

Entry to inquire into suspected contraventions

WHS Act s117

A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of WHS Act that relates to, or affects, a relevant worker.

The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

In relation to records held by another person

WHS Act s120

For the purposes of the inquiry into the suspected contravention, the WHS entry permit holder may enter any workplace for the purpose of inspecting, or making copies of:

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

Before doing so, the WHS entry permit holder 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 at that workplace at least 24 hours, but not more than 14 days, before the entry.

Note: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988 (Cwth).

WHS entry permit revocation

WHS Act 138

Persons entitled to request a WHS entry permit be revoked include:

- the regulator
- the relevant PCBU
- any other person who has been the subject of, or affected by a WHS entry permit holder exercising their rights under the WHS Act.
- any other person affected by the exercise or purported exercise of a right by a WHS entry permit holder.

WHS entry permit holders right to show cause

WHS Act 139

The show cause notice must:

- contain a statement to the effect that the WHS entry permit holder may, not later than 21 days after the day the WHS entry permit holder is given the notice, give the authorising authority written reasons explaining why the WHS entry permit should not be revoked; and
- be accompanied by a summary of the reasons for the application; and
- if applicable, be accompanied by a notice of suspension of the permit.

Determination of application to revoke permit

WHS Act: s140

If the authorising authority is satisfied on the balance of probabilities that the WHS permit holder is no longer eligible, has contravened a condition of entry, has acted in an improper manner or hindered or obstructed a PCBU or workers it may make one or more of the following orders:

- an order imposing conditions on the WHS entry permit;
- an order suspending the WHS entry permit;
- an order revoking the WHS entry permit;
- an order about the future issue of a WHS entry permit to the person whose WHS entry permit is revoked;
- an order imposing any alternative action the authorising authority considers appropriate.

In deciding what action to take in relation to a person, the authorising authority must take into account:

- the seriousness of any findings of the authorising authority having regard to the object of the WHS Act; and
- any other matters the authority considers relevant.

Dealing with a dispute

WHS Act: s141

If a dispute arises about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this WHS Act, any party to the dispute may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the dispute.

The authorising authority may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.

If dealing with the dispute through arbitration the authorising authority may order one or more of the following in relation to a WHS entry permit:

- impose conditions
- suspend or revoke the permit
- impose requirements for the future issue of a permit to one or more persons
- any other order considered appropriate.