



Fortescue
The New Force in Iron Ore

Procedure



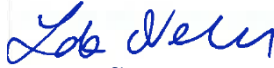
Contractor Right of Entry – Development Projects

Fortescue People

May 2019

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1. PURPOSE

This procedure provides Contractors on Development Projects with details regarding Fortescue's Right of Entry procedure for unions and outlines how Contractors are to manage Right of Entry on the Project.

2. SCOPE

Table 1: Key Accountabilities

Role	Responsibility
Fortescue Employee Relations	Occupier of site Communicating approval / refusal to union in response to Entry Notice Communicating proposed visit with Gatehouse Security
Contractor Employee Relations	Administering Right of Entry on site for relevant employees Conduct all escorting duties on site Ensure Right of Entry is conducted in accordance with process set out in this procedure and relevant legislation Reporting to Fortescue Employee Relations

3. DEFINITIONS

Table 2: Definition of Terms/Acronyms

Word/Term	Definition
Fortescue	Fortescue Metals Group Limited all subsidiaries and employees.
FW Act	means the <i>Fair Work Act 2009</i> (Cth)
FW Regulations	means the <i>Fair Work Regulations 2009</i> (Cth)
Contractor	Company engaged by Fortescue to carry out works on a Development Project
Project	means a Fortescue Development Project
Site	Project site

4. LEGISLATIVE CONTEXT

The following Legislation provides the broad framework for which this procedure must operate and with which it needs to comply.

Table 3: Legislation

Act / Regulation / Standards

Fair Work Act 2009 (Cth)

Industrial Relations Act 1979 (WA)

5. OVERVIEW

The *Fair Work Act 2009* (FW Act) and the *Industrial Relations Act 1979* (WA) establishes the rights of an official of an employee organisation (a “union official”) to enter a workplace for purposes related to their representative role under the FW Act and under Western Australian Occupational Health and Safety legislation.

The right of entry by a union official to a workplace may occur for one of three reasons:

- to investigate a suspected contravention of the FW Act or a fair work instrument;
- to hold discussions with employees who work on the premises; or
- to exercise a right under Western Australian Occupational Health and Safety legislation.

Where a Contractor is working on the Project, the right of union entry may be exercised with respect to that individual Contractor. In this circumstance, the Contractor is the employer and Fortescue is the occupier of the premises. The FW Act prescribes obligations on both the employer and the occupier with respect to the entry of a union official into a workplace.

This procedure has been developed to ensure that Contractors and Fortescue work cooperatively to ensure that any right of entry by a union official is undertaken effectively at the workplace to ensure minimum inconvenience or disruption activities while ensuring that all legal obligations are met.

This Right of Entry Procedure applies to all Contractors performing work on the site.

All Contractors are advised to seek advice from their IR/ER advisors on the legislative responsibilities and requirements for the management of any Notice of Entry of a union official as it relates to the Contractor as the affected employer.

This Procedure is not intended to represent or provide specific advice on the Contractor’s responsibilities under the FW Act.

6. RIGHT OF ENTRY PROCEDURE

Prior to commencing any work on Site, each Contractor is required to provide a detailed Right of Entry Procedure outlining the Contractor’s management processes and individual responsibilities for the management of any right of entry to ensure compliance with the law.

The Right of Entry Procedure must address the specific requirements relating to each type of entry, the rights available to a union official, obligations to be fulfilled by the Contractor, escalation procedures and matters relating to inspection of employee and other records.

In addition, each Contractor is required to advise Fortescue of the Contractor's key employee/industrial relations personnel and/or external advisors who will assist and advise the Contractor in the management of any right of entry process.

7. RESPONSIBILITIES

It is the responsibility of each Contractor to manage all right of entry of a union official relating to the Contractor on site in accordance with this procedure.

8. RIGHT OF ENTRY REQUIREMENTS

The right to enter the workplace by a union official is only legitimate if a valid Notice of Entry as required by the FW Act is provided and the union official holds a valid entry permit issued by Fair Work Australia.

The only exception to the requirement to lodge a valid Notice of Entry relates to the investigation of alleged state Occupational Health and Safety breaches.

8.1 Notice of Entry

The Notice of Entry is the formal written notification of the proposed entry of a union official onto a workplace and must be provided in the prescribed form under the FW Regulations.

