

STANDARD OPERATING PROCEDURE

Expiation Notices

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1. PURPOSE

This SOP provides guidance to SafeWork SA inspectors/authorised officers (inspectors) on the issuing and processing of expiation notices under legislation administered by the agency. This document is an amalgam of the procedures detailed in the former SafeWork SA SOP *Guidelines for the Issuing and Processing of Expiation Notices*; the harmonised 2012 Work Health & Safety *Infringement Notice Model Operating Procedure*; and the requirements prescribed in the South Australian *Expiation of Offences Act 1996*.

2. DEFINITIONS

Expiation Notice	This is the terminology used in the <i>Expiation of Offences Act 1996</i> to describe the penalty notice issued for expiable offences issued under SA legislation
Infringement Notice	Is the term used within the Work Health & Safety (WHS) legislation for an expiation notice issued for prescribed offences within that legislation
PCBU	Means a person undertaking a business or undertaking as defined in WHS legislation
PMCW	Means a person with management or control of a workplace as defined in WHS legislation
WHS	Means Work Health and Safety as per the <i>Work Health & Safety Act 2012 (SA)</i>

2. BACKGROUND

The *Expiation of Offences Act 1996* provides that in the case of certain offences, an expiation notice may be issued in lieu of commencing prosecution action. The alleged offender may then avoid prosecution by payment of an expiation fee within the allocated period.

This option is available only when:

- the Act or Regulation that creates the offence stipulates that the offence may be expiated; and
- the expiation notice has been prepared and issued appropriately in relation to the alleged offence (refer to SOP Parts 5 & 6 – [Preparing](#) & [Issuing Expiation Notices](#)).

3. EXPIABLE OFFENCES AND PENALTIES

The *Victims of Crime Act 2001* states that in order for an offence to be expiated, the levy established by that Act must be paid. The amount of the levy is detailed at the top of [Appendix A](#) of this SOP. The levy amount must be included for every offence that is expiable, and be included in the final amount payable.

[Attachment A](#) lists all expiable offences located in the Acts administered by SafeWork SA.

4. EXPIATION NOTICES – GENERAL PRINCIPLES

Expiation notices are discretionary. For guidance on exercising this discretion, please refer to [Appendix D](#) of this SOP. Under no circumstances should the use of expiation notices be treated as a revenue-raising opportunity.

Inspectors issuing an expiation notice need to ensure all the points below are considered/acted upon to ensure the validity of the notice (these are not in any priority order):

1. That they have formed a reasonable belief that a scheduled offence has been contravened as a result of:
 - a. their observations,
 - b. information obtained from conversations with persons at the location or who may be involved,
 - c. information obtained from document review,
 - d. information from relevant codes of practice, Australian Standards and other published guidance materials; and
 - e. advice provided by suitable technical specialists (if relevant)
2. That the alleged offender is given the opportunity to provide any mitigating circumstances that led to the breach,
3. That sufficient evidence to prove all elements of the offence beyond reasonable doubt has been gathered [Use [Attachment C](#) of this SOP as a guide to gathering sufficient evidence],
4. That they are authorised to give expiation notices for the alleged offence under the Act against which the offence is alleged to have been committed,
5. That the alleged offence must be one that can be expiated (refer to [Attachment A](#) of this SOP - *Expiable Offences*),
6. That the offence must have been committed within the last six months,
7. That the offence is not trifling,
8. That the identification of the individual or entity must be confirmed¹, and the expiation notice is issued to the liable person or entity; and

¹ Inspectors should ensure knowledge of legislative provisions for a person having to provide name and or address and evidence of same

Noting that:

9. An expiation notice cannot be given to a child (defined as a person who was under the age of 16 years at the time the offence is alleged to have been committed), and
10. An expiation notice cannot, if the regulations or some other Act so provides in relation to particular offence, be given to a person under the age of 18 years; and

And:

11. In relation to expiable offences for WHS matters that apply to a workers' obligations, evidence must be gathered to assess whether a PCBU's obligations to a worker (to enable their compliance) have first been met; and
12. For WHS matters, whether the circumstances warrant the application of a sanction at a lesser scale than an enforceable undertaking or prosecution (possibly in addition to remedial action in the form of say a prohibition or improvement notice).

5. PREPARING AN EXPIATION NOTICE

Each contravention of a scheduled offence for which an expiation notice is to be issued must be the subject of a separate expiation notice (One notice per offence).

Once an inspector has determined that the issuing of an expiation notice is appropriate, the following procedure should be adopted:

- Complete the expiation notice form, ensuring all relevant particulars are addressed. The notice must contain a statement of the specific offence with which the accused person is charged, together with detail sufficient to give reasonable information as to the nature and particulars of the charge. Ordinary language should be used as much as possible. A reference to the statute creating the offence must be included; and
- Ensure the correct expiation fee and victims of crime levy have been applied - refer to [Appendix A](#) of this SOP - *Expiable Offences*; and
- Ensure the expiation notice specifies that the expiation fee is to be paid within 28 days from (and including) the date of the notice.

When an error is made while completing a manual expiation notice, the notice must be voided and not issued. A new notice must be prepared in place of the voided notice. Do not attempt to correct the error on the expiation notice. To void the notice, write CANCELLED in block letters diagonally across the notice. Leave all copies in the notice book. Electronic notices can be amended as required.

If raising an electronic notice on InfoNET, refer to the InfoNET manual for instructions on how to do so.

Record all manual expiation notices on InfoNET and ensure the reminder date is recorded to replicate that of the manual notices due payment date.

NOTES:

- The above procedure does not limit an inspector from seeking a case conference to discuss appropriate action or any legal issues that may be unclear prior to issuing a notice.
- Expiation notice books are available from the SafeWork SA Operational Support Team.

