

STANDARD OPERATING PROCEDURE

Evidence Management

February 2018

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DOCUMENT CONTROL SHEET

REVIEW

This SOP must be reviewed every 36 months from the date of issue. However, this document must be immediately modified if practices and/or procedures change.

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PURPOSE

The purpose of this standard operating procedure is to ensure that SafeWork SA:

- collects evidence in a consistent manner;
- maintains a chain of evidence;
- maintains the integrity of all evidence; and either
 - returns evidence to the lawful owner upon completion of all investigative actions, or
 - disposes of evidence in a lawful manner upon completion of all investigative actions, or
 - forfeits evidence pursuant to s179 (4) of the WHS Act in a lawful manner.

Note: The specific meaning of any acronyms or terms highlighted in **bold** can be found in the glossary (Appendix C)

BACKGROUND

SafeWork SA **Investigators** regularly use their powers under the *Work Health and Safety Act, 2012* (SA) (**WHS Act**) to obtain, seize and store evidence for evidentiary purposes. This is because most of the cases referred to the Investigation Team are as a result of a fatality or other type of **Critical Event** and there is a greater likelihood that prosecution may be considered. The way that **Investigators** seize, manage and store evidence is therefore crucial to the conduct and outcome of any legal proceedings that may follow.

This procedure describes the processes for seizing, relocating, storing, managing and disposal of evidence that has been seized.

Most of the investigations done by **Inspectors** from the Industry and Dangerous Substances Teams of the Compliance and Enforcement Division (**CAED**) are primarily focussed on preventing work-related injury and illness by ensuring compliance with the WHS Act or *Dangerous Substances Act, 1979*. While they are still required to collect evidence to support any powers they use to ensure compliance (e.g. issue of Improvement Notices) it is usually not necessary for them to seize evidence as part of their investigations. If evidence must be seized then the following procedures should be followed by **Inspectors** unless advised otherwise by their Team Leader or Manager.

It is the responsibility of all persons involved in the evidence management process to ensure that evidence is managed in accordance with this procedure.

Powers of Seizure

Sections 175 - 177 of the WHS Act provides an **Inspector** with the powers to seize evidence when entering a workplace pursuant to Part 9 of the WHS Act.

Inspectors must act within the defined authorities of the particular legislation to which their investigation pertains and have the legal authority to enter a place and seize evidence.

Evidence may be seized from a workplace, or with a search warrant from another place that is not a workplace.

Section 175(1) of the WHS Act provides that an **Inspector** who enters a *workplace* under sections 163(1) and 163(2) and then exercises a general power under section 165 may seize anything (including a document) at the place if the **Inspector** reasonably believes the thing is evidence of an offence against the WHS Act. Also note that section 165(1)(e) of the WHS Act states that an **Inspector** who enters a workplace under section 163 may (also) take and remove for analysis, a sample of any substance or thing without paying for it.

Such samples might include, for example, a piece of tubing from a scaffold, or a floor tile that the **Inspector** suspects may contain asbestos or a liquid, gas or powder that is used in a production process that the **Inspector** suspects may be harmful to health.

Considerations for the seizure of evidence

Before seizing evidence, the **Inspector** must consider the following:

- Was it used in the commission of an offence?
- Is it an integral part of proof?
- If the evidence is a document, is the document relevant to proof?
- Is there likely to be a dispute in court about the evidence?
- Is there any doubt as to answering any of the questions above?

If any of the above criteria is yes, then seize the evidence.

If an **Inspector** has entered a place under section 163, then under section 175(3) they can also seize anything else at the place if the **Inspector** reasonably believes the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

Prior to seizing a workplace or part of a workplace an **Inspector** is required to consider the application of other options to secure compliance (e.g. prohibition notice, non-disturbance notice). If it is considered necessary to seize a workplace or part of a workplace, an **Inspector** will contact their line manager who shall then discuss the matter with their Director.

Risk Assessment

Before, during and after the seizure of evidence, a hazard identification and risk assessment of the access, recording, collection, transport and storage of the evidence shall be conducted.

No attempts to seize, access, record, inspect or move evidence will be attempted until any identified risks are adequately managed.

Use the STAMP principle to evaluate the evidence and evidence management actions.

- **Stop**
- **Think**
- **Assess**
- **Manage**
- **Proceed or Postpone**

During the assessment stage, **Inspectors** should utilise their own knowledge coupled with the expertise of the following persons (as required) to conduct the necessary assessments:

- the owner and/or person in control of the evidence;
- team leaders and managers
- SafeWork SA specialists and chief officers
- the Team Leaders in the Investigation Team; and
- relevant manufacturers, suppliers, designers.

The identified risks and hazard control measures will be documented by the **Inspector** in both contemporaneous notes and on the rear of any property label that is attached to evidence when the evidence is being lodged in an evidence storage facility (**ESF**).

