



CTI Lawyers Webinar Series: Session 6

Right of Entry

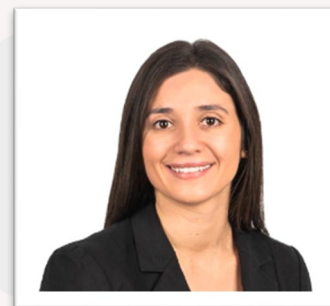




Webinar Agenda

1. Right of Entry – THE CODE
2. Union Permit Holders
3. Entry to Investigate Suspected Contraventions
4. Entry to hold Discussions
5. Entry for WH&S purposes
6. Summary

Presenter:



Marina Galatoulas



**A UNION OFFICIAL DOES
NOT HAVE THE POWER
TO CLOSE A SITE.**



1. Right of Entry – THE CODE



The Code

1. Entry to premises where building work is performed:

- A code covered entity must, in relation to premises where building work is performed, comply with all laws of the Commonwealth and each relevant State and Territory to which the entity is subject to and that give a permit holder a right to enter premises where work is performed.
- Examples
 1. The FW Act.
 2. Work health and safety laws.



The Code

2. A code covered entity must, so far as is reasonably practicable, ensure that:

- a. Entry by an officer of a building association to premises where building work is performed must be for a purpose for which a right of entry could be exercised under Part 3-4 of the FW Act or a relevant work health and safety law; and

Example:

A contractor could permit entry for the purposes of holding discussions with workers where the permit holder provides the requisite notice and complies with all requirements in the FW Act. However, inviting an officer of a building association to enter the site other than as could be permitted by the right of entry requirements would breach this code of practice.



The Code

- b. When an officer of a building association seeks to enter premises, the officer must strictly comply with all applicable legislative requirements in Part 3-4 of the FW Act or a work health and safety law, including permit and notice requirements.

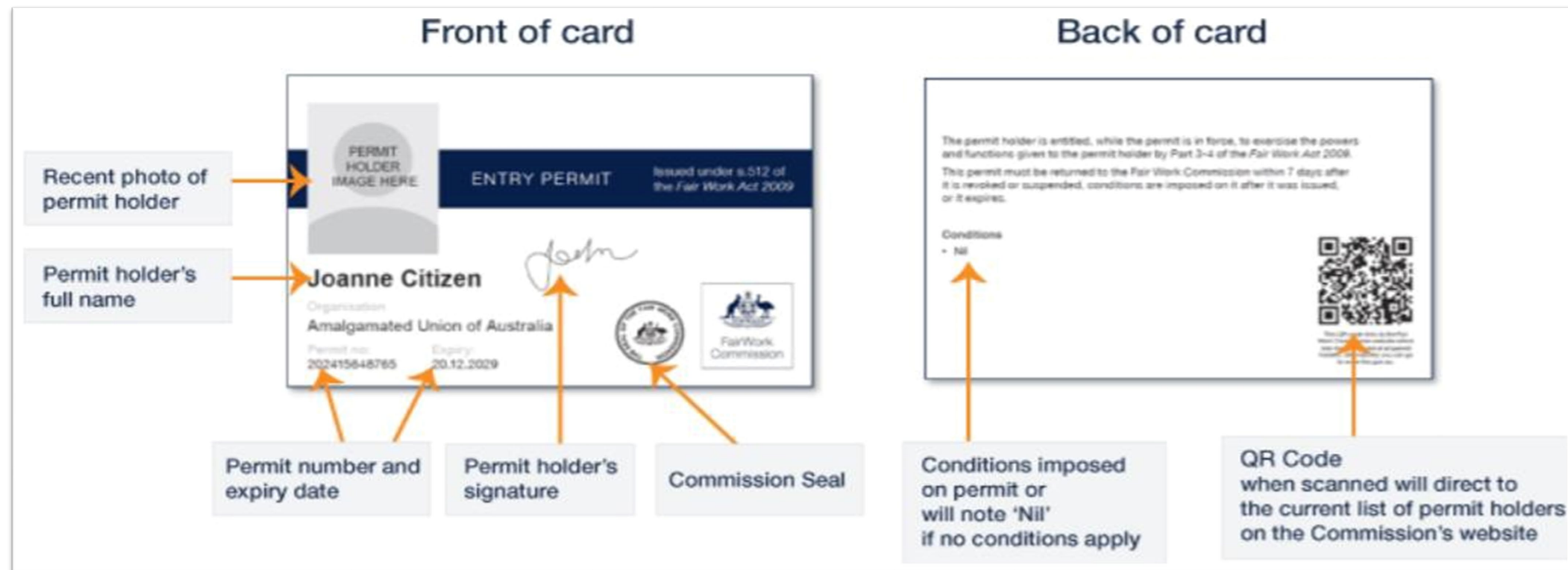
Note: Officer is a defined term in the Act and includes officials and employees of a building association.



