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1. DEFINITIONS

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 valid and duly elected 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 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 to inspectors when dealing with unresolved issues in relation to HSR training under *Part 5* of the WHS Act.

3. BACKGROUND

Section 72(1)(a) and (b) of the WHS Act places an obligation on the PCBU, if requested by the HSR, to allow the HSR to attend a course of training approved by the regulator and that the HSR is entitled to attend under the WHS regulations.

Under regulation 21(4) of the WHS Regulations, the HSR is entitled to attend an initial course of training of 5 days and a 1 day's refresher training course each year commencing one year after the initial training.

Section 72(1)(c) of the WHS Act provides that the HSR can choose which approved course to attend in consultation with the PCBU.

It is desirable for HSRs and PCBUs to agree on which course the HSR should attend. Issues that might be considered by the parties include:

- the timing of attendance – the sooner HSRs attend training after being elected, the more effective they will be in performing their role;
- cost of courses, where prices differ substantially;
- costs of attendance for remotely located workplaces including travel and accommodation expenses (in such circumstances, the arrangements that would apply for any other work-related professional development courses will determine what is reasonable);
- the relevance of any hazard-specific course to the workgroup; and
- the total number of workers requiring training.

Section 72(3)(c) of the WHS Act provides that the time off to attend an approved course must be allowed by the PCBU as soon as practicable within three months of the HSR's request.

Sections 72(3)(b) and 72(5) of the WHS Act provides that the PCBU must pay the course fees, the HSR's normal pay they would otherwise receive during the period of the course, and the reasonable costs associated with the HSR's attendance.

Section 72(6) of the WHS Act provides that if agreement between the PCBU and the HSR cannot be reached within 3 months of the request to attend training (on which course the HSR is to attend, the allowed time off to attend the course, or payment of course fees and associated costs), either party may request the appointment of an inspector to decide the matter.

The inspector's role in this matter is to decide the course the HSR will attend and the costs the PCBU will pay if the PCBU and HSR cannot reach agreement.

Section 72(8) of the WHS Act provides that the PCBU must allow the HSR to attend the training the inspector decided and must pay the costs associated with the training as decided by the inspector.

Internal Review

Decisions made by an inspector under s.72(7) of the WHS Act - *decision in relation to training of HSRs* - are reviewable decisions under s.223.

Regulator's policy

Inspectors will advise a person affected by a reviewable decision of their right to seek a review of the inspector's decision and how they make such application.

- See SAFE 11/0638 Reviewable Decisions MOP

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:</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

<p>Inspector</p>	<p>Assessment</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>Within the timeframes specified above, contact the HSR and PCBU (or their management representative) to:</p> <ul style="list-style-type: none"> • confirm the person seeking to attend HSR training is a HSR (as the entitlement to attend approved training only applies to a HSR or deputy HSR); • determine if more than three months has elapsed since the HSR has requested training; • identify the issue(s) in dispute that has prevented the PCBU and HSR from reaching agreement; • check the persons requesting training are entitled to request the training; and • check the course being requested is an approved training course. <p>In forming an opinion on the matter, you should consider:</p> <ul style="list-style-type: none"> • the training course preferences of the HSR and PCBU noting s.72(1)(c); • the reason(s) that issues(s) are in dispute; • the relevance of the proposed course content to the HSR’s workgroup; • the cost of attending the course including associated costs; and • any concerns the PCBU or HSR have regarding the appropriateness of the proposed training provider to provide the training. Note: Consideration of the type of training provider (e.g. industry association or union) are not factors which should be considered by the inspector in making a decision. <p>Advise the PCBU and HSR of the relevant provisions in the WHS Act and Regulations and your opinion on how the matter should be resolved</p> <p>If agreement is still not able to be reached:</p> <ul style="list-style-type: none"> • decide the matter; or • if you are unable to make a decision due to insufficient information, advise the parties of the actions you intend to carry out to address the deficiency and when you anticipate being able to make a decision.
<p>Inspector</p>	<p>The HSR and PCBU reach agreement between themselves</p> <p>1. In this case, confirm with the person who requested the attendance of the inspector that the issue(s) have been resolved. (This may mean agreement in principle has been reached even though fine details are still to be negotiated); or</p> <p>The HSR and PCBU fail to reach agreement.</p> <p>2. In this case, make a decision on the course to be attended and/or associated costs, and advise the parties of this decision. Make sure the parties understand that the PCBU must allow the HSR to attend the course and pay the costs as per your decision.</p>
<p>Inspector</p>	<p>Communicate your decision</p> <p>Communicate your decision in writing to the parties by way of an Inspection Report outlining the outcome of your intervention.</p>

Inspector	Advise the parties that SafeWork SA maintains a list of approved HSR training providers that is available via www.safework.sa.gov.au or by contacting the Help Centre on telephone 1300 365 255.
Inspector	<p>Review of Decisions</p> <p>Advise the parties they may seek review of your decision (refer to Item 2 of s.223 of the WHS Act) and how they can go about it.</p> <p><i>Refer to MOP SAFE 11/0638 Reviewable Decisions</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 – TBA 2012