

MODEL OPERATING PROCEDURE

Regulators intention to take remedial action

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2. DEFINITIONS

IRC	Means Industrial Relations Court
Remedial Action	Means something done by the regulator that affords a remedy to manage risks created as a result of activities of a person conducting a business or undertaking.
PCBU	Means person conducting a business or undertaking as described in section 5 of the <i>Work Health & Safety Act 2012 (SA)</i>
PMCW	Means person with management and control of a workplace as described in section 20 of the <i>Work Health & Safety Act 2012 (SA)</i>
Regulator	Means the Executive Director of SWSA or their delegate
SWSA	Means SafeWork SA
WHS Act	Means the <i>Work Health & Safety Act 2012 (SA)</i>

3. PURPOSE

This procedure provides direction and guidance to inspectors, managers and officers of SWSA when it is considered necessary for the regulator to secure appropriate safety outcomes under the provisions of sections 211 and 212 of the WHS Act. The procedure also addresses the recovery of the regulator's costs associated with any remedial action taken as provided for by section 213 of the WHS Act.

4. BACKGROUND

Section 211 of the WHS Act applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.

In these circumstances the regulator may take any remedial action the regulator believes reasonable to make the workplace or situation safe.

Where a person who has been issued a prohibition notice fails to take reasonable steps to comply with the notice and the regulator decides to take remedial action the regulator must, before taking the remedial action, give written notice to the person to whom the prohibition notice was issued.

The written notice must state:

- a) the regulator's intention to take that action; and
- b) the owner's or person's liability for the costs of that action.

The timeframes for initiating remedial action will be decided on a case by case basis. Inspectors and team managers will use their experience and judgement giving consideration to the immediate or imminent exposure to the hazard/s identified in the notice when determining the initiation timeframe.

Section 212

Section 212 of the WHS Act applies if the regulator reasonably believes that:

- a) circumstances in which a prohibition notice can be issued exist; and
- b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person with management or control of the workplace cannot be found.

In these circumstances the regulator may themselves take any remedial action necessary to make the workplace safe.

Section 213

Section 213 of the WHS Act allows the regulator to recover (as a debt to the regulator) the reasonable costs of any remedial action taken under:

- a) section 211 from the person to whom the notice is issued; or
- b) section 212 from any person to whom the prohibition notice could have been issued in relation to the matter.

Regulator's policy

It is the regulator's policy that the cost of remedial action will be minimised as far as is possible.

The costs of the remedial action will be charged to the responsible PCBU by invoice via the SWSA Business Services Team. Should a PCBU fail to pay the invoice amount, that team will initiate contemporary debt recovery processes in a prompt and timely manner.

5. PROCEDURE

Responsibility	Description
Inspector	<p>Determine if remedial action is appropriate</p> <p>Where circumstances relevant to the issuing of a prohibition notice exist and:</p> <ol style="list-style-type: none">a) the person to whom a prohibition notice was issued has failed to take reasonable steps to comply with the notice (s211), orb) a prohibition notice cannot be issued because the person with management or control of the workplace cannot be found(s212); <p>The inspector should as soon as possible, notify their manager regarding the circumstances surrounding the identified risks, and:</p> <ul style="list-style-type: none">• details of the prohibition notice issued and the inspector's opinion that the prohibition notice has not been complied with; or• the inability to find the PMCW after taking reasonable steps to find them, and what those reasonable steps were; and• that remedial action is appropriate, and why. This action can be verbal in the first instance, but must be followed up in writing as soon as possible (see page 3 of this procedure).

<p>Inspector's Manager or delegate</p>	<p>Consider an inspectors notification that remedial action is appropriate</p> <p>Upon notification of the relevant circumstances, the inspector's Manager must consider the facts of the matter, taking into account:</p> <ul style="list-style-type: none"> • the evidence that supports the inspector's reasonable belief in issuing a prohibition notice and observing its non-compliance or wishing to issue a prohibition notice but not being able to find the person with management or control of the workplace; • the significance of the risk involved; • the number of persons at risk due to the activity; • the cost of any remedial action required; and • whether any other investigation and/or enforcement action is being undertaken or contemplated in relation to the matter.
<p>Inspector</p>	<p>Where a prohibition notice was issued and remedial action is being considered</p> <p>Contact the person to whom the prohibition notice was issued in the first instance and inform/remind them of the following:</p> <ul style="list-style-type: none"> • the activity that involves or will involve a serious risk (s195); • the requirement to remedy the serious risk (s195); • the regulator's ability to undertake enforcement action in relation to a non-complied prohibition notice; and • the regulator's power to take remedial action and seek cost recovery for remedial action taken (ss211 and 213); and • the owners or persons s212(2) liability for the costs of the (remedial) action. <p>If, following such discussions, the person issued the notice agrees to remedy the serious risk and does so, no further action to consider taking remedial action will be required.</p>
<p>Inspector</p>	<p>Where remedial action is recommended</p> <p>Prepare a recommendation for the regulator's consideration on a case conference document. The case conference documentation must address the matters detailed below:</p> <ul style="list-style-type: none"> • the evidence that supports the inspector's reasonable belief in issuing or wishing to issue a prohibition notice; • the significance of the serious risk involved; • the number of persons at serious risk; • the nature and cost of options for any remedial action that may be taken (This will include sourcing appropriate contractors if necessary, and obtaining quotes for the costs); and • the compliance behaviours of the person to whom the prohibition notice was issued (if relevant), or the reasonable steps taken to locate the person with management or control of the workplace or situation (if relevant) <p>Convene a Legal Case Conference</p> <ul style="list-style-type: none"> ○ <i>See Case Conference SOP</i>

