

MODEL OPERATING PROCEDURE

Entry to workplaces and related powers and obligations



NOTE: This MOP limited changes were made to this MOP on 7/4/2016 to ensure:

1. Current and correct hyperlinks and references to:
 - Teams or position
 - Templates or other documents
 - Delegations
 - Sections of the WHS Act or Regs
2. Correction of grammatical or format errors.

A full review of this MOP will occur to reflect the new SWSA structure – post July 2016.

1. INDEX

1. Index	
2. Definitions	
3. Purpose	
4. Policy section	1
5. Procedure	4
6. Further information	7
7. Review	8
8. Appendix 1: Dealing with workplaces under the jurisdiction of another WHS regulator	9
9. Appendix 2: What makes for a good inspection?	11
10. Appendix 3: Determining legal entity and correct duty holder	13
11. Appendix 4: Inspector notebook records	17
12. Appendix 5: Digital photographs and recordings	19
13. Appendix 6: Sketches & drawings	20

2. DEFINITIONS

Dangerous Goods	Means anything prescribed as dangerous goods (see Schedule 2 point 6 WHS Act)
High Risk Plant	Means plant prescribed as high risk plant (see Schedule 2 point 6 WHS Act)
Regulator	Means the Executive Director of SafeWork SA or their delegate
Reviewable Decision	Means a reviewable decision under section 223 of the WHS Act
SWSA	Means SafeWork SA
WHS Act	Means <i>Work Health & Safety Act 2012 (SA)</i>

Note: Abbreviated references to WHS legislation in this procedure are read as follows (for example):

- Section 123 of the WHS Act is written as Section 123 or s123;
- Regulation 28 of the WHS Regulations is written as Regulation 28 or r28; and
- Part 7 of the WHS Act is written as Part 7.

3. PURPOSE

To provide guidance to inspector's when exercising their entry and related powers whilst attending a workplace.

4. POLICY SECTION

General power of entry

Section 163 provides that an inspector can enter at any time, a place that is, or the inspector reasonably suspects is a workplace, with or without consent of the person with management or control of the workplace.

Section 170 provides that the power of entry under the WHS Act cannot be exercised in a place that is used only for residential purposes except:

- with the consent of the person with management or control of the place; or
- under the authority conferred by a search warrant; or
- for the sole purpose of gaining access to a suspected workplace, but only;
 - if the inspector reasonably believes that no reasonable alternative access is available; and
 - (entry is) at a reasonable time having regard to the times the inspector believes the work is being carried out at the place to which access is sought.

An inspector may also enter any place (including places that are not workplaces) if authorised by a search warrant issued under s167.

Jurisdictional Note:

In SA, Schedule 1 of the WHS Act has been adopted. This means an inspector can enter any place where dangerous goods are stored or handled; or any place where high risk plant is operated or used to carry out work. In both cases the power of entry applies where a risk to a worker or to public safety exists or may exist.

NOTE: Entry to a place used for residential purposes must be made at a reasonable time.

Notification of entry

Section 164(1) provides that an inspector's entry may be without prior notice to any person.

Section 164 (2) provides that an inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:

- *the relevant person conducting a business or undertaking (PCBU) at the workplace;*
- *the person with management or control of the workplace; and*
- *any health and safety representative (HSR) for workers carrying out work for that business or undertaking at the workplace.*

Section 164 (3) provides that an inspector is not required to notify any person if to do so would defeat the purpose for entry or cause unreasonable delay.

Section 157(2) provides that an inspector must produce their identity card for inspection on request when exercising their compliance powers.

Note: A regulator's staff member and or an inspectors (s166) assistant who are not appointed inspectors attending a workplace in a purely assistance, advisory or training capacity are not exercising a power of entry under the WHS Act. Therefore those persons do not need to show any form of identification.

Cross jurisdictional workplaces

An inspector from a State WHS regulator may enter premises of persons covered by the Commonwealth WHS Act and exercise their powers in accordance with this procedure as long as the inspector reasonably believes it is necessary to do so in order to facilitate the inspector's enquiries in relation to persons or activities covered by the relevant jurisdiction's WHS Act. This also applies for an inspector appointed under the Commonwealth WHS Act entering the premises of persons covered under the WHS Act of a State or Territory regulator.

For further information and examples refer to [Appendix 1](#) Dealing with workplaces under the jurisdiction of another WHS Regulator

Health and safety representatives (HSR)

Section 68(2)(b) provides that an HSR (including a deputy HSR) may accompany an inspector during an inspection of the workplace, or part of the workplace, where a worker in the work group works. Section 68(2)(c) provides for an HSR to be present at an interview concerning work health and safety between a worker and an inspector or the worker and the PCBU, with the consent of that worker

Section 164(2)(c) and the SafeWork SA [‘Principles of Operation’](#) require inspectors to seek any HSR upon workplace attendance; and for any inspection, offer the HSR the opportunity to accompany them in relation to matters affecting the HSR’s work group.

