</i> (SA)
<b>WHS Regulations</b>	<i>Work Health &amp; Safety Regulations 2012</i> (SA)

Note: Abbreviated references to WHS legislation in this procedure are to be read as follows (for example):

- Section 123 of the WHS Act is written as Section 123 or s123;
- Regulation 28 of the WHS Regulations is written as Regulation 28 or r28; and
- Part 7 of the WHS Act is written as Part 7.

## 4. BACKGROUND

Part 7 of the WHS Act deals with the entry to workplaces by persons who hold WHS entry permits (EP's). Such people are referred to as a WHS entry permit holder (EPH). Chapter 2 Part 4 of the WHS Regulations provides some further stipulations in relation to WHS entry permits.

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**Under s277(1) a review of the operation of the Work Health and Safety Act 2012 must be conducted after the expiry of 1 year from its commencement.**

**Under s277(2) of the above review a specific report by the Executive Director SafeWork SA must be included on the extent to which inspectors have attended at workplaces under s117 and an assessment of the operation and effectiveness of the policy established.**

## **5. ISSUE OF ENTRY PERMIT TO AN EPH**

Section 131(1) provides that a union may apply to the Commission to issue an EP to a person who is an official of that union. Section 131(2) of the WHS Act provides that the application must include a statutory declaration that the person:

- a) is an official of the union; and
- b) has satisfactorily completed the prescribed training as required by r25; and
- c) holds, or will hold, an entry permit under the *Fair Work Act 2009* (Cth) or the *Fair Work Act 1994* (SA) (Note: Section 131(3) provides a person who has right of entry to a workplace under section 140 of the *Fair Work Act 1994* (SA) will be taken to hold an EP under that Act).

Section 135 provides that the Commission may impose conditions on an EP.

## **6. PROVISIONS RELATING TO ENTRY**

### **6.1 Legislative provisions**

The WHS Act has 3 sections that provide for an EPH's entry to a workplace. These are:

- s117 - Entry to inquire into suspected contraventions of the Act
- s120 - Entry to inspect employee records or information, and
- s121 - Entry to consult and advise workers.

These sections are described in detail at points [7](#), [8](#) and [9](#) respectively of this procedure.

### **6.2 Notice of entry – general provisions**

Section 119 provides that a notice of entry (NOE) is required in most cases<sup>1</sup> for each entry to a workplace by an EPH. Regulation 27 requires each NOE (regardless of type of entry) to be in writing, and include the following:

- a) the full name of the EPH;
- b) the name of the union that the EPH represents;
- c) the section of the Act under which the EPH is entering or proposing to enter the workplace;
- d) the name and address of the workplace entered or proposed to be entered;
- e) the date of entry or proposed entry; and
- f) additional information and other matters required under regs 28, 29 and 30 as applicable (see points [7.2](#), [8.2](#) and [9.2](#) of this procedure for further detail on these requirements).

Refer to [appendix 3](#) of this procedure to see an example WHS Entry Permit and WHS Notice of Entry.

## **7. ENTRY UNDER s117 TO INQUIRE INTO SUSPECTED CONTRAVENTIONS**

Section 117(1) provides that an EPH may enter a workplace for the purpose of inquiring into a suspected contravention of the WHS Act that relates to, or affects, a relevant worker.

Section 117(2) provides that the EPH must reasonably suspect before entering the workplace that a contravention of the WHS Act has occurred or is continuing, and involves a risk to the health or safety of a relevant worker.

<sup>1</sup> See 7.4 for exemptions to the Notice of Entry requirement

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### 7.1 Additional requirements on the EPH prior to a s117 entry

Section 117(3)(a) provides that the EPH must give consideration as to whether it is reasonably practicable to give notice to the Executive Director about the proposed entry before exercising a power under s117(1) in order to provide an opportunity for an inspector to attend at the workplace at the time of entry.

Section 117(3)(b) provides that if it is reasonably practicable for an EPH to give notice to the Executive Director about the proposed entry, the EPH must comply with any requirement prescribed by the regulations in relation to giving such a notice under this section.