Case Conference Panel	<p>Consider the information and make a decision</p> <p>The case conference panel will consider the information put forward by the inspector and determine the appropriate remedial action, if any.</p> <p>Examples of appropriate remedial action may include:</p> <ul style="list-style-type: none"> • repairs and/or modifications to plant; • replace an unsuitable scaffold component with a compliant item; • purchase and install a supplied breathing air system in a chemical plant
Inspector	<p>Remedial action determined necessary pursuant to section 211 – Where a prohibition notice has been issued to a person:</p> <p>Prepare a written notice of intended remedial action (see appendix 1) to the person to whom the prohibition notice was issued, stating:</p> <ul style="list-style-type: none"> • the regulator’s intention to take specific action (on or from a specific date) to make the workplace or situation safe; and • the owner’s or person who had control over the activity’s liability for the costs of the regulator’s action <p>and</p> <ul style="list-style-type: none"> • forward the case conference documentation and the written notice of intended remedial action through their manager to the regulator for consideration and signature.
Regulator	<p>Consider the proposal for remedial action to be taken</p> <p>On receiving the recommendation for remedial action to be taken, consider the information provided and determine if the proposed action is appropriate. If considered necessary, obtain technical or other advice to assist your consideration.</p> <p>Given the seriousness and consequences of the taking of certain remedial action, approval of the Executive Director may be required.</p> <p>Approve and sign the notice of remedial action, or alternatively, record the actions considered appropriate which may include not taking remedial action.</p>
Inspector	<p>Issue the notice</p> <p>Issue the written notice to the person to whom the prohibition notice was issued.</p>
Inspector	<p>The person fails to comply with the notice</p> <p>Once the written notice has been issued (and the relevant person still takes no action themselves to remedy the matter before the date specified in the written notice), refer the matter back to the appropriate team manager with a recommendation to instigate the decided action that is believed reasonable to make the workplace or situation safe.</p>
Regulator	<p>Remedial action determined necessary pursuant to section 212 – In cases where the PMCW cannot be located:</p> <p>Refer the matter back to the relevant manager with a direction to instigate the action that is believed reasonable to make the workplace or situation safe with an approval to pay reasonable costs associated with the remedial action to be taken.</p> <p><i>Note: No written notice is required to be given before taking remedial action under s212.</i></p>
Inspector’s Manager or	<p>Reporting</p> <p>Arrange for preparation of a full report covering the original issue, the recommendation and decision to take remedial action to make the workplace or situation safe, including details of, and receipts for, the costs associated with any remedial action taken.</p>

	<p>Forward the report to:</p> <ul style="list-style-type: none"> • SWSA Business Services Team with a recommendation that cost recovery as a debt due to the regulator under s213 be pursued, and • a copy to the regulator for their information; and • include a copy of the report in the relevant investigation file.
Business Services Team	<p>Cost recovery</p> <p>Pursue s213 cost recovery in accordance with normal accounting processes.</p>

6. FURTHER INFORMATION

- All related documents are detailed in the body of this procedure.

7. 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: Operational Support Team

Contact: [REDACTED]

Version Control Information

- Issue 1 – TBA 2012

Our ref: <InfoNET or RecFIND nu

Your ref:

Contact: <Inspector Name>

Telephone: <Your number>



Government of South Australia

SafeWork SA

Work Health and Safety Act 2012 (SA)

Section 211

Notice of intended remedial action and liability for costs of that action

<insert name of relevant person/organisation>

<insert address of relevant person/organisation>

A prohibition notice number <insert number> was issued to you under section 195 of the *Work Health and Safety Act 2012 (SA)* (the Act) on <insert date> in relation to <insert relevant activity>.

This activity was considered to involve a serious risk to the health and safety of a person emanating from an immediate or imminent exposure to a hazard. The prohibition notice directed that you <select> until an inspector was satisfied that the matters that gave rise to the risk were remedied.

SafeWork SA considers that you have not taken reasonable steps to comply with the prohibition notice.

It is SafeWork SA's intention, in accordance with section 211(2) of the Act, to take remedial action that is believed to be reasonable to make the workplace or situation safe.

The following details the specific remedial action to be taken on/from <insert date>:

<insert specific remedial action intended to be taken>

SafeWork SA advises that you are liable for the costs of any remedial action that SafeWork SA takes, and that pursuant to section 213 of the Act, SafeWork SA may recover the reasonable costs of any remedial action taken under section 211 of the Act as a debt due to SafeWork SA.

Please contact <inspectors name> on telephone <insert number(s)> or email <inspectors name> if you wish to discuss this matter.

<insert delegates name>

<select>

SAFEWORK SA

<select> <select>

APPENDIX 2



Government of South Australia
SafeWork SA

Work Health and Safety Act 2012 (SA) Sections 211(2), 212(2), 213 & 215(1)

LIST OF DELEGATES

Click [here](#) to access the table of delegates under the WHS Act. This authorisation cannot be further delegated.