Right of Entry

Employer Guide

Australian Chamber of Commerce and Industry

Canberra BUSINESS CHAMBER



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1. Introduction

1.1 The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (**Closing Loopholes Act**) introduced a new ability for a union official to enter a premises without the requirement of a permit in circumstances where they are assisting a Health and Safety Representative (HSR). Additionally, the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* (**Closing Loopholes Act No.2**) introduced discrete changes to existing laws regarding the right of union officials to enter a workplace without notice to an employer.

1.2 The changes allow any official from a registered organisation to enter a workplace without a permit if they are doing so to assist a health and safety representative (**HSR**). The assisting person must still comply with the *Fair Work Act 2009* (**FW Act**) with respect to their conduct when attending a premises.

1.3 The changes also permit union officials to apply to the Fair Work Commission (**FWC**) to obtain 'exemption certificates' permitting the officials to enter a workplace to investigate suspected contraventions of the FW Act without advance notice, if the FWC reasonably believes that advance notice of the entry would hinder an effective investigation into the suspected contraventions. This has broadened the circumstances in which these types of exemption certificates can be obtained.

1.4 Taking into account these changes, the Australian Chamber of Commerce and Industry (**ACCI**) is circulating this guide, summarising right of entry laws and providing employers with guidance as to how they might handle rights of entry activities in different kinds of circumstances.

1.5 For the benefit of all readers, references to work health and safety (**WHS**) also includes occupational health and safety (**OHS**), to account for language used in all jurisdictions.

IMPORTANT NOTE: New right of entry provisions come into effect on 1 July 2024

Outline of this guide

1. Summary of current laws
2. Guide for employers to follow in handling right of entry activities
3. FAQs

2. Summary of laws

Key takeaways

1. Union officials can enter premises to hold discussions, investigate suspected contraventions of workplace laws or investigate suspected contraventions of WHS laws.
2. Notice periods for entry differ from 24 hours (for holding discussions) to no advance notice in the case of suspected contraventions of WHS laws.
3. Union officials can only enter if they hold an entry permit, unless the official is assisting a health and safety representative on request under a provision of a State or Territory WHS law.

What is right of entry?

2.1 Right of entry refers to rights that union officials can exercise to enter the workplace of an employer. To enter, the officials must hold an entry permit.

2.2 A union official is generally an employee of the union, who is elected as an officer of the union and registered under the *Fair Work (Registered Organisations) Act 2009*.

2.3 Entry is only permitted for three categories of activities:

a. to hold discussions with union members or employees who are eligible to be members of the union;1

b. to investigate suspected contraventions of workplace laws affecting members of the union;2 or

c. to investigate suspected contraventions of State or Territory work, health and safety laws pertaining to members or employees who are eligible to be members of the union (**WHS laws**).3

2.4 In all of the above cases, the employees/members identified above must either be members or alternatively must be eligible to be members — that is, their work must be covered by the union's *"coverage rules"* — if the union official is going to exercise one of the above rights of entry. The coverage rules are a set of rules each union has that identify who can join the union.

2.5 A union's coverage rules can be found here:
https://www.fwc.gov.au/registered-organisations/find-registered-organisation

TCF Workers

2.6 There are special rights and obligations for right of entry relating to textile, clothing and footwear industry workers. These rules are not covered by this guide.

1 FW Act s484 FW
2 Act s481 FW Act
3 s494-499

When can a union official enter a premises?

2.7 Aunion official can only enter a premises if they meet the 3 following requirements:



What is a FW Act entry permit?

2.8 FW Act entry permits are issued by the FWC.

2.9 They are issued after an application. To apply, a person must be:4

a. an elected officer of a union or an employee of a union, and

b. a 'fit and proper person'.

2.10 When considering whether a person is a 'fit a proper person' the FWC must consider:5

a. whether the official has received appropriate training about the rights and responsibilities of a permit holder;

b. whether the official has ever been convicted of an offence against an industrial law;

c. whether the official has ever been convicted of an offence against a law of the Commonwealth, a State,

a Territory or a foreign country, involving:

i. entry onto premises; or

ii. fraud or dishonesty; or

iii. intentional use of violence against another person or intentional damage or destruction of property;

d. whether the official, or any other person, has ever been ordered to pay a penalty under this Act or any other industrial law in relation to action taken by the official;

e. whether a permit issued to the official under this Part, or under a similar law of the Commonwealth (no matter when in force), has been revoked or suspended or made subject to conditions;

f. whether a court, or other person or body, under a State or Territory industrial law or a State or Territory OHS law, has:

i. cancelled, suspended or imposed conditions on a right of entry for industrial or occupational health and safety purposes that the official had under that law; or

ii. disqualified the official from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under that law;

iii. any other matters that the FWC considers relevant.

