

Work Health and Safety Act 2011 (QLD)

Workplace entry by work health and safety entry permit holders

Interpretive guideline

This document provides guidance on the interpretation and application of the provisions of the *Work Health and Safety Act* (the WHS Act) and *Work Health and Safety Regulations* (the WHS Regulations) that relate to workplace entry by WHS entry permit holders.

It provides advice and information on how the right of entry provisions in the WHS Act would, in the Regulator's opinion, apply either to a particular person or persons or to a set of circumstances, or how a discretion of the Regulator under the WHS Act or Regulations would be exercised.

While this document covers the range of right of entry provisions under the WHS Act, there is a particular focus on right of entry for the purposes of consulting and advising workers on WHS matters.

WHS entry permit holder entry rights

The WHS Act allows an official of a union¹ who holds a WHS entry permit and a *Fair Work Act 2009* permit² to enter workplaces to:

- inquire into suspected work health and safety (WHS) contraventions that affect or relate to relevant workers³;
- inspect employee records or information held by another person, or
- consult and advise relevant workers who wish to participate in the discussions about WHS matters.

The Act does not give WHS entry permit holders an unconditional right of entry. In the context of the *Fair Work Act 2009*, it has been held that a statutory right of entry should not be construed as conferring any greater right than is necessary to achieve the statutory objective and accordingly the common law rights of an occupier are only to be diminished to the extent absolutely necessary to give effect to the right conferred.⁴ Courts have stated that permit holders have responsibilities when diminishing the rights of an occupier and the privilege of being able to enter someone else's premises without notice 'should be exercised with due acknowledgement of the rights of the occupier'.⁵

¹ **An official of a union** is a person who holds an office in, or is an employee of, the union.

² *Fair Work Act 2009* (Cth), s 494(1).

³ **A relevant worker** is a worker who is a member, or eligible to be a member of the union the WHS entry permit holder represents, whose industrial interests that union is entitled to represent and who works at the workplace entered.

⁴ *AMEIU v Fair Work Australia* [2012] FCAFC 85 per Flick J.

⁵ *ABCC v Mitchell & Ors* [2011] FMCA 622 at 9.

It should be noted that this document contains references to decisions by courts on right of entry provisions in legislation other than the WHS Act and that such references are provided for guidance only to assist understanding of general principles relating to right of entry. In particular, where such decisions were made under industrial relations legislation, they should not be regarded as necessarily binding on courts when making decisions under the right of entry provisions of the WHS Act.

When interpreting and applying the right of entry provisions under the WHS Act, regard should also be had to the objects of the WHS Act of, amongst other things, encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment.

Entry to inquire into a suspected contravention (24 hours' notice is not required)

In order to enter a workplace to inquire into a suspected WHS contravention, the WHS entry permit holder must have a reasonable suspicion before entering that the contravention has occurred or is occurring.

In order to have a reasonable suspicion, the entry permit holder must have some information about events in the workplace that would lead to a belief that there has been a contravention, or there is a contravention occurring. For example, a reasonable suspicion could be based on a complaint from a worker or someone familiar with the workplace that provides detail of incidents or events at the workplace or a direct observation by the WHS entry permit holder, while outside the workplace, of an incident or event that is likely to constitute a contravention.

The WHS Act gives entry permit holders a number of rights when exercising their right of entry to inquire into a suspected contravention of the WHS Act.

Entry to inspect employee records or information held by another person (24 hours' notice is required)

In order to assist an entry permit holder to inquire into a suspected contravention of the WHS Act, the entry permit holder may, for the purposes of such inquiry, 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 person conducting a business or undertaking (PCBU)⁶.

Entry to hold consultations and advise workers (24 hours' notice is required)

This right of entry is not given for the purpose of holding discussions with workers generally.⁷ Entry to consult and advise workers is limited to discussion of WHS matters with relevant workers who wish to participate in the discussions. If a WHS entry permit holder insisted that a worker participate in consultations when the worker has made it clear that they don't wish to, that contradicts the purpose for which entry is permitted, meaning that the WHS entry permit holder has no authority to remain at the workplace.

⁶ ***Relevant person conducting a business or undertaking*** is a person conducting the business or undertaking in relation to which the WHS entry permit holder is exercising or proposes to exercise the right of entry.