In the case of a proposed entry relating to a Contractor, the Contractor will receive a Notice of Entry as the affected employer and Fortescue will also receive the Notice of Entry as the occupier of the premises.

The notification requirements for the Notice of Entry relate specifically to the reasons stated for the proposed entry, that is, either:

- to investigate a suspected contravention of the FW Act or a fair work instrument;
- to hold discussions with employees who work on the premises; or
- to exercise a right under a Western Australian Occupational Health and Safety law.

For each of these reasons, there are separate requirements with respect to the Notice of Entry and the rights that are available to the union official that may be exercised while on the premises. The Contractor's Right of Entry Procedure should clearly detail these requirements to ensure compliance with the FW Act.

All Notices are to be sent to Fortescue Employee Relations at:

- employeerelations@fmgl.com.au.

Any Contractor receiving a Notice of Entry must immediately notify Fortescue Employee Relations by sending the Notice of Entry to the above email address.

Where Fortescue, as the occupier of the premises, receives a Notice of Entry that relates to a Contractor, Fortescue Employee Relations will immediately contact the nominated Contractor representative and forward the Notice of Entry to the Contractor.

It is the responsibility of the Contractor to provide the following details to Fortescue Employee Relations:

- confirmation that the union has coverage over employees working on the site;
- details of the competent Contractor representative who will escort the Union delegate (including name and mobile contact details);
- time and length of break;
- proposed location of meeting;
- point of collection/drop off, and times.

8.2 Entry Permits

In order to gain entry to the workplace, the union official must hold a valid Entry Permit issued by Fair Work Australia.

This is the **only** Entry Permit required where the entry is for the purposes of:

- investigating a suspected contravention of the FW Act or a fair work instrument; or
- holding discussions with eligible employees who work on the premises

However, where the proposed entry is for the purposes of a union official exercising a right under a Western Australian Occupational Health and Safety law, **two entry authority documents** are required to be presented.

In addition to the Entry Permit issued by Fair Work Australia as outlined above, the union official is also required to present an authority issued by the Western Australian Industrial Relations Commission.

Each union official seeking to enter the premises must present the appropriate and required Entry Permit(s) authorising their ability to enter the premises. In addition, they are required to have provided a copy of the Notice of Entry. It is the responsibility of the union official to have all

required authorising documentation in their possession and to present that documentation when requested.

No union official will be allowed access to any Fortescue premises without a valid Entry Permit regardless of whether a Notice of Entry has been received.

9. MANAGING THE RIGHT OF ENTRY

The Contractor's duly trained representative is responsible for managing the union official's entry to the premises and for supervision of the union official for the duration of the visit.

Where it is not specified on the Notice of Entry, the Contractor and Fortescue will work together to confirm the proposed time for the visit. In the case of a Notice of Entry to hold discussions with employees, meetings may only be held at mealtimes or other breaks such as crib or rest breaks. It is therefore important to determine the relevant break period for the proposed visit.

Where more than one employer is identified on the Notice of Entry, the Union will be authorised to meet with each contractor separately. Joint contractor meetings will not be authorised. Contractors will be required to coordinate this process.

9.1 Consultation prior to entry

The Contractor and Fortescue Employee Relations will discuss the management of the proposed entry onto Fortescue's premises and identify the particular circumstances, requirements and issues with respect to the visit.

Through this consultation process, an agreed management plan will be developed for the proposed entry to the premises.

Fortescue Employee Relations will advise all employees in control of any access point to the Fortescue premises of the date of the proposed union visit, the name of the visiting union official, permissions needed for entry to the premises and the nominated Contractor representative who will be responsible for managing the union official while on site.

Fortescue Employee Relations may also advise other Contractors working on the premises of the proposed visit.

Fortescue Employee Relations will advise the union official whether entry is approved or refused.

9.2 Union official arriving at premises

Any employee in control of an access point to Fortescue premises, such as security or reception, will **notify the Contractor Representative** of the planned arrival of the union official at the premises.

If a union visit is unexpected, then Fortescue Employee Relations will be contacted.

The visiting union official will be required to remain at the main security entrance to the premises until the appropriate Contractor representative arrives to verify the union official's entry permit/s and to provide the required escort onto the work premises.

