

INDEX

1. Definitions.....	1
2. Purpose.....	1
3. Background	2
4. Procedure.....	6
5. Further information.....	10
6. Review.....	10
7. Appendix 1: Guidance 1 - Transitional provisions relating to PIN's.....	11
8. Appendix 2: Guidance 2 - Consultation prior to a PIN being issued.....	12
9. Appendix 3: Guidance 3 - What makes a PIN invalid?.....	13
10. Appendix 4: Guidance 4 - What is the same matter in relation to a PIN?	15

1. DEFINITION

Assist	Means the inspector provides support, help and aid to the parties to encourage them to reach agreement.
Decide	Means the inspector makes a decision after consideration of the issues in dispute.
HSR	Means a duly elected and trained health and safety representative or a deputy HSR
Person	Means either a natural person or an incorporated entity recognised by the law as having the rights to hold property, to enter into legal contracts, and to sue and be sued in his, her or its own name
PIN	Means provisional improvement notice
Regulator	Means the Executive Director SafeWork SA
SWSA	Means SafeWork SA
WHS Act	Means <i>Work Health & Safety Act 2012 (SA)</i>

2. PURPOSE

To provide guidance for inspectors when responding to a request for review of a Provisional Improvement Notice (PIN) that has been issued in accordance with Part 5, Division 7 of the WHS Act.

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

- Section 123 of the WHS Act is written as Section 123 or s123;
- Regulation 456 of the WHS Regulations is written as Regulation 456 or r456.

3. BACKGROUND

Power to issue a PIN

Section 90 empowers a HSR to issue a PIN to any person if they reasonably believe that the person:

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

Section 90(4) provides that a HSR may not issue a PIN unless they have completed initial training prescribed by the WHS regulations as referred to in s72(1)(b); or previously completed such training when acting as a HSR for another work group; or completed equivalent training under the WHS Act in another jurisdiction.

See [appendix 1](#) of this procedure for transitional provisions relating to HSR's exercising their powers under the WHS Act.

Section 90(3) provides that a HSR **must** consult with the person before issuing the PIN.

Regulator's policy

'Consultation' will be considered to have occurred prior to issuing a PIN if:

- the HSR has (verbally or in writing) provided information to the person about the contravention and ways to remedy the contravention or likely contravention or the things or operations causing the contravention or likely contravention;
- the HSR has allowed the person an opportunity to express their views and to contribute within a reasonable time to remedy the alleged contravention or resolve the matters or activities causing the alleged contravention;
- the HSR has taken into account the views of the person before issuing the PIN; and
- the HSR has advised the person of the outcome of consultation in a timely manner.

See [appendix 2](#) of this procedure for further information and guidance on consultation.

Section 93 provides that a PIN 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 PIN relates. These directions may:

- include a reference to a code of practice, or
- offer the person to whom the PIN is issued a choice of ways in which to remedy the contravention

Section 94 provides that a HSR may make minor changes to a PIN in certain circumstances:

- for clarification such as to simplify the language or remove jargon; or
- to correct errors or references; or
- to reflect changes of address or other circumstances.

Section 95 provides that a HSR may issue a PIN to a person in accordance with s209 by:

- a) delivering it personally to the person or sending it by post or fax or electronic transmission to the person's usual or last known place of residence or business; or
- b) leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be over 16 years of age and who appears to reside or works there; or
- c) 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
- d) in a prescribed manner.

Because HSRs mainly deal with duty holders who are corporations, PINs would be normally be left for the relevant person to whom the PIN is issued using either method b) or c) above - by giving it to the management representative the HSR was dealing with at the workplace.

For further information on 'delivering it personally' and 'leaving it for a person', refer to *WHS MOP 11-0842 Issue of notices and other general requirements relating to all notice types*

Section 96 provides that the HSR may at any time cancel the PIN issued to a person by giving written notice to that person.

Obligations of the person to whom a PIN is issued

Section 97 provides that a person to whom a PIN has been issued **must** display a copy of the PIN as soon as practicable in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Note: It is an offence for a person to not display a PIN; or to intentionally remove, destroy, damage or deface a PIN while it is in force.

