



**Government  
of South Australia**

SafeWork SA

# Entry Permit Holder Policy (External)

## Document control

This policy must be reviewed and updated as required when changes to SafeWork SA governing instruments or strategies affect the accuracy of its contents. This policy must be reviewed every two years from the date of issue.

This policy shall continue in operation until it is rescinded (irrespective of whether the review date has passed).

## Document details

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## Auditing

This policy will be audited in line with SafeWork SA's auditing policy.

### Approved by

Martyn Campbell  
Executive Director  
**SafeWork SA**

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## Purpose

The purpose of this policy is to outline the:

- circumstances in which a SafeWork SA (SWSA) inspector will attend a workplace with a Work Health and Safety (WHS) Entry Permit Holder (EPH) following notification of a proposed entry, and
- rights and responsibilities of an EPH proposing to enter a workplace under section 117 of the *Work Health and Safety Act 2012* (the WHS Act).

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This policy <b>supports the requirements of:</b>	➤ <i>Work Health and Safety Act 2012</i> (WHS Act)
	➤ <i>Work Health and Safety Regulations 2012</i> (WHS Regulations)

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This policy is to be <b>read in conjunction</b> with:	➤ Not applicable
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This policy <b>supersedes:</b>	➤ Not applicable
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**Compliance with this policy is mandatory.**

## Scope

This policy applies to:

- SWSA inspectors
- SWSA staff involved in receiving notifications of planned entries and reports from EPHs, and
- EPHs attending workplaces and conducting activities under Part 7 of the WHS Act and Chapter 2, Part 4 of the WHS Regulations.

## Risks

This policy sets out to mitigate/control the following risks associated with not having an adequate policy in place to meet the requirement of section 117(5) to publish a policy outlining when inspectors will attend workplaces with EPHs:

- Lack of clarity in relation to when EPHs must notify SWSA of intended entry to a workplace and subsequent reporting requirements – presenting potential consequences of entry notifications and reports not being lodged with SWSA as required by the WHS Act.

- SWSA not maintaining a publicly available policy on inspector attendance at workplaces with an EPH – presenting potential consequences of SWSA not upholding its obligations under section 117 of the WHS Act.

## Elements

### Legislation

Section 117 of the WHS Act sets out when and how an EPH can enter a workplace to inquire into a suspected contravention of the WHS Act and what their rights, responsibilities and obligations are.

Subsection 117(4) requires the Executive Director to establish and maintain a policy that relates to the circumstances when inspectors will attend at workplaces when notified of the proposed entry by an EPH under this section.

Subsection 117(5) of the WHS Act requires the Executive Director to ensure that the policy is published on a website that is maintained or used by the Department and the Minister must cause a copy of the policy to be laid before both Houses of Parliament.

Sections 120 and 121 of the WHS Act enable an EPH to:

- inspect employee records or other documents that are directly relevant to the suspected contravention under section 117, and
- consult and advise relevant workers on WHS matters.

### Gaining right of entry

A WHS entry permit is a permit card with photo identification that allows a union official to enter a workplace to inquire about a suspected breach of the WHS Act. A WHS entry permit is obtained under section 131 of the WHS Act.

Unions may apply to the South Australian Employment Tribunal (SAET) to have one or more of their officials granted a WHS entry permit. This permit allows the person to enter a workplace for specified purposes. SAET supplies and revokes the permits and deals with disputes about rights of entry.

An EPH must also hold an entry permit under other laws, as outlined in section 124 of the WHS Act; for example, under section 512 of the *Fair Work Act 2009* (Cth) or under section 140 of the *Fair Work Act 1994* (SA). Entry permits granted under these acts provide additional powers to enter Commonwealth workplaces and to address industrial relations issues, as well as corresponding work health and safety laws. Appendix A provides more information about entry rights for EPHs.

SAET maintains a publicly available register of current WHS EPHs at:

<https://www.saet.sa.gov.au/awards-agreements-and-registers/whs-entry-permits/>

The WHS Act and WHS Regulations place certain requirements on EPHs and other persons (refer to Appendix B) with regards to the EPH's exercise of right of entry to a workplace, and the EPH's rights after entry. Some of these are general requirements and some are specific to the EPH's purpose for entry.

If a dispute arises regarding an EPH's right of entry and rights after entry, the WHS Act provides mechanisms to resolve the dispute. This includes the appointment by SWSA of an inspector to assist in resolving the dispute, or the SAET may deal with the dispute (refer to Appendix C for more information).

