

MODEL OPERATING PROCEDURE

WHS inspector appointment and related matters

NOTE: This MOP limited changes were made to this MOP on 7/4/2016 to ensure:

1. Current and correct references to:
 - Teams or position
 - Templates or other documents
 - Delegations
 - Sections of the WHS Act or Regs
2. Correction of any grammatical or format errors.

A full review of this MOP will occur to reflect the new SWSA structure – post July 2016.

Principal Skills Support Officer
Corporate Services

Date:

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1. PURPOSE

To guide work health and safety regulators on matters relating to the appointment of inspectors under the *Work Health and Safety Act 2012 (SA)* (WHS Act).

2. DEFINITIONS

Condition of Appointment	Means any restriction or limit on the s160 Powers imposed by the regulator on the inspector appointment to a person
Compliance Powers	Are defined in s4 of the WHS Act 2012 as all powers and functions of the Act which are further defined in s160
Inspector	Means an inspector appointed under Part 9 of the WHS Act 2012
Regulator	Means the Executive Director of SWSA or their delegate
SWSA	Means SafeWork SA
WHS	Means Work Health and Safety

3. BACKGROUND

Section 156(1) of the WHS Act provides that the regulator may, by instrument, appoint any of the following as an inspector:

- a public sector employee under the *Public Sector Act 2009*;
- the holder of a statutory office;
- a person who is appointed as an inspector or authorised officer under a corresponding WHS law;
- a person in a prescribed class of persons.

The instrument of appointment is shown at [Appendix 1](#) of this procedure.

Section 156(2) of the WHS Act specifies that without limiting s156(1), persons gazetted or authorised under other legislative instruments are taken to be appointed as inspectors under the WHS Act. These classes of persons are subject to the same directions and conditions placed upon a person appointed as an inspector under s156(1).

4. POLICY SECTION

4.1 Inspector appointments

SWSA will only consider appointing a person as an inspector under s156 of the WHS Act if the person fits the required criterion, including:

- compliance with the requirements of s156(1)(a),(b),(c), or (d),
- provision of relevant documentary evidence of the person's full legal name (for inclusion on the instrument of appointment and the inspector's identity card); and
- satisfactory completion of the regulator's inspector induction and training program (including, as relevant in each jurisdiction, demonstration of the inspector role competencies).

Persons employed by SWSA as a WHS inspector are usually employed in an ongoing capacity and are subject to their tenure ending or being suspended pursuant to s159 of the WHS Act, and/or Part 7 of Division 3 of the *Public Sector Act 2009*.

Transitional arrangements (*Ref item 18 of Schedule Six of the WHS Act*) provides for inspectors appointed under the South Australian *Occupational Health Safety and Welfare Act 1986* continue to be an inspector under the WHS Act.

4.2 Conditions on inspectors compliance powers

Section 161 of the WHS Act prescribes that an inspector's compliance powers are subject to any conditions imposed by the Regulator. Section 161 provides that any conditions must be specified in the instrument of the inspectors appointment ([Appendix 1](#)).

These conditions must also be detailed on the inspector's identification card [Ref Regulation 700(d) of the *Work Health & Safety Regulations 2012 (SA)*].

Conditions may vary for individual inspectors within and across jurisdictions, or not be imposed at all.

Examples conditions of appointment as an inspector that regulators may consider include:

- appointment for a fixed period (eg for cross-border inspector appointment purposes);
- appointment being subject to a restriction applying to performance of functions and exercise of powers in relation to a specified sector, specified types of hazards or specified locations within the jurisdiction; and/or
- appointment being subject to a restriction specifying which inspector functions and powers can be exercised or those which cannot be exercised (for example, to distinguish inspectors who have advisory functions only without ability to exercise enforcement powers, or to identify the range of powers an inspector is limited to exercising while on probation or operating under a "buddy" or coaching system during induction).

4.3 Directions to inspectors relating to exercise of compliance powers

Section 162 of the WHS Act provides that an inspector is subject to the regulator's directions in the exercise of the inspector's compliance powers. Directions under s162 of the WHS Act must be given by the regulator.

These directions may be general in nature or may relate to a specified matter or a specified class of matter. General directions will usually be in the form of policy and/or procedures.

Directions to inspectors may be determined at the time of their appointment to apply for the duration of appointment, or may be determined at any stage during the period of appointment to apply for a particular or indefinite period of time.

Directions must be communicated in clear terms to the relevant inspector(s) either verbally or in writing, individually or collectively as relevant. [Appendix 3](#) of this procedure provides a template for use should there be a requirement for a direction to be documented.

Examples of directions that regulators may consider include, but are not limited to:

- a direction to have regard to the *National Compliance and Enforcement Policy*, the *Framework for a Common Approach to Inspection Work*, relevant inspector and investigation operational procedures, and any other relevant policies or procedures that have been adopted by the regulator; and/or
- a direction to participate in regulator-determined training and development programs relating to the inspector role; and/or
- a direction not to perform inspector functions or exercise inspector powers:
 - while on leave of absence from employment;
 - while on temporary secondment/transfer to another position within the regulator or elsewhere that does not require use of inspector powers; or
 - during an investigation into alleged serious misconduct by the inspector.

4.4 Suspension of inspector appointments

Section 159(1) of the WHS Act provides that the regulator may suspend the appointment of an inspector.