⁷ *Australian Meat Industry Employees' Union v Fair Work Australia* [2012] FCAFC (8 June 2012), at [16]

Interaction with union right of entry under the Fair Work Act

The *Fair Work Act 2009* gives union officials who are permit holders a statutory right of entry to premises for the purposes outlined in Part 3-4 of that Act. It does not authorise entry for work health and safety purposes, which is provided for under State or Territory WHS law⁸. It does however impose a number of additional requirements that must be met by permit holders when they are exercising a right of entry under a State or Territory WHS law. Most of those requirements are replicated in the WHS Act⁹. However, an official must not exercise a State or Territory OHS right unless the official is a permit holder under the *Fair Work Act 2009* or a state or territory industrial relations entry permit.

Can WHS entry permit holders enter any place?

WHS entry permit holders are not permitted to enter any part of a workplace that is used only for residential purposes. For example, if a two storey townhouse has a shop on the ground floor and residential premises on the second floor, a WHS entry permit holder only has a right to enter the shop on the ground floor.

When and where can rights be exercised?

A WHS entry permit holder may only exercise a right of entry during the usual working hours at the workplace.

For all entry purposes a WHS entry permit holder can only exercise a right of entry relating to the area of the workplace¹⁰ where relevant workers work or other work areas that directly affect the health and safety of those workers.

Under the WHS Act, entry rights to consult with and advise workers about WHS matters are not limited to meal times or other breaks like similar entry rights under the *Fair Work Act 2009*¹¹ which restricts when discussions can be held about industrial relations matters. The location for discussions is also not necessarily limited to an area or room within the workplace nominated by the PCBU. However, holding discussions in the normal working environment may not always be safe or appropriate.

WHS entry permit holders are required to comply with a reasonable request from a PCBU¹² to comply with a work health and safety requirement that applies to the workplace (for example, to not enter an exclusion zone around a crane or an area of the workplace where mobile plant is in operation). WHS entry permit holders should also conduct discussions in a way which only involves those workers who wish to participate in the discussions. Where a

⁸ Section 26 of the Fair Work Act 2009 acts to exclude all State or Territory industrial laws for a national system employee or a national system employer. However, section 27 of the Fair Work Act provides that this exclusion does not apply to State and Territory laws dealing with occupational health and safety.

⁹ The requirements not replicated are the requirement not to contravene a condition imposed on the permit issued under the Fair Work Act (s 496) and the requirement to produce the permit issued under the Fair Work Act for inspection (s 497). There are, however, equivalent requirements applying to WHS permits.

¹⁰ **Workplace** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. A **place** includes:

- a vehicle, vessel, aircraft or other mobile structure, and
- any waters and any installations on land, on the bed of any waters or floating on any waters.

¹¹ *Fair Work Act 2009*, s 490.

¹² Under s 128 of the WHS Act a WHS permit holder must comply with any reasonable request by the relevant PCBU or the person with management or control of the workplace.

WHS entry permit holder asks for information from a worker regarding a WHS matter, inspectors should encourage that the worker to be given an opportunity to provide the information without the PCBU present.

The WHS Act sets out a number of rights that entry permit holders may exercise while at a workplace to inquire into a suspected contravention of the WHS Act. These rights do not apply to entry permit holders when exercising their right of entry for the purpose of consulting and advising workers.

WHS entry permit holder obligations

As a visitor at the workplace a WHS entry permit holder must take reasonable care for their own health and safety and ensure that their acts or omissions do not adversely affect the health and safety of other persons. They must also comply, as far as they are reasonably able, with any reasonable site safety instruction given by the relevant PCBU, for example, to wear personal protective equipment or to be escorted. As the WHS entry permit holder is not undertaking any relevant work at the workplace, they would generally not be required to undertake a safety induction, unless unique circumstances or hazards exist at the workplace, such as at a petrochemical plant or a tunnelling site.

Reasonable request by PCBU regarding WHS requirements

The WHS Act requires that a WHS entry permit holder not exercise a right of entry unless he or she has complied with any reasonable request by the relevant PCBU to comply with WHS requirements that apply to the workplace for example, applicable safety induction¹³ or on-site supervision¹⁴ or any other requirement that applies to that type of workplace. A failure to comply with such requests will generally mean that the WHS entry permit holder has no authority to enter or remain at the workplace. However, while immediate compliance with a request may not in all circumstances be found to constitute a failure to comply, courts have said the 'greater may be the concern to safety, the greater may be the need for a person to more immediately comply with a request made'¹⁵.