Regulator's policy

A *prominent place* means open display in a place where the PIN will be seen without prior knowledge that it is there and where workers or other persons affected by the PIN will come across it in the normal course of events and be able to examine it.

It is an offence under s99 for a person to not comply with a PIN where an inspector **has not** been required to attend the workplace under s101.

Request for an inspector to review PIN

Section 100 provides that **within 7 days** after a PIN is issued to a person, they, or if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker works, may ask the regulator to appoint an inspector to review the notice.

Section 101 provides that regulator must ensure that an inspector attends the workplace as soon as practicable after the request is made, and that the inspector must review the PIN and inquire into the circumstances that are the subject of the PIN. Section 100(2) provides that the PIN is stayed until the inspector makes a decision on the review.

Section 101(3) provides that the inspector may review a PIN even if the period for compliance with the notice has expired.

Regulator's policy

For the purposes of s101, *as soon as practicable* means at the earliest opportunity based on work requirements, and in any event:

- where the workplace is within the metropolitan area – within 1 business day
- where the workplace is outside the metropolitan area – within 2 business days

A preliminary assessment of the PIN is required to obtain as much information as possible from the parties to assist in determining if the PIN is valid and, where possible, to seek a resolution to the issue(s). This may result in the HSR cancelling the PIN in accordance with s.96; the HSR making minor changes to the PIN in accordance with s.94; or the person to whom the PIN was issued withdrawing their request to review the PIN. As such there would no longer be a need for an inspector to attend the workplace.

The inspector shall make contact with the HSR to obtain as much information about the basis on which the PIN was issued before discussing the matter with the person who requested the review of the PIN.

Determine validity of the PIN

To be valid, a PIN **must** be in writing (s91) and can only be issued by a HSR:

1. elected under the WHS Act or by a HSR to whom (Appointments) Transitional Provision 18 of Schedule 6 of the WHS Act applies; and
2. who satisfies the training requirements of s90(4); i.e.
 - a. has completed the initial training referred to in s72(1)(b) and prescribed by Part 2.1 of the WHS Regulations; or
 - b. has previously completed that training when acting as a HSR for another work group; or
 - c. has completed any other equivalent training under a corresponding WHS law; or
 - d. to whom (Training) Transitional Provision 19 of Schedule 6 of the WHS Act applies.

The PIN must also be:

3. in relation to a matter affecting workers in the HSR's work group or another work group the HSR can act in relation to (if there is an immediate or imminent serious risk affecting those members of another work group, or one of the members of the other work group requests the HSR's assistance and the HSR for that work group is unavailable); and
4. to a person on whom duties are imposed by the WHS Act; and
5. to the correct or relevant duty holder.

Section 92 provides that a PIN **must also state**:

6. that the HSR believes the person is contravening a provision of the WHS Act, or has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated; and
7. the provision of the WHS Act that the HSR believes is being, or has been contravened; and
8. briefly, how the provision is being or has been contravened; and
9. the day, **at least 8 days after** the notice is issued, by which the person is required to remedy the contravention or likely contravention.
 - a. Note: The day on which the notice is issued does not count for this purpose.

A PIN will be invalid if:

- any of the above nine (9) criteria are not satisfied or if any of the following apply:
- the PIN was issued after midnight on 31 December 2013 by a HSR to whom the (Training) Transitional Provision 19 of Schedule 6 of the WHS Act applies; or
- an inspector (in the relevant jurisdiction at the relevant workplace) has already issued, or decided not to issue, an improvement notice or prohibition notice in respect of the same matter [see s90(5)]; or
- the HSR has not undertaken consultation prior to issuing the PIN [s.90(3)].

Section 98 provides that a PIN **is not** invalid only because there is a formal defect or irregularity unless it causes or is likely to cause substantial injustice or merely because of a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

For further information on what makes a PIN invalid, refer to [appendix 3](#) of this procedure.

