

Today the South Australian Lower House passed the Greens' [Work Health and Safety \(Representative Assistance\) Amendment Bill 2017](#) (the Bill), which will soon become law. The Bill amends [section 68](#) of the [Work Health and Safety Act 2012](#) (SA) (the Act), removing the restrictions on who a Health and Safety Representative (HSR) can request assistance from, by deleting subsections 68(4) and (6) of the Act.

In exercising their [functions](#), HSRs will now be able to request assistance from *any person*. However, for the reasons set out below, if the person is a union official, we recommend clients take advice prior to permitted the official into their workplace, especially for Code compliance purposes.

Attending a site at the request of a HSR is exercising right of entry

We previously advised of a recent [decision](#) of the Full Federal Court which found that a [comparable provision](#) under Victorian legislation was a 'right to enter' within the meaning of [section 494](#) of the *Fair Work Act 2009*. This is significant because that provision provides that if a union official wishes to exercise a right of entry for safety purposes, they must hold a right of entry permit under the *Fair Work Act 2009*.

As a result, despite although any person is entitled to enter site upon invitation of a HSR, they must hold a valid Federal Right of Entry Permit. As such, before allowing entry to site, you should check whether the official has a valid Federal permit. The Fair Work Commission publishes a [searchable list](#) of union officials with valid permits. While on-site for this reason, the official is limited to assisting the HSR performing their functions under [section 68](#).

Note: we understand that this decision is under appeal to the High Court. However, unless and until that appeal is determined or a judicial decision is made that distinguishes the apparently similar South Australian legislation, the above decision appears to be good law.

Code Compliance

For clients in the construction sector, the [Code for the Tendering and Performance of Building Work 2016](#) requires that a union official only be permitted to enter a construction site if they are duly exercising right of entry, and not otherwise. This means that failing to make the above check could lead to issues under the Code. We understand that the Australian Building and Construction Commission are aware of this issue (ABCC). The ABCC publishes a [list](#) of construction union officials without permits and can be expected to police this issue closely. It is important to check this regularly because [another South Australian official](#) recently lost their permit.

Need more information

If you would like further information or advice about right of entry, or Code compliance, please contact the team at Fair Work Lawyers.



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