Courts and tribunals have previously found under industrial and occupational health and safety laws that:

- a request need not be in writing (but it is recommended that this be the case)
- a request must be 'sufficiently certain as to permit compliance'¹⁶
- a request is not deemed unreasonable because an entry permit holder has not been asked to comply with WHS requirements on previous visits to the same workplace

¹³ In *Darlaston v Parker* [2010] FCA 771 it was found that safety induction that was 'imposed for the benefit and safety of all entering the site—be they union officials or others' was a WHS requirement that an entry permit holder should have complied with when requested, as was a request that an entry permit holder come down from scaffolding he had climbed in inquiring into a suspected WHS contravention.

¹⁴ In *Construction, Forestry, Mining and Energy Union v Foster Wheeler Worley Parsons (Pluto) Joint Venture* [2010] FWA 2341 it was found that a requirement that a permit holder be escorted and monitored at all times while on site was an appropriate WHS requirement. In making this finding though the Commissioner noted it was a requirement for all visitors to the site with the legitimate purpose of ensuring site and personnel safety and that the escort did not and could not listen to discussions between the entry permit holder and workers.

¹⁵ *Darlaston v Parker* [2010] FCA 771.

¹⁶ See *Darlaston v Parker* [2010] FCA 771

- a request is not necessarily unreasonable if it is made assertively or authoritatively and in some circumstances it is accepted that there may be a need to be assertive ‘to protect a person from a risk to their own health and safety’, and
- the events taking place at a workplace on the day of entry must be taken into account when determining the reasonableness of a request as well as the nature of the work being carried out at the workplace; the size and location of the workplace and the policies and practices that apply to the workplace.¹⁷

Other legislative requirements

Access to some workplaces is restricted by other legislative requirements and a WHS entry permit holder must comply with a reasonable request by the relevant PCBU to comply with these requirements. For example, security restrictions under the Commonwealth *Aviation Transport Security Act 2004* require screening and clearance of a person before they can gain access to certain areas of an airport.

Notice requirements

When 24 hours notice is required

At least 24 hours (but not more than 14 days) written notice is required to be provided to the relevant person conducting a business or undertaking:

- to inspect employee records held by the relevant PCBU or information held by a person other than the relevant PCBU that are directly relevant to a suspect contravention¹⁸, and
- to enter a workplace to consult and advise workers. There is no requirement in the WHS Act or Regulations for the notice to include information on what matters will be the subject of consultation or advice.

Requiring at least 24 hours notice to inspect or make copies of employee records is consistent with requirements in the *Fair Work Act 2009*¹⁹. An employee record is a record of personal information relating to the employment of an employee, for example, information about an employee’s training or terms and conditions of employment.²⁰ This does not capture records relating to workers who are not employees of the PCBU. Section 148 of the WHS Act prohibits the unauthorised use or disclosure of information or documents obtained under entry to inquire into a suspected contravention. The disclosure of personal information (as for information about employees) is also regulated by other laws including the Commonwealth *Privacy Act 1988*.

When 24 hours’ notice is not required

A WHS entry permit holder can enter a workplace where a relevant worker works to inquire into suspected contraventions of the WHS Act without giving any notice. As soon as is

¹⁷ In *Construction, Forestry, Mining and Energy Union v Foster Wheeler Worley Parsons (Pluto) Joint Venture* [2010] FWA 2341 at 65, it was said that the relevant circumstances to be taken into account included the legitimate interests of the affected employer and occupier and those of the employees and the permit holder as well as ‘the nature of the industry and the size and location of the site, the site policies and practices of the occupier and employers concerning safety and security’.

¹⁸ If seeking access to information held by a person other than the relevant PCBU, the entry permit holder must also give 24 hours written notice to the person from whom the documents are requested.

¹⁹ *Fair Work Act 2009* (Cth), s 495.

²⁰ See definition of ‘employee record’ in *Privacy Act 1988*, s 6.

reasonably practicable after entering a workplace to inquire into a suspected WHS contravention written notice of entry must be provided to the relevant PCBU and the person with management or control of the workplace unless doing so would:

- defeat the purpose of the entry, for example providing notice could result in the destruction, concealment or alteration of relevant evidence, or
- would unreasonably delay the entry permit holder in an urgent case, for example if the WHS entry permit holder had a reasonable belief that workers were being exposed to a hazard that posed a serious and immediate risk to their health and safety and it was necessary to warn them.