Decision of the inspector following the review of PIN

Section 102(1) provides that after reviewing the PIN, the inspector **must**:

- confirm the PIN; or
- confirm the PIN with changes; or
- cancel the PIN

Section 102(3) provides that a PIN that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under the WHS Act.

Section 102(2) provides that the inspector must give a copy of his or her decision to both the applicant for the review of the PIN and the HSR who issued the PIN.

Regulator's policy

The inspector's decision shall be recorded in the 'Decisions Made Under Pt 5' section of the Inspection Report and include:

- the basis for the inspector's decision to confirm (with or without changes) or cancel the PIN;
- if the PIN is confirmed, the penalty for contravening that notice; and
- how the person may seek review of the inspector's decision.

The provision of the Inspection Report to both parties will satisfy the requirement for a copy of the inspector's decision to be given to both the person who requested the review of the PIN and the HSR who issued the PIN.

Internal Review

A decision made by an inspector to confirm or cancel a PIN is a reviewable decision. Persons listed in item 4 in the table in s223 may seek an Internal Review of the inspector's decision.

Regulator's policy

Inspectors will advise the HSR and the person to whom the PIN was issued of their right to seek a review of the inspector's decision and how they may make such application.

For information on how an HSR or person to whom a PIN was issued can seek an internal review of the inspector's decision, refer to

- *MOP 11/638 Reviewable Decisions*

4. PROCEDURE

Requests for inspector's assistance may be received via:

- telephone; or
- email or other written correspondence; or
- conversations; or
- personal attendance by a workplace party at an SWSA office.

Responsibility	Description
Help Centre	<ul style="list-style-type: none"> • Facilitate creation of InfoNET file if not already in place • Forward the notification to the relevant line manager
Line Manager	<p>Appoint an inspector who shall commence relevant inquiries as soon as practicable or no later than:</p> <ul style="list-style-type: none"> • where the workplace is within the metropolitan area – within 1 business day • where the workplace is outside the metropolitan area – within 2 business days
Inspector	<p>Preliminary assessment of request to review a PIN</p> <p>Discuss the matter with SWSA Principal Liaison Officer(s) (Workplace Consultation), and ascertain their availability to assist you with your inquiries as necessary.</p> <p>If the request to review a PIN is not accompanied by a copy of the PIN, request a copy (or information about its content) to enable you to conduct a preliminary assessment.</p> <p>Preliminary assessment can extend to having telephone discussions with the HSR and person issued with the PIN regarding the substantive matter that is the subject of the PIN and any reason for the request to review.</p> <p>It is preferable that details from the HSR are obtained first to gain the full history of the matter and reasons for the PIN being issued before obtaining reasons for the request to review from the person to whom it was issued.</p> <p>If the request is made outside the 7 day period after the PIN was issued, the inspector has no power to review the PIN and the person issued the PIN must comply with it. Advise the HSR and the person to whom the PIN was issued accordingly.</p> <p>Note: consider what further action is required such as recommending that the issue be raised through the PCBU's issue resolution process or requesting that an inspector attend to deal with any substantive issue.</p> <p>Check whether an inspector has already issued (or decided not to issue) an improvement or prohibition notice on the same matter at the same workplace specified in the PIN. If so, the PIN is not valid. Advise the HSR and the person to whom the PIN was issued accordingly.</p> <p>For information on the same matter, refer to appendix 4 of this procedure.</p>

Inspector

Check that the HSR is duly elected under the WHS Act and has completed initial training which entitles the HSR to issue a PIN (subject to transitional provisions in the WHS Act), or that the HSR who issued the PIN had completed a course of training approved for the purposes of section 31A of the repealed *Occupational Health Safety and Welfare Act 1986*

Check that the HSR consulted with the person to whom the PIN was issued prior to issuing the PIN.