Regulation 28(1) states that any notice to be given to SafeWork SA's Executive Director under s117(3)(b) about the proposed entry must be given by contacting the Department by telephone using a number determined by the Executive Director and as published on a website maintained or used by the Department, specifically [REDACTED]. When making the notification, the EPH must provide the following information:

- his or her full name;
- his or her permit number;
- the name and address of the workplace proposed to be entered;
- the date of proposed entry;
- so far as is practicable, particulars of the suspected contravention to which the notice relates; and
- whether there is considered to be a serious risk to the health or safety of a person emanating from an immediate or imminent risk and, if so, any details about the situation known to the EPH.

### 7.2 Safework SA actions following a s117 entry notification

SWSA may decide to send an inspector to the place being entered by the EPH under s117. Refer to the SafeWork SA Policy '*Inspector attendance at workplaces when notified of a proposed entry by a WHS Entry Permit Holder*' established under the provisions of s117(4).

### 7.3 Notice of entry for a s117 entry

Sections 119 (2) & (3) provide exclusions to the notice of entry requirement when entering a workplace pursuant to s117. Section 119(1) does not apply if to give notice would defeat the purpose of the entry to the workplace or unreasonably delay the EPH in an urgent case, e.g. such as an imminent risk to life. Section 119(1) does not apply when entering a workplace pursuant to s117 in order to inspect or make copies of the types of documents referred to in s120.

The notice of entry must be in writing, and must contain:

- the information required by r27 and detailed at [point 6.2](#) of this procedure; and
- further information required by r28(3), specifically:
  - so far as is reasonably practicable, the particulars of the suspected contravention to which the notice relates; and
  - a declaration stating:
    - that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace entered and is a member or eligible to be a member of that union; and
    - the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and
    - that the suspected contravention relates to, or affects that worker.

Section 119(1) provides that an EPH must, as soon as reasonably practicable after entering a workplace under s117, give notice of the entry and the suspected contravention to:

- the relevant PCBU; and
- the PMCW.

#### **Regulator's policy**

An EPH who has entered a workplace without first issuing a written notice of entry must provide the written notice of entry before leaving the workplace.

#### 7.4 EPH rights following a s117 entry

Section 118 provides that an EPH that has entered a workplace under s117 may, while at the workplace, do all or any of the following in relation to any suspected contravention of the WHS Act:

- 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 EPH holder to inspect, and make copies of, any document that is directly relevant to the suspected contravention that is kept at the workplace or is accessible from a computer that is kept at the workplace; and
- warn any person whom the EPH 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.

However:

- s118(2)(a) provides that the right of an EPH to require copies of a document under this section is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the EPH);

And:

- s118(2)(b) provides that the relevant PCBU is not required under this section to allow the EPH to inspect or make copies of a document if to do so would contravene a Commonwealth or State law, e.g. records covered under Privacy legislation.

#### 7.5 requirements on an EPH following an s117 entry

Section 117(6) provides that if an EPH exercises a power of entry under s117 without being accompanied by an inspector, the EPH must furnish a report on the outcome of his or her inquiries at the workplace to the Executive Director (of SafeWork SA) in accordance with r28(2) within 7 days (policy not prescribed); specifically, the report must be set out in a document that is furnished to the Executive Director at an email address, postal address or fax number determined by the Executive Director and published on a website maintained or used by the Department; specifically be emailed to [REDACTED]

Regulation 28(2)(b) prescribes that the report required under s117(6) must set out the following information:

- the EPH's full name;
- their permit number;
- the name and address of the workplace that was entered;
- the date of entry; and
- the details of any contravention of the Act that, in the opinion of the EPH, has occurred.

### 8. ENTRY UNDER S120 TO INSPECT EMPLOYEE RECORDS OR INFORMATION HELD BY ANOTHER PERSON

S120 allows an EPH who is entitled under s117 to enter a workplace to inquire into a suspected contravention of the WHS Act to inspect or make copies of certain defined categories of documents (see [8.3](#)).

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The right of an EPH to require copies of a document under s120 is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the EPH).

### 8.1 Additional requirements on an EPH prior to a s120 entry

Section 120(3) provides that an EPH must give notice of the proposed entry under s120(2) to the person from whom the documents are requested and the relevant PCBU. The notice must be given during usual working hours at the workplace proposed to be entered at least 24 hours, but not more than 14 days, before the entry.

