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Right of Entry Policy & Procedure

Purpose

The purpose of this Policy is to outline New Start Australia's commitment to comply with legislative obligations related to Right of Entry provisions in the Fair Work Act 2009.

Commencement

This Freedom of Association Policy and Procedure will commence on 28 April 2017 and replaces all other Policies (whether written or not).

Scope

This Policy applies to **Workforce Participants** defined as:

- Managing Director
- Site Managers (permanent, part-time and casual)
- Contractors (Responsible for Site Management)
- Subcontractors (Responsible for Site Management)
- Clients and their Agents/Representatives

This Policy does not form part of any contract between an employee and the organisation, nor does it form part of any other Workplace Participant's Contract for Services.

Organisation refers to New Start Australia Pty Ltd.

Policy Statement

New Start's Right of Entry Policy and Procedure aims to support legislative compliance with Right of Entry provisions in the Fair Work Act 2009.

Right of Entry

A union official who wishes to exercise the right to enter a workplace must hold a federal right of entry permit and comply with the provisions in the Fair Work Act 2009.

Before a Union Official Enters a Site

Union officials do not have automatic right to enter workplaces. The Fair Work Act 2009 provides permit holders with a right to enter sites for particular purposes and sets out the requirements they must comply with when on a site.

Before entering your site, a union official must:

- Hold a valid federal permit
- Provide at least 24 hours' written notice of entry (unless they entry is pursuant to a State or Territory occupational health and safety (OHS) law).

Reasons for Union Officials to Enter Your Site

A union official who is a federal permit holder may enter your site during working hours for the following reasons:

- To investigate a suspected contravention of the Fair Work Act 2009, or a term of a fair work instrument, provided that:
 - The official reasonably suspects that a contravention has occurred or is occurring, and
 - The suspected contravention relates to, or affects, a member of the official's union who performs work on the site, and
 - The official's union is entitled to represent the member's industrial interests, and
 - If the suspected contravention related to a fair work instrument, the instrument applies or has applied to the member
- To hold discussions during meal times or other breaks with employees:
 - Who perform work on the site, and
 - Whose industrial interests the official's union is entitled to represent, and
 - Who wish to participate in those discussions
- To perform inspections and other functions under a State or Territory OHS law

Rights of Entry under State or Territory OHS Laws

The Fair Work Act 2009 recognises the existence of right of entry provisions under State and Territory OHS laws. Where an entry by an official is to occur pursuant to a State or Territory OHS law, the official must still hold a federal permit and comply with relevant provisions of the Fair Work Act 2009, as well as any applicable requirements in the relevant State or Territory OHS law.

It is important to note that the Fair Work Act 2009 does not require 24 hours' written notice of entry in circumstances where the entry by the official is to occur pursuant to a right under a State or Territory OHS law, except where the official is seeking to exercise a right to inspect or otherwise access an employee record.

Entry Notice Requirements

The Fair Work Act details information that must be provided in an entry notice. All entry notices must specify the:

- Site to be entered
- Day of Entry
- Union which the permit holder belongs, and
- Section of the Fair Work Act 2009 that authorises the entry

Additionally, when the entry is to investigate a suspected contravention the entry notice must:

- Specify the particulars of the suspected contravention



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- Contain a declaration by the permit holder that the union is entitled to represent the industrial interests of a union member who performs work on the site and to whom the suspected contravention related or who is affected by the suspected contravention, and
- Specify the provision of the union's rules that entitles the union to represent the member

When the entry is to hold discussions with employees, the entry notice must:

- Contain a declaration by the permit holder that the union is entitled to represent the industrial interests of an employee who performs work on the site, and
- Specify the provision of the union's rules that entitles the union to represent the employee

If a union official does not provide an entry notice that meets these requirements or, when on site, does not produce a federal permit/entry notice upon request, you have the right to refuse entry or ask the official to leave the site.

If these requirements are met, you must not refuse or unduly delay entry.