Seeking assistance

An inspector may consider it necessary to have assistance at a workplace. If this is the case, s166 enables a person, including an interpreter, to accompany an inspector entering a workplace under s163 or under a warrant issued under s167. The assistant can do such things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise any of their powers.

Anything done lawfully by an assistant is taken for all purposes to have been done by the inspector. The assistant must not do anything that the inspector does not have the power to do except as permitted under a search warrant.

General powers on entry

Section 165(1) provides that an inspector who enters a workplace may conduct inspection and other activities. Specifically s165(1) provides that an inspector may:

- (a) *inspect, examine and make inquiries at the workplace;*
- (b) *inspect and examine any thing (including a document) at the workplace;*
- (c) *bring to the workplace and use any equipment or materials that may be required;*
- (d) *take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);*
- (e) *take and remove for analysis a sample of any substance or thing without paying for it;*
- (f) *require a person at the workplace to give the inspector reasonable help to exercise the inspector’s powers under paragraphs (a) to (e);*
(Note: it is an offence for a person to refuse or fail to provide reasonable help without reasonable excuse.)
- (g) *exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.*

Refer to:

- [Appendix 2](#) *Guidance on ‘What makes for a good inspection?’*, and
- [Appendix 5](#) *Guidance for information on digital photographs and recordings.*

Damage and compensation

Section 182 provides that an inspector must take all reasonable steps to ensure they (and any assistant) cause as little inconvenience, detriment and damage as is practicable in the exercise or purported exercise of their compliance powers.

Section 183 provides that the inspector must give written notice of any damage caused when exercising or purporting to exercise a power of the WHS Act unless the inspector reasonably believes the damage is trivial.

- *Record any damage and how the damage was done on the inspection report.*

Section 184 provides for a person to apply for compensation from the State if they incur loss or expense because of the exercise or purported exercise of a power under Division 3 of Part 9 of the WHS Act - Refer to [MOP Damage & Compensation](#)

5. PROCEDURE

Responsibility	Description
Inspector	<p>Preparation for visit – notification</p> <p>You are not required to give prior notice of your entry to a workplace, but you may do so.</p> <p>Entry without notice has the benefit of the inspector being able to see the workplace in its natural state.</p> <p>If you have reason to believe that prior notice will afford the workplace the opportunity to attempt to frustrate the purpose of the visit, then prior notice should not be provided.</p> <p>However, for efficiency, prior notice/making an appointment is appropriate if it is necessary to ensure that specific persons are in attendance. For example, you may need to interview particular persons or want to observe specific plant, equipment or processes in operation.</p> <p>When giving prior notice and/or making an appointment, seek to avoid days when relevant HSR's are not likely to be present, unless to delay your visit would mean that a significant health and safety issue was not addressed as quickly as it should be.</p>
Inspector	<p>On arrival at the workplace</p> <p>You will comply with reasonable security and WHS procedures required by the person with management or control of the workplace. <i>(For example, when seeking access to a workplace it may be a safety requirement to wear cotton clothing or other appropriate PPE. The PCBU should take all reasonable steps to assist you – this may include providing relevant PPE).</i></p> <p>When entering premises under the control of a Defence or Defence related establishment, you may be required to undergo a security induction. These requirements are not meant to inhibit or delay your entry unnecessarily. You will need to determine, on the facts at hand, whether or not it is reasonable in the circumstances.</p> <p>As soon as practicable after entry to a workplace, take all reasonable steps to seek out and notify the following persons of the purpose of your entry:</p> <ul style="list-style-type: none"> • the relevant PCBU at the workplace; • the person with management or control of the workplace (PMCW); and • any HSR for workers carrying out work for that business or undertaking at that workplace. <p>Note 1: In most cases, the PCBU is likely to be a body corporate - in this case take reasonable steps to notify the nominated management representative of the PCBU.</p> <p>Note 2: The PMCW is usually the same as the relevant PCBU. However, examples where the party may be different are:</p> <ul style="list-style-type: none"> • the PMCW may be a principal contractor if a contracted PCBU is the relevant PCBU for the purposes of your entry; • a landlord/rental agency may be the PMCW if the workplace is leased premises, depending on the issue being dealt with; and • the PMCW may be a host employer if the matter being dealt with relates to a labour hire worker.
	<p>Note 3: Identifying relevant HSR's may be achieved by looking at the list of HSR's that the PCBU is required to keep up to date and display under</p>