6. ISSUING OF EXPIATION NOTICES

Once an inspector has prepared an expiation notice, the following procedure for issuing the notice should be adopted:

- Electronic notices shall be printed on orange coloured paper
- The top page of a manual notice (orange) is given to the alleged offender either:
 - in person or by service on an employee or agent of the alleged offender, or

- by registered post addressed to the alleged offender's last known place of business or residence, and
- if the notice relates to a breach of WHS legislation, a copy of the relevant inspection report must be provided with the notice
- The various copies of the notice are filed as follows:
 - the green copy of a manual notice marked on the bottom as (*GREEN TO TEAM ADMINISTRATION OFFICER*) is to be filed in the InfoNET hard file
 - the pink copy remains in the notice book (manual notices)
 - the second copy of the electronic notice (blank on reverse) is to be filed in the InfoNET hard file, and
 - that the InfoNET case file has been updated to show a notice has been issued (refer to the InfoNet manual for instructions on how to do this).

When issuing the expiation notice personally, inform the person to whom the notice is issued about the following:

- Why they are receiving the notice
- The timeframe for and methods of paying the penalty
- Their right to elect to have the matter heard before a court
- Their right to seek a review of (dispute) the notice on grounds the person may consider the offence to be trifling, and how they can do this, and
- And that any clarification about the requirements of the notice be referred back to the issuing inspector or to the issuing inspectors line manager

Make contemporaneous notes about the detail of to whom and when the expiation notice was issued, and any response by the person relating to the allegation.

NOTE: For WHS matters, the person to be issued an expiation notice should be provided with a copy of the inspection report that the expiation notice refers to.

NOTE to the inspector: It will be a requirement for the inspector to accurately record the date of issue of the original expiation notice in InfoNET. This ensures that an automatic Oracle Pop Up reminder will present to the inspector. This pop up reminder will also present for the Team Manager to cover for the eventuality that the inspector is on leave or has resigned from SWSA. (This is crucial for the mandated 28 day period to be observed).

7. EXPIATION REMINDER NOTICES

- If by the end of the 28 day expiation period an alleged offender has neither paid the expiation fee, nor obtained an order for alternative payment arrangements from the Registrar of the Court on the grounds of hardship, then an expiation reminder notice must be issued.
- As a matter of policy, team managers are authorised to issue reminder expiation notices or approve notice withdrawals.
- Before issuing a reminder notice, the issuing inspector shall establish that there is proof of receipt of the original notice, and that the notice has not been complied with.
- Reminder notices will be generated electronically from InfoNET by the inspector who originally issued the primary notice or by a staff member nominated by the team manager.

To issue an expiation reminder notice the procedure is to:

- Complete the expiation reminder form on InfoNET ensuring all relevant particulars are addressed
- Ensure the correct original expiation fee and victims of crime levy have been applied after completing the reminder notice (see [Appendix A](#) of this SOP - *Expiable Offences and Penalties*)
- Ensure the correct reminder fee is applied (see [Appendix A](#) of this SOP)
- Ensure the compliance date of the reminder notice is 14 days from the date of the issue date of the reminder notice.
- The reminder notice must be sent by registered post addressed to the alleged offender's last known place of business or residence.

NOTE: It will be a requirement for the person creating the reminder notice to accurately record the date of issue of the reminder notice in InfoNET. This ensures that an automatic Oracle Pop Up reminder will present to the inspector. This pop up reminder will also present for the Team Manager to cover for the eventuality that the inspector is on leave or has resigned from SWSA. (This is crucial for the mandated 14 day period to be observed).

Make contemporaneous notes about the detail of to whom and when the expiation reminder notice was issued and any response by the person relating to the allegation.

8. ENFORCEMENT PROCEDURE

If 14 days have elapsed following the issue of an expiation reminder notice and the notice remains unexpiated, the notice may be enforced in the Magistrates Court. To enforce a notice that has not been complied with, an officer shall, through their relevant manager, provide a minute to Chief Advisor Legal Enforcement & Strategy of SafeWork SA's Investigation & Legal Team.

The Minute should summarise the case, recommend referral of the notice and include a completed Certificate for Enforcement (Magistrates Court Form 49)². The Minute should briefly summarise the investigation of the alleged offence that led to the issuing of the expiation notice and include a copy of the expiation and expiation reminder notices and all other supporting evidence (i.e. field notes, interviews or copies of other relevant records).

The Magistrates Court Registrar may only make an enforcement order if the time for commencement of a prosecution against the person for the unexpiated offence has not expired.

An inspector must not seek prosecution of an unexpiated expiation without first issuing an expiation reminder notice and allowing the expiation date of the reminder notice to lapse.

9. WITHDRAWAL OF EXPIATION NOTICES

This action can only be undertaken by a team manager.

- An expiation notice may be withdrawn under any of the following circumstances:
 - the team manager is of the opinion that there is insufficient evidence to prove the allegation beyond reasonable doubt, or
 - the team manager is of the opinion the notice should not have been given with respect to the offence, or
 - the notice is defective, or
 - the team manager decides that the alleged offender should be prosecuted for the offence.
- The withdrawal of an expiation notice is effected by giving written notice of the withdrawal personally or by post to the person to whom the expiation notice was given. The notice must specify the reason for withdrawal (see s18(6) Expiation of Offences Act 1996).

² These forms are available through the SWSA Intranet Staff Resources> Files & Templates>Templates - General

- An expiation notice may be withdrawn notwithstanding payment of an expiation fee or an instalment, but in that event, the amount paid must be refunded.
- If an expiation notice is withdrawn, it is possible to commence a prosecution for an offence to which the notice related. However the fact that the defendant paid an expiation fee or an instalment, or obtained an order for alternative payment arrangements from the Registrar of the Court on the grounds of hardship, is not admissible in those proceedings as evidence against the defendant.
- An expiation notice cannot be withdrawn for the purposes of prosecuting the alleged offender for an offence if:
 - an enforcement order has been made in respect of the offence, or
 - the period of 60 days from the date of the notice has expired.
- If an expiation notice is withdrawn and the notice of withdrawal does not specify that the notice is withdrawn for the purposes of prosecuting the alleged offender:
 - the Court must be informed of the withdrawal of the notice, if a Certificate for Enforcement has been sent to the Court, and
 - any enforcement order made under the Act in respect of the notice will be taken to have been revoked, and
 - the alleged offender cannot be prosecuted for an alleged offence to which the withdrawal related, unless the alleged offender has been given a fresh expiation notice and allowed the opportunity to expiate the offence.