Check validity of the PIN

Check to see if the PIN is in writing and it complies with the requirements of ss90, 91 and 92 including:

- the HSR's belief that the person is contravening a provision of the WHS Act or regulations or has contravened a provision of the WHS Act or regulations in circumstances that make it likely that the contravention will continue or be repeated;
- the provision of the WHS Act or regulations that the HSR believes has been or is likely to be contravened;
- how the provision is being or has been contravened; and
- the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention. The day on which the notice is issued **does not** count for this purpose.

Check the PIN for formal irregularities or defects

A PIN is not invalid only because of:

- a formal irregularity or defect unless the irregularity or defect causes or is likely to cause substantial injustice; or
- a failure to use the correct name of the person to whom the notice was issued if the notice sufficiently identifies the person.

For further information on what formal irregularities or defects in a PIN would cause or be likely to cause substantial injustice or not sufficiently identify a person, refer to Part 6 – *Validity of notices: Formal irregularities and defects* in the guidance section of model operational procedure SAFE 11/0842 *Issue of Notices and other General Requirements Relating to all Notice Types*.

Advise the HSR and person to whom the PIN was issued of the outcome of your preliminary assessment. If the PIN is considered to be invalid, suggest the HSR cancel the PIN (noting that s96 of the WHS Act requires this be done by giving written notice to the person issued with the PIN), and advise the HSR on how to issue a valid PIN.

If preliminary assessment (including any discussions with parties and giving your own recommendation on the matter) results in the issue being resolved, request, as appropriate, that:

- the HSR cancel the PIN (e.g. if it is agreed it was not required because there is no contravention);
- the HSR make minor changes to the PIN (e.g. if it is agreed this would clarify the PIN); and/or
- the person to whom the PIN was issued withdraw their request to review the PIN (e.g. if it is agreed that the PIN or modified PIN is appropriate and will be complied with).

	<p>If the request to review the PIN is withdrawn, there is no longer a need for an inspector to attend the workplace. Record this outcome contemporaneously and on InfoNET.</p>
<p>Inspector</p>	<p>Attending the workplace</p> <p>If you are unable to have preliminary discussions with the HSR and the person to whom the PIN was issued, or preliminary discussions do not result in the request for review of the PIN being withdrawn, attend the workplace as soon as practicable.</p> <p>Discuss the PIN with the HSR to establish:</p> <ul style="list-style-type: none"> • the history of the issue leading up to the PIN, including what consultation (if any) occurred; • that the HSR is duly elected; • if the HSR has completed initial training which entitles the HSR to issue the PIN (subject to transitional provisions in the WHS Act); • if the PIN relates to a different workgroup to the one the HSR is elected for, the inquiries made by the HSR to determine the relevant HSR was unavailable; and • the method by which the PIN was first issued or given. <p>Discuss the reasons for seeking review of the PIN with the person who has requested the review of the PIN. If the person requesting the review is a body corporate, speak to the relevant management representative.</p> <p>Seek verification of or response to the duty holder's comments from the HSR.</p> <p>Note: If the HSR and person to whom the PIN was issued agree, a joint meeting may be held to speed up the process.</p> <p>If necessary, discuss the subject matter of the PIN and any other related details with any other relevant persons (such as affected workers or other HSRs).</p> <p>Consider whether any formal defects or irregularities in the PIN cause or are likely to cause substantial injustice, or whether a technically incorrect name has been used in the PIN which does not sufficiently identify the person to whom it is issued. In either case, the PIN would be considered invalid.</p> <p>If you cannot decide if a PIN is invalid, first speak with your manager and principal inspector, and in the absence of resolution, contact SWSA Investigation & Legal Team for advice.</p> <p>Consider whether the substantive issue raised by the HSR amounts to a provision of the WHS Act or regulations being contravened or a contravention that is likely to continue or be repeated.</p>
<p>Inspector</p>	<p>Further inquiries</p> <p>If, at the time, you need to make further inquiries before deciding the outcome of your review of the PIN, advise the HSR and person to whom the PIN was issued. Further inquiries outside the workplace may be needed to:</p> <ul style="list-style-type: none"> • verify the information that you have been provided (e.g. checking with relevant training provider about the HSR's training status if it is in dispute),