2.11 The Commission can revoke, suspend, or impose conditions on an entry permit. For instance, if conduct arises that indicates a person is not a 'fit and proper person' to hold an entry permit, the FWC might revoke the permit.

4 FW Act s512
5 FW Act s513

What is a WHS Act entry permit?

2.12 A WHS Act entry permit is a permit issued by State regulatory bodies (usually the industrial relations tribunal in each State) to union officials.

Entry notice requirements

2.13 Notice requirements differ depending on the type of entry right being exercised. The different notice requirements are outlined overleaf.6

Entry to hold discussions	24 hours notice of entry to be provided, but no more than 14 days notice to be given
Entry to investigating FW Act suspected contraventions	24 hours notice of entry to be provided, unless an exemption certificate has been obtained (see discussion further below)
Entry to investigation WHS Act suspected contraventions	Under State/Territory WHS laws, no advance notice is required, however, notice is to be provdied once the holder arrives at the site.

What should be in an entry notice?

2.14 For entries to hold discussions or investigate suspected contraventions of the FW Act, the notice must:7

a. state the premises to be entered;

b. state the date of entry;

c. state the section of the FW Act that authorises the official to enter the site;

d. contain a declaration by the official that they are a right of entry permit holder who is entitled to represent the interests of an employee on the site; and

e. state the provision of the union's rules that entitles the union to represent the relevant employees.

WHS entry notices

2.15 The above requirements do not apply to entries to investigate suspected WHS Act breaches.

2.16 In these cases, State/Territory WHS laws specify what needs to be notified to employers when a permit holder enters a premises.

2.17 These laws generally require the following notice to be given as the official arrives (or as soon as practicable after arriving) at a worksite. The Notices are generally required to set out:8

a. the full name of the official and the name of the relevant union;

b. the section of the WHS Act under which the official is entering the workplace;

c. the name and address of the workplace entered or proposed to be entered;

d. the date of entry or proposed entry;

e. that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace;

f. the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and

g. that the suspected contravention relates to, or affects, that worker.

6 FW Act s513
7 FW Act, s513
8 There are some minor variations jurisdiction to jurisdiction

Exemption certificates

2.18 Previously, a union official could apply to the FWC to obtain an exemption certificate, allowing the official to enter a site to investigate suspected contraventions of the FW Act without advance notice, provided that the FWC reasonably believed that the advance notice of the entry might result in the destruction, concealment or alteration of relevant evidence.9

2.19 Under the new reforms, the circumstances in which an exemption certificate can be issued have been broadened to also include circumstances where the FWC is satisfied that:10

a. the suspected contravention relates underpayment of wages of a member of the union (who the union is eligible to represent); and

b. the relevant member works on the premises being entered; and

c. there is a reasonable belief that advance notice of entry would hinder an effective investigation into the suspected contravention.

The Exemption Certificate

The exemption certificate will be issued by the Fair Work Commission, bearing the following logo on the top of the certificate:

It will set out:

- the premises to which it relates;
- the union to which it relates;
- the day or days on which entry may occur;
- the particulars of the suspected contravention;
- that the entry is authorised by section 481 of the FW Act; and

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2.20 Where an exemption certificate is issued, the union official must, either before or as soon as practicable after entering the premises, give a copy of the certificate to:11

a. the occupier of the premises or another person who apparently represents the occupier; and

b. any affected employer or a person who apparently represents the employer if the employer is not on the premises.

9 FW Act s519
10 FW Act s510 as amended by Schedule 1, Part 10 of the Closing Loopholes Act No.2
11 FW Act s487

What can a union official do once on the premises?

