

MODEL OPERATING PROCEDURE

Authorisation for an inspector to commence legal proceedings for offences against the *Work Health & Safety Act 2012 (SA)*

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1. PURPOSE

This procedure is developed under the National Harmonisation Project for the Model Australian *Work Health and Safety Act 2012 (SA)* (the WHS Act). It provides direction and practical guidance to regulator staff and legal practitioners engaged by the regulator when exercising the power to bring legal proceedings for offences against the WHS Act.

2. DEFINITIONS

Complainant	Means the person named on and signing any complaint and summons prior to its lodgement for commencement of proceedings in the relevant Court of jurisdiction
ILT	Means Investigation & Legal Team
Regulator	Means the Executive Director SWSA or their delegate. For the purposes of this procedure, there are no delegates.
SWSA	Means SafeWork SA
WHS Act	Means the <i>Work Health and Safety Act 2012 (SA)</i>

3. BACKGROUND

Section 230(1) of the WHS Act provides that proceedings for an offence against that Act can be brought by:

- the regulator; or
- an inspector authorised by the regulator (either generally or in a particular case)

The regulator has chosen to generally authorise certain positions within the agency to commence proceedings under the WHS Act. These persons are detailed on the [instrument](#) of authorisation and are also appointed as inspectors pursuant to s156(1) of the WHS Act.

4. PROCEDURE

The authorisation document must contain:

1. the full title of the position within the organisation whom the regulator has authorised to commence legal proceedings (the inspector), and
2. reference that the person is appointed as an inspector under the WHS Act

Responsibility	Description
Regulator	Determine what inspectors will be authorised to commence proceedings under s230 of the WHS Act. Sign the instrument of authorisation. Ensure the original signed instruments are retained in a secure place within the regulators head office. In SA's case, this means with Chief Officer, Performance & Data Unit.
Complainant	Maintain a copy of their s156(1) appointment as an inspector and their s230(1)(b) authorisation to commence proceedings in a secure place of their choosing.
Team Manager	Ensure a copy of the complainants s156(1) appointment as an inspector and s230(1)(b) authorisation to commence proceedings are included in any brief of evidence
CALI	Check that any complainant inspectors s156(1) appointment as an inspector and/or s230(1)(b) authorisation have not been revoked prior to the complainant signing any complaint and summons.
Chief Officer Performance & Data Unit	Maintain the original s156(1) appointment as an inspector and s230(1)(b) authorisation documents. Provide a copy of both instruments to each authorised body or person.

5. FURTHER INFORMATION

- WKP 05/0172 Investigations SOP
- SAFE11/0818 Appointment as an Inspector
- SAFE11/0827 Regulators Delegations
- Brief of Evidence Checklist

Case Law

Schierholter v County Court [2006] VSCA 262; *AB Oxford Cold Storage v Arnott* [2003] VSC 452; *Yamasa Seafood v Watkins* [2000] VSC 156; *Davis v Grocon* [1992] 2 V.R. 647 and *United Transport Services Pty Ltd v Evans* [1992] 1 V.R. 240; *Traveland Pty Ltd v Doherty* [1982] FCR 81, 41 ALR 563; *Gilmour v Midways Springwood Pty Ltd* [1980] 33 ALR 605; *Crichton v Victorian Dairies Ltd* [1965] V.R. 49; *Kemp v Gough and Gilmour Holdings Pty Ltd* [1995] 86 LGERA 63 and *Berwin v Donohoe* [1915] 21 CLR 1.

6. REVIEW

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

Author/Document Owner: Performance Unit

Version Control Information

- V1 approved 6 January 2012
- V1 issued – 14 Nov 2012



Work Health and Safety Act 2011

Section 230

LIST OF DELEGATES

Director Field Services Group
Director Strategic Interventions
Director Policy & Strategy
Director Strategic Alliances & Performance Team
Chief Officer Investigation & Legal Team
Chief Officer Hazard Management Team
Chief Officer Construction & High Risk Plant
Manager Country Team
Manager Response Team
Manager Prevention Team
Manager Dangerous Substances Team