2. Union Permit Holders



Right of Entry Permit Requirements





Requirements of Notices of Entry

- Entry notices must specify the:
 1. Site to be entered;
 2. Date of entry;
 3. Union to which the permit holder belongs; and
 4. Section of the Act authorising the entry.



Entry by Union Official – 3 reasons:

- Entry by a union official may be exercised for 3 reasons:
 1. To investigate a suspected breach of employment obligations;
 2. To hold discussion with members or prospective members;
 3. To enter under State WH&S legislation including to investigate breaches and suspected breaches of WHS legislation or to hold discussion.
- Union officials must provide 24 hours written notice (except for WH&S entry) to occupier of premises and any affected employer.
- Entry is confined during working hours



3. Entry to Investigate Suspected Contravention



Inspecting a Suspected Contravention

Entry to investigate suspected breach of FW Act, modern award, agreement, workplace determination and FWC order as applicable

- Union official must hold a valid Right of Entry Permit issued by FWC.
- Union official must provide between 24 hours and 14 days written notice.
- The notice must specify the section of the legislation that entitles the official to enter the premises.
- The notice must be given to the occupier of the premises and any affected employer.
- www.fwc.gov.au



Inspecting a Suspected Contravention

- The notice must contain a declaration that the union is entitled to represent the affected member(s), and specify the provision of the union's rules that entitle the union to represent the member(s).
- Union official may hold discussions with member(s) and those eligible to be member(s):
 - Held during meal or other breaks; or
 - Employer can specify particular route and room.
- Union official must comply with the on-site WH&S requirements.



Inspecting a Suspected Contravention

- The notice must also specify the particulars of the suspected breach, contain a declaration that the union is entitled to represent the affected member(s) and specify the provision of the union's rules that entitle the union to represent the member(s).
- The suspected breach must apply to member(s) or eligible member(s) of the officials union who perform work on the site.
- Non union member(s) must provide the union official with a written authority to view their records.
- Order may be obtained from FWC to view non-union member(s) records if no written authority provided by employee.



When on premises, the permit holder can:

- Inspect any work or process relevant to the contravention.
- Interview any person about the contravention:
 - That agrees to be interviewed; and
 - Whose industrial interests the permit holder's organisation is entitled to represent.



Do's and Don'ts

The Permit Holder can:	The Permit Holder cannot:
<ul style="list-style-type: none">Inspect and make copies of any record or document (other than that of a non member) that relates to the contravention and;<ul style="list-style-type: none">Is kept on the premises; orIs accessible from a computer that is kept on the premises.	<ul style="list-style-type: none">Use or disclose a document or information for a purpose not related to the suspected contravention or rectifying the contravention,
<ul style="list-style-type: none">Give written notice to inspect documents and records not kept on the premises within 14 days.	<ul style="list-style-type: none">Exceptions to above:<ul style="list-style-type: none">If disclosure:<ul style="list-style-type: none">Prevents health or safety threat;Relates to unlawful activity;Is required or authorised by law.



4. Entry to Hold Discussions



Entry to Hold Discussions with Employees

- Union official must hold a valid Right of Entry Permit issued by FWC.
- Union official must provide between 24 hours and 14 days written notice.
- The notice must specify the section of the legislation that entitles the union official to enter the premises.
- The notice must also specify purpose of entry.
- Permit holder can only hold discussions during meal times and other breaks.



Entry to Hold Discussions

- A person must not:
 - Refuse
 - Unduly delay
 - Hinder or obstruct
- a permit holder.
- A permit holder must give the OCCUPIER of the premises between 24 hours and 14 days notice before the entry.
- Must show occupier of the premises entry notice and entry permit.