An expiation notice must be withdrawn if the alleged offender did not receive the notice until after the expiation period, or has never received it as a result of error on the part of SafeWork SA or failure of the postal system. However an expiation notice cannot be withdrawn for this reason if the alleged offender has paid the expiation fee or part thereof. If an expiation notice is withdrawn in these circumstances, the period within which a fresh expiation notice may be given to the alleged offender in respect of the offence to which the withdrawal related is extended to one year from the date of commission of the alleged offence.

10. ALLEGED OFFENDER'S OPTIONS

10.1 Late Payment

A team manager may accept late payment.

10.2 Trifling Offence Review

An alleged offender may apply to SafeWork SA for a review of the notice on the ground that an offence to which the notice relates is trifling.

When SafeWork SA receives an application to review a notice on trifling grounds, an internal review is to be convened within **seven** days to determine the application³.

Care should be taken to ensure for reasons of procedural fairness, that the persons who participate in the review were not involved in the original decision to issue the expiation notice.

SafeWork SA may, before determining any such application, require the applicant to provide further information in support of the review application. SafeWork SA may or may not require such information to be supported by statutory declaration.

SafeWork SA must consider any such application before it can issue a Certificate for Enforcement.

If SafeWork SA is satisfied that the offence is trifling, notice in writing must be given personally or by post to the alleged offender, and the notice in respect of that offence must be withdrawn. No further expiation notice may be issued in respect of that offence; however an expiation notice cannot be withdrawn under the following circumstances:

- if any amount due under the notice has been paid, or

³Internal review means a case conference, and upon commencement of WHS legislation means the internal review process.

- the alleged offender has obtained an order for alternative payment arrangements from the Registrar of the Court on the grounds of hardship, or
- SafeWork SA has issued a Certificate for Enforcement in respect of the offence.

Should the outcome of the review be that the expiation notice be upheld, the applicant shall be advised by letter signed by the issuing inspectors team manager. This letter must set out the grounds, evidence and other matters considered. The letter must also outline the options now available to the person, which are:

- That any amount payable pursuant to the notice is now due to be paid within 14 days of the date of the letter. (Where payment has not been received at the end of this period, the file should be referred to the team's Senior Administration Officer for the issue of an expiation reminder notice), and
- That the applicant may elect to dispute the notice in court and elect to be prosecuted

10.3 Disputing the Offence / Prosecution

A person in receipt of an expiation notice may dispute the notice and elect to be prosecuted. The alleged offender is required to complete the *election to be prosecuted* tear off slip on the front expiation notice and forward it to SafeWork SA. A case conference must be convened within seven days of the agency's receipt of the tear off slip advising of a person's election to be prosecuted. The normal prosecution process will then apply.

If a person elects to be prosecuted, the expiation notice will be taken to have been withdrawn in respect of the offence to which the election relates.

Proceedings for prosecuting expiable offences must be issued within the following timeframes:

<i>Occupational, Health, Safety & Welfare Act 1986</i> <i>Dangerous Substances Act 1979</i> <i>Explosives Act 1936</i> <i>Petroleum Products Regulation Act 1995</i>	<ul style="list-style-type: none"> – Within six months of the expiry of the expiation period specified in the notice (if an expiation notice was given to the person) – Within six months of the date on which the offence is alleged to have been committed (if an expiation notice was not given to the person)
<i>Fair Work Act 1994</i>	– Within two years of the date on which the offence is alleged to have been committed
<i>WHS Act 2012 (When enacted)</i>	– Within two years of the offence coming to the attention of SWSA

[Attachment B](#) contains a flow chart that depicts the progression of expiable offences through SafeWork SA.

10.5 Cases of Hardship

The Act provides that a person who has been given an expiation notice may apply to the Court Registrar for relief (time payment) on the basis that they would suffer hardship if the expiation fee were to be paid in full. If the Registrar makes such an order for relief in the case of an expiation notice issued by SafeWork SA, written notice will be provided to SafeWork SA.

Upon receipt of such a notice from the Court, the notice should be matched with the applicable expiation notice and processed as per the Registrar's order.

11. ADMINISTRATIVE PROCESSING

It is SafeWork SA policy that inspectors must not accept payment of an expiation notice penalty. Inspectors shall direct the payer to follow the payment procedure detailed on the rear

of the expiation notice.

The administrative officer (receptionist) responsible for receipting is responsible for the following procedures:

11.1 Receipting of Expiation Notices

When the expiation notice is receipted, it is coded on Bizgate against the expiation notice. The victims of crime levy is receipted against the same receipt, however a separate code is used to distinguish the two fund sources.

11.2 Processing Paid Expiation Notices

When the expiation notice is paid, the receipt will be forwarded to the issuing inspector to be kept in the InfoNET hard file.

11.3 Processing Unpaid Expiation Notices

If an expiation notice is not paid the inspector who originally issued the primary notice or by a staff member nominated by the team manager will send a reminder notice (refer to SOP [Part 7 – Expiation Reminder Notices](#)).

11.4 Processing Reminder Notices (Issued and Unpaid)

If a reminder notice is not paid by the due date and the alleged offender elects to be prosecuted, the relevant inspector and the inspector's manager will arrange a legal case conference for the consideration that a prosecution brief be prepared.

If a reminder is not paid and the alleged offender has not elected to be prosecuted, the inspector prepares a Certificate for Enforcement (Magistrates Court Form 49) and notifies the inspector and team manager (refer to SOP [Part 8 - Enforcement Procedure](#)).

11.5 Maintaining Register of Notice Books

A register of notice books is maintained centrally by SafeWork SA's Operational Support Team to ensure numbers are not duplicated and to identify the inspector to whom the books are assigned.

Notice books are confidential and legal documents. It is a requirement that once a book is completed it must be returned to the Operational Support Team.

11.6 Register of Notices

Each team shall maintain a register of notices issued. Register entries will include:

- notice number
- issuing inspector
- expiation fee amount
- payment due date
- levy amount
- receipt number
- date paid
- payee reminder fee
- withdrawals
- extension of time
- progression to Magistrates Court, and
- cancellation.

