

MODEL OPERATIONAL PROCEDURE



Powers of Seizure

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 any grammatical or format errors.

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

Principal Skills Support Officer
Corporate Services

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2. DEFINITIONS

Defective	Means to have a defect, be faulty; be imperfect; not as designed ¹
Evidence	Means something that tends to prove or disprove something; ground for belief; proof.
Hazardous	Means full of risk; perilous; risky
Line Manager	Means an inspector's team manager
PCBU	Means person conducting a business or undertaking
Plant	Means any machinery, equipment, appliance, container, implement and tool; and any component of any of those things; and anything fitted or connected to any of those things
PMCW	Means person with management and control of a workplace
Property Officer	Is the substantive Team Leader in SWSA's Investigation Team
Regulator	Means the Executive Director of SafeWork SA or their delegate
Structure	Means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes buildings, masts, towers, framework, pipelines, transport infrastructure; and underground works (shafts or tunnels); and any component of a structure; and part of a structure
Substance	Means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour
SWSA	Means SafeWork SA
Thing	Means any material object without life or consciousness; or an inanimate object or creature which is not or cannot be specifically designated or precisely described
Definitions continued	
	Means a <i>place</i> where work is carried out for a business or undertaking and includes any

¹ Definitions of defective, hazardous and thing are taken from Macquarie Dictionary

Workplace	<i>place</i> where a worker goes, or is likely to be, while at work, including: <ul style="list-style-type: none"> • A vehicle, vessel, aircraft or other mobile structure, and • Any waters and any installation on land, on the bed of any waters or floating on any waters
WHS Act	Means <i>Work Health & Safety Act 2012 (SA)</i>

3. PURPOSE

This procedure provides direction and guidance to inspectors on the exercise of their power to seize evidence and dangerous workplaces and things under sections 175 – 178 of the WHS Act.

This procedure should be read in conjunction with the [Evidence Management SOP](#).

4. POLICY SECTION

Sections 175 - 177 of the WHS Act provide an inspector with the powers to seize evidence when entering a workplace pursuant to Part 9 of the WHS Act.

Evidence may be seized from a workplace (as defined), or with a search warrant from another place that is not a workplace by definition.

Section 175(1) of the WHS Act provides that an inspector who enters a *workplace* under s163(1) and 163(2) and then exercises a general power under s165 may seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against the Act. Also note that section 165(1)(e) of the WHS Act states that an inspector who enters a workplace under section 163 may (also) take and remove for analysis, a sample of any substance or thing without paying for it.

Taking or removing a sample of a substance or thing for analysis, testing or examination may be necessary for various reasons including whether or not the thing or substance taken, or a sample of it, provides evidence of an alleged offence.

Such samples might include, for example, a piece of tubing from a scaffold, or a floor tile that the inspector suspects may contain asbestos or a liquid, gas or powder that is used in a production process that the inspector suspects may be harmful to health.

4.1 Seizing a thing to prevent loss of evidence or use

When an inspector enters a place under s163, s175(3) then gives the inspector the power to also seize anything else at the place if the inspector reasonably believes:

- the thing is evidence of an offence against the Act; and
- the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

4.2 Seizing things from a place that is not a workplace

An inspector cannot seize anything from a place that is not a workplace without a search warrant. The search warrant must specify the evidence the inspector wishes to seize whilst searching the place. A procedure relating to Search is under development based on a HWSA MOP. It is a [DRAFT ONLY \(MOP SAFE 11/0808 Search Warrants\)](#)

4.3 Seizing dangerous workplaces and dangerous things

Section 176 of the WHS Act gives an inspector the power to seize the workplace or part (of the workplace), the plant, the substance or the structure if an inspector who enters a workplace reasonably believes that:

- the workplace or part of the workplace; or
- plant at the workplace; or
- a substance at the workplace or part of the workplace; or
- a structure at a workplace:

is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

The seizure of a workplace or part thereof has significant potential consequences for a PCBU and the workers, and other workplaces which may rely on their services or products. A PCBU may seek compensation for loss or expense incurred consequent to the exercise of this power.

Refer to [Damage and Compensation MOP](#)

Regulator's policy

Prior to seizing a workplace or part of a workplace an inspector is required to consider the application of other options to secure compliance (e.g. prohibition notice, non-disturbance notice).