	<ul style="list-style-type: none"> • check prior history of inspector attendance at the workplace if not already known); and • research the substantive matter that is the subject of the PIN.
Inspector	<p>Determine the outcome of your inquiries (A, B, C or D as relevant)</p> <p><u>A: Is the PIN invalid?</u></p> <p>Determine if the PIN is valid or invalid.</p> <p>Refer to Part 2 of the Guidance section in this procedure for information about what makes a PIN invalid.</p> <p>If the PIN is invalid, first give the HSR an opportunity to cancel the PIN themselves and if this does not occur, go to D of this procedure, and cancel the PIN.</p> <p><u>B: Decision to confirm PIN</u></p> <p>Confirm the PIN if you believe:</p> <ul style="list-style-type: none"> • it is valid; and • you support the stated contravention, the HSR’s basis on which the PIN was issued and the directions for measures to remedy; and • the remaining compliance time frame (once the stay is no longer in play) is sufficient. <p><u>C: Decision to confirm the PIN with changes</u></p> <p>Confirm the PIN with changes if you believe it is valid and you support the stated contravention but believe it is necessary to:</p> <ul style="list-style-type: none"> • delete reference to any multi-stated contraventions; or • include more appropriate directions to remedy the contraventions; or • correct any formal defect or irregularity that does not cause substantial injustice; or • correct the name of the duty holder even though it is sufficiently identifiable; or • set an appropriate comply-by date (because the remaining compliance time frame – once the stay is no longer in play – is not sufficient). <p><u>D: Decision to cancel the PIN</u></p> <p>Cancel the PIN if you believe it is invalid; or if you believe it is valid (meeting all technical requirements), but:</p> <ul style="list-style-type: none"> • you do not support the stated contravention; or • the PIN has been issued to the wrong duty holder (give the HSR an opportunity to cancel the PIN themselves and reissue the PIN if you support the stated contravention) <p>If the substantive issue remains, consider issuing an improvement notice.</p> <p>If there is an immediate or imminent serious risk, consider issuing a prohibition notice.</p>
Inspector	<p>Communicating your decision</p> <p>Inform the HSR and person to whom the PIN was issued about your decision (A, B, C or D above) by referring to it in your Inspection Report.</p>

	<p>[If multiple PINs have been reviewed, identify each PIN separately in your Inspection Report, for example PIN-1 (topic), PIN-2 (topic)].</p> <p>If the PIN is cancelled (because it is invalid or for any other reason), advise the HSR on how to issue a valid PIN.</p> <p>If the PIN is confirmed (with or without changes), advise the person to whom it was issued that:</p> <ul style="list-style-type: none"> • it is an offence not to comply with what is now taken to be an inspector's improvement notice; and • a copy of the PIN is required to be displayed in a prominent place at the workplace. <p>The communication of your decision in relation to the reviewed PIN could also include reference to issue resolution provisions in the WHS Act and regulations to assist the workplace parties to deal with any other work health and safety matters which may arise.</p>
Inspector	<p>Internal Review</p> <p>Advise the parties they may seek review of your decision (as provided for at Item 4 of s223) and how they can go about it.</p> <ul style="list-style-type: none"> • See MOP 11/0638 Reviewable Decisions
Inspector	<p>Follow-up</p> <p>If you have confirmed a PIN with or without changes, it is taken to be an improvement notice issued by you.</p> <p>Follow up the deemed improvement notice in accordance with the model operational procedure <i>11/0843 Improvement Notices MOP</i>.</p>
Inspector	<p>File management</p> <p>Enclose copies of all information obtained and provided, the Inspection Report (or other written decision) and other file closure documents in the relevant InfoNET file.</p>

5. FURTHER INFORMATION

- Compliance & Enforcement Policy
- Principles of Operation
- Framework For a Common Approach to Inspection Work
- Other procedures as referenced in the body of this procedure

