

# MODEL OPERATING PROCEDURE

Notice of an inspectors interest

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### 2. DEFINITIONS

<b>Non-Pecuniary Interest</b>	Means a general involvement with a person or organisation. For example your friend is employed by the employer; you used to work for the employer; you are a member of the organisation.
<b>Pecuniary Interest</b>	Means an involvement with a person or organisation that involves money. For example you have shares with a person or organisation.
<b>Regulator</b>	Means the Executive Director of SafeWork SA or their delegate Click <a href="#">here</a> to access the table of delegates under the WHS Act.
<b>SWSA</b>	Means SafeWork SA
<b>WHS Act</b>	Means <i>Work Health &amp; Safety Act 2012 (SA)</i>

### 3. PURPOSE

To provide guidance for inspectors and their managers when dealing with conflicts of interest in relation to an inspectors' role under the *Work Health and Safety Act 2012 (SA)* (WHS Act).

### 4. POLICY SECTION

Section 158 of the WHS Act deals with accountability of inspectors and provides that:

- *An inspector must give written notice to the regulator of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions, and*
- *That the regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.*

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.*
- *A direction under s162(1) may be of a general nature or may relate to a specified matter or specified class of matter.*

Inspectors (as is the case with all public officials) have a duty to act in the public interest and this duty overrides any personal or private interest an inspector may have.

A conflict of interest is where a personal or private interest of an inspector actually influences, has the potential to influence or could be perceived to influence or impact on an inspector's performance in their public role. Conflicts of interest may also impact on the credibility and reputation of both the inspector and SafeWork SA.

A personal or private interest can be the inspector's own, or that of a family member, colleague, friend or organisation they belong to. The interest may be pecuniary, or non-pecuniary such as an interest relating to a belief or attitude.

Avoidance of actual, potential and perceived conflicts of interest is fundamental to ensuring the highest levels of integrity and public trust in work health and safety inspectors.

Inspectors employed by SafeWork SA are bound by the requirements of:

- The South Australian *Public Sector (Honesty and Accountability) Act 1995*  
[http://www.legislation.sa.gov.au/lz/c/a/public%20sector%20\(honesty%20and%20accountability\)%20act%201995.aspx](http://www.legislation.sa.gov.au/lz/c/a/public%20sector%20(honesty%20and%20accountability)%20act%201995.aspx); and
- The Code of Ethics for the South Australian Public Sector  
<http://www.espi.sa.gov.au/page-351>; and
- The Global Code of Integrity for Labour Inspection  
[http://www.safework.sa.gov.au/uploaded\\_files/CodeofIntegrity.pdf](http://www.safework.sa.gov.au/uploaded_files/CodeofIntegrity.pdf)

It is SafeWork SA policy that inspectors will:

- take reasonable steps to ensure their impartiality is not compromised when exercising their powers and carrying out their functions;
- abstain from involvement in any action or decision which could be perceived as being compromised by their private interests or affiliations;
- avoid improper use of information gained during the course of their work<sup>1</sup> (either in their employment with the WHS Regulator, or when seeking employment elsewhere);
- not use their position or resources available to them for private gain; and
- not receive any benefit which could be perceived as influencing the performance of their role.

Note that inspectors who may, for any period of time, perform the regulator's function of Internal Review in relation to specified decisions will need to be mindful of the conflicts of interest that may specifically arise in that context.

- Refer to MOP SAFE 11/0881 Guidelines for Internal Review (Section 7.5)

<sup>1</sup> Note also the confidentiality of information provisions in s271 of the WHS Act 2011 that apply in relation to information obtained or documents accessed by an inspector.