	<p>s74. If there are HSR's at the workplace, but no such list exists, seek out relevant HSR's by questioning the relevant management representative(s) and/or workers at the workplace. <i>(It is an offence for the PCBU not to prepare the list required by s74, and, if this is evident, your inspection should deal with this matter in addition to the thing(s) you are there to address).</i></p> <p>Produce your identity card for inspection on entry to the notified parties and upon request when exercising your powers.</p> <p>You are not required to notify on entry if to do so would defeat the purpose of your entry or cause unnecessary delay – e.g. when you reasonably believe there is a serious risk emanating from an immediate or imminent exposure to a hazard and you want to take action without delay.</p> <p>Be careful to maintain confidentiality when attending a workplace where the person who triggered your visit wishes to remain anonymous. You are not obliged to disclose the source of the information. It will suffice for you to indicate you are assessing compliance with WHS laws in relation to the relevant subject matter.</p> <p>If, to gain access to a suspected workplace, it is considered necessary to enter a part of the place that is used only for residential purposes, you may only do so if you reasonably believe that no reasonable alternative access is available and it is at a reasonable time when you believe work is being carried out.</p> <p>You must not enter any part of a place that is used only for residential purposes unless you have consent of the person with management or control of the place or under authority of a search warrant.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>NOTE: In SA, Schedule 1 of the WHS Act has been adopted. This means an inspector can enter any place at any time where dangerous goods are stored or handled, or any place where the operation of high risk plant is operated or used to carry out work. In both cases the power of entry applies where a risk to a worker or to public safety exists or may exist. The definition of dangerous goods and high risk plant are detailed at Point 6 of Schedule 1 of the WHS Act. NOTE: Entry to a place used for residential purposes must be made at a reasonable time.</i></p> </div> <p>If there are officers from another regulator such as the Environment Protection Agency or the Police at the workplace, and they request information from you, contact your line manager for advice as you are bound by the confidentiality requirements of s271.</p>
<p>Inspector</p>	<p>Assistant can accompany you</p> <p>You may arrange for a person to accompany you to the workplace, including an interpreter, to do such things as you reasonably require to assist you in the exercise of your powers.</p> <p>You are accountable for the actions of the assistant who is subject to your direction.</p> <p><i>It is the Regulators' policy that an inspector's powers do not extend to an assistant, however the assistant may assist an inspector by providing information that may help an inspector form the necessary reasonable belief required to issue a notice.</i></p> <p>If you are accompanied by an assistant, introduce them to the workplace parties you are dealing with and explain what the assistant will be doing.</p> <p>Anything done lawfully by an assistant is taken for all purposes to have</p>

	been done by you.
Inspector	<p>Confirm the duty holder and legal entity</p> <p>Determine who the relevant duty holders are for the purposes of your entry, and confirm their legal entity. This is important to ensure that you are dealing with the appropriate persons. Refer to Appendix 3 for guidance on determining legal entity and correct duty holder.</p>
Inspector	<p>HSR may accompany you</p> <p>Advise any HSR's that are relevant to the purposes of your entry (including deputy HSR's if the relevant HSR's are unavailable) that they may accompany you during your inspection of their work group, and may be present at any interview between you and any workers concerning work health and safety. The attendance of the HSR is subject to the interviewees consent.</p> <p>When a HSR accompanies you on an inspection, clarify that they can assist you as the representative for workers in the relevant work group by providing required information.</p> <p>When a worker has approved that an HSR be present at an interview you conduct with that particular worker:</p> <ul style="list-style-type: none"> • clarify that the HSR may act as a support for the worker, without acting to hinder the conduct of the interview; and • if making inquiries regarding an incident, it may be appropriate to first interview the HSR if they were also a witness to the incident so that the information they provide to you is not affected by being present when you make inquiries of the relevant worker. <p>Clarify also that any information coming to the HSR's attention when they accompany you or are present at an interview you conduct may only be used by them for the purposes of performing their functions and exercising their powers under the WHS Act.</p>
Inspector	<p>During the inspection</p> <p>Focus your inspection on the issue(s) which triggered your entry. This does not preclude other issues coming to your attention being addressed.</p> <p>Notes</p> <p>Take detailed notes in your inspector notebook to enable sufficient recall at a later date including a summary of your observations and information received (whether verbal or written) and a summary of powers exercised.</p> <ul style="list-style-type: none"> ○ Refer to Appendix 4 of this procedure for information on notebook records <p>Require reasonable help</p> <p>If you require any person to provide you with reasonable help to exercise your powers, explain to that person what you need and why. The required help needs to be reasonable, connected to the purpose of exercising inspector powers, and connected to the relevant workplace.</p> <p>If the person refuses to help, explain that it is an offence to not provide reasonable help without a reasonable excuse, ask why they are refusing to help, and record their reason(s) in your notebook.</p> <p>It is considered that a "reasonable excuse" would include that the person is physically incapable of providing the help or that the required help is not within the person's power or control, and not mere inconvenience.</p> <p>Note 4: It is not part of your role to operate workplace plant or equipment. If you need to observe any equipment in action, you should exercise your</p>