2.21 A union official's powers when they enter vary depending on the right of entry being exercised:12

Entry to hold discussions	- Hold discussions with relevant employees during meal or break times. - The discussions should take place in an agreed place. - If agreement can't be reached, the discussions can be held in the room or area where employees ordinarily take their meals.
Entry to investigate FW Act suspected contraventions	- Inspect any work, process, or object relevant to the suspected breach. - Interview someone about the suspected breach (if the person agrees to be interviewed and the permit holder's union is entitled to represent them). - Inspect and make copies of relevant records or documents. - Serve a notice on the occupier or affected employer to produce records or documents at a later date.
Entry to investigate WHS Act suspected contraventions (generally — there are slight variations from jurisdiction to jurisdiction)	- Inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention. - Consult with relevant workers in relation to the suspected contravention. - Consult with the relevant businesses relating to the contravention. - Require an employer or occupier to allow the permit holder to inspect and make copies of any document directly relevant to the contraventions and that: • is kept at the workplace; or • is accessible from a computer that is kept at the workplace - Warn any person whom the permit holder reasonably believes to be exposed to a serious risk to their health and safety arising from an immediate or imminent exposure to a hazard.

12 FW Act s483(b), FW Act s486

When a person does not require a permit

2.22 A person (assisting person) does not require a permit when they have been requested by an HSR to assist that HSR in exercising their power or performing a function. This means that there are occasions where a union official, or any other union employee, may be granted access to a worksite or premises without requiring a permit to do so.

2.23 The Closing Loopholes Act introduced subsections 494(4) and (5), stipulate that the request for assistance must be made under a provision of a State or Territory WHS law equivalent to section 68(2)(g) of the Work Health and Safety Act 2011 (Cth). Section 68(2)(g) states that:

'In exercising a power or performing a function, the health and safety representative may whenever necessary, request the assistance of any person.'

2.24 The State and Territory equivalents are as follows:

S TAT	INSTRUMENT	SECTIO
E	*Work Health and Safety Act 2011* (NSW)	N
NSW	*Occupational Health and Safety Act 2004* (Vic)	68(2)(g)
VIC	*Work Health and Safety Act 2011* (Qld)	58(1)(f)
QLD	*Work Health and Safety Act 2012* (SA)	68(2)(g)
SA	*Work Health and Safety Act 2020* (WA)	68(2)(g)
WA	*Work Health and Safety Act 2012* (Tas)	68(2)(g)
TAS	*Work Health and Safety Act 2011* (ACT)	68(2)(g)
ACT	*Work Health and Safety (National Uniform Legislation) Act 2011* (NT)	68(2)(g)
NT		68(2)(g)

2.25 Employers should familiarise themselves with the powers and functions of HSRs in their workplace. Given the wording of the WHS laws, it is reasonable to assume that the assisting person is only allowed on a premises to assist the HSR in performance of their functions or exercise of their powers. If the assisting person is engaging in any other activity, they cease to be exempt by section 464(4), and may reasonably be requested to leave the premises.

2.26 Section 494(5) confirms that a person assisting an HSR is still bound to behave in accordance with the FW Act while they are on premises. An assisting person must:

a. comply with reasonable requests by the employer to comply with an occupational health and safety requirement that applies to the premises;

b. not hinder or obstruct any person, or act in an otherwise improper manner;

c. not use or disclose information or a document that has been obtained while giving assistance other than for a purpose related to the exercise or performance of the powers or functions of the HSR;

d. not make misrepresentations, either intentionally or recklessly.

2.27 An employer who believes that an assisting person has contravened any of the above should seek independent legal advice. A contravention of the above can attract a civil penalty for the assisting person.

2.28 An employer is not able to refuse or unduly delay an assisting person entry to the premises, nor can an employer intentionally hinder or obstruct the assisting person from the role of assisting the HSR.

Behaving safely on premises

2.29 The permit holder, or an assisting person, 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.13

2.30 This means that employers can direct premises attendees to walk in designated safe walkways, wear PPE or otherwise comply with site safety requirements in order to be granted access to a site.

Union official obligations

2.31 Permit holders or an assisting person, must not:14

a. intentionally hinder or obstruct any person or act in an improper manner;

b. fail to follow a reasonable request to comply with applicable WHS requirements;

c. misrepresent (intentionally or recklessly) the authority and rights that they have under the FW Act (they must not give the impression that something they are doing is authorised by the FW Act right of entry provisions when it is not);

d. use information or documents obtained (by a permit holder) in the investigation of a suspected breach for a purpose not related to the investigation or rectifying the suspected breach (with some exceptions).