### 8.2 Notice of entry for a s120 entry

The notice of entry must be given within the timeline detailed at point 8.1 above. The notice must contain:

- the information required by r27 and detailed at [point 6.2](#) of this procedure; and
- information required by r29, specifically:
  - so far as is practicable, the particulars of the suspected contravention to which the notice relates;
  - a description of the employee records and other documents, or of the classes of records and documents, directly relevant to the suspected contravention, that are proposed to be inspected;
  - a declaration stating:
    - that the union is entitled to represent the industrial interests of a worker who is a member or eligible to be a member of that union; and
    - the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and
    - that the suspected contravention relates to, or affects that worker; and
    - that the records or documents proposed to be inspected relate to that contravention.

### 8.3 EPH rights following a s120 entry

Section 120(2) provides that for the purposes of the inquiry into a suspected contravention, the EPH may inspect or make copies of:

- employee records that are directly related to a suspected contravention; or
- other documents that are directly relevant to a suspected contravention and that are not held by the relevant PCBU.

However:

- s120(6) provides that the right of an EPH to require copies of a document under section 120 is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the EPH);

### 8.4 Requirements on an EPH following a s120 entry

Nil

## 9. ENTRY UNDER s121 TO CONSULT AND ADVISE WORKERS

Section 121(1) provides that an EPH may enter a workplace to consult on work health and safety matters, and provide advice on those matters to one or more relevant workers who wish to participate in the discussions.

### 9.1 Additional requirements on an EPH prior to a s121 entry

Section 122(1) provides that before entering a workplace under s121, an EPH must give notice of the proposed entry to the relevant PCBU. Such a notice of entry must be given during the

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usual working hours at the workplace proposed to be entered at least 24 hours, but not more than 14 days, before the entry.

## 9.2 Notice of entry for a s121 entry

The notice of entry must contain the following:

- the information required by r27 and detailed at [point 6.2](#) of this procedure; and
- the information required by r30, specifically:
  - a declaration stating that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace proposed to be entered and is a member, or eligible to be a member of that union; and
  - a declaration stating the provision in the union's rules that entitles the union to represent the industrial interests of that worker.

## 9.3 EPH rights upon an s121 entry

In addition to the rights conferred by s121(1), section 121(2) provides that an EPH may, after entering a workplace under s121, warn any person whom the EPH 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.

## 9.4 Requirements on an EPH following an s121 entry

Nil

## 10. GENERAL REQUIREMENTS ON AN ENTRY PERMIT HOLDER

Sections 123 to 129 of the WHS Act provide that an EPH must:

- not contravene any condition imposed on their permit (s123);
- not enter a workplace unless they also hold an industrial law entry permit under the *Fair Work Act 2009* (Cth) or have right of entry to a workplace under section 140 of the *Fair Work Act 1994* (SA) (s124);
- at all times whilst at the workplace have their EP (issued to them by the Commission s134) and photographic identification available for inspection by any person on request (s125);
- only exercise any of their rights during the usual working hours at that workplace (s126);
- only exercise a right of entry in relation to the area of the workplace where the relevant workers work or any other area that directly affects the workers' health or safety (s127);
- not exercise a right of entry unless they comply with any reasonable request by the relevant PCBU or the PMCW relating to any work health and safety requirement<sup>2</sup> that applies to the workplace and any other legislated requirement that applies to that type of workplace (s.128); and
- not enter any part of a workplace that is used only for residential purposes (s129).

## 11. PROHIBITIONS

Sections 144 to 148 of the WHS Act provide that:

- a person must not refuse or unduly delay lawful entry by an EPH into a workplace (without reasonable excuse (s144));
- a person must not intentionally and unreasonably hinder or obstruct an EPH who is entering a workplace or exercising their rights after entry (s145);
- an EPH must not intentionally and unreasonably delay, hinder or obstruct any person, disrupt any work at the workplace, or otherwise act improperly (s146);
- a person must not, intentionally or recklessly, act to give the impression that something is authorised under Part 7 of the WHS Act if it is not so authorised (s147); and

<sup>2</sup> See Regulator's Policy on page 7

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- a person must not use or disclose information or documents obtained pursuant to s117 or s-120 for purposes not related to inquiring into or rectifying a suspected contravention (s148). However s148 sets out a number of exceptions to this principle.