For this purpose the ***person with management or control of the workplace*** is the person who is in charge of the premises. This 'person' could be a body corporate or an individual.

Details required in a notice of entry

Entry notices must be in writing and include the details specified in Part 2.4 of the WHS Regulations, including the full name of the entry permit holder; the name of the union that they represent; the section of the Act under which entry to the workplace is proposed; the date of entry or proposed entry and the name and address of the workplace entered or to be entered.

In addition, notice of entry to inquire into a suspected WHS contravention must include, so far as is practicable, the particulars of the suspected contravention. The particulars of the contravention must provide enough information to enable the person with management or control of the workplace (or their representatives) and representatives of the relevant PCBU to determine the scope of the inquiry including general location(s) for example, "suspected contravention in the provision of safe plant within production areas of the workplace". However, if the entry permit holder is acting on a complaint about a suspected contravention from a worker and has been provided with limited information, they may not be able to clearly identify the scope of the contravention in the notice of entry. For example, a worker may call an entry permit holder and report unsecured planks on a section of scaffolding, but not provide further detail on where the unsecured planks are located. In this case, it would be sufficient for the entry permit holder to inform the PCBU that they are acting on a report from a worker about unsecured scaffolding planks, giving the PCBU as much detail as they are able to about the suspected contravention, and notifying the PCBU they may need to look at all of the scaffolding to identify the location of the issue.

An entry permit holder is not required to provide such specific detail that individual workers may be identified (for example it may identify workers if the notice said, "lack of machine guarding on production line one stamping machines"). In other words, it is sufficient that the WHS entry permit holder genuinely held a reasonable suspicion before entering the workplace that the contravention has occurred or is occurring. There is no requirement that the notice specify the provisions of the Act or Regulations, provided that the notice indicates how the legislation is suspected to have been contravened.

This requirement makes entry permit holders accountable for the proper exercise of this right of entry because an inability to provide particulars may call into question the reasonableness of the asserted belief.

If it is not practicable for the WHS entry permit holder to provide a written entry notice on arrival to inquire into a suspected contravention; the WHS entry permit holder may instead write a notation in the visitors/sign-in book. The notation must be written on entry to the

workplace and state the suspected contravention. The notation must provide enough information to enable the person with management or control of the workplace (or their representative) and representatives of the relevant PCBU to determine the scope of the inquiry.

A written notice of entry will still be required to be given as soon as reasonably practicable to both the PCBU and person with management and control of the workplace. However in circumstances where an inspector has been called to the workplace a notice of entry would not be required.

A WHS entry permit holder must not disclose the name of any worker either in the written notice or verbally to a PCBU unless that worker has consented. This protects the privacy of workers who may have reported a suspected WHS contravention to their union and/or requested inquiries to be made. Even if the consent of a worker is given, entry cannot be refused because the worker has not been identified in the entry notice.

Person must not refuse or delay entry of WHS entry permit holder or hinder or obstruct WHS entry permit holder

The WHS Act aims to ensure that WHS entry permit holders are not prevented from properly exercising their rights by prohibiting people at a workplace from taking certain actions.

Under sections 144 and 145 of the WHS Act a person must not:

- without reasonable excuse, refuse or unduly delay entry into a workplace by a WHS entry permit holder who is entitled to enter, for example by refusing entry until the entry permit holder enters an undertaking that would prevent them from discussing particular matters²¹, or
- intentionally and unreasonably hinder or obstruct a WHS entry permit holder in entering a workplace or in exercising any rights at a workplace under the WHS Act, for example, by requiring workers to advise their employer if they wish to participate in discussions with a permit holder²².

In relation to similar duties under previous WHS laws, it has been held that:

- ignorance of right of entry laws in relation to WHS is inexcusable²³
- the ability of union officials to enter premises to investigate suspected breaches of OHS laws is critical in ensuring a safe workplace and refusing and/or unduly delaying entry by union officials shortly after a workplace fatality is a serious contravention of the Act²⁴

²¹ In *Construction, Forestry, Mining and Energy Union v BGC (Australia) Pty Ltd* [2008] AIRC 55 it was held that a company could not refuse entry to permit holders until they signed an undertaking to not discuss with workers employment opportunities that existed outside of that company.