2.32 In addition, permit holders or an assisting person must not enter any part of the premises that is mainly used for residential purposes.

Employer obligations

2.33 Employers and occupiers must not:15

a. refuse or unduly delay entry to a permit holder or assisting person if they are entitled to enter the premises;

b. refuse or fail to comply with a permit holder's or assisting person's lawful request for records or documents; or

c. intentionally hinder or obstruct a permit holder or assisting person who is exercising their rights.

13 FW Act s491 and s499 Part
14 3-4, Division 4, FW Act Part
15 3-4, Division 4, FW Act

3. Guide to follow when a union official seeks to enter a site

The Guide

The below guide sets out 8 steps that an employer can follow to responsibly handle right of entry activities and disputes pertaining to right of entry. It is general in nature and subject to consideration of the circumstances at the time.

A number of the matters discussed below could give rise to disputation with relevant unions.

Accordingly, specific and urgent legal advice should be obtained prior to refusing unions access to a site through guidance given in the below protocol.

Step 1 — Is the official a permit holder?

First, check to see whether the official has a right of entry permit. If the person is attending the premises to assist an HSR in the performance or exercise of a function or power, a permit is not required.

If they don't have a permit, and they are not assisting an HSR to perform or exercise a function or power, consider refusing access to site.

Step 2 — Why is the official entering the site?

Find out which category of entry right is being exercised. Is it:

- to hold discussions with members/persons eligible for membership?
- to investigate a breach of the Fair Work Act?
- to investigate a breach of the WHS Act?

If the reason does not relate to any of the above, consider refusing access to site.

In the instance of an assisting person attending the premises, ensure that the HRS has articulated the power or function they are exercising or performing. Ensure that the assisting person is aware that their attendance is contingent on their assistance of the HSR, and that they are not permitted to engage in any other activities.

Step 3 — Has the right notice been given?

Holding discussions/investigation breaches of FW Act

If the union official is entering to hold discussions or to investigate a breach of the Fair Work Act, the official must give 24 hours' notice before entering the site (unless an exemption certificate is presented). The notice must:

- state the premises to be entered;
- state the day of the entry;
- state the section of the Fair Work Act that authorises the official to enter the site;
- contain a declaration by the official that they are a right of entry permit holder who is entitled to represent the interests of an employee on the site; and
- state the provision of the union's rules that entitles the union to represent the relevant employees.

If a notice satisfying all of the above requirements has not been given in writing, consider refusing access to site.

Alleged WHS breaches

24 hours' notice is not needed for entries related to suspected breaches of the WHS Act.

However, a Notice is still usually required by State/Territory WHS laws setting out matters such as the following:

- the full name of the official and the name of the relevant union;
- the section of the State WHS Act under which the official is entering the workplace;
- the name and address of the workplace entered or proposed to be entered;
- the date of entry or proposed entry;
- that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace;
- the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and
- that the suspected contravention relates to, or affects, that worker.

If a notice satisfying all of the above requirements has not been given in writing, consider refusing access to site.

Step 4 — Determine who the official is meeting with

Depending upon the reason why the union official is entering, the union official can only exercise rights of entry to meet with certain employees as follows:

Purpose of entry	Persons who can be spoken to
Hold discussions	Members or employees who are eligible to be members of the union
Investigate WHS Act breaches	Members or employees who are eligible to be members of the union
Investigate FW Act breaches	Members only

In all cases, the union's coverage rules must permit the employees to be eligible to be members of the union.

Step 5 — Permit entry only to certain locations (holding discussions only)

- Where entry is to hold discussions, the union should be directed to an area to meet with the relevant employees. The area can be any place the employer and the union agree to the meeting taking place.
- If no agreement can be reached, then the area must be the place where employees ordinarily take their meals.
- Where the entry is to investigate suspected contraventions of the FW Act or the WHS Act, the union official can investigate areas of the workplace necessary to enquire into the contravention.