11.7 Processing Victims of Crime Levy

Quarterly, DPC Business Services will forward payment of the victims of crime levies collected in that quarter to the Department of Justice, Victims of Crime section. The amounts forwarded should reflect each team's register of notices for the quarter and be available for audit and cross-referencing at all times.

The Senior Accounting Coordinator shall audit the register to ensure compliance with these procedures.

12. FURTHER INFORMATION

Related documents:

- Investigation SOP and all procedures related to that SOP
- Expiation of Offences Act 1996

13. REVIEW

This SOP must be reviewed every 2 years and immediately modified if practices and/or procedures change.

Author/Document Owner Investigation & Legal Team (Legal)

Contact: 

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ATTACHMENT A – LIST OF EXPIABLE OFFENCES

Victims of Crime Levy is \$60-00

Expiation Reminder Levy is \$51-00

OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT 1986		
Section	Brief Description	Penalty
39 (4)	Contravention/failure to comply with improvement notice	\$315

WORK HEALTH AND SAFETY ACT 2012 (SA)			
Section	Offence	Penalty (individual)	Penalty (body corporate)
38(7)	Duty to notify of notifiable incidents	\$600	\$3 000
70(1)(c), (d) or (e)	General obligations of person conducting business or undertaking	\$720	\$3 600
70(2)	General obligations of person conducting business or undertaking	\$720	\$3 600
72(7)	Obligation to train health and safety representatives	\$720	\$3 600
74(1)	List of health and safety representatives	\$240	\$1 200
75(1)	Health and safety committees	\$600	\$3 000
79(3)	Duties of person conducting business or undertaking	\$720	\$3 600
79(4)	Duties of person conducting business or undertaking	\$720	\$3 600
97(1)	Display of provisional improvement notice	\$600	\$3 000
193	Compliance with improvement notice	\$720	\$3 600
273	Person not to levy workers	\$600	\$3 000

WORK HEALTH & SAFETY REGULATIONS 2012 (SA)			
NOTE: Items preceded with *** are only expiable from 01 January 2014			
Reg	Title	Individual	Body Corp.
46(2) - (4)	Duties of worker	\$432	\$2 160
48	Remote or isolated work	\$720	\$3 600
50(1) &(3)	Monitoring airborne contaminant levels	\$720	\$3 600
50 (2)	[Record keeping]	\$144	\$720
66(2) & (5)	Managing risks to health and safety [Duty to prepare risk assessment and keep it up-to-date]	\$432	\$2 160
67(4)	Confined space entry permit[ensuring no-one is left in the space inadvertently]	\$720	\$3 600

WORK HEALTH & SAFETY REGULATIONS 2012 (SA)

NOTE: Items preceded with * are only expiable from 01 January 2014**

<i>Reg</i>	<i>Title</i>	<i>Individual</i>	<i>Body Corp.</i>
68(1)	Signage	\$432	\$2 160
69	Communication and safety monitoring	\$720	\$3 600
72(1) &(2)	Specific control - flammable gases and vapours	\$720	\$3 600
76(2)	Information, training and instruction for workers [Training records to be kept]	\$144	\$720
77(2)- (4),	Confined space entry permit and risk assessment must be kept	\$144	\$720
77(5)	Confined space entry permit and risk assessment must be kept [Worker access etc.]	\$432	\$2 160
85(1)- (3)	Evidence of Licence - PCBU	\$432	\$2160
85(4)	Evidence of Licence – PCBU (record-keeping)	\$144	\$720
94(1)	Licence document to be available (HRW)	\$144	\$720
96	Notice of change of address	\$144	\$720
97	Licence holder to return licence (amended HRW licence)	\$144	\$720
98(1)	Replacement licence document (HRW licencing)	\$144	\$720
111	Licence holder to return licence document (HRW licence suspension/cancellation)	\$144	\$720
124(1) &(2)	Accreditation document to be available (accredited assessors)	\$144	\$720
125	Changes to information (accredited assessors)	\$144	\$720
126	Accredited assessor to return accreditation document	\$144	\$720
127	Replacement accreditation document	\$144	\$720
139	Accredited assessor to return accreditation document (suspension/cancellation of accreditation)	\$144	\$720
142	Notice of demolition work	\$144	\$720
150(1) &(2)	Inspection and testing of electrical equipment	\$432	\$2 160
150(3)	Inspection and testing of electrical equipment (Record of testing)	\$144	\$720
154	Electrical work on energised electrical equipment—prohibited	\$720	\$3 600
155(1) & (2)	Duty to determine whether equipment is energised	\$720	\$3 600
159	Unauthorised access to equipment being worked on	\$720	\$3 600
160	Contact with equipment being worked on	\$720	\$3 600
165(1)	Testing of residual current devices	\$432	\$2 160
165(2)	Testing of residual current devices [Record keeping]	\$144	\$720
170	Duty to keep certificate of medical fitness (Expiable only from 01-07-2013)	\$144	\$720
175(1)- (3)	***Evidence of competence (diving work)	\$144	\$720
180	***Additional control - Dive safety log to be kept	\$144	\$720
181(2) -	***Use of dive safety log	\$144	\$720

WORK HEALTH & SAFETY REGULATIONS 2012 (SA)**NOTE: Items preceded with *** are only expiable from 01 January 2014**

Reg	Title	Individual	Body Corp.
(4)			
182(2), (3) &(5)	***Record keeping (Diving work)	\$144	\$720
224(1)& (2)	Pressure equipment	\$432	\$2 160
226(1), (3),(4)	Plant with presence-sensing safeguarding system – records	\$144	\$720
228	Records and information (designers of plant)	\$144	\$720
229(1) &(2)	Records of standards or engineering principles used (designers of plant)	\$144	\$720
230(1)- (3)	Records to be available for inspection (designers of plant)	\$144	\$720
237(2), (4)&(5)	Records of plant	\$144	\$720
238(2)	Operation of amusement devices	\$720	\$3 600
253	Duty of design verifier	\$432	\$2 160
254	Design verification statement not to be made in certain circumstances	\$432	\$2 160
260 (3) - (5)	Plant design registration number	\$144	\$720
262(1)	Registration document to be available (plant designs)	\$144	\$720
273(3) &(4)	Plant registration number	\$144	\$720
275(1)	Registration document to be available (items of plant)	\$144	\$720
282	Changes to information (plant/design registration)	\$144	\$720
287	Registration holder to return registration document (plant/design registration)	\$144	\$720
288(1)	Replacement registration document (plant/design registration)	\$144	\$720
295(1)	Designer must give safety report to person who commissions design	\$432	\$2 160
296	Person who commissions project must give information to principal contractor	\$432	\$2 160
301	***Safe work method statement—copy to be given to principal contractor (high risk construction work)	\$432	\$2 160
302	***Review of safe work method statement (high risk construction work)	\$432	\$2 160
303(1) & (2)	***Safe work method statement must be kept (high risk construction work)	\$144	\$720
303(3)	***Safe work method statement must be kept (high risk construction work) [Worker access etc.]	\$432	\$2 160
304(2)- (4)	Excavation work- underground essential services information	\$432	\$2 160
304(5)	Excavation work- underground essential services information (information access)	\$144	\$720
308	***Specific control measure—signage identifying principal contractor	\$432	\$2 160

