



Principles of Operation for the WHS Inspector

Dear WHS Inspector

The WHS Inspector is highly valued. WHS Inspectors are key to the maintenance of high standards of work health and safety and the prevention of injury and illness in the workplace. The *Principles of Operation* attached underpin the way in which WHS Inspectors will carry out their work.

The aim of the *Principles of Operation* (the *Principles*) is to provide WHS Inspectors with clarity in the pursuance of their compliance and enforcement work, so that we can continue to develop a professional and credible Inspectorate that commands the respect of Persons Conducting a Business or Undertaking (PCBU), workers and the general public.

The *Principles* are designed to promote consistency in the Inspectors' compliance and enforcement work. Consistency in application of the law is the only way to ensure fairness across industries and within workplaces.

WHS Inspectors are provided with powers that derive from the WHS legislation. The means of ensuring compliance with the WHS legislation is built on the basis of the WHS Inspector forming a reasonable belief in relation to breaches of the law and in relation to the potential for exposure to risk.

The *Principles* are intended to ensure the Inspector has enough information to assist them in forming a reasonable belief and in exercising their powers in a balanced and flexible manner, having regard to the needs of individual situations, industry sectors and workplaces.

The *Principles* derive strictly from the objects and intent of the WHS legislation, and from good administrative practice.

The *Principles* are intended to be discussed, debated and regularly updated. Where any conflict with an existing policy or procedure occurs, these principles override the existing procedure. In the vast majority of cases however, they are intended to be used in conjunction with existing policies and procedures.

I trust you find the *Principles* of assistance in carrying out your significant and important role.

Bryan Russell
EXECUTIVE DIRECTOR
SAFework SA

Terminology

Regulator – refers to the Executive Director of SafeWork SA

WHS – refers to work health and safety matters

WHS legislation - refers to the *Work Health & Safety Act 2012 (SA)* and their Regulations and the associated codes of practice

Worker – is used to include a person or individual who carries out work in any capacity for a PCBU and is detailed further in section 7 of the *Work Health & Safety Act 2012 (SA)*

General

1. Protection of workers and other persons against harm to their health safety and welfare in the workplace is the primary objective of the WHS Inspectors' work.
2. This objective is to be achieved first and foremost, by ensuring PCBU's and workers comply with their duties under the WHS legislation.
3. The WHS Inspector tests compliance with these duties by checking:
 - the consultation arrangements and the elimination or minimisation of risks arising from work, substances or plant; and
 - compliance with the specific requirements of the WHS legislation.
4. The key message that WHS Inspectors will take to everyone in a workplace, is that WHS must be systematically managed through a risk management process involving consultation with workers.

Workplace Visits

5. In carrying out their duties, WHS Inspectors will reflect the principles of consultation and participation embodied in the objects of the legislation on two levels:
 - when an Inspector enters a workplace, by ensuring that in addition to consulting with the PCBU that any health and safety representatives (HSRs) are also consulted, kept informed of any proposed action, and provided with copies of inspection reports; and
 - by encouraging the constructive participation of registered associations (i.e. unions and employer groups) in promoting WHS practices and assisting PCBU's and workers to achieve a healthier and safer working environment.
6. When an Inspector forms a reasonable belief that a person is in breach of the WHS legislation and that corrective action is necessary, the use of notices as authorised by the Act (i.e. improvement or prohibition) is preferred over verbal directions, other than when the breach is rectified while the Inspector is still present.
7. Where an Inspector forms a reasonable belief that there is or may be an activity that involves or will involve a serious risk to the health and safety of a person emanating from an immediate or imminent exposure to a hazard at a workplace, a prohibition notices must be used to prevent the activity from continuing.
8. In each instance where a Prohibition Notice is served, the Inspector will immediately take steps to consult with the PCBU and any HSR(s) about any alternative practical and safe means of carrying out the activity until the Prohibition Notice can be lifted. Any such interim procedure should be outlined in an Improvement Notice for the activity.
9. In most other instances, an Improvement Notice specifying the corrective action required to bring the activity into compliance allowing time to comply will be appropriate, as long as the Inspector has formed the reasonable belief that there is no risk to health and safety in the interim.

10. Where an Inspector forms a reasonable belief that plant or an activity need not comply with certain specific requirements of a Regulation, the Inspector must consult with the person designated under the Act (e.g. Chief Adviser Engineering) to determine whether a modification or exemption to the Regulation could be considered.
11. In the course of attendance at a workplace the Inspector should complete and issue an inspection report at the time of inspection.
12. An inspector after issuing a statutory notice/s on a government agency must inform their Team Manager and Chief Officer Field Services as soon as possible after the notice/s has been issued.

Investigations

13. The development of consistency in forming reasonable beliefs and opinions about appropriate investigation action is paramount.
14. At the start of each investigation in response to a *notifiable incident*¹ report (*fatality, serious injury or illness and dangerous incident*), WHS Inspectors must make an initial assessment of the incident against the organisation's compliance and enforcement policy to determine whether it fits the criteria for a potential prosecution and approach the collection of information and evidence accordingly.

Specifically, that policy states that a decision to prosecute may be considered where there is:

- a work-related fatality, or serious injury or illness, or where there is a risk of such outcomes;
- non-compliance with inspectors' notices or directions;
- offences against inspectors;
- offences against health and safety representatives and matters relating to entry permit holders;
- discrimination against employees on the basis of their WHS activities; and
- failure to notify SafeWork SA of a notifiable incident

Following the initial investigation of a matter in one of the above categories, a case conference will be arranged to consider whether to proceed with this course of action.

General Approach

14. In carrying out their functions, WHS Inspectors will be polite, courteous and responsive to the views and needs of PCBU's, workers and the general public. Every endeavour will be made to apply their powers in a balanced and equitable manner, with primary regard for health and safety.

Stakeholder Complaints

15. Complaints and queries about work health and safety in workplaces submitted by industry stakeholders such as employer associations and unions will receive high priority and feedback will be provided as promptly as possible.

¹ See sections 35, 36, & 37 WHS Act

Anonymity of Complaints

16. As required under s271(4) of the Act, WHS Inspectors will not divulge the identity of a complainant without the complainant's consent to do so.
17. Where a complainant wishes to remain anonymous even for the purpose of reporting the complaint to SafeWork SA, the complaint will be assessed for priority according to the seriousness of the allegations made. This assessment will be based firstly on the extent of the risks to health or safety alleged by the complainant.
18. Care should be taken not to inadvertently divulge the source of a complaint even where the source is a union, an employer association or another PCBU. Divulging such a source may lead to persons being able to identify a worker connected to the complaint, create animosity between PCBUs or may be detrimental to the relationship between unions and PCBUs.

Conflict of Interest

19. When assigned to act on a complaint or carry out an investigation, WHS Inspectors will declare to the Regulator whether they have previously been employed by that PCBU, or had any other association with or interest in the particular PCBU or workplace which could give rise to a conflict of interest in the performance of their duties. (*See MOP 11/0817 Inspectors Interests*)
20. The Regulator will assess the potential for any conflict of interest and determine if the inspector can deal, or no longer deal with the complaint or investigation.

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