

NSW Work Health & Safety Act



Module:
Union Participation in WHS

What is different in WHS Act about Union Participation in the Workplace

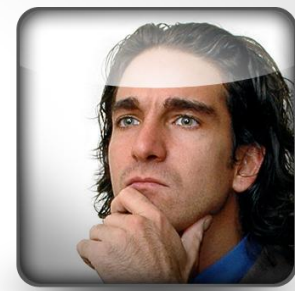
The **authority** for Trade Unions in NSW **to initiate proceedings** for a breach of the Act has been **altered**



Trade Union officials now must undergo training prior to being issued with an entry permit and have broadened powers on entry

The Right to Exercise Entry Powers

- Must be WHS Entry Permit Holder
- Must complete prescribed training
- Must hold relevant entry permit under IR law
- May only seek entry for specified purposes
- May enter without notice to investigate a suspected breach
- 24hrs notice if consulting workers / documents
- Must comply with WHS requirements



Reasons for Entry:

Entry only be for specified reasons



To enquire in suspected contravention that relates to a relevant worker



Must reasonably suspect that the contravention has occurred or is occurring before entering workplace



To consult with & advise workers who wish to participate in talks about WHS

Notice of Entry



A WHS entry permit holder:



May enter a workplace **immediately** to enquire into a suspected contravention, but

- must, as soon as is reasonably practicable, **give notice of the entry and the suspected contravention** to the relevant PCBU



Must give notice, during usual working hours, of their intended entry to consult and advise workers **at least 24 hours but not more than 14 days before entry**

Powers onEntry



POWER TO:



Inspect any work system, plant, substance, structure or other thing relevant to suspected contravention



Consult with relevant workers re suspected contravention



Consult with PCBU about the suspected contravention



Inspect & make copies of any document relevant to the suspected contravention



Warn persons exposed to a serious risk emanating from an immediate or imminent exposure to a hazard, of that risk

Breaches Relating to Entry



A person must not:

Recklessly & unreasonably hinder a **WHS entry holder** in, or obstruct them from entering the workplace or exercising their rights

A WHS permit holder must not:

Intentionally and unreasonably:

- delay, hinder or obstruct any person
- disrupt any work, or
- otherwise act improperly



Use or disclose information or a document obtained for a purpose unrelated to the enquiry

- **Unless a serious risk exists**
- **Disclosure is necessary part of investigation**





Resolution of Right of Entry Disputes

Disputes regarding:

- Entry entitlement
- Conduct of WHS Permit Holder
- Conduct of other persons during course of entry



Referred to an **Inspector** or the **Authorising Authority** who can deal with matter in manner determined suitable, including:

- Mediation
- Conciliation
- Arbitration



Right to Prosecute

THE UNIONS RIGHT QUALIFIED:



A Trade Union can bring a prosecution under the WHS Act in NSW **only if:**

1. the offence concerned is a **Category 3**
2. the offence concerned is a **Category 1** or a **Category 2** offence,

and

WorkCover has (after referral of the matter to the Director of Public Prosecutions) **declined to follow the advice of the DPP to bring the proceedings**



What do you have to do?

You need to **understand** the **WHS entry permit provisions** as they may apply in your workplace:

PAY PARTICULAR ATTENTION TO NEW PROVISIONS:



Union officials **MUST** hold a WHS entry permit in order to enter your workplace on a WHS matter & must produce the permit if requested



You must allow WHS entry permit holders to enter the workplace during normal working hours to consult with members or eligible workers on WHS matter, if given 24 hours notice



You may be required to consult with union officials about a suspected contravention