**NOTE: The legislation provides civil penalty provisions related to specific prohibitions with maximum penalties for individuals of \$10,000 and for a body corporate of \$50,000.**

***Regulators policy***

For the purposes of s145, examples of unreasonably hindering or obstructing an EPH's entry to a workplace or exercising any rights at a workplace may include:

- if a supervisor attempted to delay an EPH's entry until the supervisor's manager returned to the workplace the next day, even though the manager had left the supervisor in charge
- if a PCBU refused to allow the EPH entry until they disclosed the name of the worker who called them
- that the EPH has not completed a site specific induction. In these cases the PCBU shall provide a company representative to escort the EPH about the workplace

Examples of reasonable delay or refusal may include a PCBU refusing the EPH's entry:

- if an EPH tries to enter the workplace to consult and advise relevant workers without providing prior notice of entry as required by the regulations
- if the EPH does not show their permit when requested
- if the written entry permit does not contain all the information required by the regulations
- if the EPH does not have their entry permit or photographic identification available for inspection upon request

**12. JURISDICTIONAL BOUNDARIES**

There are jurisdictional boundaries in which EPH's can operate. For further information about this, refer to [appendix 4](#) of this procedure.

**13. DISPUTE RESOLUTION**

**13.1 Request for inspector to assist in resolving a dispute**

If a dispute arises about the exercise or purported exercise of a right of entry by an EPH, s141 provides that any party to the dispute may ask SafeWork SA to appoint an inspector to attend the workplace to ***assist*** in resolving the dispute. In this situation an inspector can only ensure the parties understand their relevant rights and obligations as set out in the WHS Act, and provide support, help and aid to the parties to encourage them to reach agreement. The inspector ***is not*** empowered to make a determination about the dispute if it continues to remain unresolved. Section 142 provides that the Commission can deal with such a dispute.

***Regulator's policy***

Where the inspector believes the health and safety matter is sufficiently serious, the inspector may make a decision to enter the workplace to inquire into the matter and where necessary use their own compliance powers as required.

**13.2 Commission and dispute resolution**

Section 142(4) provides that the Commission can deal with a dispute on its own initiative or any of the following persons may make application to the Commission to deal with a dispute:

- a WHS entry permit holder
- the relevant union or PCBU

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- any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise the right of entry
- any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit holder; and
- SafeWork SA.

### **Regulator's policy**

SWSA will not generally make an application to the Commission to resolve an entry dispute because SWSA believes that such application to deal with an entry is best made by one or other of the parties to the dispute.

## **14. PROCEDURE**

<b>Responsibility</b>	<b>Description</b>
<b>Response Team</b>	<p><b>Notification of a proposed entry is received</b></p> <ul style="list-style-type: none"> <li>• Refer to the SafeWork SA Policy - '<i>Inspector attendance at workplaces when notified of a proposed entry by a WHS Entry Permit Holder</i>'. Strict timelines apply to situations where an inspector is required to attend a workplace.</li> </ul> <p><b>Preliminary assessment of request to assist in resolving a dispute</b></p> <p>An inspector's assistance may be requested to assist in resolving a dispute about right of entry relating to:</p> <ol style="list-style-type: none"> <li>1. whether entry or attempted entry by a WHS entry permit holder is lawful; or</li> <li>2. the exercise of rights of a WHS entry permit holder following entry.</li> </ol> <p>Determine what jurisdiction the dispute is related to (refer also to <a href="#">appendix 4</a> jurisdictional boundaries). If the dispute is related to Commonwealth workers then only inspectors appointed under the Commonwealth WHS Act can assist in resolving the dispute.</p> <p>Alternatively, the regulator may decide to send an inspector to a workplace following an EPH's notification to enter under s117.</p> <p>In all cases, Response Team will:</p> <ul style="list-style-type: none"> <li>• Facilitate creation of an InfoNET file if not already in place</li> <li>• Forward the notification to the rostered triage Principal Inspector</li> </ul>
<b>Triage Principal Inspector (P.I.)</b>	<p><b>Internal notifications when an inspector will be attending under s117</b></p> <p>Send an email notification to the Executive Director, the Director Field Services Group, Response Team manager and where applicable, the Country Team manager advising them that an inspector is attending an EPH related issue.</p> <p>The email will contain the following information:</p> <ul style="list-style-type: none"> <li>• trading name and address of PCBU being entered;</li> <li>• name of EPH and the union they represent;</li> <li>• purpose of entry and suspected contravention; and</li> <li>• the attending inspector's name(s)</li> </ul>
<b>Inspector</b>	<p><b>Dispute resolution matter</b></p> <p>Make initial contact with all parties to the dispute and clarify the issue(s)</p> <p>Provide the parties with any necessary guidance or advice on how you believe the matter can be resolved as provided for in A or B below.</p>