While the Notice of Entry is not required to specify the time of the proposed visit, the union official is only permitted to enter the premises on the day specified on the notice and only during working hours. If the right of entry relates to holding discussions the mealtimes or other breaks should be identified. *Note: Working hours means the actual operating hours of the premises.*

The Contractor representative will meet the union official at the access point and provide the required transportation and supervision for the duration of the visit.

If the entry relates to holding discussions with employees, the union official should be taken directly, and without deviation, to the Contractor's designated meeting room. Appropriate amenities should be provided for the union official. If there is not agreement as to the venue for the purposes of the right of entry the default venue will be the place in which employees usually take their breaks. At the conclusion of the meal or other break, the union official is to be transported directly and without deviation back to the access point to the premises.

In circumstances where the Notice of Entry involves more than one Contractor and the meetings are scheduled to follow from one Contractor to the next so too does the responsibility for escorting the union official transfer from one Contractor to the next. Contractors should organise the most appropriate method for this in the planning of the visit.

9.3 Preparation for the right of entry

9.3.1 Investigating a suspected contravention

The Notice of Entry is required to specify the suspected contravention of the FW Act or Fair Work instrument. Entry to the premises is limited to the specified contravention only and the contravention must relate to, or affect, a member of the union official's organisation whose industrial interests the organisation is entitled to represent and who performs work on the

premises. That is, once on the premises, the union official has no capacity or right to expand the nature of the visit to other matters.

As the nature of the alleged contravention is specified in the Notice of Entry, the Contractor should conduct an investigation into the alleged contravention and obtain all relevant facts in preparation for the union official's visit. The Contractor should advise Fortescue Employee Relations of the findings of the preliminary investigation prior to the date of entry and the validity of any suspected contravention.

As there are rights available to the union official under this entry condition that will involve potential access to both work processes and employees, it will be essential to coordinate and prepare all work areas for the union official's visit in consultation with the relevant operations / construction management.

9.3.2 Holding discussions with employees

If the Notice of Entry is for the purpose to hold discussions with employees, the Contractor should prepare and provide a suitable room, in which the union official is able to privately meet with any eligible employee who wishes to do so, or in the absence of agreement the venue where employees usually eat their meals. No eligible employee should be discouraged from attending a meeting with the visiting union official.

The union official is not required to demonstrate that there are employees who wish to meet with the official during the visit to the premises.

The union official is only permitted to meet with employees during meal times and other breaks. Discussions may not occur during paid work time or outside of the hours during which employees work.

It is important to remember that a union official is not permitted entry to residential areas (including camps) except where the entry is related to employees working in the residential areas and relates to a suspected contravention of the FW Act or Fair Work instrument or when the union official is exercising rights under Western Australian Occupational Health and Safety legislation.

9.3.3 Exercising a right under WA Occupational Health and Safety law

A Notice of Entry is not required where a union official is seeking entry to the premises for the purposes of attending for safety related matters. However, a union official must hold a valid Entry Permit issued by Fair Work Australia and an authority issued by the Western Australian Industrial Relations Commission in order to gain access to the premises.

The Contractor should immediately advise and coordinate with the relevant Fortescue Health, Safety and Environment Department and Fortescue Employee Relations regarding the visit of the union official to the premises for these purposes.

10. RIGHTS OF A UNION OFFICIAL ON ENTRY

The various rights available to a union official entering the premises will depend on the reason for the entry outlined in the Right of Notice. These rights are outlined in the FW Act and are summarised as set out below.

10.1 Suspected Contravention

While on the premises, the union official can:

1. inspect any work, process or object relevant to the suspected contravention;
2. interview any person about the suspected contravention:
 - (a) who agrees to be interviewed; and
 - (b) whose industrial interests the union is entitled to represent;
3. require the occupier or an affected employer to allow the union official to inspect and make copies or any record or document that is directly relevant to the suspected contravention and that:
 - (a) is kept on the premises; and
 - (b) is accessible from a computer that is kept on the premises.

It is important to note that each of these rights must be concerned **only with the suspected contravention**. The union official **does not** have a right to visit any work, interview any person or have access to any documents **not related to the suspected contravention**.

10.2 Holding Discussions

The rights available to a union official entering the premises for the purposes of holding discussions are limited to:

- holding interviews only in a suitable room on the premises;
- taking the route prescribed by the Contractor to and from the access point to the designated room;
- complying with all reasonable requests to observe occupational health and safety requirements of the premises;
- only hold discussions with only eligible employees.