If it is considered necessary to seize a workplace or part of a workplace, an inspector will contact their line manager who shall then discuss the matter with their Director.

If the inspector is uncertain about whether a workplace, plant, substance or structure at a workplace is defective or hazardous, the inspector may use the provisions of s166. [*persons assisting inspectors*] to have an expert or specialist examine and test the plant or substance, or take samples, to determine if it is defective or too hazardous to be moved or dismantled.

The inspector may also use their general powers of inquiry under s165 in order to determine whether the workplace, plant, substance or structure is defective and or hazardous enough to cause a serious injury or dangerous incident to occur (refer section 165 WHS Act).

- See sections 36 & 37 of the Act for definitions of a serious injury and dangerous incident.

4.4 Powers supporting seizure

Section 177 of the WHS Act gives further powers in relation to seized things. Once a thing has been seized an inspector may:

- move it or have it moved from where it was seized; or
- leave it in place but take reasonable action to restrict access to it; or
- if the thing is plant or a structure - dismantle or cause to be dismantled the plant or the structure.

The thing seized may be moved to the exhibits store of the regulator, a storage facility, a holding yard or a facility where testing may be conducted.

If the structure or plant is dismantled or moved, it must be photographed or digitally recorded prior to being dismantled or moved and then again once it has been dismantled or moved.

If access to a seized workplace, part of a workplace or a thing is restricted, no person may tamper or attempt to tamper with the restricted access, the workplace or the thing itself without the inspector's approval. The means of securing the restricted access must be noted and photographed to ensure that there is a record for future reference.

To enable seizure, the inspector may require a person who controls the thing seized to:

- take it to a stated reasonable place by a stated reasonable time, and
- if necessary, to remain in control of it at the stated place for a reasonable time.

Either of these requirements must be made by written notice or, if not practicable to do so, orally and then as soon as practicable confirmed by written notice. Refer to [Appendix 2](#) for an example notice under s177 (4) requiring a person in control of a thing to take it to a stated reasonable place and/or remain in control of it for the stated reasonable time.

Information

Corporate Services will provide each inspector with a hard copy book of s177 notices and retain spare books for future use.

Section 177(5) of the WHS Act gives the regulator power to make further requirements in relation to the same thing if it is necessary and reasonable to make the further requirement. For example, the person who controls the seized thing may again be required to take it to another reasonable place by a reasonable time, or to remain in control of the thing for a period longer than originally stipulated in the original s177(4) notice. This example will require a new notice s177(4) notice to be issued.

4.5 Receipt for seized things

Section 178 of the WHS Act requires the inspector to issue a receipt for any thing seized to the person from whom it was seized unless for any reason it is impracticable to do so. In such cases, the inspector must leave a receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

For example, the owner or the person who has management and control of the thing may not be present at the time of seizure and it may not be practicable to await his or her arrival or to locate them within a reasonable time.

The receipt must describe generally each thing seized and its condition.

When preparing a receipt the inspector needs to consider the consequences of a number of things being listed on the one receipt. For example, documents will be held by the inspector, but a thing that requires storage in an evidence storage facility should be listed on a separate receipt to the documents. The separate receipt for the thing being stored in the storage facility will simplify tracking and return of that thing.

Refer to [Appendix 1](#) for an example receipt. Corporate Services will issue each inspector with a receipt book and holds stock of field receipt books for future use.

The inspector's records of the seizure of a workplace, plant or substance or structure will include a photograph or video recording that clearly shows the condition of the thing.

- Refer to [Evidence Management SOP](#)

Note that s178 does not apply to a thing if it impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

4.6 What is a reasonable belief

For the guiding principles that should be applied in forming a reasonable belief, refer to Appendix 1 of the [Issue of Notices and other general requirements relating to all notice types MOP](#)