	<p>power under s.165(1)(f) to direct an appropriate person to operate the plant or equipment for you <u>after checking with the PCBU it is safe to do so.</u></p> <p>Any damage caused by the inspector</p> <p>You must take all reasonable steps to ensure that you or your assistant cause as little inconvenience, detriment or damage as practicable during your inspection and any exercise of powers. If you or assistant cause damage, you must give written notice of the damage as soon as practicable to the person you believe on reasonable grounds to be the person in control of the thing damaged (unless you reasonably believe the damage to be trivial). Generally, it is sufficient for this written notice to be a specific reference in the Inspection Report to be issued in relation to your entry.</p> <p>If the Inspection Report is not given contemporaneously, or it is not practicable to give the written notice to the relevant person in control of the item, a written notice of the damage needs to be affixed to the item damaged, where possible.</p>
Inspector	<p>General powers</p> <p>Exercise any of your powers under s165 as is appropriate, for example:</p> <ul style="list-style-type: none"> • inspect, examine and make inquiries; • inspect and examine any thing (including a document) at the workplace; • take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings). <p>Refer to:</p> <ul style="list-style-type: none"> ○ MOP Power to require production of documents & answers to questions (s171), and ○ Appendix 5 Guidance of this procedure for information on digital evidence management
Inspector	<p>Taking samples</p> <p>Refer to Section 5 of the <i>Evidence Management SOP</i> for guidance on taking samples.</p>
Inspector	<p>Compliance and enforcement</p> <p>Manage any issues relating to the visit in accordance with the Principles of Operation and the National Compliance and Enforcement Policy and the following operational instructions in the e-Manual including:</p> <p>Prohibition notices</p> <p>The Operational Guideline on Improvement Notices</p> <p>Non- disturbance notices</p>
Inspector	<p>Prepare and issue Inspection Report</p> <p>Actions taken under this procedure should be recorded in an Inspection Report, including notice of any damage caused by you.</p> <p><i>Refer to e-Manual: Inspection Reports and Damages</i></p>

6. FURTHER INFORMATION

- [e-Manual](#)
- [Principles of Operation](#)
- [National Compliance and Enforcement Policy](#)

7. REVIEW

This SOP will be reviewed two (2) years from the date of issue, and must be immediately modified if practices and/or procedures change.

8. Appendix 1: Guidance Pt 1 - Dealing With Workplaces under the Jurisdiction of another WHS Regulator

Entry to different jurisdictional workplaces

An inspector is able to exercise power of entry into the premises of a PCBU from another jurisdiction provided the inspector reasonably believes that the matter for which they are requiring entry relates to a duty holder under their own jurisdiction's WHS Act. The inspector is able to exercise their powers to:

- monitor and enforce compliance with duty holders covered by their home States WHS Act; or
- perform a function that an inspector has under their home States WHS Act at the workplace.

This may include exercising powers to deal with persons covered by another WHS Act.

Example: A State or Territory inspector is at the premises of a Commonwealth PCBU (previously known in SA as a Comcare employer) making enquiries into how a State or Territory-based labour hire company conducts hot work activities at that workplace. The labour hire company's representative states that they are following the hot work permit procedure as required by the Commonwealth PCBU. The inspector may then make enquiries of the Commonwealth PCBU, exercising their power under s.165 and/or s.171(1) to require the production of the hot work permit / safe work method statement and ask questions about it. They may also want to look at induction training records held by the Commonwealth PCBU relating to the work.

Note that the Commonwealth PCBU will commit an offence under the State or Territory WHS Act if the State or Territory inspector is hindered or obstructed in the exercise of their powers, including their power to enter the premises of the Commonwealth PCBU where a State or Territory PCBU works.

The above principles also apply if a Commonwealth inspector enters premises under the control of a State or Territory PCBU for the purposes of enquiring into a contravention of the Commonwealth WHS Act.

Note: Non-Commonwealth licensee PCBU's will transition to operate under South Australian WHS laws at a later date (as of 01 January 2013, the transition date is yet to be determined).

WHS issue under the control of a duty holder of another regulator's jurisdiction

If, as part of the visit, the inspector reasonably believes that a WHS issue exists that is within the control of a duty holder under the jurisdiction of another regulator, it is recommended that the inspector seek to have the issue addressed in one (or more) of the following ways:

- raise the issue with the responsible person, provide appropriate guidance and recommend they deal with the issue (noting that the inspector does not have any powers to enforce duties under the specific WHS Act the person is covered by);
- consider whether the duty holder under the jurisdiction of another regulator may also owe duties under a corresponding WHS law e.g. as a worker etc. If relevant, exercise powers in relation to other parties, who may then put pressure on the duty holders from other jurisdictions;
- raise the issue with an inspector from the appropriate WHS regulator if they are at the site at the time of the inspector's visit; or
- raise the issue with their Line Manager to consider whether to refer the matter to the relevant WHS regulator for them to take any further action they deem appropriate.

Joint inspections

It may be appropriate in certain circumstances for inspectors from more than one WHS regulator to conduct a joint inspection where issues relate to both WHS regulators. This should be arranged between relevant line management of the regulators or conducted as per any memorandum of understanding documents.

Inspector appointments across borders

It may be appropriate in certain circumstances for one WHS regulator to appoint an inspector from another WHS regulator under s156(1)(c) to act in the first regulator's jurisdiction.

Circumstances when this might be warranted and an agreed protocol for how one regulator can appoint another's inspector are included in the Heads of Workplace Safety Authorities'

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9. Appendix 2: Guidance Pt 2 – What makes for a good inspection?