²² See *Somerville Retail Services Pty Ltd v Australasian Meat Industry Employees' Union* [2011] FWA 120; [2011] FWAFB 120 at 42.

²³ *CFMEU v Woden Contractors Pty Ltd* [2011] FMCA 473; *Hogan v Riley & Ors* (No. 2) [2010] 760.

²⁴ *Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union & Aor v Byrne Trailers Pty Ltd & Anor* [2009] FMCA 1192.

- persons with a clear statutory right to enter onto premises for the purpose of protecting the health safety and welfare of persons engaged in work in a workplace should not be treated as trespassers²⁵.

A PCBU obstructing the purported exercise of a right of entry by a permit holder will not be contravening the civil penalty provisions if the permit holder is seeking entry for an extraneous purpose because in such circumstances there is no valid right of entry²⁶.

A PCBU will not be contravening the civil penalty provisions if the WHS permit holder is seeking entry to consult and advise workers and that entry would intentionally and unreasonably disrupt work (see the following section).

WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work

Under section 146, when exercising any right of entry under the WHS Act, a WHS entry permit holder must not intentionally and unreasonably:

- delay, hinder or obstruct any person at the workplace, or
- disrupt any work at the workplace.

A WHS entry permit holder is also prohibited from otherwise acting in an improper manner.

An action that has the effect of intentionally delaying, hindering or obstructing a person, or disrupting any work at the workplace, is one that is done on purpose, 'usually with some degree of premeditation, or at least in circumstances where the perpetrator may have reasonably foreseen that the concurrent effect of his or her actions would be likely to hinder or obstruct'²⁷. It is not enough if the act has the effect of delaying, hindering or obstructing a person or disrupting work if it is not deliberately designed to do so, unless it is reasonably foreseeable that the act would have this effect.

The test of whether something is unreasonable is whether, at the time it was done, it was unreasonable in all the circumstances. An object of the WHS Act, 'encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment' also needs to be considered.

Intentionally and unreasonably delay, hinder or obstruct any person at the workplace

Court and tribunal decisions dealing with similar prohibitions under industrial relations and occupational health and safety laws have found an entry permit holder had contravened the right of entry provisions of the now repealed Commonwealth *Workplace Relations Act 1996* by intentionally and unreasonably hindering and obstructing persons from carrying out concrete pouring at the workplace.²⁸

²⁵ See *Workcover Authority of New South Wales v Ourcorp Pty Ltd* [2006] NSWIMC 74 where two authorised officials were directed to leave premises by a management representative despite having informed him that they were duly authorised and were acting or seeking to act in the exercise of their statutory functions.

²⁶ See judgment of Grey J in *Australian Federation of Air Pilots v Australian Airlines Limited* [1991] 36 IR 194 at 240-5, cited in *Construction, Forestry, Mining and Energy Union v BGC (Australia) Pty Ltd* [2008] AIRC 55 at 192.

²⁷ See *Willow Ware Australia Pty Ltd v Tony Mavromatis* - PR927866 [2003] AIRC 152 at 20.

²⁸ See *Lovewell v Pearson* [2011] FMCA 102 and *Standen v Feehan* [2008] FCA 1574; [2008] 177 IR 276.

Intentionally and unreasonably disrupt work

Because of the safety context, there is no blanket prohibition in the WHS Act on the disruption of work. However a WHS entry permit holder must act reasonably when exercising any of their specific rights of entry under the WHS Act and must not intentionally and unreasonably disrupt work,

The WHS Act, unlike the *Fair Work Act 2009*, does not limit the right of entry to consult with and advise workers about WHS matters to meal times or other breaks. This however should not be regarded as a right to enter a workplace without regard to the effect on the work being carried out at the workplace. When considering whether an entry permit holder has acted reasonably, all relevant circumstances should be taken into account, for example, whether there was any urgency in the need for consultations with relevant workers, whether the relevant PCBU was consulted with a view to agreeing on a time for the consultations or whether the entry took place at a time when critical work was disrupted and the consultations could reasonably have taken place at another time that was acceptable to both the PCBU and the WHS entry permit holder.

