



Government
of South Australia

SafeWork SA

Review Recommendations Bill

Fact Sheet: Right of entry

What is changing?

The *Work Health and Safety (Review Recommendations) Amendment Bill 2024* (the Bill) amends the *Work Health and Safety Act 2012* (the Act) to implement law reform recommendations made by the [Independent Review of SafeWork SA](#).

The Bill follows [initial public consultation](#) on these recommendations conducted between September and November 2023.

Fact sheets covering the main amendments in the Bill can be found [on the SafeWork SA website](#). This fact sheet summarises amendments relating to WHS right of entry.

Ensuring responsible behaviour by unions and permit holders

- **Civil penalties:** The maximum civil penalty for breaching orders of the South Australian Employment Tribunal (SAET) resolving a right of entry dispute will increase to \$100,000. A person affected by a breach (such as a business or employer organisation) will have standing to apply to SAET for a civil penalty to be imposed on the person responsible for the breach. SAET will have a discretion to make any penalty payable to the party affected by the breach.
- **Probationary declarations:** SAET will be given the power to make a “probationary declaration” if a union has a significant record of refusing or failing to comply with obligations applying to WHS right of entry. A declaration will remain in effect for 2 years. While a probationary declaration is in effect:
 - The union will be prohibited from applying to SAET for a civil penalty order in relation to a breach of health and safety duties by a person conducting a business or undertaking, acknowledging that the union has failed to comply with its own legal obligations.

- Officials of the union will be required to always notify SafeWork SA before exercising a right of entry to investigate suspected WHS contraventions, and will also be required to provide a written report to SafeWork within 14 days detailing the outcome of their investigation.
- If an official of the union is involved in a breach of WHS right of entry obligation while a probationary declaration is in effect, there will be an automatic presumption that SAET should revoke the official's WHS entry permit.

Investigating suspected WHS contraventions

- **Reporting workplace entries:** The Act will retain existing requirements for entry permit holders to notify SafeWork SA before entering a worksite to investigate suspected contraventions (to enable SafeWork to consider arranging for an inspector to attend).

Permit holders will no longer be required to automatically provide a written report to SafeWork after entry (unless a probationary declaration is in effect in relation to their union). If a permit holder chooses to provide a written report to SafeWork, the regulator will be required to advise them of any action taken in response to the report.

- **Measurements and recordings:** When a permit holder enters a workplace to investigate suspected WHS contraventions, they will be allowed to take measurements and make sketches or recordings relevant to the suspected contravention. Any information gathered using these powers will be subject to existing confidentiality requirements in the Act, and misuse of these powers will be subject to existing penalties for acting in an improper manner.

When will these changes come into effect?

These proposals are subject to passage of legislation by Parliament.