Entry to Hold Discussions

Permit holder must hold discussions in:

- Place agreed with the occupier; OR
- If no agreement: in any room or area where one or more eligible persons take their meal or other breaks that is provided by the occupier for the purpose of taking meals or other breaks.
- Permit holder must comply with occupier's reasonable request to take particular route to the meeting.

The permit holder must comply with any reasonable request by the occupier of the premises for the permit holder to comply with an occupational health and safety requirement that applies to the premises.

When can Entry be Refused?

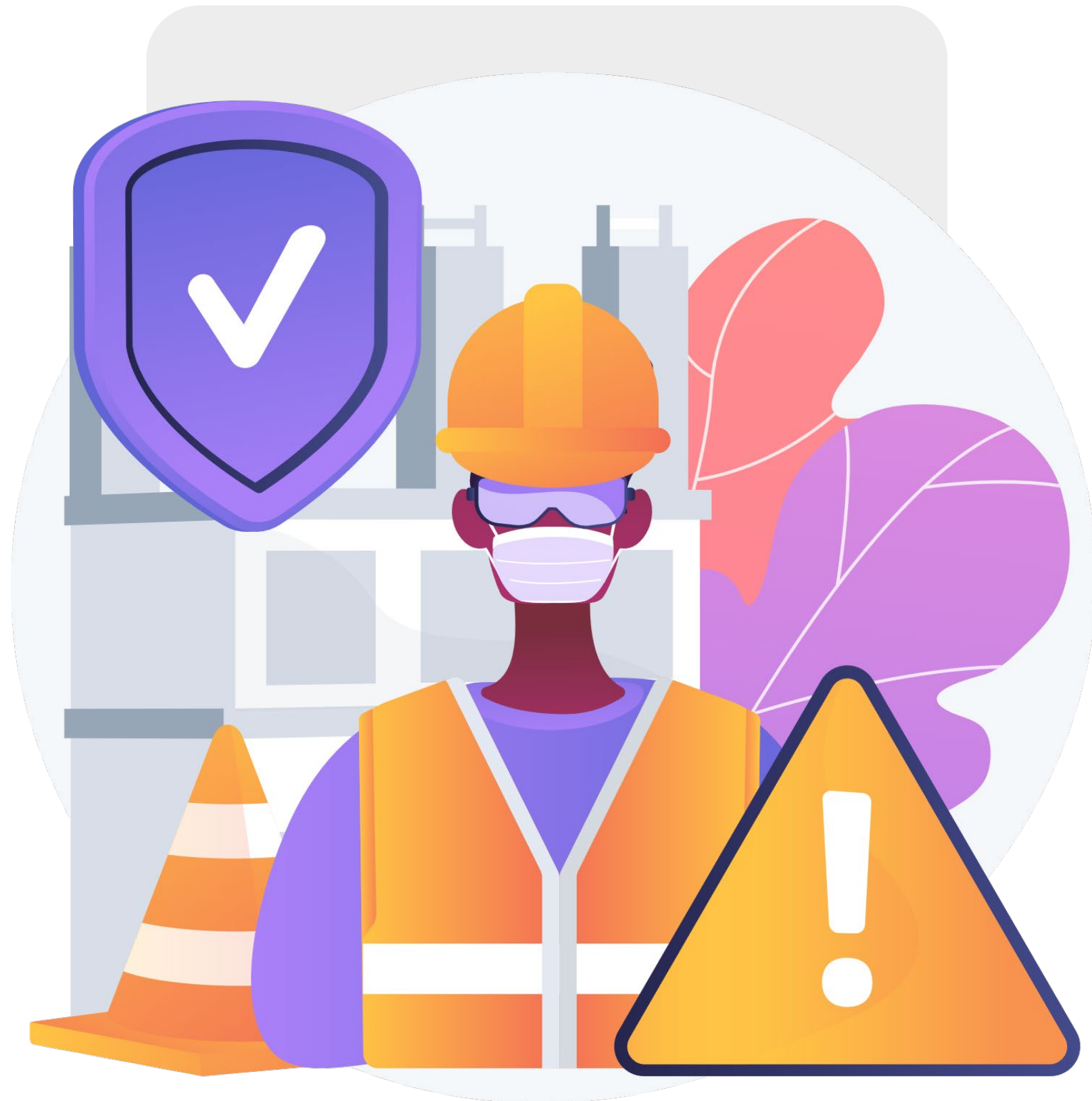
IF A UNION OFFICIAL FAILS TO PROVIDE A VALID ENTRY NOTICE, YOU HAVE THE RIGHT TO REFUSE ENTRY OR ASK THE OFFICIAL TO LEAVE THE SITE IF THEY DON'T PROVIDE AN ENTRY NOTICE THAT MEETS THE REQUIREMENTS (UNLESS THEY ARE ENTERING TO EXERCISE AN WHS RIGHT) OR DON'T PRODUCE A FEDERAL PERMIT/ENTRY NOTICE WHEN ASKED ON SITE.