For example, if a PCBU receives notice of entry, they may advise the WHS entry permit holder, on reasonable grounds, that the proposed entry will unreasonably disrupt work because of the time and/or manner in which entry is to be exercised and propose an alternative time. If the WHS entry permit holder proceeds with entry at the original notified time knowingly disrupting the work without explaining why the proposed time is not acceptable or without trying to negotiate an alternate time that is agreed to by both parties, they will have breached their entry rights by intentionally and unreasonably disrupting work at the workplace.²⁹

A person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by a WHS entry permit holder who is entitled to enter the workplace. A PCBU cannot refuse or delay entry to consult and advise workers solely on the grounds that it is outside of meal times or other breaks in work. A PCBU will need to be able to demonstrate that the refusal or delay to entry is reasonable because the disruption to work would be unreasonable.

The events taking place at the workplace on the day of entry need to be taken into account when determining whether or not the disruption to work is unreasonable. Relevant considerations in determining whether or not the disruption caused by the entry would be unreasonable could include:

- Whether the consultations would disrupt the whole or a substantial part of the work. For example, consultation with all workers at a workplace at the same time, in particular if the PCBU has put forward alternative arrangements which enable consultation to occur in a staged manner which minimises or eliminates disruption to work.
- Whether the consultations will impact on time critical work (e.g. concrete pours), particularly busy working periods (e.g. a bank at lunch time) or result in failure to meet contractual deadlines (e.g. the dispatch and delivery of a product).
- Whether, having regard to all relevant circumstances, consultations are unduly lengthy or protracted, either on a single day or over a period of time.
- Whether consultations with some workers will prevent other workers who do not wish to participate in the consultations and discussions from working. The involvement of safety critical workers or workers with specialised knowledge and expertise in consultations may mean that other workers cannot undertake their work. For example, if a dogger is

²⁹ For a discussion on what may be considered 'intentional' see *Willow Ware Australia Pty Ltd v Tony Mavromatis* - PR927866 [2003] AIRC 152 at 20.

directing a crane that is lifting tilt-up panels, the work being performed by the crane driver and rigging workers would have to cease.

Otherwise acting in an improper manner

Precedent found under industrial relations laws can also be relied on to provide guidance on “otherwise acting in an improper manner”. It has been held that the rights given for the purpose of ensuring that workplace safety is protected come with responsibilities. The ability to enter without notice upon another’s premises is a privilege denied to most. It is one which should be exercised with due acknowledgment of the rights of the occupier. This requires restraint, but not lack of diligence and good manners³⁰. For example, it has been held that a failure of a WHS entry permit holder to provide their entry permit for inspection when requested, as is required in section 125 of the WHS Act, could be regarded as acting in an improper manner because it indicates an intentional or reckless disregard for the requirements imposed on an entry permit holder.³¹

Resolving disputes about right of entry

If a dispute arises about a right of entry that cannot be resolved between the parties themselves, either the entry permit holder or another party to the dispute (e.g. the relevant PCBU or the person with management or control of the workplace) can ask the Regulator to send an inspector to the workplace to assist in resolving the dispute. A dispute might arise, for example, if a WHS entry permit holder believes that a PCBU is unreasonably refusing them entry to a workplace or if a relevant PCBU thinks that a WHS entry permit holder is unreasonably and intentionally disrupting work at a workplace they have entered.

Where an inspector is appointed to assist in resolving a right of entry dispute, the inspector is empowered to make a determination about whether a WHS entry permit holder has a right to enter the workplace. This includes being able to direct a PCBU to immediately allow the WHS entry permit holder to enter the workplace, if the inspector is reasonably satisfied the WHS entry permit holder has a right to enter.

While at the workplace an inspector can also exercise their compliance powers, including investigating whether or not there has been a contravention of any part of the WHS Act.

Assistance from an inspector is not mandatory under the WHS Act and a party may choose instead to apply directly to the Queensland Industrial Relations Commission to deal with the dispute. The QIRC has the power to address the dispute in any manner it thinks fit, including through mediation, conciliation or arbitration.

However, where an inspector has been appointed to assist in resolving a right of entry dispute, parties may also apply to the QIRC to have the inspector’s decision reviewed. In this instance, the QIRC may review a decision made by an inspector and either confirm, vary or set aside the inspectors decision.

³⁰ *ABCC v Mitchell & Ors* [2011] FMCA 622

³¹ See *Australian Building and Construction Commission - re Application for orders for abuse of system* [2007] AIRC 717; *Addison* (1998) 85 IR 308.