6. REVIEW

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

Document Owner: Liaison Officer (Workplace Consultation) Help & Response Team

Version Control Information

- V1 – 8 Jan 2013

7. Appendix 1: Guidance 1 – Transitional Provisions Relating to HSR’s Power to Issue PIN’s

Schedule 6 of the *Work Health and Safety Act 2012* (SA) provides that transitional provisions apply to HSR’s and Deputy HSR’s that were appointed under the repealed *Occupational Health Safety and Welfare Act 1986* (*the repealed Act*), specifically:

- Transitional provision 18(b) provides that a person holding office as a health and safety representative or deputy health and safety representative under the repealed Act will be taken to hold the corresponding office under this Act (with a term of office corresponding to the balance of his or her term of office under the repealed Act)
- Transitional provision 19(1) provides that a person who has completed a course of training approved for the purposes of section 31A of the repealed Act will be taken to have completed any training required under section 85(6) or 90(4) of this Act.
- Transitional provision 19(2) provides that transitional provision 19(1) will cease to apply at the expiration of 12 months after the relevant day (and any relevant course of training under the repealed Act will then cease to have effect for the purposes of this Act).

8. Appendix 2 - Guidance 2 - HSR Consultation Prior To Issuing A PIN

Work Health and Safety regulators consider that consultation will have occurred, initiated by the HSR (or deputy HSR as relevant), prior to issuing a PIN if:

- the HSR has - verbally or in writing - provided information to the dutyholder (or management representative if the dutyholder is a PCBU) about remedying the contravention or likely contravention or the matters or activities causing the contravention or likely contravention;

(Note: it is sufficient for consultation purposes that the HSR raises the activities, matters or things which they believe cause a contravention of the WHS Act without having to specify a particular provision of the WHS Act at this time, though they may do so. The HSR must have indicated that the contravention or matters or activities causing it needs to be remedied. For the purposes of consultation the HSR does not have to specify the remedy but may suggest options for remedying the believed contravention or matters or activities causing it.)

- the HSR has allowed the person an opportunity to express their views and to contribute within reasonable time to remedy the alleged contravention or resolve the matters or activities causing the alleged contravention;

(Note: the person may express their view immediately – in which case the HSR can immediately move to the next step; alternatively, the person may need to take reasonable time to consider the HSR's view, for example to obtain authorisation from a more senior manager or to seek expert advice on the matter – in which case, the HSR needs to allow for a reasonable time to pass for the person to either action the matter if they agree with the HSR or respond otherwise to the HSR before the HSR moves to the next step. 'Reasonable time' will vary depending on the circumstances, the issue in the workplace and/or the immediacy of the risk, but should not normally be longer than a period of one week for relatively minor matters and two to three weeks for more complex concerns.)

- the HSR has taken into account the views of the person before issuing the PIN; and
- the HSR has advised the person of the outcome of consultation in a timely manner.

Consultation can still be said to have occurred even if:

- the person does not respond to the HSR in a reasonable time or at all. In this case, the HSR can take the failure to respond into account before deciding to issue the PIN. There does not have to be a two-way exchange, only the opportunity for this to occur;
- there is no agreement between the HSR and the person. The person does not have to agree that there is or is likely to be a contravention or agree with the HSR about how to remedy the matter. The time period for consultation or degree of consultation required is not specified in the WHS Act. It will depend on the circumstances and must be reasonable for the relevant circumstances; or
- the HSR has prepared the PIN (which is later issued) prior to engaging in the consultation process. A prepared PIN, or a modified prepared PIN, may be issued if, after the consultation process is complete, the HSR is not satisfied with the outcome.

Consultation does not require the HSR to specifically state they will issue a PIN if they are not satisfied with the outcome of the consultation process (though they can state this). Nor does the consultation process require that the HSR state the penalty implications of issuing a PIN and the dutyholder not complying with it (though they can also state this if they wish).