	<p>If, based on the preliminary guidance or advice you provide, the matter is considered by the parties as now capable of resolution or it is no longer in dispute, there is no longer a need for an inspector to attend the workplace.</p> <p>Request that the person who asked for an inspector to be appointed to attend the workplace to assist in resolving the dispute, now withdraw their request, and record this outcome on InfoNET. Otherwise, attend the workplace.</p> <ul style="list-style-type: none"> <li>• Endeavour to attend a workplace within the Adelaide metropolitan area within 90 minutes of EPH entry notification; or</li> <li>• Where the workplace is outside of the Adelaide metropolitan area, an inspector will endeavour to contact the EPH and the PCBU and advise of an anticipated time of attendance at the workplace.</li> </ul> <p>Regulator decides to have an inspector attend the relevant workplace following a s117 entry notification.</p> <ul style="list-style-type: none"> <li>• Inspector to attend as directed by the Triage P.I. or Country Team Manager.</li> </ul>
<p><b>Line Manager/ Inspector</b></p>	<p><b>A: Lawful entry</b></p> <p>Seek to confirm that where a union official has entered or seeks to enter the workplace as a WHS entry permit holder, lawful entry requires a union official to:</p> <ol style="list-style-type: none"> <li>1. hold a valid right of entry permit issued under the <i>Fair Work Act 2009</i> (Cth) or a right of entry under s140 of the <i>Fair Work Act 1994</i> (SA) and comply with any conditions attached; and</li> <li>2. hold a valid WHS entry permit issued under s134 by the Commission – see <a href="http://www.industrialcourt.sa.gov.au/index.cfm?objectid=695541F1-CDF9-494D-3D2ACF98CE9217E7">http://www.industrialcourt.sa.gov.au/index.cfm?objectid=695541F1-CDF9-494D-3D2ACF98CE9217E7</a> ; or a Commonwealth issued WHS entry permit, see <a href="http://www.fwc.gov.au/index.cfm?pagename=entryhsfind">http://www.fwc.gov.au/index.cfm?pagename=entryhsfind</a></li> </ol> <p>and, if entering under s117 of the WHS Act, the EPH must:</p> <ol style="list-style-type: none"> <li>3. reasonably suspect prior to entry that a contravention of the WHS Act has occurred or is occurring at the workplace which relates to or affects a relevant worker;</li> <li>4. have prepared a WHS notice of entry in accordance with Chapter2 Part 4 of the WHS Regulations; (Note: there are certain exemptions to this requirement as stated in s119 of the WHS Act); and</li> <li>5. have available their WHS entry permit and photographic identification for inspection on request from any person;</li> </ol> <p>And, if entering under s120 of the WHS Act (to inspect employee records or other documents relevant to a suspected contravention) or under s121 of the WHS Act (to consult and advise workers), the EPH must also have:</p> <ol style="list-style-type: none"> <li>6. given 24 hours -14 days advance notice of entry (in accordance with s120(5) and s122(3) of the WHS Act as relevant);</li> </ol> <p>If relevant, advise the parties that s130 of the WHS Act provides that an EPH may not disclose to the PCBU or PMCW the name of any worker, unless the worker consents.</p> <p>Advise the parties that lawful WHS entry must not be unreasonably delayed hindered or obstructed by any person (without reasonable excuse), or intentionally and unreasonably hindered or obstructed – ss144-145.</p>

