



Entry Permit Holder Policy (External)

Version: 2.0 **Effective date:** 1 September 2024

Who does this policy apply to?

1.1 This policy applies to:

- ♦ SafeWork SA Inspectors
- ♦ SafeWork SA employees involved in receiving notifications of planned entries and reports from Entry Permit Holders (EPHs)
- ♦ EPHs attending workplaces and conducting activities under Part 7 of the *Work Health and Safety Act 2012* (SA) (the 'WHS Act') and Chapter 2, Part 4 of the *Work Health and Safety Regulations 2012* (SA) (the 'WHS Regulations').

Why does this policy exist?

1.2 This policy provides guidance for EPHs when entering a workplace.

1.3 This policy also provides guidance for SafeWork SA Inspectors when accompanying an EPH into a workplace.

1.4 This policy clarifies that entry into a workplace is authorised when investigating a potential contravention of the WHS Act.

1.5 Notes requirements about reports, if an EPH submits a report to SafeWork SA.

1.6 This policy outlines the:

- ♦ circumstances in which a SafeWork SA Inspector will attend a workplace with an EPH following notification of a proposed entry
- ♦ the process for EPH reports and responses
- ♦ the rights and responsibilities of Inspectors and EPHs proposing to enter a workplace under Part 7 of the WHS Act (including section 117).

What is the SafeWork SA position?

1.7 SafeWork SA is committed to ensuring the safety of workplaces and workers in line with the WHS Act, relevant regulations and Codes of Practice under legislation.

1.8 Any potential or suspected contraventions of the WHS Act requires action from SafeWork SA. SafeWork SA works closely with EPHs to address risks to worker health and safety.



What are the requirements of this policy?

Legislation

- 1.9 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.
- 1.10 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.
- 1.11 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; the Minister must cause a copy of the policy to be laid before both Houses of Parliament.
- 1.12 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

- 1.13 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.
- 1.14 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. The SAET supplies and revokes permits and deals with disputes about rights of entry.
- 1.15 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.
- 1.16 The SAET maintains a publicly available register of current WHS EPHs at: <https://www.saet.sa.gov.au/awards-agreements-and-registers/whs-entry-permits/>
- 1.17 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.
- 1.18 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 SafeWork SA of an Inspector to assist in resolving the dispute, or the SAET may deal with the dispute (**refer to Appendix C for more information**).



Notice of a proposed entry

- 1.19 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.
- 1.20 A notification to SafeWork SA is taken to be a notification to the Executive Director, compliant with subsection 117(3) of the WHS Act.
- 1.21 EPH entry notifications must be made by telephoning SafeWork SA on 1800 777 209 (24 hours per day, seven days per week).
- 1.22 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.
- 1.23 SafeWork SA will establish and maintain an electronic recording system to record all EPH entry notifications and any EPH reports received.

Inspector attendance with an EPH

- 1.24 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 (note – some misunderstandings may be resolved via telephone)
 - ◆ Other circumstances as deemed appropriate at the discretion of the Executive Director.
- 1.25 If a SafeWork SA 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 their anticipated time of attendance at the workplace.

EPH reports

- 1.26 Under section 117(6) of the WHS Act, where an EPH exercises a power of entry without the attendance of a SafeWork SA Inspector, the EPH may provide a report to SafeWork SA on the outcome of their inquiries at the workplace.
- 1.27 If a report is submitted, the EPH must use the [online report form](#) on the SafeWork SA website. When submitted the report will be electronically emailed to the designated SafeWork SA email address rightofentry.safework@sa.gov.au automatically.



- 1.28 If the EPH decides to provide a report, it should 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.
- 1.29 Upon receipt of the report, SafeWork SA will give consideration to what action, if any, should be taken in regard to any contravention of the Act outlined in the report. SafeWork SA must inform the EPH of any action taken.

EPHs taking photographs, video and measurements at workplaces

- 1.30 An EPH may take photographs and videos at workplaces when inquiring into a suspected contravention of the WHS Act that relates to or affects a relevant worker. The EPH may not live stream, or take photos or videos that include persons who are *not* relevant workers, a worker directly affecting a relevant worker, an Inspector or emergency services worker or an EPH.
- 1.31 The EPH may also take measurements or conduct tests directly related to the suspected contravention of the Act.
- 1.32 The EPH may also take photos or videos of any person hindering or obstructing the EPH and/or Inspector.
- 1.33 The EPH may bring to the workplace and use any equipment or materials that are reasonably necessary for the taking of measurements or conducting of tests.

Offences under Part 7 of the WHS Act

- 1.34 Legal proceedings may commence by SafeWork SA 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.
- 1.35 **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.

Responsibilities

Compliance and monitoring

- 1.36 An EPH must comply with Part 7 of the WHS Act.
- 1.37 SafeWork SA is responsible for the enforcement of Part 7 of the WHS Act.



Delegations and authorisations

- 1.38 An EPH must hold a current WHS entry permit issued by the SAET and hold an entry permit under the *Fair Work Act 2009* (Cth) or have a right of entry under the *Fair Work Act 1994* (SA).

Reporting and auditing

- 1.39 If a Report from EPH is submitted to SafeWork SA, SafeWork SA must inform the EPH of any action taken in relation to the report.
- 1.40 The application of this procedure may be audited in accordance with the SafeWork SA audit schedule.

Records

- 1.41 Records relevant to administering this policy must be retained, archived, and disposed of in accordance with SafeWork SA requirements.
- 1.42 Should an EPH provide a report subsequent to a workplace visit prompted by a suspected or possible contravention of the WHS Act, and a response is prepared by the Regulator, both must be retained in accordance with relevant legislation.

References

Legislation, regulation, and external conformance

- ♦ [Work Health and Safety Act 2012](#) (SA)
- ♦ [Work Health and Safety Regulations 2012](#) (SA)

Supporting information for this policy

- ♦ Appendix A - General requirements for EPHs
- ♦ Appendix B – Requirements for Other Persons
- ♦ Appendix C – Dealing with Disputes
- ♦ [SafeWork SA WHS Entry Permit Holder Report Online Form](#)

Definitions

- 1.43 Terms not defined in this document are recorded in the SafeWork SA Glossary.



Policy Governance

Category	Compliance and Enforcement
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Superseded versions

Version	Change history
1.0	Original version
2.0	Major review due to legislative changes Supersedes Entry Permit Holder Policy (External) version 1.0 April 2020



Appendix A - General requirements for EPHs

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 SafeWork SA 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.