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1. DEFINITIONS

Assist	Means the inspector provides support, help and aid to the parties to encourage them to reach agreement.
HSR	Means a valid and duly elected and trained health and safety representative or a deputy HSR
Issue	Means a point in question or a matter that is in dispute between contending parties in an action at law
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
Regulator	Means the Executive Director SafeWork SA
SWSA	Means SafeWork SA
WHS Act	Means <i>Work Health & Safety Act 2012 (SA)</i>
WHS Regulations	Means <i>Work Health & Safety Regulations 2012 (SA)</i>

2. PURPOSE

To provide guidance for inspectors when dealing with matters relating to issue resolution processes under Division 5 of Part 5 of the WHS Act, and Part 2.2 of Chapter 2 of the WHS Regulations.

3. BACKGROUND

Section 80(1) of the WHS Act defines “parties” to a HSR issue resolution matter as:

- a) the person conducting the business or undertaking (PCBU) or the person’s representative;
- b) if the issue involves more than one business or undertaking, each PCBU or their respective representative;
- c) if worker(s) affected by the issue are in a work group as defined in Division 3 of Part 5 of the WHS Act, the health and safety representative HSR for the work group or his/her representative; and
- d) if there is no work group, the worker or workers affected by the issue or their representative.

Section 80(2) of the WHS Act provides that the PCBU must ensure that their representative (if any) is not a HSR, and the person has an appropriate level of seniority and is sufficiently competent to act as the PCBU's representative for the purpose of issue resolution.

Regulator's policy

The term '**appropriate level of seniority**' in relation to a PCBU's representative means the representative who has the appropriate level of seniority at the management level of the PCBU (or otherwise has authority) to make or readily facilitate the necessary decisions to resolve WHS issues at the workplace (ideally included in their position description).

The term '**sufficiently competent**' in relation to a PCBU's representative, has the following meaning:

- the representative has a general knowledge and understanding (whether obtained through WHS training, general management training, work experience or mentoring programs) of:
- the WHS Act and the WHS Regulations;
- the PCBU duties under the WHS Act and WHS Regulations;
- the PCBU's approach to managing WHS issues;
- the concept of "reasonably practicable";
- the role and functions of HSRs and Entry Permit Holders;
- the role of inspectors;
- the process of issue resolution;
- workplace operations;
- communication, consultation and negotiation skills;
- WHS risk management processes; and

The person must have an ability to:

- identify appropriate risk control measures available to the PCBU; and
- access expert technical information/advice (internally or outside the PCBU).

Section 81(1) and (2) of the WHS Act provides that if the parties have not resolved the issue by discussion, they must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure [see regulation 22 (r22) of the WHS Regulations - or in the absence of agreement, the default issue resolution procedure as set out in r23 of the WHS Regulations.

Note: There is no obligation on the parties to have an agreed procedure for issue resolution. The parties can use the r23 default procedure prescribed in the regulations in all cases. However, if an agreed procedure is being contemplated, the PCBU must ensure that affected workers and their HSR(s) - if any - are consulted (under Division 2 of Part 5 of the WHS Act) about the development and content of procedure.

Refer to [Appendix 1 Guidance](#) section of this procedure for information on agreed procedures and to see the provisions of the default procedure which applies if there is no agreed procedure

Section 81(3) of the WHS Act provides that a representative of any party to the issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

If the matter is not resolved after reasonable efforts to do so, s.82(2) of the WHS Act provides that any party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.

[Note: s.82(3) of the WHS Act provides that a request made to the regulator under s.82(2) of the WHS Act does not prevent a worker from exercising the right under s.84 of the WHS Act to cease work, or a HSR from either directing work to cease under s.85(1) of the WHS Act or issuing a provisional improvement notice under s.90 of the WHS Act].

Although the initial role of the inspector is to assist the parties to resolve the issue themselves, s.82(4) of the WHS Act provides that, when attending the workplace to assist resolve the issue, an inspector may exercise any of their compliance powers under the WHS Act.

Part A of this procedure ([page 4](#)) guides inspectors on what to do when appointed by the regulator to attend the workplace to assist in resolving the issue.

Part B of this procedure ([page 5](#)) guides inspectors and other officers of the regulator in dealing with other matters relating to issue resolution that may be raised with the regulator, including:

- guidance on what should be included in an agreed procedure;
- dispute over whether there should be an agreed procedure or whether the default procedure in the WHS regulations should apply;
- if the purported agreed procedure is actually an agreed procedure in accordance with the WHS Act;
- an allegation that the relevant agreed procedure was not followed; or
- an allegation (or inspector's observation) that the PCBU's representative is not appropriately senior or sufficiently competent.