WORK HEALTH & SAFETY REGULATIONS 2012 (SA)

NOTE: Items preceded with * are only expiable from 01 January 2014**

Reg	Title	Individual	Body Corp.
312	***High risk construction work—safe work method statements	\$432	2 160
313(1)-(4)	***Copy of WHS management plan must be kept	\$144	\$720
316	Duty to provide general construction induction training	\$432	\$2 160
326(1) & (2)	Duties of workers (general construction induction training)	\$144	\$720
378(1) & (2)	Health monitoring records (hazardous chemicals)	\$144	\$720
387(2)	Statement of exposure to be provided to workers (hazardous chemicals)	\$432	\$2 160
388(2) & (3)	Records to be kept (hazardous chemicals)	\$432	\$2 160
390(2) & (3)	***Pipeline builder's duties	\$144	\$720
391(3)	***Management of risks to health and safety by pipeline operator	\$144	\$720
409	***Duty to pay costs of health monitoring	\$432	\$2 160
415(2)	***Removal of worker from lead risk work	\$432	\$2 160
418(1) & (2)	***Health monitoring records (lead)	\$144	\$720
423(2)	Analysis of sample (asbestos)	\$144	\$720
425(1) & (2)	Asbestos register	\$432	\$2 160
426	Review of asbestos register	\$432	\$2 160
427(1) & (2)	Access to asbestos register	\$432	\$2 160
429(5)	***Asbestos management plan [Worker access]	\$432	\$2 160
432(5)	***Asbestos management plan (management of naturally occurring asbestos)	\$432	\$2160
438(1) & (2)	Duty to pay costs of health monitoring	\$432	\$2 160
444(1) & (2)	Health monitoring records (asbestos)	\$144	\$720
445(3) & (4)	Duty to train workers about asbestos [Records of training]	\$144	\$720
449	Duty to give asbestos register to PCBU of demolition or refurbishment	\$720	\$3 600
450	Duty to obtain asbestos register	\$720	\$3 600
451(5)	Determining presence of asbestos or ACM [Notification: owner, occupier]	\$432	\$2 160
461(1) & (2)	Licensed asbestos removalist must keep training records	\$144	\$720
464(3)	Asbestos removal control plan	\$432	\$2 160
465(1) - (3)	Asbestos removal control plan to be kept and available	\$432	\$2 160
482(3)	Air monitoring (asbestos-related work)	\$432	\$2 160
505	Licence document to be available (asbestos removalists and assessors)	\$144	\$720
506	Changes to information (asbestos removalists and assessors)	\$144	\$720

WORK HEALTH & SAFETY REGULATIONS 2012 (SA)			
NOTE: Items preceded with *** are only expiable from 01 January 2014			
Reg	Title	Individual	Body Corp.
507(1)	Change to nominated supervisor (asbestos removalists)	\$144	\$720
512	Licence holder to return licence (asbestos removalists and assessors)	\$144	\$720
513(1)	Replacement licence document (asbestos removalists and assessors)	\$144	\$720
525	Licence holder to return licence document (asbestos removalists and assessors)	\$144	\$720
529	Work must be supervised by named supervisor (asbestos removalists)	\$432	\$2 160
555(4)	Safety assessment (major hazard facilities)	\$720	\$3 600
572(4)	Information for local community - general (major hazard facilities)	\$144	\$720
587(1)	Licence document to be available (major hazard facilities)	\$144	\$720
588(1)	Changes to information (major hazard facilities)	\$144	\$720
593	Operator to return licence (major hazard facilities)	\$144	\$720
594	Replacement licence document (major hazard facilities)	\$144	\$720
607	Operator to return licence document (major hazard facility licence suspension/cancellation)	\$144	\$720

DANGEROUS SUBSTANCES REGULATIONS 2002		
Brief Description		Penalty
68	Contravention/failure to comply with regulations (general offence)	\$210

DANGEROUS SUBSTANCES (DANGEROUS GOODS TRANSPORT) REGULATIONS 2008		Penalty	
Reg	Brief Description	Individual	Corp
37	Failure to comply with licence condition	800	4 000
40 (2)	Produce licence to competent authority upon request	130	-
40 (3)	Return of licence upon cancellation or suspension	130	650
42	Driver to always carry Dangerous Goods drivers licence	130	-
43 (2)	Vehicle must have current licence label attached when transporting dangerous goods	130	-
43 (3)	Prime contractor can only use vehicle if the current licence label is attached	130	650
47	Prime contractor must produce evidence of insurance policy for vehicle or approval under regulation 157(2)	260	1 300
48 (3)	Person must not manage or supervise transport and associated activities unless they have relevant training and instruction	800	-
54	Cannot sell, supply or offer to supply non-compliant packaging	800	4 000
57	Owners duties in relation to MEGC tank	800	4 000
60	Loader's duties: must not load goods with unsuitable packaging	800	4 000
62	Driver's duties: must not drive goods with unsuitable packaging	800	-
65	Loader's duties in relation to non-compliant overpacks	400	2 000
66	Prime contractor or rail operator's duties in relation to non-compliant overpacks	400	2 000