A good inspection involves three stages:

- planning and preparation;
- conducting compliance assessment and initiation of enforcement action; and
- close out of inspection work.

The following lists provide a quick point of reference to check that each stage of an inspection is being conducted appropriately. (Not all steps may be possible or necessary for every inspection – for example, inspections initiated while already out in the field; inspections to follow up and check on compliance with notices previously issued.)

Planning and preparation

- obtain and review up-to-date workplace history or profiles
- conduct an Australian Business Name and Number (ABN¹) check/ASIC search to identify the correct legal entity of the duty holder
- plan your approach to the intervention/inspection based on the issue(s) you intend to address or are likely to encounter
- assess any potential risk to your own health and safety
- confirm your understanding of the rationale for the intervention
- refresh your understanding of relevant inspector operational policies and procedures
- gather information on acceptable risk controls or other solutions for the likely issues to be assessed
- ensure equipment and materials you need are ready for use (e.g. laptop, camera, notebook, guidance material, personal protective equipment)
- allocate time that is adequate for the job
- where appropriate for the type of inspection to be undertaken, engage with workplace parties prior to attendance to explain intended inspection and provide in-advance guidance material, and/or arrange interview with the relevant person(s)
- if more than one inspector is to attend, determine lead inspector and clarify expectations and roles of all involved
- copies of WHS Act, WHS Regulations, Codes of Practice, Guidance Notes etc for reference
- consider the need for assistants and their role

Conducting assessment

- ensure your own health and safety is addressed on arrival at workplace
- identify yourself and, if necessary, explain your power to enter the workplace
- identify and speak with relevant persons – relevant management representative(s) and health and safety representative(s) of the business or undertaking
- state the purpose of your visit and explain what you will be doing
- break the assessment process into stages (e.g. review documentation then ask questions and/or observe work being carried out to see what happens in practice)
- use powers in accordance with legislation and the regulator's policy and procedures
- be responsive to the situation – know when to change your approach
- conduct a walk-through of relevant part(s) of the workplace to observe work being undertaken and plant in operation

¹ An ABN is a unique 11 digit number used primarily for tax purposes since 1999. The ABN was introduced as a single business identifier to allow business to meet its regulatory obligations and access information and assistance through a single entry point to government.

- make sufficient observations and inquiries to draw your conclusions (e.g. sufficient to support a reasonable belief that a contravention exists if considering the need to issue a statutory enforcement notice)
- use effective communication techniques, including the use of open rather than closed questions
- verify and validate what you observe or what you are told
- deal with other issues you observe as well as those which triggered your visit
- make notes in your inspector notebook as you walk around
- discuss your observations and actions with the duty holder
- be transparent – explain why anything is considered non-compliant or a serious risk
- if warranted, provide advice / information or issue relevant enforcement notices
- ensure there is a balance between acting on behalf of the regulator to enforce compliance and providing guidance on how compliance can be achieved
- ask if there is anything else the workplace parties need (e.g. further information, advice or guidance) and offer other relevant regulator services (if any) or inform duty holder of steps to take to find a suitable non-regulator WHS service provider that could be accessed to assist them
- consider what, if any, guidance or other assistance may be required to help build capability for systematic management of workplace health and safety
- advise the workplace parties if a return visit may occur (or advise there will be no further action at this point in time)
- where appropriate, issue an inspection report to the relevant workplace parties
 - *Refer to MOP SAFE 09/0149 Inspection Reports*

Post inspection

- if necessary, conduct further research to determine enforcement actions required or to provide further advice to assist work health and safety management
- record relevant inspection work information in the regulator's inspection record management system InfoNET.
- where appropriate, issue an inspection report to the relevant workplace parties
 - *Refer to e-Manual: [Inspection Reports](#)*
- as required or necessary, provide feedback on the inspection to your manager
- schedule any necessary follow-up visits (e.g. to assess compliance with notices)
- identify any learning's for yourself, your team or the inspectorate more broadly (including learning's for any planned project or campaign of which the inspection was a part)
- consider and make recommendations to the regulator on any further action that may be appropriate in relation to the inspected workplace.

10. Appendix 3: Guidance Pt 3 - Determining legal entity and correct duty holder

It is critically important that the correct duty holder and their legal entity be established prior to or as early as possible during an inspection. This will enable an inspector to exercise their powers in relation to the correct party, and, for example, assist to ensure that any notices that may be issued are valid. It will also support any further action, following inspection work that the WHS regulator may determine to take in relation to that party.

The primary duty holder under WHS laws is the person conducting a business or undertaking. Other duty holders under WHS laws include officers, workers, and others persons at the workplace.

Person - When administering legislation, the term ‘person’ is taken to mean ‘any human being or artificial body of people, having rights and duties before the law’. A person must have a legal identity which generally means that they have the power to act, hold property, enter into legal contracts, sue and be sued in their own name.

A person may have more than one legal personality. If reference is made to a person as a particular kind of entity, it refers only to the person in its capacity as that kind of entity. For example, a natural person, or body corporate may also be a trustee for a particular trust. A natural person may also be a director of a body corporate.