Step 6 — Meetings should not stop work (holding discussions only)

- Employers are not obliged to tell employees that the union official is onsite or direct employees to meet with the union official. Their only obligation is to take the official to the agreed meeting area or if there is no agreed meeting area, the meal area.
- Additionally, when union officials enter to hold discussions, the union official cannot prevent employees from working. This means that any employees who cease working to speak with the union official should be directed to return to work. Employees can, however, speak with the union official during scheduled tea or lunch breaks.
- However, where union officials enter to investigate breaches of the FW Act and WHS Act, they can interview relevant employees during work time if it is directly relevant to the breach.
- Importantly, generally under State/Territory WHS Laws, only an employee Health and Safety Representative (as opposed to a permit holder and/or a union official), can direct employees to cease work if:

  - he or she has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety; and which
  - emanates from an immediate or imminent exposure to a hazard.

- Health and Safety Representatives are persons elected by their work group to represent the workers as their representative for the purposes of the relevant State/Territory WHS laws.
- Additionally, under both the FW Act and State/Territory WHS laws, workers may cease or refuse to carry out work if they have a reasonable concern about an imminent risk to their health and safety.
- However, if a worker ceases or refuses to perform work without the above conditions being satisfied, and/or at the direction of a person who is not a duly appointed Health and Safety Representative, this could constitute unlawful industrial action under the FW Act. Where unlawful industrial action occurs, employers are obliged to:
- Not pay the employee during the action; and
- Withhold at least 4 hours pay, even if the action was for less than 4 hours.
- If there is any dispute about whether a worker or a Health and Safety Representative has a reasonable concern about an imminent risk to a worker's health or safety, legal advice should be obtained or consider contacting the relevant SafeWork regulator in the State/Territory and request that an inspector attend the site to resolve a dispute about the relevant safety issue.

Step 7 — Ensure appropriate behaviour

- All employees, union officials and assisting persons can be expected to behave respectfully and courteously whilst on the premises.
- If any employee, a union official, or assisting person behaves in an offensive or aggressive manner, this should be recorded, and further advice sought. Steps may be able to be taken to either address the behaviour of the relevant employees or raise disputes in the FWC regarding relevant union officials depending on the type of misbehaviour engaged in.

Step 8 — Resolving disputes

If a dispute arises about a union's ability to access the site or whether suspected contraventions of WHS State/Territory laws arise, there are a variety of options available including:

- Filing a dispute in the FWC regarding any alleged improper exercise of rights of entry. The relevant form can be found on the FWC website (Form 12): https://www.fwc.gov.au/apply-or-lodge/forms
- If the dispute pertains to a WHS right of entry, employers can call the relevant State/Territory WHS regulator to appoint an inspector to attend the site to resolve the dispute.

4. FAQ

What happens if the permit holder does not meet the pre-requisites to enter, can I direct them to leave site? What if they refuse to leave?

4.1 Under the FW Act and State/Territory WHS laws, a person is prohibited, without reasonable excuse, from refusing or unduly delaying entry by a permit holder or an assisting person who is entitled to enter the site.

4.2 Whether an employer has a 'reasonable excuse' to refuse or unduly delay entry, or direct the permit holder or assisting person to leave the site, will need to be determined on a case-by-case basis and may ultimately be the subject of subsequent legal proceedings.

4.3 As such, any refusal to enter site should be carefully handled and legal advice obtained.
As a general guide, the following steps may assist:

a. Firstly, if it is uncontroversially clear that a person does not have permission to be on site, the employer can direct the person to leave the site and utilise the assistance of security (if available).

b. Secondly, if there is some dispute as to whether the permit holder has failed to satisfy the pre-requisites, the employer should not direct the permit holder to leave the site but instead:

c. obtain specific legal advice; and/or

d. in the case of WHS dispute, consider contacting the relevant State SafeWork regulator to request that an inspector attend the site to resolve the dispute.

What if the permit holder advises that they are not required to provide me with notice? How do I respond?

4.4 A permit holder does not need to provide prior notice if they are entering the site to inquire into a suspected safety contravention or if they hold an exemption certificate issued by the FWC in relation to suspected contraventions of the FW Act.

4.5 However, even under WHS laws or where an exemption certificate has been obtained, the permit holder must as soon as practicable after entering the site, give notice of the entry and the suspected contravention (or supply the exemption certificate).

How do I determine if there is a genuine safety contravention being investigated by a union?

4.6 State/Territory WHS laws generally require a permit holder to "reasonably suspect" that a contravention has occurred.

