

MODEL OPERATING PROCEDURE

Dealing with alleged non-complied provisional improvement notices

INDEX

1. Definitions.....	1
2. Purpose.....	1
3. Background.....	1
4. Procedure.....	2
5. Further Information.....	3
6. Review.....	3

1. DEFINITIONS

HSR	Means a duly elected and trained health and safety representative or a deputy HSR
PCBU	Means person conducting a business or undertaking as described in s.5 of the <i>Work Health & Safety Act 2012 (SA)</i>
Person	Means any human being or artificial body of people, having rights and duties before the law that have the power to act, hold property, enter into legal contracts, sue and be sued in their own name
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 to inspectors and other SWSA staff when dealing with allegations that a provisional improvement notice (PIN) issued by a health and safety representative (HSR) has not been complied with.

3. BACKGROUND

Non-compliance with a [valid] PIN issued by a HSR is an offence under section 99(2) of the WHS Act. A person issued with a PIN must comply with the PIN within the time specified in the PIN unless they have requested a review of the PIN under s100, and an inspector has been required to attend the workplace under s101. (In this situation, s100(2) provides that the PIN is stayed [suspended] pending the outcome of the inspector's review).

- See *SAFE 11/0850 WHS s90 Request for review of a PIN MOP for guidance on confirming validity of a PIN*

SafeWork SA will arrange for an inspector to follow up any service request alleging non-compliance with a PIN issued by a HSR, including a PIN that has previously been confirmed (with or without changes) by an inspector and consequently taken to be, as provided in s102(3) of the WHS Act, an improvement notice issued by an inspector.

Regulator's policy

Where non-compliance with a PIN is alleged and **the PIN is considered to be valid**:

- an investigation may be conducted with a view to taking appropriate enforcement action, **and**
- if the inspector forms a reasonable belief that the matter giving rise to the PIN continues to be a contravention or is likely to be repeated, the inspector is to issue an improvement notice unless compliance is achieved while the inspector is at the site.

It is SafeWork SA policy that, where non-compliance with a PIN is alleged and **the PIN is considered to be invalid** (and cannot, therefore, be the subject of enforcement action):

- the inspector will consider and address the substantive issue leading to the issue of the PIN; and
- provide information to the relevant HSR about the requirements for a valid PIN.
 - See SAFE 11/0850 WHS s90 Request for review of a PIN MOP for guidance on confirming validity of a PIN

4. PROCEDURE

Responsibility	Description
Inspector	<p>Request</p> <p>You are allocated an activity alleging that a HSR's PIN has not been complied with.</p> <p>Obtain a copy of the relevant PIN.</p> <p>Check whether the relevant PIN has previously been the subject of a request to review a PIN, and if so; identify the outcome of the inspector's review of the PIN. If the PIN was confirmed (with or without changes) check whether the confirmed PIN (now taken to be an inspector's improvement notice) has been, or is currently, the subject of Internal or External Review. This will help determine the nature and timing of the next steps.</p> <p>(If the PIN was the subject of an inspector's review or Internal Review or External Review and was cancelled, no further action is required in relation to the activity. If an inspector's decision to confirm the PIN (now taken to be an inspector's improvement notice) is currently the subject of Internal or External Review, await the outcome of the review before proceeding).</p> <p>Record your actions and the basis of your decisions on InfoNET.</p>
Inspector	<p>Attend the workplace</p> <p>Make inquiries with the HSR who issued the PIN, the person to whom the PIN was issued (or the relevant management representative if issued to an organisation), and any other relevant person.</p> <p>Establish whether the PIN is valid or, if there are any formal irregularities or defects, whether s98 of the WHS Act applies to validate the PIN.</p> <p>See SAFE 11/0850 WHS s90 Request for review of a PIN MOP for guidance on confirming validity of a PIN</p>

Responsibility	Description
Inspector	<p>Invalid PIN</p> <p>If you determine the PIN is invalid and the substantive issue raised in the PIN warrants action, address the substantive issue.</p> <p>Communicate this outcome to the relevant HSR and person to whom the PIN was issued, and provide guidance to the relevant HSR about the requirements for a valid PIN.</p> <p>Note: an invalid PIN cannot be considered for enforcement action because the invalidity of the PIN voids any allegation of non-compliance. However, you may consider whether taking enforcement action is appropriate in relation to any offence that is evident from the substantive issue resulting in the PIN being issued, e.g. issue improvement or prohibition notices.</p>
Inspector	<p>Valid PIN</p> <p>If you determine the PIN is valid, make observations and inquiries and exercise any other relevant powers (e.g. to take photographs or to require production of documents) to assist you in determining whether the PIN and the accompanying obligations in s97 of the WHS Act (that a copy of the PIN be displayed at or near the workplace) have or have not been complied with.</p> <p>Communicate this outcome to the relevant HSR and person to whom the PIN was issued, and inform these persons that the non-complied status of the PIN will now be considered by the WHS regulator for potential enforcement action.</p> <p>If the contravention specified in the valid non-complied PIN is continuing or likely to be repeated, act to achieve compliance by issuing an improvement notice unless the identified contravention is remedied while you are on site.</p> <p>Refer the non-complied PIN to a case conference to consider potential enforcement action for such non-compliance.</p>
Inspector	<p>Record keeping</p> <p>Ensure detailed notes of all action taken is included in your inspector notebook (including your reasons for determining if the PIN was valid or invalid), and that relevant Inspection Report(s) have been prepared and issued.</p> <p>Record your actions and the basis of your decisions on InfoNET.</p>
Line Manager	<p>Consider the inspector's recommendation (if any) for potential enforcement action. As relevant, refer the matter for appropriate action.</p> <p>Record your actions and the basis of your decisions on InfoNET.</p>

5. FURTHER INFORMATION

- Compliance & Enforcement Policy
- Principles of Operation
- 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: Principal Liaison Officer (Workplace Consultation) Help & Response Team

Version Control Information

- V1 – Approved Jan 2012