

# MODEL OPERATING PROCEDURE

## Improvement notices



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 Resources  
Corporate Services

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## 1. DEFINITIONS

<b>Reasonable Belief</b>	Is defined in Part 1 of Guidance section in model operational procedure MOP 11/0824 Issue of Notices and other General Requirements Relating to all Notice Types
<b>Regulator</b>	Means the Executive Director of SafeWork SA or their <a href="#">delegate</a>
<b>SWSA</b>	Means SafeWork SA
<b>WHS Act</b>	<i>Means Work Health &amp; Safety Act 2012 (SA)</i>

## 2. PURPOSE

To provide guidance to inspectors when issuing improvement notices under Part 10 of the WHS Act.

## 3. POLICY SECTION

Inspectors are empowered to issue an improvement notice under s191 of the WHS Act if the inspector reasonably believes that a person is:

- o *contravening a provision of this Act; or*
- o *has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.*

Improvement notices are used to remedy contraventions of the WHS Act which **do not** or **will not** involve a serious risk to the health and safety of a person emanating from an immediate or imminent exposure to a hazard.

*The inspector may issue an improvement notice requiring the person to:*

- o *remedy the contravention; or*
- o *prevent a likely contravention from occurring; or*
- o *remedy the things or operations causing the contravention or likely contravention.*

### **Regulator Policy**

*Inspectors will issue an improvement notice in all cases unless a prohibition notice is appropriate in the circumstances; unless:*

- *the situation is remedied whilst the inspector is present at the workplace, or*
- *the situation is the subject of an agreed action plan, or*
- *some other action is considered appropriate by the inspector to achieve the desired outcome.*

*Refer to SafeWork SA [Principles of Operation](#) for the WHS Inspector*

For further guidance, refer to the [National Compliance and Enforcement Policy](#) which sets out the principles agreed by WHS regulators which underpin the approach that they will take to monitoring and enforcing compliance with the WHS Act and Regulations.

Section 192(1) of the WHS Act provides that an improvement notice must state that the inspector believes the person:

- is contravening a provision of this Act; or
- has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; and
- the provision of the Act the inspector believes is being, or has been, contravened; and
- briefly, how the provision is being, or has been, contravened; and
- the day by which the person is required to remedy the contravention or likely contravention.

*Section 27 of the Acts Interpretations Act 2002 provides that the date of any instrument that falls on a Saturday, Sunday or public holiday will mean the date will be taken to fall on the next business day. It is regulator policy that the compliance date on all improvement notices be a normal business day.*

Section 192(2) of the WHS Act provides that a notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.

Section 193 of the WHS Act requires a person to whom an improvement notice is issued to must comply with the notice in the specified period.

Section 194 of the WHS Act provides that an inspector may extend the compliance date of an improvement notice if requested to do so, and only if the compliance date has not ended.

Section 204 of the WHS Act provides that directions included in an improvement notice may refer to a code of practice and offer the person to whom a notice is issued a choice of ways to remedy the contravention. If directions are included in a notice, it is mandatory for the person to whom the notice is issued to comply with the directions.

Section 205 of the WHS Act provides that recommendations may be included in an improvement notice. It is not an offence to fail to comply with a recommendation in a notice. See: [General Notices MOP](#)

Decisions made by an inspector relative to an improvement notices are reviewable decisions.

- Refer to [Standard Operating Procedure: Internal Review](#)
- Internal Review [Application form](#), [Applicant' FAQ's](#) , [Applicant Guidance](#)

### **Regulator Policy**

*Inspectors will advise the person issued with an improvement notice of their right to seek a review of the inspector's decision and how they may make such application.*

A range of other provisions of the WHS Act apply to improvement notices (and other notices) issued by an inspector, including those relating to:

- validity of notices;
- directions and recommendations in notices;
- changes to notices (including extending the compliance date specified in an improvement notice);
- giving (or service) of notices, display of notices;
- follow-up to assess notice compliance status; and
- use of injunctions in circumstances of non-compliance.

Refer to Part 1 of the Guidance section of [General Notices MOP](#)

#### 4. PROCEDURE

See also the E-Manual section on [Improvement Notices](#) and in particular: [Operational Guideline No.3 Improvement Notices](#)