	<p><b>Federal or state/territory industrial law entry permit guidance</b></p> <p>For purposes of preliminary assessment you can reasonably believe that the union official has the federal or relevant state/territory industrial law entry permit if you sight, or establish that the PCBU has sighted the permit and is not challenging its validity, and you have no knowledge of the industrial law permit having been suspended or cancelled.</p> <p>You <b>are not</b> in a position to advise the parties on any issues relating to the requirements of the <i>Fair Work Act 2009</i> (Cth) or the <i>Fair Work Act 1994</i> (SA). Refer the person to Fair Work Australia or the Commission (respectively) for further assistance (see <a href="#">appendix 2</a> of this procedure for referral details).</p>
<p><b>Line Manager/ Inspector</b></p>	<p><b>B: Lawful exercise of rights by entry permit holder <u>after</u> entry</b></p> <ul style="list-style-type: none"> <li>▪ Establish the right that the WHS entry permit holder is seeking to exercise and then assess whether the requirements have been met. Then explain the right/s, any accompanying obligations, and any relevant prohibitions as required.</li> </ul> <p>(For information on rights, obligations and prohibitions refer to the <a href="#">Background section</a> of this procedure.)</p>
<p><b>Inspector</b></p>	<p><b>Attend the workplace</b></p> <p>Attend the workplace if the preliminary assessment and provision of guidance and advice failed to result in the resolution of the matter.</p> <p><b>Disputed entry:</b></p> <ul style="list-style-type: none"> <li>▪ separately discuss the dispute with the PCBU and the WHS entry permit holder seeking to enter the workplace and establish their views and reasons for these views (noting that joint meetings may be held if the parties agree);</li> <li>▪ examine any relevant documents;</li> <li>▪ provide guidance and advice on how the facts – as you now understand them – apply to the relevant provisions of Part 7 of the WHS Act (referring to A or B above as relevant); and</li> <li>▪ recommend to the parties how the dispute should be resolved between them.</li> </ul> <p>You may need to make further inquiries before providing your recommendation, such as to verify the relevant permits by making contact with the Commission and/or Fair Work Australia – refer to appendices 1 and 2 of this procedure for relevant contact details.</p> <p>Note. Your objective in this situation is to help the parties resolve the dispute. You should only consider entering the workplace and exercising your powers if you form the view that the suspected contravention is substantial and the dispute about entry is unable to be resolved.</p> <p><b>Entry Lawful</b></p> <p>If you believe that entry is lawful, provide advice and guidance to the parties on the relevant provisions of the WHS Act relating to notice of entry and the rights and obligations of the parties after entry is affected.</p> <p>Even if you believe that the disputed entry is lawful, you are <b><u>not able to direct</u></b></p>

that entry occur. You are only able to recommend that this occur.

**Unlawful Entry**

If you believe that the entry is not lawful, you should provide advice about what is needed to make it lawful. You are ***not empowered to direct*** that entry is not lawful and cannot occur.

**Other forms of Entry**

Where a union official has entered a workplace using their industrial permit or without using a permit, they are considered not to have entered or be seeking entry to the workplace under Part 7 of the WHS Act. In this situation, **you have no power to assist in resolving any dispute** that arises in relation to entry.

Depending on the circumstances, the parties may be advised that:

- the union official’s entry may occur with the consent of the relevant PCBU or PMCW: or
- if there is no such consent, either party may seek to have the matter addressed by the relevant industrial tribunal, or the PCBU or PMCW may seek police assistance (i.e. in relation to alleged trespass)
- where a union official has not entered the workplace under the WHS legislation, and wishes to raise a WHS issue under the WHS entry permit, they should be advised they would need to exit the workplace and complete the relevant steps for lawful entry.

**Dispute unresolved**

If the dispute is not resolved between the parties with your assistance, advise the parties that any of them may refer the matter to the Commission for the dispute to be dealt with (for contact details see [appendix 1](#) of the Guidance section of this procedure). You may also wish to point out the possible consequences of prohibited actions (see Item 11 of this document)

(Note: It is expected that SafeWork SA would make an application to the Commission to deal with an entry dispute **only in rare and exceptional circumstances**, believing that application to deal with an entry dispute is best made by one or other of the parties to the dispute or affected by the dispute. If, however, you believe that SafeWork SA should make such an application you will need to outline your reasons for referring the issue to the Commission with your Principal Inspector and Manager before any action is taken.

Disputes are to be referred to the Commission via the prescribed application form that must be completed and filed with the Commission (see [appendix 6](#) of this procedure).

Contact must also be made with the complainant and the relevant PCBU advising them that the dispute is being referred to the Commission.

**Inspector**

**Communicate the outcome of the negotiations**

Record the outcome of your attendance and/or negotiations on an inspection report and provide it to the eligible recipients.

- *Refer to Model Operational Procedure – Inspection Reports*

**Inspector**

**Record keeping**

Take detailed contemporaneous notes.  
Update InfoNET.

