

**Check list for assessing whether to provide help to an authorised representative
under
Part 7A of the *Workplace Health and Safety Act 1995***

(To be completed with reference to the Legislative Application and Enforcement Note No. 30 for Union Right of Entry)

Part A – Authorised Representative	
THE POWER THAT IS THE SUBJECT OF THE ALLEGED OBSTRUCTION WAS LAWFULLY EXERCISED	
PRE-ENTRY	
<p>1. What is the evidence that the representative holds a valid permit (identification card)?</p> <ul style="list-style-type: none"> - The permit was issued by the Industrial Registrar? - The permit is current (less than 3 years old)? - Identification number _____ - The representative has the permit available for inspection on request by the occupier - Any conditions on the permit do not limit the representative’s powers to the extent of this particular workplace or relevant workplace area <p>Response: _____</p> <p>_____</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
ENTRY TO THE WORKPLACE OR RELEVANT WORKPLACE AREA	
<p>2. What is the evidence that the place is a workplace or relevant workplace area?</p> <p>Response: _____</p> <p>_____</p>	
<p>3. What is the evidence that eligible member/s of the employee organisation are working at the place?</p> <p>Response: _____</p> <p>_____</p>	
<p>4. What is the evidence that representative gathered to form a reasonable suspicion that a contravention of the Act involving workplace health and safety has happened or is happening at the place?</p> <p>Response: _____</p> <p>_____</p>	

POWERS EXERCISED AFTER ENTRY TO THE WORKPLACE OR RELEVANT WORKPLACE AREA

<p>5. What is the evidence that entry was obtained for a valid purpose?</p> <ul style="list-style-type: none"> - to hold workplace health and safety discussions with eligible members at the workplace or relevant workplace area (24 hours notice); - to investigate a suspected contravention of a workplace health and safety matter under the Act <p>Response: _____</p> <p>_____</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>5a. If the entry is to hold workplace health and safety discussions – what is the evidence that the entry was valid?</p> <ul style="list-style-type: none"> - Is there a worker who is an eligible member of the union working at the workplace? - Do the discussions relate to matters relating to workplace health and safety at the place? - Has the representative given the required written notice to the occupier 24 hours prior to entry (see Legislative Application)? - Did the representative tell the occupier of their presence as soon as practicable after entry (see Legislative Application)? - Are the discussions to be held when the workers are on a work break (e.g. meal break, before or after work)? <p>Response: _____</p> <p>_____</p> <p>If the required notice has been given, the occupier is required to allow the representative to enter the workplace to hold these discussions.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>5b. If the entry is to investigate a suspected contravention of the Act – is it a valid entry?</p> <ul style="list-style-type: none"> - Is there a worker who is an eligible member of the union working at the workplace? - Has the representative stated in the required written notice a reasonable suspicion that there has been a contravention of the Act involving WHS (see Legislative Application)? - Did the representative give the notice and tell the occupier of their presence as soon as practicable after entry (see Legislative Application)? - If entry is to inspect employment records, was the notice given 24 hours prior to entry? <p>Response: _____</p> <p>_____</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

THERE HAS BEEN AN ACT OR OMMISION THAT AMOUNTS TO AN OBSTRUCTION OF THE REPRESENTATIVE

6. What is the act or omission that is alleged to be restricting the lawful powers of the representative?

- What has the occupier done or not done to make it more difficult for the representative to do that which he/she is empowered to do?
- Which of the representative's powers was obstructed?
 - Inspection of plant, substance or another thing at the workplace
 - Observation of work
 - Speaking to a person who is an eligible member of the employee organisation
 - Speaking to the occupier about anything related to the suspected contravention
 - Requiring the production for inspection of documents
 - Copying a document at the place in relation to the suspected contravention
 - Requiring the occupier to give reasonable help in the exercise of power

- Yes No
- Yes No
- Yes No
- Yes No
- Yes No
- Yes No
- Yes No

Response: _____

7. Why does the representative believe that the action (or inaction) amounts to obstruction?

- How has the representative formed the view that they are being obstructed in the exercise of their powers?

Response: _____

8. Has the representative warned the person?

- it is an offence to obstruct without reasonable excuse;
- the representative considers their conduct to be obstruction; and
- if the person continues to obstruct then the representative may ask an inspector to help the representative exercise their powers

IF NO the representative is to be advised to comply with this requirement prior to proceeding with the exercise of their powers.

Response: _____

- Yes No

9. What is the evidence that the authorised representative complied with the requirements of the Act?

- Has the representative complied with reasonable requests of the occupier to comply with a WHS requirement that applies to the place on entering the place (see Legislative Application)?
- Is the representative only entering any part of a place that is used as domestic premises with the consent of the occupier?
- Is the representative only entering any part of a place where their entry is not restricted by another Act (see Legislative Application);
- Has the representative, in exercising or purporting to exercise their powers of entry, not:
 - unreasonably hindered or obstructed a worker or other person at the workplace or relevant workplace area;
 - intimidated or threatened a worker or other person at the workplace or relevant workplace area;

Yes No

Yes No

Yes No

Yes No

Yes No

Response: _____

Part B – Occupier

1. What is the view of the occupier to the allegation of obstruction

Response: _____

Part B – Occupier

2. Did the occupier have a reasonable excuse

– Complying with the requirement might tend to incriminate the person

Yes No

Part C – Assessment of the evidence

1. Is there evidence that the power was exercised lawfully

Yes No

Response: _____

2. Is there evidence of obstruction?

Yes No

Response: _____

Part C – Assessment of the evidence	
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<p>3. If there is evidence of obstruction, did the occupier have a reasonable excuse?</p> <p>Response: _____</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p><input type="checkbox"/>Yes <input type="checkbox"/> No</p>
<p>4. Is there evidence that the representative acted in good faith?</p> <p>Response: _____</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p><input type="checkbox"/>Yes <input type="checkbox"/> No</p>

Part C – Assessment of the evidence	
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Inspector: <hr/>	Date:

- Inspectors should consult with senior management if unsure about the evidence presented. Senior management may choose to consult the Workplace Health and Safety Queensland Legal and Prosecution Services Branch.
- If the inspector forms a belief that the action is obstruction, the inspector must, as soon as reasonably practical
 - advise the occupier that their action is considered obstruction and is a contravention of the Act
 - issue an oral direction to stop the obstruction and advise that the direction will be confirmed in writing (by way of an improvement notice) and will be forwarded that day
 - advise the occupier of the penalty associated with not complying with the notice i.e. the possibility of an infringement notice being issued should an inspector be sent to the workplace to assist the representative exercise the representative's power
 - advise the representative of the outcome of the request
- If the inspector DOES NOT form a belief that the action of the occupier is obstruction, then the representative is to be advised of that decision, as soon as reasonably practical.