5. PROCEDURE

Responsibility	Description
<p>Inspector</p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><i>It is regulator policy that where ever practicable, evidence of an offence will be seized and removed from the place from which it was seized. Document originals will be seized and a copy provided to the owner for business continuance.</i></p> </div> <p>If you have determined that it is necessary to seize a workplace, plant, substance structure or thing - including documents - make initial inquiries to establish who is the owner or the person in management and control of the thing.</p> <p>Given the potential for a PCBU to make of a compensation claim in the event that detriment or damage is caused as a result of your seizure, contact your line manager for guidance if you form an opinion this is possible.</p> <p>Prior to seizing the thing, advise the owner if known, or person who has management and control of the thing that you intend to seize it and that a receipt will be issued.</p> <p>Photograph or make a digital recording of the thing in situ, and also make a sketch of its location including a brief description of its condition, particularly noting any damage.</p> <p>If it is not practicable to issue a receipt to a person, leave it in a conspicuous position and in a reasonably secure way at the place of seizure.</p> <p>Proof that a receipt was left at the place is required. The inspector should photograph the receipt in situ, or have the action confirmed in writing by witnesses at the place.</p> <p>Determine if you will:</p> <ol style="list-style-type: none"> 1. take the thing with you; or 2. leave it on the premises and take reasonable steps to restrict access (restricting access may mean sealing a thing and marking it to show access to it is restricted; or taking possession of the keys of a piece of mobile plant); or 3. require the person in control to take it to a reasonable place at a reasonable time (a reasonable place may be a secure holding yard within close proximity, for example an SWSA evidence storage facility or a specific testing facility). <p>If you are unsure about the most suitable way to effect the seizure, contact your line manager or their nominee (eg principal inspector) to discuss the options.</p>
<p>Inspector/ Line Manager</p>	<p>Removing a seized thing.</p> <p>In considering whether to remove the seized thing, consider whether:</p> <ul style="list-style-type: none"> • it is possible to effectively secure it in situ; • if testing and examination is required, whether this can be done in situ; • if it is safe to remove it from its location and, if so, whether the means for moving it are available; • whether there is a suitable place to store it; and • the expense to the regulator and the potential impact on the business; which should be balanced against the things evidentiary value.

Inspector	<p>Record the seizure</p> <p>Record details of the seizure in your notebook including:</p> <ul style="list-style-type: none"> • the reasons or purpose for seizure, • the location of the thing, • the owner or person in control of it, • a description of it and its condition, • the receipt number of the field receipt given to the person from whom you seized the thing; and • the name and contact details of the person to whom the receipt was issued.
Inspector	<p>If the owner prevents you seizing (removing) a thing</p> <p>If you determine that the seized thing is to be removed and if the owner or a person attempts to prevent the removal, you must warn the owner or the person:</p> <ul style="list-style-type: none"> • that under section 188 of the Act it is an offence to intentionally hinder or obstruct an inspector in the exercise of their compliance powers, or to induce or attempt to induce any other person to do so; and • that anyone found guilty of obstruction is liable to a maximum penalty of \$10,000 for individuals and \$50,000 for a body corporate
Inspector	<p>Removing a thing</p> <p>When removing a thing from its location, you must ensure that:</p> <ul style="list-style-type: none"> • the thing is packaged and transported in a manner that will prevent damage to it; • it is handled and transported in a safe manner; • the chain of evidence is maintained; • it is secured in such a way as to prevent any unauthorised person from accessing it and causing it to be altered; • the thing is lodged into an evidence facility, • the thing is properly identified with a label; and • a property register receipt is obtained and placed in the relevant investigation file. <p>Note: A property register receipt does not apply for items secured in an inspectors personal secure storage cabinet.</p>
Property Officer	<p>Storing a thing in an evidence storage facility</p> <p>The thing seized must be recorded in the Property Book as soon as practicable.</p> <p>The thing must be stored appropriately.</p> <p>If a person seeks access to the thing and access is given, this must be recorded in the property register.</p> <p style="text-align: center;"><i>Refer to MOP Forfeiture of evidence</i></p> <ul style="list-style-type: none"> ○ <i>SOP SWSA 06/0454 Seizure and Storage of Exhibit Property</i> <p>The property officer must ensure the chain of evidence is maintained whilst it is in their control by completing the property register as required.</p>
Investigation Team	<p>Evidence storage audits</p> <p>Will undertake regular audits of the property register and storage area(s) to ensure that evidence has been correctly identified and stored, and to ensure that evidence is not being held beyond the limitations prescribed by the Act. Records of these audits will be documented and retained.</p>
Inspector	<p>Leaving a seized thing in place</p>