4.7 The notion of reasonably suspecting means that the permit holder needs to have had (prior to entering the site), some factual basis, or some material or materials with probative value, which would create in the mind of a reasonable person a suspicion that a contravention has occurred or is occurring.16 Suspicion with no or inadequate proof, will not satisfy the requirement of s 117(2).17

4.8 Hearsay information (such as information provided by workers on the site that they are being exposed to safety risks), that is provided to permit holders may be of sufficient probative value to ground a reasonable suspicion.18 Furthermore, information relayed to permit holders by workers that they are being exposed to specific safety risks such as lack of training on machinery, inadequate rest breaks leading to fatigue and/or insufficient PPE will ordinarily provide a permit holder with a reasonable suspicion that a contravention has occurred or is occurring.

4.9 However, whether a permit holder has a reasonable suspicion or otherwise will depend on the individual circumstances of each particular case.

4.10 If the employer considers that it is unequivocally clear that the permit holder has intentionally or recklessly misrepresented that he or she has a reasonable suspicion of a contravention, there will not be a contravention of the WHS Act if entry permission is refused.

4.11 However, legal advice should be obtained if any ambiguity arises because employers are not permitted to prevent access to site if there is a genuine suspected safety contravention being investigated.

What information can I ask or does a permit holder have to disclose about why they believe there is a contravention and how they became aware of it?

4.12 The details of the suspected contravention should be set out in the Notice of Entry.

4.13 However, if the employer considers that there are insufficient details in the notice, he or she should ask the permit holder for more information on the suspected contravention.

4.14 This can help the employer to determine whether there is genuinely a reasonable suspicion of any alleged contravention of the FW Act or WHS laws.

Do I have to stop a worker from working to enable the permit holder to consult with the worker about suspected contraventions or for the permit holder to 'warn any person' about a WHS risk?

4.15 In relation to a suspected contravention, the permit holder is entitled to consult with members (or eligible members) of the union, as well as 'warn any person' about serious WHS risks presenting an imminent risk to worker safety.

4.16 In order for the permit holder to engage with these workers (in relation to either consulting or warning), ordinarily work may need to cease for these categories of workers whilst the permit holder undertakes these actions.

4.17 It is a matter for the worker whether they wish to speak to the permit holder. The worker cannot be compelled to speak to the permit holder by the union.

16 *Construction, Forestry, Mining* and Energy Union (New South Wales Branch) v Acciona Infrastructure Australia Pty Ltd and Ferrovial Agroman (Australia Pty Ltd t/as the Pacifico Acciona Ferrovial Joint Venture [2017] NSWIRCComm 1000 (17 January 2017) at [67].

17 Mid North Coast Local Health District at [78]

18 Ibid at [87], [89], [95] and [96].

Can a site leader be present when a permit holder consults or warns workers on site? What if I am directed to leave by the permit holder?

4.18 Yes, you can be present whilst the permit holder consults or warns workers on site so long as you do not hinder or obstruct the permit holder whilst this is taking place.19

4.19 The permit holder is not entitled to direct you to leave whilst these discussions are taking place.

What do I do if I believe or hear a permit holder directing workers to cease work?

4.20 First, investigate and determine whether there is any reasonable concern over a safety matter that may expose the workers to a serious risk to their health and safety. If there is, the employer should also direct the workers to cease work and take appropriate action.

4.21 Second, if there is no reasonable concern over a safety matter that may expose the workers to a serious risk to their health and safety, the employer could inform the workers that if they cease work their action may constitute unlawful industrial action and, as such, under the FW Act the employer is required to:

a.not pay the employee during the action; and

b. withhold at least 4 hours pay, even if the action was for less than 4 hours.

4.22 These matters will likely give rise to disputation. Accordingly, the employer should seek specific legal advice in relation to the matter. If necessary, the FW Act contains provisions enabling the FWC to issue orders stopping any work stoppages that are not legitimate on the basis that they constitute unlawful industrial action.

4.23 In the interim, the employer should record a file note of the concern that has been raised (and why this is not valid and/or measures taken to address same), what the permit holder is saying to the workers, the workers' response and what the employer has said to both the permit holder and the workers in relation to the matter.

4.24 In addition to seeking legal advice, the employer could consider contacting the relevant SafeWork regulator in their State/Territory to appoint an inspector to attend the site to assist with any dispute about whether work has become unsafe.

19 Section 145 of the WHS Act

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