DANGEROUS SUBSTANCES (DANGEROUS GOODS TRANSPORT) REGULATIONS 2008		Penalty	
Reg	Brief Description	Individual	Corp
67	Drivers duties in relation to non-compliant overpacks	260	1 300
71	Loader's duties in relation to defective or damaged packaging	800	4 000
72	Prime contractor or rail operator's duties in relation to damaged or defective packaging	800	4 000
73	Driver's duties in relation to damaged or defective packaging	400	-
75 (3) (a)	Consignor's duties in relation to mislabelled packages- for large packaging or an overpack	400	2 000
75 (3) (b)	Consignor's duties in relation to mislabelled packages- any other offences	130	650
76 (3) (a)	Packers duties: must not mislabel packaging- for large packaging or an overpack	400	2 000
76 (3) (b)	Packers duties: must not mislabel packaging- for any other offence	130	650
77 (1) (a)	Prime contractor or rail operator's duties in relation to the transportation of mislabelled or incorrectly packaged goods- for a large package or an overpack	400	2 000
77 (1) (b)	Prime contractor or rail operator's duties in relation to the transportation of mislabelled or incorrectly packaged goods- for any other offence	130	650
77 (3) (a)	Prime contractor or rail operator must not transport goods mislabelled as dangerous goods- for a large package or an overpack	400	2 000
77 (3) (b)	Prime contractor or rail operator must not transport goods mislabelled as dangerous goods- for any other offence	130	650
79 (3)	Consignor's duty re use of mis-placarded loads	800	4 000
80 (1)	Loader's duties: must ensure load is appropriately placarded	800	4 000
80 (3)	Loader's duties: must not placard a load that does not contain dangerous goods	800	4 000
81 (3)	Prime contractor must not use transport that is inappropriately placarded	800	4 000
82 (1)	Driver must not drive load that is not placarded and should be	400	-
82 (2)	Driver must not drive a misleading or falsely placarded load	400	-
82 (3)	Driver must not drive a load that is placarded and does not contain dangerous goods	400	-
85	Loader's duties: must not load goods onto transport vehicle that does not comply with ADG code	400	2 000
86	Prime contractor or rail operation must not use transport that does not comply with ADG code	800	4 000
87	Driver duties: must not drive vehicle that does not comply with ADG Code	400	-
88	Owner's duties in relation to placarded vehicle requirements	800	4 000
89	Prime contractor's or rail operator's duties in relation to placarded vehicle requirements	800	4 000
90 (1)	Driver's duties in relation to placarded vehicle requirements	260	-
90 (2)	Driver's duties in relation to transporting a placard load	260	-
96	Driver's duties: must not drive a load that does not comply with ADG Code	260	-

DANGEROUS SUBSTANCES (DANGEROUS GOODS TRANSPORT) REGULATIONS 2008		Penalty	
Reg	Brief Description	Individual	Corp
97 (1)	Consignor's duties in relation to the correct method for stowing, loading and restraint of a load	400	2 000
97 (2)	Consignor duties in relation to transportation if a load will not comply with chapter 8.2 of ADG Code	400	2 000
98 (1)	Loader's duties: must ensure goods are loaded in compliance with chapter 8.1 of ADG Code	400	2 000
98 (2)	Loader's duties: must ensure proper restraint as per chapter 8.2 of ADG Code	400	2 000
99 (1)	Prime contractor or rail operator's duties in relation to the correct stowage, loading and restraint of a load	400	2 000
99 (2)	Prime contractor or rail operator's duties in relation to proper restraint of load	400	2 000
100 (1)	Driver's duties in relation to proper stowage, loading and restraint of a load	260	-
100 (2)	Driver's duties in relation to the proper restraint of a load	260	-
107	Driver's duties: must not drive load that should be segregated and is not	260	-
109 (1)	Transferor's duties: must not use damaged or defective hose assembly to transfer goods	400	-
109 (2)	Transferor's duties: must not use hose assembly that does not comply with ADG Code	800	-
110 (1)	Transferor's duties: must ensure goods are transferred in compliance with the ADG Code	400	-
110 (2)	Transferor's duties: must not transfer goods that are incompatible with equipment	400	-
110 (3)	Transferor's duties: if a leak occurs the transfer must cease immediately until the issue is rectified	400	-
114	Transferor's duties: must ensure compliance with the code in relation to the transfer of goods into a tank	400	-
115	Prime contractor or rail operator's duties in relation to compliance with the code re tanks	400	2 000
116	Driver's duties: must not drive a road tank that does not comply with ADG Code	400	-
118 (1)	Consignor's duties to not use transport where the appropriate paperwork has not been provided	260	1 300
118 (2)	Consignor's duties to not use transport where the load will be split and the appropriate paperwork has not been provided	260	1 300
119	Consignor's duties for transport via rail: must not utilise transport if appropriate paper work has not been provided	260	1 300
120	Prime contractor must not transport goods via road vehicles unless driver's have appropriate documentation	400	2 000
121	Rail operator must not transport goods via rail unless the driver of the rail train has appropriate documentation	400	2 000
122 (1)	Driver's duties: must ensure dangerous goods transport paperwork is carried	260	-
122 (2)	Driver must produce dangerous goods transport paperwork upon request	260	-
123 (1)	Train driver must not transport goods unless appropriate paperwork is held onboard	260	-
123 (2)	Train driver must produce documents upon request	260	-
125	Consignor must not consign load unless required emergency paper work is available on the vehicle	260	1 300

