

MODEL OPERATING PROCEDURE

Dealing with requests for assistance relating to the constitution of Health and Safety Committees

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1. DEFINITIONS

Assist	Means the inspector provides support, help and aid to the parties to encourage them to reach agreement.
Constitution	Means the membership of the health and safety committee
Decide	Means the inspector makes a decision after consideration of the issues in dispute.
HSC	Means health and safety committee
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 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 the constitution of health and safety committees under *Part 5* of the *WHS Act*.

3. BACKGROUND

Section 75 of the *WHS Act* provides that Health and Safety Committees (HSCs) are part of the consultation process. HSCs can be established by the PCBU on the PCBU's initiative, or must be established within 2 months of a request from the HSR or 5 or more workers at that workplace.

Section 76 of the *WHS Act* provides that the PCBU and workers at the workplace may agree on the membership of the HSC and sets out particular requirements regarding membership including, as provided by s.76(4), that at least half of the members must be workers who are not nominated by the PCBU.

If agreement is unable to be reached within a reasonable time, any party to the negotiations may request the appointment of an inspector to decide the matter under s.76(5).

The inspector's role in this matter is to either decide the constitution of the HSC or that the HSC should not be established.

Before making this decision, the inspector must have regard to the high priority section 3 of the WHS Act places upon consultation and representation.

Section 76(7) of the WHS Act provides that the inspector's decision is taken to be an agreement under this section of the WHS Act.

Internal Review

Decisions made by an inspector under s.76(6) – *decision relating to health and safety committee* - are reviewable decisions under s.223.

Regulators' 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 may make such application.

- See MOP SAFE 11/0638 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:</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>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"> • identify all relevant parties; and • obtain preliminary information about the issue(s) in dispute.
Inspector	<p>A. The parties fail to reach agreement on the constitution of the Health and Safety Committee (HSC)</p> <p>Your role in this matter is to decide the constitution of the HSC or that the HSC should not be established.</p> <p>In this circumstance you should:</p> <ul style="list-style-type: none"> • identify the issues that are in dispute; • find out why these issue(s) are of concern; • based upon legislative requirements, form an opinion on the appropriate constitution of the HSC (see s.76); and • discuss your opinion with the parties and seek their agreement.

	<p>If agreement is 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. • If you can and do make a decision, advise the parties of your decision and ensure they understand your decision is taken to be an agreement on the constitution of the health and safety committee for the purposes of s.76 of the WHS Act.
	<p>B. The parties reach agreement between themselves</p> <p>In this case, confirm with the person who requested the attendance of an 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).</p>
Inspector	<p>Communicate your decision or agreed outcome</p> <p>Communicate the decision/outcome in writing to the parties.</p> <p>If you have attended the workplace, this should be by way of an Inspection Report outlining the outcome of your intervention.</p>
Inspector	<p>Review of Decisions</p> <p>Advise the parties they may seek review of your decision (refer to Item 3 of s.223 of the WHS Act) and how they can go about it.</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 – 20 Dec 2012