Some examples of circumstances that regulators may consider for suspending an inspector's appointment may include, but not be limited to:

- when an inspector is the subject of disciplinary action for a period of time after having been found to have engaged in serious misconduct, or
- when an inspector is, for a lengthy period, on leave of absence from employment or on temporary secondment/transfer to another position that does not require use of inspector powers (as an alternative to a direction not to perform inspector functions or exercise inspector powers for a period of time), or
- when an inspector is seconded or takes leave of absence to work for another employer for any period of time (other than another WHS regulator for the purposes of cross-border inspector appointments), or
- during periods of retraining and/or reassessment when an inspector does not continue to meet the WHS regulator's ongoing inspector competency or other role-related requirements; and
- when there are significant changes to the WHS legislation under which inspectors are appointed (including significant changes to statutory powers and functions of inspectors) and it is considered appropriate to retrain and then reappoint relevant person(s) as inspectors with immediate effect from when the former appointment is revoked.

4.5 Ending of inspector appointments

Section 159 of the WHS Act provides for the regulator to end an inspector's appointment.

Some examples of circumstances that regulators may consider for suspending an inspector's appointment may include, but not be limited to:

- as per the list in 4.4 above, and/or
- when the inspector's employment with the regulator ends, and/or
- when the period of time agreed for a cross-border inspector appointment is concluded or the host regulator, for any reason, determines to terminate the agreed arrangement for a cross-border appointment before its conclusion date, and/or
- when an inspector permanently transfers to another position within the regulator that does not require an inspector appointment.

Any proposed suspension or ending of an inspector's appointment (other than where the inspector ceases at his or her own initiative to be eligible for the appointment), under the WHS Act will be communicated in writing to the inspector together with reason(s) and the intended timeframe for the suspension.

Any proposed challenge or appeal against any proposed suspension or ending of an inspector's appointment should be directed in the first instance to the human resources section of SafeWork SA.

4.6 Inspector identity cards

Section 157(1) of the WHS Act provide that the WHS regulator must give each appointed inspector an identity card that states the persons name and appointment as an inspector. Section Regulation 700 of the WHS Regulations sets out further requirements of an inspector's identity card, specifically:

- a photograph of the inspector of the size, and in the form, specified by the regulator; and
- the inspector's signature; and
- the date (if any) on which the inspector's appointment ends; and
- any s161 conditions to which the inspector's appointment is subject to, for example the kinds of workplaces in relation to which the inspector may exercise his or her compliance powers, or detailing the functions and powers an inspector can or cannot exercise.

Transitional arrangements (See item 18 of Schedule six of the WHS Act) provides that identification cards issued to Inspectors appointed under the South Australian *Occupational Health Safety and Welfare Act 1986* continue under the WHS Act.

If a replacement identity card is required, for example due to loss, damage, or theft of an existing card, the replacement card will include a more recent photograph to that included on the original card. An exception to this is when it is considered appropriate to re-use the previous photograph because the inspector's features have not changed significantly.

Section 157(3) requires that when a person to whom an identity card has been issued ceases to be an inspector, the person must return their (inspector's) identity card to the regulator as soon as possible.

5. REVIEW

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

Next review: August 2016

Author/Document Owner: Corporate Services [REDACTED]



Work Health and Safety Act 2012 (SA)

Section 156(1)

INSTRUMENT OF APPOINTMENT AS AN INSPECTOR

Pursuant to section 156(1) of the *Work Health and Safety Act 2012* (SA) (the Act), I [REDACTED], Executive Director, SafeWork SA, hereby appoint 0 (Inspector ID No.) as an Inspector under the Act for such time as she/he remains employed within SafeWork SA.

Pursuant to section 161 of the Act, this appointment is subject to the following conditions:

- Nil conditions specified

This Instrument of Appointment as an Inspector supersedes any preceding appointment the Inspector may have under the Act.

Signed: _____ Date: _____

[REDACTED]
Executive Director
SAFEWORK SA



Work Health and Safety Act 2012 (SA)
Section 156(1)

INSTRUMENT OF APPOINTMENT AS AN INSPECTOR

Pursuant to section 156(1) of the *Work Health and Safety Act 2012 (SA)* (the Act), I _____, Executive Director, SafeWork SA, hereby appoint _____ (Inspector ID No. _____) as an Inspector under the Act.

Pursuant to section 161 of the Act, this appointment is subject to the following conditions:

- to provide information and advice about compliance with the Act
- to assist in the resolution of:
 - work health and safety issues at workplaces
 - issues related to access to a workplace by an assistant to a health and safety representative
 - issues related to the exercise or purported exercise of a right of entry under Part 7
- review disputed provisional improvement notices
- to require compliance with the Act through the issuing of notices
- to investigate contraventions of the Act and assist in the prosecution of offences
- other functions or powers conferred by the regulations

The Inspector shall only exercise their authorised functions and powers under the Act, when under the direction and guidance of an inspector who has unconditional authority to exercise all functions and powers of an inspector under the Act.

This Instrument of Appointment as an Inspector supersedes any preceding appointment the Inspector may have under the Act.

Signed: _____ Date: _____

Executive Director
SAFEWORK SA



Work Health and Safety Act 2012 (SA)

Section 162(1)

REGULATORS DIRECTION

Pursuant to section 162(1) of the *Work Health and Safety Act 2012 (SA)*, I, **<name of delegate>** a delegate by instrument in writing of the Regulator, specify that inspector <name of inspector(s)> is subject to the following directions in the exercise of the inspectors compliance powers:

<detail the direction(s)>

Signed: _____ Date: [dd/mm/yyyy]

Delegate Name : [insert]

Delegate of the Regulator