Responsibility	Description
<b>Inspector</b>	<p>You may issue an improvement notice if you can form a reasonable belief that a person:</p> <ul style="list-style-type: none"> <li>● is contravening a provision of the WHS legislation; or</li> <li>● has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.</li> </ul> <p>Note: it is not appropriate for a person assisting an inspector under s166 of the WHS Act to exercise the power to issue an improvement notice unless that person is also an appointed inspector.</p>
<b>Inspector</b>	<p><b>Forming a reasonable belief</b></p> <p>The basis of your reasonable belief can be determined by making sufficient enquiries and an analysis of the types of information to reach the relevant conclusion upon which to issue the notice. It will be supported if information from one source is validated / verified by information from another source, rather than relying on one source only.</p> <p>In forming a reasonable belief to issue a notice consider the following:</p> <ul style="list-style-type: none"> <li>● your observations;</li> <li>● information obtained from speaking with persons who work at the workplace (including HSR's) or are associated with the workplace;</li> <li>● information obtained from reviewing relevant documents;</li> <li>● information from relevant codes of practice, Australian Standards and other published guidance material;</li> <li>● advice provided by suitable technical specialists (if relevant); and</li> </ul> <p>Ensure that you record sufficient details of how you formed your reasonable belief in your notebook.</p>
<b>Inspector</b>	<p><b>Where notice cannot be issued during visit</b></p> <p>There may be circumstances where you may not be able to issue the notice at the completion of your enquiries. For example:</p> <ul style="list-style-type: none"> <li>● you have concerns for your personal safety;</li> <li>● there are inadequate facilities available at the place to complete the notice; or</li> <li>● you need to make further enquiries or conduct further research in order to form a reasonable belief.</li> </ul> <p>Advise the person of this fact and, where relevant, include a summary of</p>

<p><b>Inspector continued from previous page</b></p>	<p>your observations and powers exercised in an Inspection Report along with your intended further actions.</p> <p>Note: Before issuing a notice at a later time, you must ensure that the contravention still exists or is likely to occur.</p>
<p><b>Inspector</b></p>	<p><b>Prepare the notice</b></p> <p>Prepare a notice completing all the mandatory fields in the template, including:</p> <ul style="list-style-type: none"> <li>• the provision you believe is being, or has been contravened; and</li> <li>• the basis for your reasonable belief of how the provision is being or has been contravened.</li> </ul> <p>Include if relevant:</p> <ul style="list-style-type: none"> <li>• directions to remedy the contravention that may refer to a code of practice, and offer the person a choice of ways to remedy the contravention; and/or</li> <li>• recommendations, which provide referral to appropriate guidance material such as an Australian Standard, publication etc.</li> </ul> <p>Include information about at least one example or suggested means of how the contravention can be remedied, including reference to relevant codes of practice and/or other guidance material.</p> <p><i>For information on</i></p> <ul style="list-style-type: none"> <li>• <i>correct duty holder and their legal entity, refer to <a href="#">Entry to workplaces (MOP)</a></i></li> <li>• <i>on directions and recommendations, refer to MOP SAFE 11/0824 Issue of Notices and other General Requirements Relating to all Notice Types <a href="#">General Notices MOP</a></i></li> <li>• <i>Information on number of contraventions per notice, refer to Part 2 of the Guidance section of this procedure.</i></li> </ul> <p>Prior to completing the notice, discuss the contents of the notice and what may be an achievable timeframe for compliance with the person (or the management representative as relevant) and relevant HSR taking into consideration their views and the seriousness of the contravention/risk.</p> <p><i>Note: this action is solely to check that the content is an accurate reflection of your observations and enquiries, and is not a legal requirement or an opportunity for workplace parties to dispute your actions.</i></p>
<p><b>Inspector</b></p>	<p><b>Issue the notice</b></p> <p>Finalise and sign the notice.</p> <p>Issue the notice (and, where appropriate, an Inspection Report) to the person (or the management representative as relevant) using one of the methods outlined in s209 of the WHS Act.</p> <ul style="list-style-type: none"> <li>• personally, or by post, fax or electronic transmission to the person's usual last known place of residence or business; or</li> <li>• leaving it at the person's usual last known place of residence or business with a person who appears to be over the age of 16 years and who appears to reside or work there; or</li> <li>• leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management and control of the workplace; or</li> <li>• In a prescribed manner.</li> </ul>

<p><b>Inspector continued from previous page</b></p>	<p>Give a copy to the HSR as relevant, or if there is no HSR, to a worker member of the health and safety committee (if any) or worker representative under any other agreed arrangements at the workplace.</p> <p>Explain to the person to whom a notice is given:</p> <ul style="list-style-type: none"> <li>• the requirement to display the notice;</li> <li>• that any clarification about the requirements of the notice should be referred back to you as the issuing inspector or to your Line Manager; and</li> <li>• the right to seek an internal review of the notice and the process involved to do so.</li> </ul>
<p><b>Inspector</b></p>	<p><b>Follow up</b></p> <p>Record the notice and notice number on InfoNET for manual notices. Record the due compliance date on InfoNET for all notices.</p> <p>As close as possible to the due compliance date, the issuing inspector or another inspector should verify whether the notice has been complied with.</p> <p>This may be by:</p> <ul style="list-style-type: none"> <li>• attending the relevant site, making observations and conducting enquiries; or</li> <li>• through receipt of information from the relevant person about actions they have taken (e.g. via email, a telephone call, or return of a tear off action taken statement of compliance that was part of the printed notice form) and / or verification by telephone conversations with relevant persons.</li> </ul> <p>If, due to logistical reasons, it is not feasible for timely follow up of all notices, a significant sample of them should be considered for follow up including those which are alleged by any party not to have been complied with.</p> <p>Where non-compliance with a notice is identified, consider referring the matter for investigation for possible prosecution or other enforcement action.</p> <p>The inspector will re-issue any notice that the regulator has varied under s207 of the WHS Act.</p>
<p><b>Inspector</b></p>	<p><b>Varying a notice</b></p> <p>Section 194 provides that an inspector may extend an improvement notice compliance period (due date) if the due compliance period has not ended.</p> <p>An extended compliance date is only available to those persons who are experiencing delays in compliance due to reasonable and unforeseeable circumstances such as:</p> <ul style="list-style-type: none"> <li>• Awaiting council approval for a structure</li> <li>• delay in the supply of goods or services</li> <li>• strikes</li> <li>• extenuating circumstances such as sickness or bereavement</li> <li>• liquidation or receivership</li> </ul> <p>If the compliance date of a notice is varied<sup>1</sup>,</p> <ul style="list-style-type: none"> <li>• Make a notation on the notice itself or send an email confirmation; and</li> <li>• record the extended date in contemporaneous notes; and</li> <li>• add an InfoNET activity to the relevant file, '<i>WHS Notice Extension</i></li> </ul>