## Policy

### Notice of a proposed entry

- An EPH must, if it is reasonably practicable, give notice to the Executive Director of a proposed entry to a workplace to inquire into a suspected contravention of the WHS Act. Accordingly, instances of entry into a workplace without prior notice to the Executive Director should be rare and occur only where the situation is so critical as to warrant immediate entry.
- A notification to SWSA is taken to be a notification to the Executive Director, compliant with subsection 117(3) of the WHS Act.
- EPH entry notifications must be made by telephoning SWSA on 1800 777 209 (24 hours per day, seven days per week).
- For entry to a workplace under section 120 or 121 of the WHS Act, the EPH must give the person conducting a business or undertaking (PCBU) notice during the usual working hours at the workplace of at least 24 hours, but not more than 14 days, before the entry.
- SWSA will establish and maintain an electronic recording system to record all EPH entry notifications and EPH reports received.

### Inspector attendance with an EPH

- An inspector will attend a workplace which is subject to an EPH entry notification where the information provided by the EPH indicates any of the following:
  - there is an imminent risk to life or where workers are in serious and immediate danger
  - unsafe plant is in operation and the plant presents an immediate risk to workers
  - where a PCBU is reported to be attempting to refuse, unduly delay, hinder or obstruct the EPH rightful entry to the workplace to inquire into a suspected contravention of the WHS Act, and

- other circumstances as deemed appropriate at the discretion of the Executive Director.
- If a SWSA inspector intends to attend a workplace with an EPH and the workplace is within the Adelaide metropolitan area, the inspector will endeavour to attend within 90 minutes of receiving the notification. If the workplace is outside of the Adelaide metropolitan area, the inspector will take reasonable steps to contact the EPH and the PCBU and advise of their anticipated time of attendance at the workplace.

## EPH reports

- Under section 117(6) of the WHS Act, where an EPH exercises a power of entry without the attendance of a SWSA inspector, the EPH must provide a report to SWSA.
- The report is to be submitted using the [online report form](#) on the SWSA website (refer to Appendix D). When submitted the report will be electronically emailed to the designate SWSA email address [rightofentry.safework@sa.gov.au](mailto:rightofentry.safework@sa.gov.au) automatically.
- The report provided to SWSA must include the following information in accordance with regulation 28(2)(b) of the WHS Regulations:
  - the EPH's full name
  - the EPH's permit number
  - the name and address of the workplace that was entered
  - the date of entry, and
  - details of any contravention of the WHS Act that, in the opinion of the EPH, has occurred.
- Upon receipt of the report, SWSA will give consideration to what action, if any, should be taken in regard to any matters outlined in the report.
- The report may be published on the SafeWork SA website. **Any information provided beyond what is required by regulation 28(2)(b) of the WHS Regulations will be redacted from the report prior to publishing.**

## EPHs taking photographs at workplaces

There are no provisions in the WHS Act and WHS Regulations which allow an EPH to take photographs at workplaces when inquiring into a suspected contravention of the WHS Act that relates to or affects a relevant worker.

## Offences under Part 7 of the WHS Act

Legal proceedings may commence by SWSA and civil penalties apply in relation to **any** person who fails to meet the requirements of Part 7 of the WHS Act that apply to them.

**Note:** This does not cover the obligations of a PCBU to allow entry to a workplace under Part 5 of the WHS Act to any person assisting a health and safety representative or any representative of a party to issue resolution. Union officials, whether or not holding a WHS entry permit, may also be such a person or representative.

## Outcomes

This policy is considered effective when:

- SWSA meets its obligation to maintain and publish this policy, and
- EPHs understand and uphold their rights, responsibilities and obligations under Part 7 of the WHS Act and Chapter 2, Part 4 of the WHS Regulations.

## Definitions

**Executive Director** means the Executive Director, SWSA

**Department** means SWSA, as the agency that is directly involved in the administration and enforcement of the WHS Act

## Related documents

- Not applicable



## Appendix A – General requirements for EPHs

In order to exercise a right of entry to a workplace, an EPH must:

- hold a current WHS entry permit issued by the SAET
- hold an entry permit under the *Fair Work Act 2009* (Cth) or have a right of entry under the *Fair Work Act 1994* (SA)
- only attempt to enter during the usual working hours at the workplace
- not enter any part of a workplace that is used only for residential purposes, and
- give notice of entry as required.