	<p>If you determine that you will seize a thing and leave it in place (in situ), you must:</p> <ul style="list-style-type: none"> • issue a receipt which includes a description of the condition of each thing seized; and • appropriately identify that the thing has been seized e.g. attach a secure label; and • consider the evidentiary value and monetary value of the thing in deciding the extent of security to be applied and whether the security is to be arranged by the regulator or the duty holder or owner of the thing; and • restrict access to the thing e.g. remove the keys and use barrier tape / signage to clearly indicate that access / use is prohibited; and • issue a notice pursuant to s177; • consider the issue of a non-disturbance notice; and • warn the person of the penalties for contravention of the legislation.
Inspector	<p>Getting a person to take a thing somewhere</p> <p>If you determine that you will require the person in control to take the thing to a reasonable place you must:</p> <ul style="list-style-type: none"> • issue the receipt that includes a description of the condition of each thing seized; • where there is a requirement for a thing to be transported require the person in control of the thing to transport it in a way that it will not cause damage; • provide clear details on the written notice (ref Appendix 2) of the location where the thing is to be taken and the time that it is to be taken ; • advise if the person is required to remain in control of the thing for a reasonable time; • explain to the person in control that they must not, without reasonable excuse, refuse or fail to comply with such a requirement; • accompany the thing during its relocation to preserve evidential integrity; and • warn the person of the penalties for contravention of the legislation.
Inspector	<p>Person’s refusal to allow you to remove a thing</p> <p>Where a person refuses to allow you to seize a thing you must:</p> <ul style="list-style-type: none"> • warn the person that under s188 of the Act it is an offence to obstruct an inspector in exercising their compliance powers, or to induce or attempt to induce any other person to do so - maximum penalty for an individual \$10 000 or for a body corporate \$50 000; • if the person still refuses to allow you to seize the thing –contact your line manager to determine the most appropriate course of action.
Line Manager	<p>Where a person has refused to allow an inspector to seize a thing, the line manager should consider other means of ensuring that the person complies with the legislation. This can include:</p> <ul style="list-style-type: none"> • contact the person in control and advise them of the penalties for contravention of s188 of the Act; or • contact the person’s Manager and/or legal representative; • where appropriate seek the assistance of Police or • obtain a search warrant under section 167 of the Act.

6. FURTHER INFORMATION

- [Access Evidence SOP](#)
- [Digital \(SOP\)](#)
- [Evidence Management SOP](#)
- [Forfeiture, return and access to seized things MOP](#)
- [SOP Evidence Management](#)

CHECK THE [e-Manual INDEX](#) for the latest information

7. REVIEW

This procedure must be reviewed two (2) years after the date of issue and must be immediately modified if practices and/or procedures change.

Document Owner: Corporate Services

Contact: 

Version control detail

- Version 1 – Approved Feb 2012
- V1 – Issued 21 Nov 2012
- V2 – 7 April 2016

WORK HEALTH AND SAFETY ACT 2012 (SA)

Section 177

NOTICE REQUIRING A PERSON IN CONTROL OF A THING TO TAKE IT TO A PLACE AND/OR REMAIN IN CONTROL OF IT

8. APPENDIX 2 - EXAMPLE NOTICE TO TAKE A THING TO A PLACE – A5 Hard books only

Rear of front page / client copy

This notice is issued on/...../..... at: am/pm by Inspector
 (date) (time) (name)

To..... (Name of person in control)

ABN/ACN:

of (Address)

I, Inspector, having notified you of my intention to exercise my powers of seizure under sections 175 and 176 of the *Work Health and Safety Act 2012 (SA)*, under section 177 of the *Work Health and Safety Act 2012 (SA)*, in respect of the thing(s) below require you to take the thing to:

 (Address of destination).

This action must occur befoream/pm on

Further, you are required to stay in control of it until :am/pm on(date) at the specified address

Description of thing:

Enquiries should be made to Inspector: Telephone:

WORK HEALTH AND SAFETY ACT 2012 (SA)

Section 177 Powers supporting seizure .

Having seized a thing, an inspector may:

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or
- (c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.

(2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval. Maximum penalty in the case of an individual, \$10 000; In the case of a body corporate, \$50 000.

(3) To enable a thing to be seized, an inspector may require the person in control of it:

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(4) The requirement:

- (a) must be made by written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

(5) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

(6) The person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3) or (5). Maximum penalty in the case of an individual, \$10 000; In the case of a body corporate, \$50 000.

(7) Subsection (6) above places the evidential burden on the accused to show a reasonable excuse.

Original to Client. Copy to file