DANGEROUS SUBSTANCES (DANGEROUS GOODS TRANSPORT) REGULATIONS 2008		Penalty	
Reg	Brief Description	Individual	Corp
126	Prime contractor must not use placard transport if emergency information is not available	400	2 000
127	Rail operator must not transport placard load if required emergency information is not in the driver's cab	400	2 000
128 (1)	Driver must not drive road vehicle with placard load if it does not contain emergency information	260	-
128 (2)	Driver must ensure emergency information folder contains the right information	130	-
128 (3)	Driver must produce emergency information upon request	260	-
129 (1)	Train driver must not drive train unless required emergency information is in the driver's cab	260	-
129 (2)	Train driver must present emergency information upon request	260	-
130	Driver must not let anyone else ride in road vehicle unless in accordance with ADG Code	130	-
131	Driver of a road vehicle must not park in private or public park unless in accordance with ADG Code	260	-
132 (2)	Driver must not have in possession lighter or matches or smoke in vehicle	800	-
132 (3)	Driver must ensure that no one in vehicle has lighter or matches or smoke in the vehicle	800	-
133	Driver must ensure placard load is dealt with in accordance to ADG Code	800	-
134	Driver must not allow trailer to become detached unless in accordance with ADG Code	800	-
135	Driver must only operate burners on a placard load in accordance with ADG Code	800	-
136	Prime contractor or rail operator must not transport goods contrary to regulations	400	2 000
137	Driver must not drive road vehicle with load contrary to regulations	400	-
139	Driver must alert other road users to hazard	130	-
140 (1)	Prime contractor responsible for any vehicle repairs	400	2 000
140 (2)	Prime contractor must remove dangerous goods if possible	400	2 000
150	Consignor must not consign transport for goods if special conditions will be contravened	400	2 000

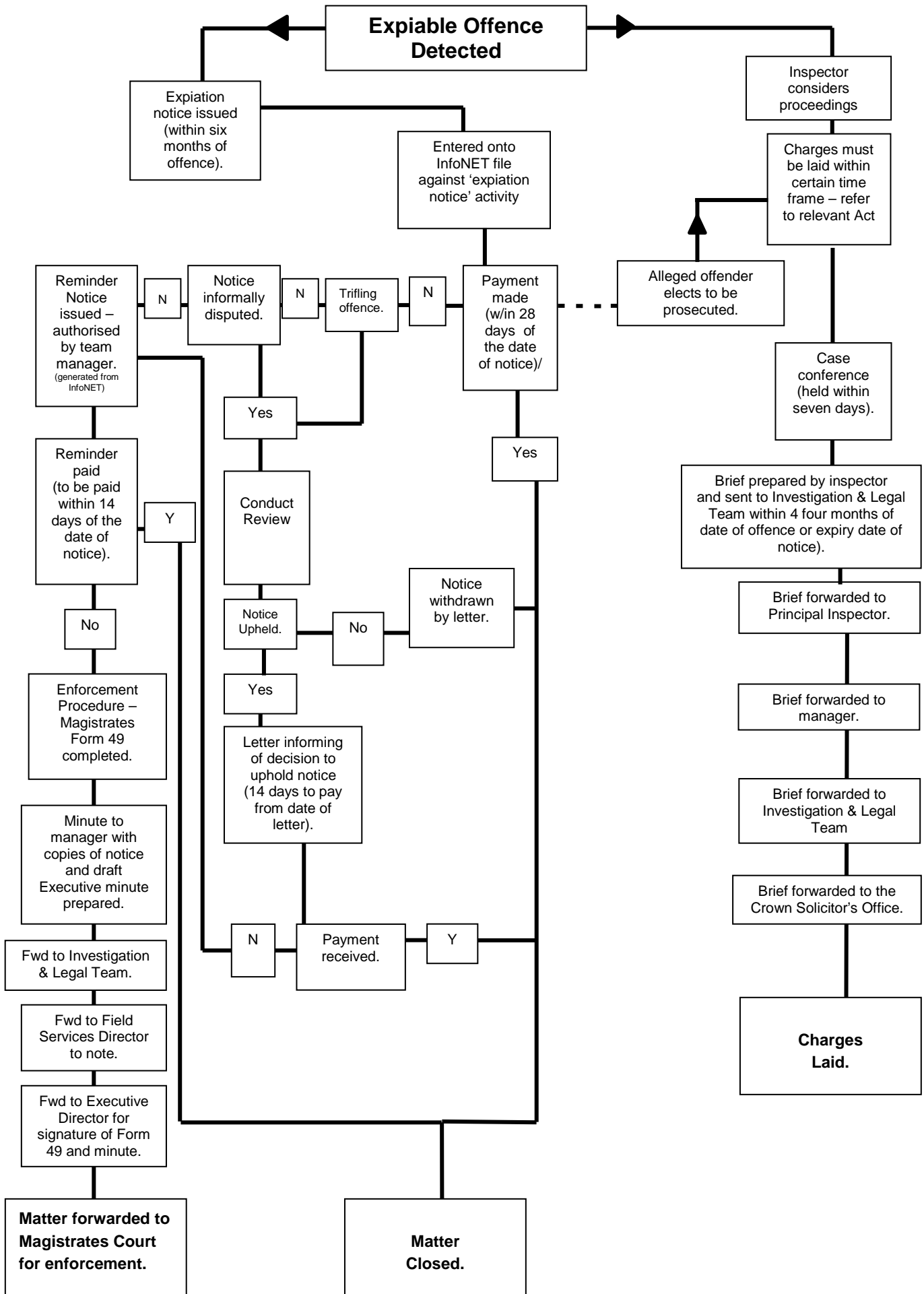
Explosives Act 1936		
Section	Brief Description	Penalty
23 (3)	Keeping of explosives	\$315

Explosives Regulations 1996		
Regulation	Brief Description	Penalty
6.02 – 6.10	Contravention or failure to comply with a requirement of Part 6 (Packaging and labelling of explosives)	\$100
14.01; 14.03-04; 14.08-09; 14.11; 14.11A; 14.12	Contravention or failure to comply with a requirement of Part 14 (Sale of explosives other than fireworks)	\$100
15.01-03; 15.06-07; 15.07A; 15.07B; 15.07C; 15.08; 15.10-11	Contravention or failure to comply with a requirement of Part 15 (Miscellaneous)	\$100

Explosives (Fireworks) Regulations 2001		
Reg	Brief Description	Penalty
6	Unlawful sale, supply or possession of fireworks	\$315 (possession/ custody of < 3kg (gross) of fireworks)
7 (2)	Reloadable mortar to be removed from certain imported fireworks by owner/importer	\$210
9 (1)	Requirement to hold pyrotechnician's licence (personal use)	\$315 (possession/ custody of < 3kg (gross) of fireworks)
9 (2)	Requirement to hold pyrotechnician's licence (conducting fireworks/special effects display)	\$315 (possession/ custody of < 3kg (gross) of fireworks)
22 (7)	Contravene/fail to comply with an exempt display permit condition	\$315
31	Contravene/fail to comply with conditions of licence	\$315
37	Production of licences, permits and records upon request	\$315

Petroleum Products Regulation Act 1995		
Section	Brief Description	Penalty
52	Records to be kept of bulk transport of petroleum products	\$200
53 (1)	Records to be kept by persons who carry on a petroleum products business	\$200
53 (3)	Records to be kept by persons who purchase petroleum products pursuant to a certificate	\$200

ATTACHMENT B – EXPIATIONS PROCESS MAP



Attachment B Continued

NOTE

Timelines mentioned within brackets on process map must be adhered to, to avoid matters running out of time for legal action.