4. Procedure Part A – Responding to requests for inspector attendance to assist resolve an issue

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:</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 assist resolve an issue</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>Make contact with relevant parties by telephone and ascertain if the parties have made reasonable efforts to resolve the matter by discussion and use of an agreed issue resolution procedure. If there is no agreed procedure at the relevant workplace, the default issue resolution procedure prescribed in regulation 23 can be used.</p> <p>If not, advise the parties to do so, as referral of the issue to the regulator under s81(1) of the WHS Act is only allowed if an issue has not been resolved after reasonable efforts have been made to achieve resolution.</p> <p>Provide the parties with any necessary guidance or advice on how they can attempt to resolve the issue. Advise the parties that, if their attempt does not result in the issue being resolved, any of them may again approach the regulator with a request for assistance to resolve the issue.</p> <p>In this case, or if the request to assist in resolving an issue is withdrawn at this time, there is no longer a need for an inspector to attend the workplace. Inform the parties that an inspector will not now attend the workplace. Record this outcome, as appropriate, in accordance with local jurisdiction arrangements.</p>
Inspector	<p>Attend the workplace</p> <p>Meet first with the person making the request and inquire into the issue.</p> <p>If the person making the request is not the HSR, then meet with the HSR and any other relevant parties, obtain their views on how the issue should be resolved, and gather any other information you may need to help you properly understand and assist in resolving the issue.</p> <p>Note: Joint meetings may be conducted if all parties are agreeable.</p> <p>Advise the parties on how the issue could be resolved and obtain their response to your advice.</p>

	If there is any indication the parties will not be able to resolve the issue by agreement, consider whether it is necessary to issue an improvement or prohibition notice (as relevant to the issue concerned), or advise the parties that you do not believe an improvement or prohibition notice is necessary in the circumstances.
Inspector	<p>Prepare and issue an Inspection Report</p> <p>Prepare an Inspection Report outlining your actions and the outcome of the matter and give it to the PCBU (or the representative of the PCBU) and any other party (or their representative) to the issue.</p> <ul style="list-style-type: none"> • See <i>WHS Inspection Report MOP</i>
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. Procedure Part B – Dealing with other matters relating to issue resolution

The following table provides information on how to deal with a range of other requests or queries relating to issue resolution that may be received by the regulator. The response to these issues may involve attending the workplace or may be responded to by other means.

Subject Matter		SWSA Response
1.	Guidance is sought on what should be included in an agreed procedure.	Provide the party with relevant information, such as that included in the background section of this procedure and Part 1 of the Guidance section of this procedure.
2.	There is a dispute at the workplace over whether there should be an agreed procedure or whether the default procedure in the WHS regulations should apply.	Inform the parties that there is no obligation to have an agreed procedure and that the default procedure applies if there is no agreed procedure. Advise the parties to consider developing an agreed procedure as it may be more tailored to meet the specific circumstances/needs of the workplace (and better facilitate issue resolution) than a default procedure. Advise the parties that the steps in the default procedure are taken to be terms of the agreed procedure if not explicitly included. Provide guidance to the relevant parties on <i>What is an agreed procedure?</i> (as contained in Appendix 1 Guidance section of this procedure).
3.	There is a query about whether the purported agreed procedure is actually an agreed procedure in accordance with the WHS Act.	<p>Review the purported agreed procedure against the information included in the background section of this procedure and Appendix 1 Guidance section of this procedure. Advise the party of your opinion.</p> <p>If you believe the purported agreed procedure is not an agreed procedure in accordance with the WHS Act, advise the party that the default procedure would apply until or unless a valid agreed procedure was developed.</p> <p>Provide guidance to the relevant parties on <i>What is an agreed procedure?</i> (as contained in Appendix 1 Guidance section of this procedure) or how their existing procedure can be improved.</p>

4.	There is an allegation that the relevant agreed or default procedure was not followed.	<p>While s.81(2) of the WHS Act provides that the parties <u>must</u> make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed or default procedure, it is not a penalty provision and a contravention of s.81(2) cannot be the subject of prosecution.</p> <p>However, if your inquiries lead you to identify that the parties did not make reasonable attempts to resolve the issue in accordance with the agreed procedure (if any) or the default procedure, an improvement notice may be issued requiring the parties to follow the relevant procedure to attempt to resolve the issue.</p> <p>Alternatively, you may inquire into the substantive issue and exercise relevant powers to have the matter dealt with.</p>
5.	There is an allegation (or inspector's observation) that the PCBU's representative is not appropriately senior or sufficiently competent.	<p>While s.80(2) of the WHS Act provides that the PCBU's representative <u>must</u> have an appropriate level of seniority and is sufficiently competent, it is not a penalty provision and a contravention of s.80(2) cannot be the subject of prosecution.</p> <p>However, if your inquiries lead you to identify that the PCBU's representative is not appropriately senior or sufficiently competent to deal with raised issues, an improvement notice may be issued requiring the PCBU to nominate a representative who is appropriately senior and sufficiently competent.</p> <p>Alternatively, you may inquire into the substantive work health and safety issue and exercise relevant powers.</p>