When at a workplace an EPH must:

- produce their WHS entry permit and photographic identification if requested
- comply with any reasonable request by the relevant PCBU, or the person with management or control of the workplace, to comply with:
  - any WHS requirement that applies to any visitor to the workplace (e.g. site induction, requirement for specific personal protective equipment), and
  - any other legislated requirement that applies to visitors to that type of workplace
- not contravene a condition imposed on their WHS entry permit, and
- not intentionally and unreasonably:
  - delay, hinder or obstruct any person
  - disrupt any work at the workplace, or
  - otherwise act in an improper manner (for example, by seeking to enter a workplace without giving the minimum 24 hours prior notification to consult with relevant workers).

Where an EPH enters a workplace to enquire into a suspected contravention, or to consult and advise relevant workers, they may only visit the area where the relevant workers work, or other work areas that directly affect the health or safety of those workers.

### Note:

1. The identity of the relevant PCBU and the person with management or control of the workplace will depend on the purpose for which the EPH is entering the workplace.
2. An EPH is not required to disclose the name of any worker at the workplace to the relevant PCBU or the person with management or control of the workplace, and if the EPH wishes to disclose the name of any worker they may only do so with the consent of that worker.

## Appendix B – Requirements for Other Persons

A person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by an EPH. This includes the relevant PCBU and the person with management or control of the workplace.

Examples of unreasonable refusal or delay 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, or
- if a PCBU refused to allow the EPH entry until they disclosed the name of the worker who called them.

Examples of reasonable delay or refusal may include a PCBU delaying or refusing entry:

- if an EPH tries to enter the workplace to consult and advise relevant workers without providing prior notice of entry at least 24 hours in advance, or
- if the EPH does not show their permit when requested.

Additionally, a person must not intentionally and unreasonably hinder or obstruct an EPH from entering a workplace or in exercising any rights that an EPH has after entry to the workplace.

For example, if a manager refused to allow an EPH access to training documents relating to the suspected contravention which were kept at or accessible from a computer at the workplace, this may constitute intentionally and unreasonably hindering an EPH in exercising their rights at the workplace.

If allowing an EPH to inspect or make copies of a document would cause a person to breach privacy laws, then they may refuse to provide the document and such refusal would not be considered an intentional and unreasonable hindrance or obstruction of an EPH's exercise of rights.

## Appendix C – Dealing With Disputes

Situations can occur when an EPH's right of entry and exercise of powers after entry may be disputed. This may concern:

- the credentials of the EPH
- disagreement about industrial coverage
- the adequacy or otherwise of the notice of entry or notice of proposed entry provided by the EPH
- disruption of work, and/or
- access to employee records or documents.

In these circumstances any party to the dispute may ask SWSA to appoint an inspector to attend the workplace to assist in resolving the dispute. The inspector will discuss the matter with both parties to assist them to resolve the dispute (including informing the parties of his or her opinion about the matter and reasons for this opinion), but the inspector cannot decide the dispute.

**Note:** 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.

Alternatively, an application can be made to SAET to resolve the dispute.

# Appendix D – WHS Entry Permit Holder Report Online Form



Login

## WHS Entry Permit Holder Report

### WHS Entry Permit Holder Report

To the Executive Director, SafeWork SA.

I provide the following report in accordance with the provisions of section 117 (6) of the Work Health and Safety Act 2012 (SA) and regulation 28 (2) of the Work Health and Safety Regulations 2012 (SA).

#### ▼ Entry permit holder (EPH) details

\* Full Name

\* Contact number

\* Please provide permit number

\* Please enter your email address

\* Name of union represented

#### ▼ Workplace entered

\* Date workplace entered

\* Workplace name

Industry

Site address

▼ Details of alleged contravention

I am of the opinion that the following provision/s of the Work Health and Safety Act 2012 (SA) has or have been contravened.

**Note: If there are signification safety issues that were not resolved during your site visit, please contact the SafeWork SA Help Centre on 1300 365 255.**

\* Please select who is alleged to have committed the alleged contravention

- Person Conducting a Business or Undertaking  
 Worker  
 Both

▼ I am of the opinion that the PCBU has contravened the WHS legislation relating to:

- Not maintaining safe systems of work  
 Not maintaining a safe work environment  
 Not maintaining safe plant and structures  
 Unsafe use, handling and storage of plant, structures and substances  
 Inadequate monitoring of the health of workers and the conditions at the workplace  
 Inadequate facilities or access to facilities  
 Lack of information, training, instruction or supervision  
 Not reporting a notifiable incident  
 Allowing workers to undertake work without the relevant licence/authority  
 Hindering or obstructing the EPH to exercise a right while at the workplace  
 Health and Safety Representation  
 Work groups  
 Other

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