The term ‘person’ may, for example, be a ‘natural person’ or a ‘body corporate’. Each of these is defined below:

Natural Person – Means an individual human being, and includes a sole trader / self-employed unless the person has incorporated their business or undertaking.

Body Corporate – Means an entity established under an Act of parliament (public authority), or under a statutory procedure of registration, such as the Corporations Law or a State or Territory’s law relating to incorporation. The following table provides an example of some body-corporate types along with the corresponding legislation / registration details.

Body Corporate Type	Enabling Act	Registrar
[Redacted]	[Redacted]	[Redacted]

Other entity types

There are a number of other entity types that do not meet the definition of person and therefore do not have duties before the law. When dealing with these entities, an inspector will need to make further enquiries to establish the person, or persons, behind the entity. The following table provides a list of the most common of these entities, along with a guide to the person(s) behind the entity.

Entity Type	Responsible Person(s)
Trust	<p>The general position is that a trust is a relationship, not an entity.</p> <p>It is the trustee who controls the trust and who is legally responsible. It is important to identify the trustee, and to do this it will be necessary to obtain a complete copy of the trust deed. Notices should be issued stating the name of the trustee or trustees (there may be more than one) followed by the words “as Trustee of the XYZ trust”.</p> <p>In a few instances the Parliament of South Australia has passed legislation by which a body with the word “Trust” in its name has been made a legal entity e.g. [REDACTED]. These are usually community or at least non-profit bodies. If it is necessary to issue a notice to such a body the notice should be issued in the name of the body as it is named in the legislation establishing the body.</p>
Partnership	<p>A partnership is an entity carrying on a business and consisting of two or more partners. Each partner may be a natural person or a body corporate. The partnership is not a legal entity in its own right. It is the partners, both jointly and individually, who are legally responsible for the actions of the partnership.</p> <p>Section 5(3) of the WHS Act provides that where a business or undertaking is conducted by a partnership, a reference to a PCBU is to be read as a reference to each partner in the partnership.</p> <p>While partners are jointly and severally liable for their acts and omissions, notices should be issued to the partner(s) considered to be in control of the matters giving rise to the contravention or serious risk.</p>
Incorporated limited partnership	<p>An incorporated limited partnership is taken to be a PCBU under s. 5(3) and can therefore be treated as a body corporate. (These are very rare.)</p> <p>Notices should be issued to the incorporated partnership.</p>
Joint venture	<p>A joint venture is an association of persons for the purposes of a particular trading, commercial, mining or other financial undertaking with a view to mutual profit. Joint ventures are governed by the terms of the formal agreement between the parties.</p> <p>A joint venture has no distinct status as a legal entity.</p> <p>While joint venture partners are jointly and severally liable for their acts and omissions, Notices should be issued to the legal person(s) who are members of the joint venture considered to be in control of the matters giving rise to the contravention or serious risk.</p>
Unincorporated association	<p>Each member is legally responsible for the actions of the association. While members are jointly and severally liable for their acts and omissions, notices should be issued to the member(s) considered to be in control of the matters giving rise to the contravention or serious risk.</p>
Franchise	<p>May be a natural person or a body corporate.</p>
Cooperative	<p>May be unincorporated or may be a body corporate.</p>

A Business (Trading) Name - Is a name that a person has registered for their exclusive use and is the name under which the person trades. The business name may be different to the legal name of the person who owns the name. A person is not generally required to register a business name in order to trade - it may choose to trade under its legal name. However, if a business or trading name is used, any notices issued by an inspector should be in the legal name of the person that has registered the business (trading name).

Legal Name - The legal name of a person is the name used by that person on legal contracts and in other formal situations. It is the name that formally identifies the person. The following resources are provided to assist the inspector in establishing the legal name of a duty holder.