## 5. PROCEDURE

Responsibility	Description
<b>Inspector</b>	Discuss any actual, potential or perceived conflict of interest with your Line Manager.
<b>Line Manager</b>	<p>Assess the disclosed conflict and consider how best it should be managed in favour of the public interest.</p> <p>If you consider the matter is an actual or potential conflict of interest, direct the inspector to complete a s158(1) written notice (<a href="#">Appendix 2</a>), and direct the inspector not to deal with the matter until the regulators decision is received.</p>
<b>Inspector</b>	Complete and provide to your manager the <a href="#">Appendix 2</a> written notice ensuring all editable fields in the document are filled in.
<b>Line Manager</b>	Review the written notice and forward the notice to the Regulator as soon as practicable.
<b>Regulator</b>	<p>Consider the written notice.</p> <p>You may choose to acknowledge the disclosure only and allow the inspector to continue dealing with the matter.</p> <p>Where you consider that the inspector should not deal or should no longer deal with the matter(s) where there is a conflict of interest or potential conflict of interest;</p> <ul style="list-style-type: none"> <li>• give a direction under s162(1) of the WHS Act to the inspector not to deal, or to no longer deal, with the matter(s) as required by s158(2) of the WHS Act.</li> <li>• advise the inspector's manager to assign another inspector to the matter or workplace.</li> </ul> <p>Depending on the circumstances of the disclosure or the nature of the interest, further actions may be considered such as:</p> <ul style="list-style-type: none"> <li>• advising the inspector to relinquish the private interest or step down from a conflicting outside position;</li> <li>• not approving outside employment, committee membership or organisation membership that may be the subject of a conflict;</li> <li>• instructing the inspector not to take (or to return) a gift;</li> <li>• recommending or taking disciplinary action if the inspector refuses to avoid the conflict.</li> </ul>
<b>Line Manager</b>	<p>Explain the intended action and rationale to the inspector and implement the action.</p> <p>Facilitate provision of a copy of the signed <i>Regulators Direction</i> document to the inspector.</p> <p>Forward the original signed <i>Regulators Direction</i> document to SafeWork SA Human Resources for enclosure in the inspector's personnel file.</p>

Responsibility	Description
<b>Human Resources</b>	<p>Place any completed <i>Written Notices of an Inspectors Interest</i> in the relevant inspectors personnel file.</p> <p>Keep a record of disclosed conflicts and actions taken in a register (<a href="#">Appendix 3</a>).</p> <p>Access to the <i>Register of Inspector Interests</i> should otherwise only be made available:</p> <ul style="list-style-type: none"> <li>• to a person who acts in your position</li> <li>• the Regulator or delegate as required</li> <li>• to your manager</li> <li>• to other persons such as a Team manager on a need-to-know basis, for example, if relevant to conduct a complaint investigation or a disciplinary process for a particular matter; or</li> <li>• any other person with the consent of the regulator; or</li> <li>• in accordance with any disclosure requirements under legislation, (eg <i>Freedom of Information Act 1991</i>).</li> </ul>
<b>Inspector</b>	<p>If you feel aggrieved by the action taken in relation to a disclosed conflict of interest, seek advice from your Human Resources Division.</p>

## 6. FURTHER INFORMATION

- Global Code of Integrity for Labour Inspection  
[http://www.safework.sa.gov.au/uploaded\\_files/CodeofIntegrity.pdf](http://www.safework.sa.gov.au/uploaded_files/CodeofIntegrity.pdf)
- Code of Ethics for the South Australian Public Sector  
<http://www.espi.sa.gov.au/page-351>
- South Australian *Freedom of Information Act 1991*
- South Australian *Public Sector (Honesty and Accountability) Act 1995*  
[http://www.legislation.sa.gov.au/lz/c/a/public%20sector%20\(honesty%20and%20accountability\)%20act%201995.aspx](http://www.legislation.sa.gov.au/lz/c/a/public%20sector%20(honesty%20and%20accountability)%20act%201995.aspx)

## 7. REVIEW

This SOP must be reviewed two (2) years after the date of issue. However, this document must be immediately modified if practices and/or procedures change.

**Author/Document Owner:** Operational Support

**Contact:** [REDACTED]

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Government of South Australia

SafeWork SA

*Work Health and Safety Act 2012 (SA)*

Section 158(2)

**LIST OF DELEGATES**

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Director Field Services Group  
Director Strategic Interventions  
Director Policy & Strategy  
Director Strategic Alliances & Performance

This delegation cannot be further delegated.



*Work Health and Safety Act 2012 (SA)*

Section 158(1)

**NOTICE OF AN INSPECTORS INTERESTS**

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I, **[OVERTYPE NAME]** being an inspector appointed under section 156(1) of the *Work Health and Safety Act 2012 (SA) (the Act)*, and pursuant to section 158(1) of the Act, notify the Regulator that I have or have acquired the following interests that conflict or could conflict with the proper performance of my inspector function:

[Overtime details]

Inspector sign: ..... Date: [dd/mm/yyyy]

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**RECORD OF REGULATORS DIRECTION**

Section 158(2)

Pursuant to s158(2) of the *Work Health and Safety Act 2012 (SA)*, I direct that from this day, Inspector [full and correct name of inspector] must not deal or must no longer deal with any matter relating to [insert name of relevant party(ies) and workplace(s) and their location(s)].

Name of Authorised Delegate: .....

Title: Director,.....

..... (Date of direction)