10.3 Suspected Occupational Health and Safety Breach

The right of entry to investigate a suspected occupational health and safety breach is given to a union official under the *Industrial Relations Act 1979 (WA)*. This right allows investigation of suspected breaches of the Occupational Health and Safety Act and/or the Mines Safety and Inspection Act.

Before a union official can exercise the right of entry, the required documents authorising entry must be produced and the union official must:

- state that the purpose of the entry is to investigate a breach of the Occupational Health and Safety Act and/or the Mines Safety and Inspection Act; and
- describe in general terms the nature of the alleged breach.

While on the premises the union official may only inspect or view any work, material, machinery or appliance that is relevant to the suspected breach.

11. OBLIGATIONS

The FW Act places obligations on the Contractor, Fortescue and the visiting union official regarding the exercising of the right of entry to work premises.

11.1 Obligations on the Contractor

The Contractor (and Fortescue) must not:

- refuse or unduly delay entry onto the premises by a permit holder who is entitled to enter the premises under the FW Act; or
- intentionally hinder or obstruct a permit holder exercising rights in accordance with the FW Act.

Travel and accommodation arrangements are solely the responsibility of the visiting union official.

11.2 Obligations on the Visiting Union Official

The union official must not:

- intentionally hinder or obstruct any person or otherwise act in an improper manner; or
- fail to observe and comply with all reasonable Health and Safety requirements applicable to the premises.

12. REVIEW AND REPORTING ON UNION ENTRY

Following any entry by a union official onto the Site, the Contractor must prepare a summary report of the union official's visit for Fortescue Employee Relations. The report should include the following:

- i. the union official(s) visiting and the union represented;
- ii. the purpose of the visit;
- iii. the duration of the visit;
- iv. the work areas of the site that were inspected (if applicable);
- v. the issues and matters raised by the union official during or following the visit to the premises; and.
- vi. any actions, resolutions, commitments or follow up proposed by the Contractor.

The report must be prepared and emailed within **24 hours** of the visit to employeerelations@fmgl.com.au.

13. FORTESCUE EMPLOYEE RELATIONS CONTACTS

Name	Position	Contact Details
Employee Relations	Team Email	E: employeerelations@fmgl.com.au

Attachment 1: Project Right of Entry Process - Summary

STEP 1 Notice of Entry

All notices are to be sent to Fortescue Employee Relations at employeerelations@fmgl.com.au

STEP 2 Contractor to provide Fortescue with visit details

Contractor is to confirm following details to Fortescue (by email):

- i. that Union has coverage over employees working at the site
- ii. who from the Contractor will escort the Union delegate (mobile contact details)
- iii. time and length of break
- iv. location of meeting
- v. point of collection/drop off, and times.

STEP 3 Fortescue will approve / deny access to site by return email to Union

Fortescue will email Union and approve/deny access to site (Contractor will be copied into email). Fortescue will notify Security Gatehouse.

STEP 4 Day of Entry

Notice to Employees

On the day of proposed visit, Contractor is required to appropriately advise employees (usually in prestart):

- i. of proposed visit by specified Union;
- ii. time and location of the meeting;
- iii. that they have the choice to attend the meeting;
- iv. that they must return to duties immediately following the end of the break.

Escort of Union Official

Contractor is responsible for:

- i. Having designated (and competently trained) representative meet Union official at the designated pick-up location (usually the Project Gatehouse / Security Entrance) at the designated time (as set out in the email referred to in Step 3);
- ii. Confirming that the Union official has a valid Entry Permit and Notice with them.
- iii. Escorting and transporting Union Official directly to the designated meeting location.
- iv. At the conclusion of the break, the Union Official is to be immediately transported back to the Project Gatehouse / Security Entrance.
- v. All issues are to be recorded and actioned appropriately.

STEP 5 Post Visit Report to Fortescue

Within 24 hours of the visit, Contractor must provide a report to Fortescue Employee Relations detailing the following:

- i. the union official(s) visiting and the union represented;
- ii. the purpose of the visit;
- iii. the duration of the visit;
- iv. the work areas of the site that were inspected (if applicable);
- v. the issues and matters raised by the union official during or following the visit to the premises;
- vi. any actions, resolutions, commitments or follow up proposed by the contractor.

The report must be emailed to employeerelations@fmgl.com.au.