<b>Inspector</b>	<p><b>File management</b></p> <p>Enclose copies of all information, the Inspection Report (or other written decision) and other file closure documents in the relevant InfoNET file.</p>
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**15. Appendix 1: Contact details for the Entry Permit Issuing Authority**

Name of authorising authority	Contact details for authorising authority	How to access a list of WHS entry permit holders
The Industrial Relations Commission of South Australia	<p>Industrial Registrar Industrial Relation Commission of SA [REDACTED]</p> <p>Postal address: [REDACTED]</p> <p>Telephone: [REDACTED]</p> <p>Fax: [REDACTED]</p> <p>Email Address: [REDACTED]</p>	<p>Please follow the EPH Entry Permit link at <a href="http://www.industrialcourt.sa.gov.au">www.industrialcourt.sa.gov.au</a></p>

**16. Appendix 2: Contact details for authorities regarding right of entry under industrial law**

To find out more about federal or relevant state or territory industrial law entry permits, or to refer a workplace party or union official to the relevant tribunal, see the following contact details:

Industrial tribunal	Contact details
<p>For information on entry permits issued under the Commonwealth <i>Fair Work Act 2009</i> please contact: Fair Work Australia.</p>	<p>Fair Work Australia [Redacted] Postal address: [Redacted] Telephone: [Redacted] Facsimile: [Redacted] Out of hours emergency: [Redacted] Email: [Redacted] Webpage: <a href="http://www.fwa.gov.au/index.cfm?pagename=entryabout">http://www.fwa.gov.au/index.cfm?pagename=entryabout</a></p>
<p>For information on a person's right of entry under s140 of the South Australian <i>Fair Work Act 1994</i> please contact: The Industrial Relations Commission of South Australia.</p>	<p>Industrial Registrar [Redacted] Postal address: [Redacted] Telephone: [Redacted] Fax: [Redacted] Email Address: [Redacted]</p>

## 17. Appendix 3: Templates for WHS Entry Permits and WHS Notice of Entry used in South Australia

NOTE: As of January 2013, the Commission is developing a business card-sized permit based on this template – an image of a sample permit will (when available) replace the template below.

<b><u>Sample WHS Entry Permit</u></b>	
Issued under s. 134 WHS Act (insert name of jurisdiction and year)	
Permit No.: _____	
Permit holder:	_____ (Full Name Required)
Name of union:	_____
<p>The (Insert name of Authorising Authority) has issued this permit in accordance with the requirements of the (insert name of jurisdiction) Work Health and Safety (WHS) Act (insert year), Part 7, Division 5. This permit has been issued after taking into account the matters in s. 132 and being satisfied the applicant meets the eligibility criteria in s. 133 of the Act.</p> <p>The named entry permit holder is entitled, whilst the WHS entry permit is in force, to exercise the rights given to the WHS entry permit holder under the (insert name of jurisdiction) WHS Act (insert year).</p> <p>The following conditions are in effect on this WHS entry permit: (insert NIL or detail conditions)</p> <p>Date of Issue: _____ Date of Expiry: _____</p> <p>Permit holder signature: _____</p> <p><i>A public register of authorised WHS entry permit holders can be found at <a href="http://www.industrialcourt.sa.gov.au">www.industrialcourt.sa.gov.au</a> Please follow the EPH Entry Permit link at the bottom of the left banner</i></p>	

Note permits may be of a different size or format but should include the wording provided.

## Sample Template WHS Notice of Entry

### NOTICE OF ENTRY

Full name of entry permit holder: \_\_\_\_\_

Name of union represented: \_\_\_\_\_

Name and address of workplace being entered:

Date of entry or proposed entry:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\* For entry under s120 or s121: 24 hours – 14 days notice must be given to PCBU.

Purpose of entry:

- Section 117** – to inquire into a suspected contravention of the WHS Act.
- Section 120** – to inspect employee records or information held by another person, in relation to a suspected contravention of the WHS Act.
- Section 121** – to consult and advise relevant workers on health and safety matters.

Additional – for entry under sections 117 and 120

Permit number: \_\_\_\_\_

Details of the suspected contravention to which this notice relates:

(e.g. what are the concerns; how do they contravene the WHS Act; what area of the workplace is affected etc.)