Rights and Obligations When a Union Official is on Your Site

Union officials have specific rights once they are lawfully on site. When investigated suspected contraventions, an official is entitled to:

- Inspect any work, process, or object relevant to the suspected contravention
- Interview any person about the suspected convention who agrees to be interviewed and whose industrial interest the official's union is entitled to represent
- Inspect and make copies of records or documents that are directly relevant to the suspected contravention (except for "non-member records or documents" as defined in the Fair Work Act 2009) and that are kept on the premises or are accessible on a computer kept on the premises
- Inspect and make copies of any non-member record or document that is directly relevant to the suspected contravention that is kept on the premises or is accessible on a computer kept on the premises, provided the non-member has consented in writing or an order permitting these actions has been made by the Fair Work Commission
- Serve a notice on the affected employer while on the premises of within 5 days after the entry, requiring access to records or documents that are directly relevant to the suspected contravention at a later date (except for "non-member records or documents" as defined in the Fair Work Act 2009); and
- Exercise these rights without being hindered or obstructed.

Union officials also have specific obligations while on site. They must:

- Produce on request their federal permit and, if required, a copy of the relevant entry notice to the occupier of the site (as well as to an affected employer where the entry related to a suspected contravention)
- Conduct interviews or hold discussion in the rooms or areas of the premises agreed with the occupier of the premises. In the absence of agreement, the union official may conduct interviews or hold discussions in any room or area ordinarily used and provided by the occupier for the purpose of taking meal or other breaks
- Only exercise their rights of entry during working hours
- Only enter premises on a day specified in the entry notice or exemption certificate
- Not contravene a condition imposed on their federal permit
- Not enter any part of the premises that is used mainly for residential purposes
- Comply with the occupier's reasonable requests about:
 - The particular route they should take to access a room or area to conducting an interview or holding a discussion
 - OHS requirements that apply to the premises
- Not use or disclose any information or document obtained when investigating a suspected contravention for an unrelated purpose unless authorised to do so by the Fair Work Act 2009
- When entering to hold discussion, not hold those discussions with employees other than at meal times or other breaks
- Not misrepresent the authority granted to them under the Fair Work Act
- Not intentionally hinder or obstruct any person or act in an improper manner in exercising, or seeking to exercise, their entry rights.

What to do if a Union Official does not have a Right to Enter and is on your site without your consent

1. Make it clear the union official does not have your consent to enter on site and ask the official to leave
2. Contact the Australian Building and Construction Commission (ABCC) Hotline for assistance regarding right of entry issues on 1800 003 338
3. Your local state police may also be able to provide assistance if a trespass has occurred.
4. Where you are not the Head Contractor on Site, advise the Head Contractor both verbally in writing and complete an Incident Report, providing a copy of the report to both the Head Contractor and New Start



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Policy Disseminated to Stakeholders

Recruitment Consultants must ensure that all workers, including stakeholders receive a copy of New Start's Fitness for Work Policy.

Managers are responsible for ensuring that all new Clients and their representatives receive a copy of New Start's Fitness for Work Policy.

Managers and Staff must ensure that interested stakeholders receive a copy of this Policy.

Policy Information

Accountable Officer: Managing Director
Policy Type: Human Resources
Related Policies:

Daniel Phillips
Managing Director
New Start Australia Pty Ltd
Dated February 2018

Variations

The Organisation reserves the right to vary, replace or terminate this Policy from time to time.

Failure to Comply with the Policy

Where it is established that a Workforce Participant has breached this Policy, they be subject to disciplinary action, up to and including termination of employment or Contract.

Questions about this Policy

Should you have any questions about this Policy, please contact the Human Resources Department.

Workforce Participant Declaration

I have read this Policy and Procedure. Any questions I have raised, have been answered to my satisfaction. I thereby agree to adhere to this Policy at all times during my employment with the Company.

Print Name	
Signature	
Date	