

[Section 68](#) of the *Work Health and Safety Act 2012 (SA)*, provides that a duly appointed 'health and safety representative' (HSR) may invite a 'consultant' into a workplace to assist them carrying out their duties.

We have recently been made aware that union officials have been asserting that provided they have been appointed as a consultant (within the meaning of safety legislation), they have a right to enter the premises upon receipt of an invitation. For the reasons set out below, Fair Work Lawyers does not accept that this is the current legal position and strongly recommends that clients take advice prior to allowing a union official into their workplace for this reason, especially for Code compliance purposes (see below).

Attending a site as a consultant is exercising right of entry

A recent [decision](#) of the Full Court of the Federal Court 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 section 494 provides that if a person is a union official and 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, although a union official who is appointed as a consultant is entitled to enter site upon invitation of a HSR, they are only able to do so if they 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, an official may only perform the functions they are authorised to do 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.

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.



Tom Earls
Partner
tom@fairworklawyers.com.au
m: 0409 939 010



David Putland
Partner
david@fairworklawyers.com.au
m: 0419 839 125

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