

# LA TROBE UNIVERSITY

## RIGHT OF ENTRY PROCEDURES (WORKSAFE INSPECTORS AND AUTHORISED REPRESENTATIVES)

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### 1. PURPOSE

The purpose of this procedure is to describe the University's process to be taken when a WorkSafe Inspector or an Authorised Representative attends University premises or workplaces.

It is important to ensure that WorkSafe Inspectors and Authorised Representatives are not impeded in the performance of their lawful duties, otherwise significant penalties can apply.

### 2. DEFINITIONS

#### **Authorised Representative**

An employee or officer of a registered employee organisation (such as a union) who has satisfactorily completed a training course approved by WorkSafe and holds an entry permit. The Authorised Representative is required to take all reasonable steps to give notice and to produce his/her entry permit on arrival.

#### **Direction**

A Direction is issued by a WorkSafe Inspector to a person, who, in their opinion, has breached the Dangerous Goods Act. A direction must state the inspector's or delegate's opinion and reasons for the opinion; specify the breach, and specify a date by which the breach must be remedied.

#### **Entry Notice**

An Authority approved form that must be given to the employer (along with an Entry Notice), when an Authorised Representative enters a place of work for the purpose of enquiring into a suspected contravention of the OHS Act. The Notice must include a description of the contravention.

#### **Entry Permits**

Permits that are granted by the Magistrates' Court, and issued to a specific person. They are valid for three years and expire at the end of the third year, or when the person ceases to be a permanent employee of the organisation or the organisation ceases to be registered.

#### **Entry Report**

The report the WorkSafe Inspector will issue at the completion of a workplace visit

#### **Improvement Notice**

An Improvement Notice is issued by a WorkSafe Inspector to any person if the inspector believes that the person has not complied with his/her obligations under the OH&S Act. An Improvement Notice will state that the Inspector is of the opinion that the Act has been breached, state what part of the Act has not been complied with, and specify a date by which the non-compliance must be remedied.

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**Legal Professional Privilege**

At common law legal privilege protects confidentiality communications between a lawyer and client from compulsory production in the context of court and similar proceedings. The rationale for the creation of privilege is the enhancement of the administration of justice by promoting free consultation and disclosure between clients and lawyers and assisting in the production of information in litigation.

**Non-Disturbance Notice**

A WorkSafe Inspector may issue a Non-Disturbance Notice to a person who is or appears to be the occupier for the time being, requiring the person to stop the use or movement of, or interference with, any specified plant, substance or other thing and prevent the disturbance of the specified plant, substance or thing.

**Occupier**

For the purpose of this procedure, the occupier is Director Human Resources, the designated Employer Representative for the relevant Designated Work Group (DWG). Where the DWG is not readily identifiable or the issue relates to more than one DWG, the employer representative may be deemed to be the University Secretary.

**Prohibition Notice**

A WorkSafe inspector may issue a prohibition notice to a person who is in control of an activity when the inspector believes that the activity may pose an immediate health and safety threat. The prohibition notice must state that the inspector is of the opinion that the activity may pose an immediate risk to the health and safety of a person, specify the activity involved and if the activity breaches the Act, specify which part of the Act has been, or will be breached and the reason for the inspector's opinion.

**Search Warrants**

Is issued to a WorkSafe Inspector by the Magistrates Court in relation to a particular place if the inspector believes on reasonable grounds that there is or may be within 72 hours a particular thing (including document) at the place that may afford evidence. The search warrant must state the offence suspected, place to be searched, a description of the thing for which the search is being made. It will also provide conditions which the warrant is subject to.

**WorkSafe Victorian Inspectors**

The primary role of a WorkSafe inspector is to ensure that workplaces comply with health and safety legislation. They will respond to breaches of the law and can impose enforcement notices such as improvement and prohibition notices. Worksafe Inspectors must show proof of their appointment as an inspector in the form of an official identification card which they must show before acting or proceeding under the law, or on demand. Normally a WorkSafe inspector will produce their identification on arrival at the workplace.

**3. RESPONSIBILITIES****3.1 Deans, Heads of Divisions, Schools or Colleges**

The Dean, Heads of Divisions, Schools or Colleges are responsible for:

- a) Notifying the OH&S Section Bundoora (or Personnel Services at Bendigo) when WorkSafe inspectors or an Authorised Representative gives notice of entry their workplace; and
- b) Ensuring that all matters identified in Entry Reports, Directions or Notices issued by WorkSafe relating to areas under their management and control, are rectified within the required time.

**3.2 The University OH&S Section**

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The OH&S Section shall ensure wherever possible that a designated staff member will be present when WorkSafe inspectors are present on campus or Authorised Representatives enter the workplace for a suspected contravention. The OH&S Section will also distribute reports and provide advice regarding compliance with Notices or Directions.

