

MODEL OPERATING PROCEDURE

Damage & Compensation

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2. DEFINITIONS

Line Manager	Means an inspectors team manager
Regulator	Means the Executive Director of SafeWork SA or their delegate
SWSA	Means SafeWork SA
WHS Act	Means <i>Work Health & Safety Act 2012 (SA)</i>

3. PURPOSE

This procedure provides guidance to inspectors in the event that when exercising a compliance power, damage is caused or it is envisaged that inconvenience, detriment or damage within the meaning of sections 182-184 of the WHS Act might be caused.

4. POLICY SECTION

Section 182 of the WHS Act provides that an inspector must take all reasonable steps to ensure that the inspector, and any assistant to the inspector, causes as little inconvenience, detriment and damage as is practicable whilst exercising a compliance power.

In the event that an inspector or an assistant to an inspector damages a thing when exercising or purporting to exercise a compliance power, the inspector must as soon as practicable, give written notice of the damage to the person whom the inspector believes to be in control of the thing, unless the inspector reasonably believes the damage is trivial.

Section 184(1) of the WHS Act provides that a person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power.

5. PROCEDURE

Responsibility	Description
Inspector	You must take all reasonable steps to ensure that you or your assistant cause as little inconvenience, detriment and damage as is practicable.
Inspector	In the event that the exercise of your power is going to potentially cause inconvenience detriment and/or damage that you reasonably believe is more than trivial to the duty holder [or others], consult your line manager for guidance prior to exercising the power.
Inspector	<p>If you or your assistant do damage which is more than trivial while exercising a power, you must:</p> <ul style="list-style-type: none"> • As soon as possible report the details of the damage to your line manager. The report should include (as relevant): <ul style="list-style-type: none"> ○ the description of the thing, ○ the owner or person in control of the thing and their contact details, ○ how the damage was made to the thing, ○ what power was being enacted, ○ if you consider the damage was caused by a latent defect or by circumstances beyond your control, and ○ if you intend to seize the item or leave it in situ; and • Provide details to the whom you believe on reasonable grounds is the person in control of the thing about the damage, and if appropriate, include photographs or sketches or digital recordings; and • Record the damage details in contemporaneous notes; and • Provide written notice of the damage to the person whom you believe on reasonable grounds is the person in control of the thing. (Use the inspection report or the template at appendix 1 of this MOP) <ul style="list-style-type: none"> ○ The notice may include a reference to any belief you have that the damage was caused by a latent defect in the thing or circumstances beyond the inspector's or assistant's control.
Line Manager	<ul style="list-style-type: none"> • Where an inspector informs the line manager that he or she believes there is the potential to cause damage in the exercise of their powers, the line manager will consider if there are other means of exercising the powers available and if not, guide the inspector on the exercise of that power. • If a line manager receives notice of a possible claim for compensation, the manager will speak with Chief Advisor Strategic Enforcement & Legal Strategy to formulate a course of action, and forward a minute with recommendations to the relevant Director for consideration. <i>(The intention is to deal with the matter 'in house' to avoid escalation of a claim in the Industrial Relations Court).</i>
Relevant Director	Consider any recommendations received and make any decisions as necessary
SWSA Business Services Team	Will manage payment of any compensation orders made by the Industrial Relations Court

6. FURTHER INFORMATION

- MOP SAFE 11/0844 Inspection Reports
- SOP 06/0454 Exhibit Property Management
- SOP 04/0172 Investigations
- *Work Health and Safety Act 2012 (SA)*
- Compliance and Enforcement Policy
- Principles of Operation for the WHS Inspector

7. REVIEW

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

Document owner: Operational Support Team

Contact: [REDACTED]

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- V1 – 27 Nov 2012



Work Health and Safety Act 2012 (SA)

Section 183(2)

NOTICE OF DAMAGE

SWSA Ref: InfoNET FileCode:

I, **<your name>** being an inspector appointed under section 156(1) of the *Work Health and Safety Act 2012 (SA)*, notify **<PCBU name and address>** that I have caused damage to **<describe the thing>** when exercising or purporting to exercise a compliance power under the *Work Health & Safety Act 2012 (SA)*.

<Describe the damage>

I believe the damage **<select>** caused by a latent defect in **<describe the thing>** or by circumstances beyond my or my assistants control.

Name: **<your name>**

Sign: Date: dd/mm/yyyy

Notice to receiver

Section 184 of the *Work Health & Safety Act 2012 (SA)* provides that a person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power by an inspector.

Compensation may be claimed or ordered in a proceeding brought in a court of competent jurisdiction; or for an offence against the *Work Health & Safety Act 2012 (SA)*, against the person claiming compensation.

The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

Prior to contacting a court of competent jurisdiction, please Contact SafeWork SA on telephone 1300 365 255 and ask to speak to the team manager of the inspector who issued this written notice of damage.

If you are not satisfied with the response from the team manager of the inspector who issued this written notice of damage, contact the Industrial Relations Court, L6 Riverside Centre North Terrace Adelaide or telephone 8207 0999 to progress a claim for compensation.