9. Appendix 3: Guidance 3 - What Makes A PIN Invalid?

Element	Section of WHS Act
HSR issuing PIN is not duly elected under the WHS Act, or was not an appointed HSR under the repealed <i>Occupational Health Safety and Welfare Act 1986</i> .	Subdivision 4 of Division 3 of Part 5 of the WHS Act Transitional provision 18(b)
HSR has not first consulted with the relevant person	s90(3)
HSR has not completed initial training, or previously completed that training when acting as a HSR for another work group, or completed equivalent training under a corresponding WHS law, or did not complete approved training under the repealed <i>Occupational Health Safety and Welfare Act 1986</i> .	s90(4) Transitional provision 19(1)
The subject matter of the PIN has been previously dealt with by an inspector (in the relevant jurisdiction) issuing (or deciding not to issue) an improvement notice or prohibition notice in relation to the specified duty holder/workplace.	s90(5)
PIN is not in writing.	s91
<p>PIN does not state:</p> <ul style="list-style-type: none"> a) the HSR's belief that the person is contravening a provision of the WHS Act or regulations or has contravened a provision of the WHS Act or regulations in circumstances that make it likely that the contravention will continue or be repeated; b) the provision of the WHS Act or regulations that the HSR believes has been or is likely to be contravened; c) how the provision is being or has been contravened; and d) the day (by which the person is required to remedy the contravention or likely contravention) which must be at least 8 days after the notice is issued. The day on which the notice is issued does not count for this purpose. <p>Note: ensure that you have considered the application of s.98 of the WHS Act.</p>	s92
<p>PIN was not issued or given to the person:</p> <ul style="list-style-type: none"> a) by delivering it personally or sending it by post, facsimile or electronic transmission to the person's usual or last known place of residence or business; or b) by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be over 16 years and who appears to reside or work there; or c) by 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 or control of the workplace. 	s209 [s95]
The subject matter of the PIN does not affect members of the HSR's work group or any other work group the HSR can act in relation to.	s69
The actual HSR for the other work group in relation to which the issuing HSR has acted was available (or the issuing HSR did not make reasonable inquiries to establish that the actual HSR was not available).	s69

Element	Section of WHS Act
<p>Any irregularities or defects in the PIN are likely to cause substantial injustice (eg they are misleading).</p> <p>If you cannot decide if a PIN is likely to cause substantial injustice, first speak with your manager and principal inspector, and in the absence of resolution, contact SWSA Investigation & Legal Team for advice.</p>	s98(a)
<p>The name of the person to whom the PIN is issued is not correct and does not sufficiently identify the person.</p>	s98(b)

10. Appendix 4: Guidance 4 – What Is the “Same Matter” In Relation To Which an Inspector Has Already Issued (Or Decided Not To Issue) an Improvement or Prohibition Notice?

Section 90(5) provides that a HSR must not issue a PIN if an inspector has already issued or decided not to issue an improvement notice or prohibition notice in respect of the same matter.

The inspector must have decided the same matter in relation to the same duty holder in the same workplace.

The substantive issue which was the subject of an inspector’s decision (to issue a notice or not to issue a notice) must have been the same as that identified in the PIN and where the circumstances have not changed since the time of the inspector’s decision.

Examples:

- 6 months prior to the issue of the PIN, the inspector had issued an improvement notice or confirmed a PIN requiring risks associated with an unguarded machine to be remedied. The improvement notice (or confirmed PIN) was complied with by the PCBU. The PIN identifies that the previously supplied guard is missing. This would be considered a different matter, not the same matter.
- The PCBU has a procedure for working at heights to perform a specific task. The PIN identifies that the HSR disagrees with the procedure. However, an inspector had reviewed and supported the procedure 2 months before the PIN was issued, deciding not to issue a notice at that time. This would be considered the same matter.
- Previously, rostering arrangements were determined by an inspector to not create a risk to health and safety due to fatigue. Some time later, a HSR issues a PIN identifying rostering arrangements as a risk to health and safety due to fatigue. If the rostering arrangements have not changed, this would be considered the same matter. If the rostering arrangements differ from when the inspector originally considered them, this would be considered to be a different matter. If the rostering arrangements have not changed, but significant and relevant additional information about the effects of the roster is now available, this would be considered to be a different matter.