Natural person	<p>Where the duty holder is a natural person, the inspector should ask the duty holder for their full name and request to see some form of personal identification (e.g. Drivers Licence) if there is a need to confirm the name.</p> <p>Where a duty holder refuses to cooperate and the inspector has identified the need to issue a notice, the inspector should use their powers to require the name and address of the person. (Note that s.185(3) of the WHS Act provides that evidence of correct name and residential address can be required if the inspector reasonably believes a name or residential address to be false.)</p>
Body corporate	<p>If the duty holder is a corporation [incorporated under Corporations Act 2001 (Cth)], the easiest way of obtaining the legal name is to obtain the duty holder's ACN² and then verify the details on the ASIC website http://www.search.asic.gov.au/gns001.html</p> <p>For all other body corporate types, the easiest way to verify the legal name is to obtain the duty holder's ABN from the duty holder, and verify the details on the ABR website. http://www.abr.business.gov.au/</p>
Public corporation	<p>In general, where a public corporation is created by an Act of Parliament the corporation is a separate legal person, and notices should be issued in the legal name of the corporation. Unfortunately the details of most South Australian government enterprises are not available on the ABR e.g. the [REDACTED]. Similarly, the details of many other public bodies established by acts of the South Australian parliament are not recorded on the ABR [REDACTED]. In such cases enquiries should be made of the CEO or other senior officer of the corporation to establish the correct name of the legal entity involved, and this should be confirmed by a search of the relevant legislation. Some assistance may be obtained from the index of subject matter of South Australian legislation maintained by the SA Division of the Australian Law Librarians association http://www.alla.asn.au/sa/sisal/index.html.</p> <p>A government department is not a separate legal person. The <i>Work Health and Safety Act 2012</i> does NOT contain provisions that allow action to be taken against a government department (or a unit of the public service) by the name of the department or unit – there is no equivalent in the new act to s.58(5a) of the <i>Occupational Health, Safety and Welfare Act 1986</i>. A notice to a government department or agency should be issued in the name of “The Crown in right of the State of South Australia” followed by, in brackets, the abbreviated name of the department or agency. If the department or agency has a separate ABN that should be included too.</p> <p>The Government changes the names of departments quite often. The website (www.sa.gov.au) is a useful resource for checking current names. (Similar websites in other jurisdictions should be referred to as relevant.)</p> <p>The legislation governing a particular public corporation will usually identify whether staff are employed by the body itself or by the Crown.</p>

² Entities that are incorporated under the Corporations Act 2001 (Cth) are registered with the Australian Securities and Investments Commission (ASIC), and are allocated a unique 9 digit Australian Company Number (ACN) upon registration.

ABN - Further Information

The ABN will eventually become the only number needed by a business in its dealings with government.

A unique ABN is given to an entity when the entity is registered on the Australian Business Register (ABR). The ABR is maintained by the Australian Tax Office (ATO) on behalf of the Commonwealth. While anyone can apply for an ABN, it is compulsory for organisations who wish to claim GST or who have a turnover >\$50000 to register and obtain an ABN.

A quick way to ascertain the correct legal name of a duty holder is to obtain the duty holder's ABN and conduct a free search of the Australian Business Register at www.abr.gov.au. A person's ABN can be found on the person's Certificate of Registration on the Australian Business Register, Superannuation Guarantee Contribution records, PAYG Instalment Activity Statement, PAYG Summary (formerly known as Group Certificate), workers wage slips or Tax file declarations.

The ABN should ideally be obtained prior to conducting the search. The register can also be searched by inputting the suspected name, either in full or in part, using standard search wildcards such as * or%. This will help the inspector verify the correct legal name of a person, but there is still a risk that an incorrect duty holder is identified.

The register contains information such as entity name, entity type, current and historical details and any associated trading name.

When searching information on ABR, the following information should be noted:

- the postcode on ABR will be for the registered business address. This may be the organisation's head office, owner's private address, accountant's address, etc. It may not be the address of the actual workplace that the inspector is visiting.
- always check that the ABN status is shown as "Active".
- not all entity types shown on ABR meet the legal definition of a person. Further enquiries may be necessary to identify the person behind the entity. (see Other Entity Types above)

ACN - Further Information

A quick way to check the legal name of an incorporated company is to obtain its ACN and conduct a free search of the ASIC Register at www.search.asic.gov.au/gns001.html. A company's name and ACN can be found on some of its public documents, e.g. their Certificate of Incorporation, its cheques and negotiable instruments, e.g. cheques to suppliers or contractors, and all documents lodged with ASIC, e.g. the company's Annual Return.

Where an incorporated company is also registered on the Australian Business Register, the ABN will usually be the same as the 9 digit ACN with a 2 digit prefix.

While it is intended that the ABN will eventually replace the ACN, corporations have been in a transition period since the introduction of the ABN and as yet, no definitive date has been set for the end of the ACN. Until such time as this occurs, the ACN and the ASIC register remain the most accurate source of information for companies.

While it is preferable that the inspector obtain the ACN prior to conducting the search, the register can also be searched by inputting the suspected name, either in full or in part, using standard search wildcards such as * or %. This will help the inspector verify the correct legal name of a person, but will not establish that the person is the correct duty holder.

NOTE: Take care when relying on financial documents (such as pay slips) prepared using an in-house accounting system such as MYOB or Quicken, especially if the system has been set up by the proprietor personally, or a bookkeeper or other person with limited legal knowledge.

11. Appendix 4: Guidance Pt 4 - Inspector notebook records

Notebook entries are to be made contemporaneously or as soon as possible after conversations or observations have been made. The notes will be in sufficient detail to enable recall at a later date if required. Do not include irrelevant opinions or comments not related to the exercise of your powers.