6. FURTHER INFORMATION

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

7. 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 – TBA 2012

8. Appendix 1: Guidance - What is an agreed procedure?

An issue resolution procedure should aim to facilitate a timely and effective resolution of a health and safety issue and **must** be consistent with the WHS Act. For example, it cannot remove the power of a HSR to issue a PIN or to exercise any other power that the WHS Act gives them.

An **agreed procedure** is one which is genuinely agreed between the PCBU and the majority of workers, including any HSRs. The procedure must not be imposed by one party or the other or arise out of a flawed process for reaching agreement, for example:

- where only a select group of workers participated and agreed with the PCBU, or
- where agreement is reached through an unrepresentative process, such as, not all HSRs or other worker(s)' representatives (as relevant) were able to participate in the agreement process.

If the PCBU or a majority of workers have concerns about the agreed procedure, they are entitled to withdraw their agreement unless, (or until) a new procedure is developed and agreed. If a new procedure is not developed, then the default procedure in the WHS Regulations applies.

An agreed procedure should:

- outline a process of steps for resolving issues and not set out what the outcome would be in specified circumstances;
- be able to be used to resolve issues and not be limited to stating that workers should raise issues with their supervisor or HSR;
- relate to health and safety issues rather than rely on a procedure which exists solely for other purposes, such as a grievance or complaint procedure, unless such a procedure is agreed to be utilised for health and safety issues;

and include:

- each person's role when resolving WHS issues, including managers, supervisors, HSRs and workers;
- timeframes and opportunities for the parties to meet to resolve the issue; and
- how to communicate the outcome of the process to workers.

Note: While Health and Safety Committee(s) (HSC) – if any exist at the workplace – have their place, (e.g. to assist in developing the agreed issue resolution procedure), they may not be suitable avenues for resolving specific WHS issues. This is because issue resolution may be delayed if the HSC meets infrequently or the affected workers may not be members of the HSC.

Procedural steps could include:

- discussing and agreeing what the actual issue is;
- nominating and discussing a range of options for resolving the issue;
- discussing which of the range of options may be the best one to resolve the issue; and
- if the desirable option will take some time to implement, consideration of suitable interim, short-term solutions to the issue.

Note that regulation 22 of the WHS Regulations provides that minimum requirements for an agreed procedure for issue resolution at the workplace are that it includes the steps specified in regulation 23 (for the default procedure), is set out in writing, and is communicated to all workers to whom the agreed procedure applies.

Communication about an agreed procedure may, for example, be achieved by providing information about the agreed procedure in briefing sessions and for any written procedure to be emailed to all workers and/or posted on a noticeboard at the workplace or on the internal website of the workplace. If there are workers who do not speak English, details of the agreed procedure should be provided and posted in relevant languages, to ensure the content is accessible to all workers.

Regulation 23 of the WHS regulations sets out the default procedure for the purposes of s.81(2) of the WHS Act, which applies if there is no agreed procedure. It provides as follows:

23(2) Any party to the issue may commence the procedure by telling each other party:
(a) that there is an issue to be resolved; and
(b) the nature and scope of the issue.

23(3) As soon as parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.

23(4) The parties must have regard to all relevant matters including the following:
(a) the degree and immediacy of risk to workers or other persons involved in the issue;
(b) the number and location of workers and other persons affected by the issue;
(c) the measures (both temporary and permanent) that must be implemented to resolve the issue;
(d) who will be responsible for implementing the resolution measures.

23(5) A party may, in resolving the issue, be assisted or represented by a person nominated by the party.

23(6) If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.

Note: Under the WHS Act, **parties** to an issue include not only a person conducting a business or undertaking, a worker and a health and safety representative, but also representatives of these persons (see section 80 of the WHS Act).

23(7) If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.

23(8) A copy of the written agreement must be provided to:
(a) all parties to the issue; and
(b) if requested, to the health and safety committee for the workplace.

23(9) For the avoidance of doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.