\_\_\_\_\_  
\_\_\_\_\_

Additional – for entry under section 120 only

List of the employee records or information directly relevant to the suspected contravention which are proposed to be inspected or copied:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Declaration:

- The above union is entitled to represent the industrial interests of worker/s at this workplace.
- The provision in the union's rules that entitles the union to represent the industrial interests of these worker/s is: \_\_\_\_\_ (s117 & 120)
- The suspected contravention relates to worker/s that the union is entitled to represent. (s120 only)
- The employee records or information proposed to be inspected relate to worker/s the union is entitled to represent (s120).

WHS entry permit holder signature: \_\_\_\_\_ Date: \_\_\_\_\_

NOTE: The legislation provides civil penalty provisions related to specific prohibitions with maximum penalties for individuals of \$10,000 and for a body corporate of \$50,000.

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## 18. Appendix 4: Jurisdictional boundaries

Under section 4 of the Commonwealth WHS Act a person who holds a WHS entry permit issued under the Commonwealth Act or a State or Territory WHS Act is recognised as an EPH in Commonwealth jurisdictions (Comcare).

This means that a union official issued with any WHS entry permit may exercise any of their rights on a Commonwealth workplace in relation to either Commonwealth or State/Territory workers. All of the usual conditions (eg. issue notice of entry, provide notice) apply.

For example; a person issued with a WHS Entry permit in NSW may exercise their right of entry at an [REDACTED] Delivery Centre to consult with state jurisdiction based workers (e.g. courier contractors) or Commonwealth workers (e.g. postal delivery workers employed by [REDACTED]) but only if those workers are, or are eligible to be, members of that EPH's union.

Persons issued with an entry permit by Fair Work Australia under the Commonwealth WHS Act are only entitled to exercise their rights on Commonwealth workplaces, duty holders and workers.

Jurisdictional note: Should a dispute arise between a state/territory WHS entry permit holder who is using their powers to enter a Commonwealth workplace in regard to Commonwealth workers then only inspectors who have been appointed under s156 (d) of the Commonwealth WHS Act will have the jurisdiction to assist in the resolution of any dispute. Local processes need to ensure that this is taken into consideration.

<b>Further Information: Policy Team</b>			<b>SAFE 12/0235</b>	<b>Pg 17/19</b>
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**19. Appendix 5: Further Guidance on “as soon as is reasonably practicable after entry”**

Guidance on ... “as soon as is reasonably practicable after entry” (s119) the term is used to describe the requirement of the entry permit holder to talk to or access the person with management or control in order to tell them that they are at the workplace and given them written notice of their reasons for entry.

What is considered reasonably practicable should be determined on a **case by case basis**. Generally it should mean immediately after entry and before any powers are exercised after entry.

However it is recognised that in some circumstances immediate notification will not be possible and exceptions can be made. Where immediate notification is not possible, notifying the occupier should occur at the earliest opportunity after entry. For example, if the site office is not at the place that the representative entered, it is practicable for the representative to proceed directly to the site office before giving the notice. In the event of an emergency / serious incident it may be "practicable" to delay notification for a period of time and for the representative to exercise their other powers prior to giving this written notification.

It is not considered "practicable" to delay notifying the occupier merely because the representative finds it inconvenient.

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## 20. Appendix 6: Prescribed Form for referring disputes to the Industrial Relations Commission.

The prescribed form is available at:

<http://www.industrialcourt.sa.gov.au/index.cfm?objectID=5F39F7C6-F402-2B67-C2FA8690874D9508&flushcache=1>

## 21. FURTHER INFORMATION

- Investigations SOP
- Entry to workplaces and related powers and obligations SOP
- Inspection Reports SOP
- Compliance & Enforcement Policy
- Principles of Operation
- Other procedures as referenced in the body of this procedure
- SafeWork Australia Interpretive Guideline – Workplace entry by Work Health and Safety Entry Permit Holders
- SafeWork SA Policy - '*Inspector attendance at workplaces when notified of a proposed entry by a WHS Entry Permit Holder*'

## 22. REVIEW

This procedure should be reviewed annually and/or as the national MOP is reviewed by HWSA; however, this document must be immediately modified if practices and/or procedures change.

Should this document change, please ensure consequential amendments are made to all related documents.

Further Information: Policy Team		SAFE 12/0235	Pg 19/19
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