#### **4. PROCEDURE – WORKSAFE INSPECTORS**

##### **4.1 Powers of Entry of WorkSafe Inspectors**

An inspector may enter a workplace at any time during working hours or at any time if the inspector believes that there is an immediate risk to the health and safety of a person arising from the conduct of an undertaking at the place.

##### **4.2 General Powers to Inspect, Examine and Make Enquiries**

An inspector may inspect, examine and make enquiries, inspect and examine anything including documents at the place, bring equipment or materials to the place that may be required, seize anything (including documents) that may afford evidence of the commission of an offence or for further examination or testing, take photographs or measurements.

The inspector may:

- Require a person to produce a document, examine the document and require a person to answer any questions. A person must not without reasonable excuse refuse or fail to comply. *(Note that Legal professional privilege is not affected)*
- Take samples of anything that may require analysis or copy documents.
  - Require people to provide name and address
  - Issue binding directions where immediate threat
  - Issue non –disturbance notices, improvement notices, directions and prohibition notices
  - Obtain and execute search warrants
  - Take affidavits

WorkSafe Inspectors are able to provide advice on how to comply with the OHS Act.

Employees do not have to answer a question, if the answer could be self-incriminating, or provide information if that information is the subject of legal professional privilege

##### **4.3 Announcement of entry.**

Immediately on entering a place the inspector must notify the occupier and the health and safety representative for the designated workgroup and show identification.

When an Inspector attends the workplace, the OH&S Section must be notified immediately. Where practicable, a designated staff member from the OH&S Section will accompany the Inspector whilst on site, and it is recommended that the Head of School or Area being visited or their nominee also accompany the Inspector.

##### **4.4 Entry Reports, Notices and Directions.**

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A WorkSafe Inspector who enters the workplace must give an official Entry Report stating time of entry and departure, purpose of entry, description of things done whilst at the workplace, summary of observations, the procedure for contacting the Authority and the procedure for seeking review. Where photographs or sketches have been taken a statement is to be included in the report. An Inspector may also issue a Direction or Prohibition Notice which are enforceable requirements that must be complied with by the given dates.

Entry Reports, Notices or Directions are normally issued to OH&S Staff who will then arrange for distribution to the relevant Heads of School, Divisional Managers or Employer Representatives as well as to health and safety representatives and other staff involved with the visit. Entry Reports, Notices and Directions must only be distributed to other staff as is necessary to achieve compliance with specific requirements or to authorised persons for the purposes of monitoring health and safety compliance within the University generally.

If Heads of Schools or Divisional Managers disagree with the findings contained in the Entry Report or any Notices or Directions issued as a consequence of the visit, the OH&S Section must be informed immediately, who will then review the matter and determine whether to pursue the matter further. Challenges or requests for reviews may only be undertaken with the approval of the Manager (OH&S) and will normally only be undertaken on legal advice.

All requirements Field Reports and Notices must be complied with by the required date. To assist in compliance with Notices and Directions, the OH&S Section will distribute the reports to persons with management and control of the identified matters and may provide advice on ways to achieve compliance. It is recommended that compliance be achieved and reviewed by the OH&S Section at least seven days before this date.

## **5. PROCEDURE - AUTHORISED REPRESENTATIVES**

### **5.1 Entry Powers of an Authorised Representative.**

When there is a suspected contravention to the Act, an authorised representative may enter the workplace when the suspected contravention relates to or affects work that is carried out by one or more members of the registered employee members.

An Authorised Representative may only attend during working hours and only to enquire into the suspected contravention and may inspect any plant, substance or other thing, observe work carried out, consult with employees who are members of the registered organisation or consult with the employer.

### **5.2 Announcement of entry.**

On arrival at the workplace, an Authorised Representative must give notice in an approved form and provide identification to the Employer Representative and the Health and Safety Representative of the Designated Work Group. The authorised representative is only able to warn employee of risks.

When an Authorised Representative attends the workplace, the OH&S Section must be notified immediately. Where practicable, a designated staff member from the OH&S Section will accompany the Inspector whilst on site, and it is recommended that the Head of School or Area being visited or their nominee also accompany the Authorised Representative.

The employer or the authorised representative may request the Authority arrange for an inspector to attend to enquire.

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**6. CONFIDENTIALITY**

Unless specially exempted by legislation or released by the University, all Entry Reports, Notices, Directions or other documents and their contents issued by WorkSafe to the University shall remain the property of the La Trobe University.

If a report, notice or direction contains information that reasonably identifies an individual(s), then such information must be handled, used or disclosed in accordance with relevant privacy laws.

**7. REFERENCES**

Occupational Health and Safety Act 2004.

WorkSafe publication 2<sup>nd</sup> edition June 2005 Information about “Right of Entry”

**8. CROSS REFERENCES**

Formation of Designated Workgroups Procedure

Issue Resolution Procedure

**9. DOCUMENTATION**

Entry Reports, Notices or Directions are retained by the Occupational Health and Safety Section.

The Executive Occupational Health and Safety Committee approved this procedure at its meeting on 6 March 2006