WARNING: IF THE UNION OFFICIAL PROVIDES A VALID ENTRY NOTICE, YOU CANNOT REFUSE OR UNDULY DELAY ENTRY.



What if a union official is on site and does not have a right to enter?

- You should make it clear to the union official that he/she does not have your consent to enter the site and ask the official to leave.
- You may also contact the local police to provide assistance if a trespass is occurring.



5. Entry for WH&S Purposes



Entry for WH&S Purposes

- Union official must hold a valid Right of Entry Permit issued by FWC and an authority under WH&S Act.
- Union official must produce Permit and Photo Identification.
- Union official not required to provide 24 hour notice to enter site to investigate a SUSPECTED breach of WH&S laws.
- Union official should identify suspected breach (Onus is on the Union Official to prove suspicion is reasonable).
- Union official must comply with Company on-site WH&S requirements.



Inspecting a Suspected Contravention of WH&S Act

- Union official must give 24 hours written notice to call a meeting of members regarding WH&S matters and / or view employment records relevant to WH&S not held by PCBU.
- Union official must be escorted while on site at all times.
- Union official can warn any person exposed to serious risk from exposure to hazard.



Inspecting a Suspected Contravention of WH&S Act - Union officials can:

- Inspect any work system, plant, substance or structure;
- Inspect employee records;
- Consult with workers in relation to a suspected contravention;
- Consult with relevant PCBU;
- Require PCBU to allow Union Official to inspect and copy relevant documents.



Inspecting a Suspected Contravention of WH&S Act

- Union Official can only enter a workplace and exercise powers under the WH&S Act where a worker:
 - Is a member or eligible to be a member of the Official's Union;
 - Whose Industrial Interests the Official is entitled to represent;
 - Works at that workplace.
- Union Official must as soon as reasonably practicable on entering workplace give notice:
 - To PCBU;
 - Person with management or control of the workplace.
- Except if defeats purpose of entering workplace or unreasonably delays



Inspecting a Suspected Contravention of WH&S Act

- Union Official can only enter:
 - During “usual working hours” at the workplace; and
 - Only in relation to area where relevant workers work or that directly affects the health and safety of those workers.
- Union Official must comply with reasonable request of PCBU or person with management or control of the workplace to comply with:
 - WHS requirements; and
 - Legislated requirement.

Entry to Consult and Advise Workers

- A WHS entry permit holder may:
 - Enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, one or more relevant workers who wish to participate in discussions; and
 - After entering the workplace for this purpose, warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk.
- The WHS entry permit holder must give notice of a proposed entry to the relevant person conducting a business or undertaking. Such notice must be given during the usual working hours at least 24 hours, but not more than 14 days, before the entry.



6. Summary



Summary

RIGHT OF ENTRY PURPOSE

FOR WHS PURPOSES (WORK, HEALTH AND SAFETY ACT)

1. Official exercises right of entry under WHS Act in so far as it relates to WHS
2. Official has a federal right of entry permit;
3. Official has authority issued by relevant state body;
4. Worker is a union member or eligible to become a member
5. No entry notice required.

TO INVESTIGATE CONTRAVENTIONS (FAIR WORK ACT)

1. Breach of the Fair Work Act
2. Breach of a Fair Work Instrument (Award, Agreement or FWA Order).

TO HOLD DISCUSSIONS (FAIR WORK ACT)

1. At least one employee is eligible to be represented by the union.



CTI LAWYERS

Construction Trade Industry Lawyers



1300 361 099



constructionlawyersydney.com



law.clerk@neca.asn.au

Disclaimer: This presentation does not constitute legal advice and reliance should not be placed upon material presented to solve a specific industrial relations issue.



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