Notebook entries should include:

- time, date, place of visit / entry
- name of the duty holder, stakeholder and any other relevant persons (in full with the correct spelling verified)
- Persons date of birth, residential address and telephone contact details
- addresses, telephone numbers and place of the workplace
- how the correct legal entity was determined, for example, ABN, ACN
- dates and times of arrival and departure from the place
- chronological record of actions and conversations at the place
- summary of issues, observations and actions taken including powers exercised
- important and relevant conversations including as relevant their name and contact details
- sketches and recorded measurements if applicable
- description of photographs taken where required
- first and last digital image number where applicable
- detail of any digital or analogue audio recordings made; e.g. who when what
- documents sighted as part of inspection - including document title, author, date, the number of pages and any other identifying detail
- record of receipt issued for seized evidence

General points on note taking in field notebooks

Written notes should be made progressively throughout the visit/investigation and entries should be sufficient for your own recall. Furthermore:

- handwriting must be legible to be acceptable for court use
- all entries shall be made in ink
- it is advisable to avoid gaps between entries as these may be used to question the credibility of the notes in a court of law
- if leaving lines between paragraphs (e.g. to assist with readability) you must ensure an inked line is placed through the blank space; or if it is notes of a witness statement or record of conversation, the witness should sign their name on each blank line

Another useful method is the use of a digital or micro tape recorder for recording observations or dictating notes which may be recalled later. These dictation notes should be labelled and retained as exhibit property

- *Exhibit Property Management SOP*, and
- *Digital Evidence SOP*

Remember, these are your notes and you can record whatever you consider relevant at the time, whether it is words said, a picture or drawing, what you have seen, heard, touched, smelled or tasted. However, always remember that these documents are liable for scrutiny at court or other inquiry and you must remain professional in all that is recorded.

State records requirements

All completed notebooks are to be retained in accordance with *The State Records Act 1997*. All notebooks remain the official property of SafeWork SA and can be subject to subpoena at any time. They may also be the subject of a request for information under the *Freedom of Information Act 1991*. Defence counsel may examine the inspector's notes in court, so notes entered in the field notebook should relate only to factual evidence relative to the particular investigation.

You should retain your notebooks in your possession and in a secure place at your base office location until such time you leave the employ of SafeWork SA. Should you leave the employ of SafeWork SA, all your notebooks will be handed over to your line manager for archiving.

12. Appendix 5: Guidance Pt 5 - Digital Photographs and Recordings

Section 165(1)(d) empowers an inspector to take make recordings, including photographs, films, audio, video, digital or other recordings after entering a workplace.

An inspector may exercise this power to assist in obtaining evidence that an alleged offence has occurred and these images may later become evidence in any proceedings regarding the matter.

These recordings may be required to be produced under court subpoena or through Freedom of Information (FOI) requests. Furthermore, images are available for viewing under the transparency protocols of the National Compliance & Enforcement Policy.

Taking photographs for investigative purposes

Points to observe:

- photograph the entire scene from all angles and points of view
- photographs of key elements should be made in distant, medium and close sequences
- use a compass and note the direction that the photographer is looking
- use cardboard arrows, fluorescent tape, or some other indicator to highlight specific objects in the picture. A tape or ruler can be used to indicate the size of items in the picture.
- take note of:
 - the distance from the object/s, date, time, direction, lighting and any other details that can assist to validate the photograph.
 - the type of camera used and the speed settings.
 - the exposure of the film
- photographs which are taken by the inspector or any other person should have the following details recorded:
 - photographer's name
 - date the photograph was taken
 - description of subject
 - location of the workplace
 - digital image numbers of the photographs taken at a particular place at a particular time/date
 - where the photographer is not the investigating inspector, a statement must be taken from the photographer to verify their photography if the photographs are to be used as evidence.
- See [SOP Digital Evidence Management](#) and the [Photo Log](#)

Taking photographs for other purposes

If an inspector wishes to take images for purposes not related to the exercise of their powers, for example, take an image for use in a publication or training purposes, then written permission from the duty holder must be sought to take the image, and to use it.

Australasian Guidelines for Digital Imaging Processes

The use of digital devices to capture images or voice conversations in law enforcement activities has led to the development of strict forensic guidelines to ensure that such evidence is available for use in Australian Courts. The [Australasian Guidelines for Digital Imaging Processes](#) have been developed by an Electronic Evidence Specialist Advisory Group with representatives from police and forensic groups across Australia and New Zealand.

These guidelines have been simplified and adapted for use for the management of all digital evidence collected by inspectors into a standard operating procedure that shall be followed. See [SOP Digital Evidence Management](#) and the [Photo Log](#)

13. Appendix 6: Guidance Pt 6 – Sketches & drawings

Where appropriate, a sketch or diagram can assist to describe the incident. It should show a plan view of the site and indicate measurements from key reference points. For example:

- positions of people and witnesses involved
- positions of equipment
- parts of materials, equipment and environmental structures broken,
- detached or otherwise damaged
- marks or other indications of impacts
- traces of movements (e.g. footprints, tyre tracks)
- defects and irregularities found in materials and equipment
- stains and or accumulations of fluids
- spilled or contaminated material
- debris lodged by impact or created by impact
- safety devices in both normal and abnormal places
- specific measurements (e.g. trapping points in machines).

Sketch technique

- must mark the sketch 'not to scale'
- start from a precise reference point which can be located at any time
- properly oriented by an arrow showing north
- properly identified with a title and the inspector's name or initials, and
- the date the sketch was made.