This is particularly relevant for DS and Explosives Act matters. For any prosecution action taken re expiable offences under these two Acts, the statutory time limit for issuing proceedings is:

(a) within six months of the expiry of the expiation period specified in the notice (if an expiation notice was given to the person)

or

(b) within six months of the date on which the offence is alleged to have been committed (if an expiation notice was not given to the person).

For prosecution action taken under the *Fair Work Act 1994*, the statutory time limit for issuing proceedings for expiable offences is two years from the date on which the offence is alleged to have occurred.

For prosecution action taken under the *Work Health & Safety Act (SA) 2012*, the statutory time limit for issuing proceedings for expiable offences is two years from the date on which the offence comes to the attention of SafeWork SA.

ATTACHMENT C - GUIDANCE – GATHERING EVIDENCE⁴

The following evidence must be gathered and contemporaneous notes made in the inspector's notebook of the following particulars prior to issuing the expiation notice.

For WHS matters, these details assist an inspector in forming a reasonable belief and shall be detailed on the inspection report.

- Details of the breach/offence including date, time, location and applicable provisions of the legislation;
- Detail(s) of the Principal Contractors and Contractors (where relevant);
- Australian Business (ABN)/Company Number (ACN) (where relevant);
- Enquiries with the duty holder and other relevant parties, including name(s), address(es), date of birth of the party in breach (if an individual) supported by proof of identity if required and their role in the business or undertaking;
- Observations made at the place and relevant to the breach, including number of workers and types of business;
- Taking photographs at the time of the offence. Where photographic evidence is not possible, the inspector should ensure that sufficient corroborative evidence is obtained to support the breach;
- Obtain make and take sketches, diagrams and measurements
- Any documents/reports that the inspector has reviewed and/or asked questions about;
- Any direct comments or admissions made by the person in breach or other relevant persons;
- Brief statement from key witnesses, including their full name, address, phone number, employer etc.
- Plant or equipment name, model, identifying number/serial number and description where relevant;
- Dangerous Goods UN number, where relevant;
- Information obtained from speaking with persons who work at the workplace (including HSRs) or those persons that are or appear to be associated with the workplace;
- Information from relevant codes of practice, Australian Standards and other published guidance material;
- Advice provided by suitable technical specialists (if relevant); and
- Other supporting documentary evidence to support the breach can include evidence of employment, plant hire agreements, plant and design registration certificates, copies of certificates of competency, sub-contractor's statements, certificates of currency
- Taking of samples

** This list is not exhaustive

⁴ Adapted from the WHS National Compliance and Enforcement Policy

ATTACHMENT D - GUIDANCE – DISCRETIONARY PRINCIPLES⁵

The following information guides inspectors in applying factors for exercising discretion to issue expiation notices.

In general, if the circumstances giving rise to you deciding that an expiable offence has occurred are less serious, the more likely an expiation notice for that scheduled offence would be an appropriate enforcement response. Conversely, the more serious the circumstances giving rise to you deciding that an expiable offence has occurred, the less likely an expiation notice would be an appropriate enforcement response and the more likely escalated enforcement action would be appropriate.

In deciding whether to issue an expiation notice, the following factors should be assessed and weighed (these are not in any priority order) :

- i. The seriousness of the risk.
- ii. The extent of any injury.
- iii. The frequency of similar conduct by the duty holder.
- iv. The prevalence of the offence in the jurisdiction and industry impact.
- v. The duty holder's safety and compliance history.
- vi. The duty holder's co-operation and willingness to address the issue.
- vii. Is the subject matter of the offence part of a priority intervention or campaign?
- viii. The attempts by the person to control the risk associated with the alleged contravention.
- ix. Prior notice of the risk (e.g. direct to the duty holder or through educational material, safety alerts, guidance sheets etc).
- x. Any mitigating or aggravating circumstances

And also consider:

Seriousness of offending

If an alleged expiable offence is identified amongst a number of other non-expiable offences where a broader investigation is occurring or is likely to occur, it would be more appropriate to incorporate the alleged scheduled offence into the broader investigation and not issue an expiation notice for that scheduled offence. You should first discuss with your Line Manager whether it is appropriate to issue an expiation notice or to consolidate the offence into the prosecution case;

Prior history/Frequency of conduct

If the identification of an alleged expiable offence occurs in isolation of other offences and in circumstances where the regulator has no prior history of the relevant duty holder's non-compliance with the relevant duty, an expiation notice would be a more appropriate enforcement response than considering the matter for potential prosecution.

Mitigating circumstances/Prior history

If, despite the identification of an alleged scheduled offence, your enquiries establish that the circumstances reasonably precluded compliance by the relevant person at the relevant time, it would be more appropriate not to issue an expiation notice. (For example, the person with the duty was dealing with an unexpected emergency situation, or a person with the relevant duty was not provided procedure assistance or protective equipment to carry out an activity)

⁵ Adapted from the WHS National Compliance and Enforcement Policy

Prevalence of the offence in the jurisdiction and impact on industry/Prior notice of the risk

If a targeted intervention program by the regulator focuses on a scheduled offence because data indicates it commonly occurs and there is general state of knowledge about the duty and how compliance can be achieved, an expiation notice would be an appropriate enforcement response to the scheduled offence.

NOTE FOR WHS MATTERS - whether or not an expiation notice (or other enforcement action) is considered appropriate in relation to an expiable offence, the identified contravention should be the subject of an improvement or prohibition notice requiring remedial action if the contravention has not already been remedied.