<sup>1</sup> Amended 14-3-2013

	<p><i>Granted</i>, and record in the comments area of the activity the notice number, and why the notice's compliance date was extended. Enter the revised notice follow-up date before saving the activity.</p> <p>Section 206 provides that an inspector may make other changes to a notice in limited circumstances, e.g.:</p> <ul style="list-style-type: none"> <li>• for clarification</li> <li>• to correct errors or references</li> <li>• reflect change of address or other circumstances</li> </ul>
<p><b>Regulator or delegate</b></p>	<p><b>Regulators variation or cancellation of a notice</b></p> <p>Section 207 provides that <a href="#">only the regulator</a> can vary an improvement notice outside the variations available to an inspector under the provisions of sections 194 &amp; 206.</p> <p>Only the <a href="#">regulator</a> can cancel an improvement notice.</p> <p>The inspector shall record in writing, any regulator's variation or cancellation of an improvement notice via entries on the relevant InfoNET file.</p>

**5. FURTHER INFORMATION**

- Related procedures are detailed in the body of this procedure.

**6. 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:**

- V1 – Nov 2012
- V2 – 14 Mar 2013
- V3- 7 April 2016

## **7. Appendix 1 - Guidance 1 - Multiple Duty Holders / Primary Duty of Care**

Where there are multiple duty holders in relation to a particular matter, identify which duty holder has responsibility or control over an activity or matter that is in contravention of the WHS legislation.

This is of particular importance in cases where a principal contractor engages another contractor, such as in the construction industry, and in circumstances where a host engages workers from a labour hire agency.

One party may have multiple duties as different entities; for example, a PCBU may also be a person who manages or controls a workplace.

Where multiple notices are required to be issued in relation to a single matter involving multiple duty holders, each notice should reflect the matters over which the relevant duty holder has management or control.

For information on the correct legal entity of a person to whom an improvement notice is issued, refer to *Part 3 of the Guidance section in the Model Operational Procedure MOP SAFE 11/0824 Entry to Workplaces and related powers and obligations.*

## 8. Appendix 2 - Guidance 2 - Single Contravention per Notice

Each contravention must be the subject of a separate improvement notice; however there are limited exceptions to this requirement. One notice with a common compliance date may only be issued in circumstances where multiple instances of the same contravention are observed, e.g.:

- a number of fire extinguishers are located at different locations in the workplace and there is no evidence that any of them have been tested regularly; or
- In strategically-identified circumstances where you observe identical risk factors for the same type of work at multiple locations of the one PCBU, for example, installing a patient lifting device on each of 3 different levels of a multi-storey building managed by the same PCBU.

Details of the multiple instances should be referred to in your *reasonable belief* section of the notice form.

## 9. Appendix 3 - Guidance 3 - The Timeframe for Compliance

The day by which the person is required to remedy the contravention or matters or activities giving rise to the contravention must be stated in the notice.

Take into consideration the seriousness of the contravention or likely contravention and the risk to the health or safety of any person and the nature of the contravention or likely contravention when determining a date by which compliance is required. In practical terms there is no minimum number of days before which compliance is due.

Discuss reasonable timeframes for compliance with the person (and any relevant health and safety representative and/or workers) having regard to the severity of the risk to the health or safety of any person and the nature of the contravention or likely contravention.

A notice must specify the day by which the person is required to remedy the contravention or likely contravention.

*Section 27 of the Acts Interpretations Act 2002 provides that any date of any instrument that falls due on a Saturday Sunday or public holiday will mean the date will be taken to fall on the next business day. It is SWSA policy that the compliance date on all improvement notices be a normal business day.*



*Work Health and Safety Act 2012 (SA)*

Section 207

**LIST OF DELEGATES**

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Click [here](#) to access the table of delegates under the WHS Act and search for s207

This delegation cannot be further delegated.