PROCEDURE

Seizing evidence

If you have determined that it is necessary to seize a workplace, plant, substance structure or thing - including documents - make initial inquiries to establish who is the owner or the person in management and control of the thing.

Given the potential for a PCBU to make a compensation claim in the event that detriment or damage is caused as a result of your seizure, contact your line manager for guidance if you form an opinion this is possible.

Prior to seizing the thing, advise the owner, if known, or person who has management and control of the thing that you intend to seize it and that a receipt will be issued.

Photograph or make a digital recording of the evidence *in situ*¹ and/or record in notes and/or sketch:

- the location where the evidence was located at time of seizure and
- brief description of its condition, particularly noting any damage.

The seizure of evidence may require specialist procedures and third party assistance if the area is not accessible by the **Inspector**.

Overviews of the evidence seizure and relocation processes are shown in appendices A and B. Any documents seized for evidentiary purposes should be the originals and not photocopies. The title of any document and the number of pages in the document should be included in the description.

Receipt for seized things

Section 178 of the WHS Act requires the **Inspector** to issue a receipt for anything seized to the person from whom it was seized.

Seek a signature on the seizure receipt from the person that the evidence was seized from. If the person does not wish to sign the receipt, the **Inspector** will:

- make a notation on the relevant area of the receipt; and
- sign and date the seizure receipt before handing the client copy of the receipt to the owner or the person apparently in charge of the evidence at the time of seizure.

If for any reason a receipt cannot be given to an appropriate person on-site, the **Inspector** must leave a receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

For example, the owner or the person who has management and control of the thing may not be present at the time of seizure and it may not be practicable to await his or her arrival or to locate them within a reasonable time.

The receipt must describe generally each thing seized and its condition.

When preparing a receipt the **Inspector** needs to consider the consequences of a number of things being listed on the one receipt. For example, documents will be held by the **Inspector** but a thing that requires storage in an evidence storage facility should be listed on a separate receipt to the documents. The separate receipt for the thing being stored in the storage facility will simplify tracking and return of that thing.

Corporate Services will issue each **Inspector** with a receipt book and holds stock of field receipt books for future use.

Note that section 178 does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

On-call Inspectors and **Investigators** will maintain a record in their field note book of the chain of evidence on all evidence seized **after hours** until the evidence is securely lodged. Assistance with relocation of large or extraordinary evidence **after hours** can be organised through the **Duty Manager** on the On-Call Roster.

Person's refusal to allow the evidence to be seized and/or removed

Where a person refuses to allow an **Inspector** to seize a thing, the **Inspector** must:

¹ In situ means situated in the original, undisturbed, natural, or existing place or position

- warn the person that under section 188 of the WHS Act it is an offence to obstruct an **Inspector** in exercising their compliance powers, or to induce or attempt to induce any other person to do so - maximum penalty for an individual \$10 000 or for a body corporate \$50 000;
- if the person still refuses to allow the evidence to be seized – the relevant Team Leader or Manager should be contacted to determine the most appropriate course of action.

Seizing Dangerous or Hazardous Evidence

General guidelines

Careful consideration must be given before seizing any evidence that may be considered dangerous or hazardous to humans or property (hazardous substance). This includes items containing explosives, mineral fibres or that are chemical or biological in nature or coating.

Before seizing of any hazardous substance or evidence containing or coated in a hazardous substance, **Inspectors** shall take the following steps:

- determine if the substance or evidence must be seized; and
- identify the substance; and
- obtain safety data sheet (SDS) for the substance; and
- ensure that you have the appropriate safety equipment for safely handling the substance/evidence; and
- ensure that SafeWork SA has the appropriate means to safely store the substance/item; and
- ensure that the substance/item can be transported safely.

If any doubt exists regarding any of the above steps then assistance **MUST** be sought **BEFORE** the substance is handled (**Inspectors** should contact their team leader or manager).

In most cases a sample of the substance or material is sufficient for evidentiary purposes.

Asbestos or asbestos related and other synthetic fibre evidence

If asbestos containing material (ACM) must be seized an expert in sampling and/or licensed asbestos removalist will normally be engaged by the Investigation Team. **Inspectors** shall obtain a minimum 10mm square / maximum 20mm square piece of the material. More than one sample may be required depending on individual circumstances. The samples shall be identified and double bagged for transport. The sample shall be placed in a small zip lock bag, with that bag being placed into a secondary evidence bag. For investigations that may lead to prosecution contact the Investigation Team for guidance on the quantity of material to be seized as it is likely a larger amount of material is required for evidentiary purposes.

If the sampling location is inaccessible, issue a Non-disturbance Notice and speak with your Team Leader and/or manager on ways to achieve the requisite sample.

For further information see the SafeWork SA [Asbestos Handling Policy](#)

Explosives evidence

Inspectors will contact the Manager of the SafeWork SA Dangerous Substances Team in all circumstances prior to seizure of explosives or explosive like materials.

Hazardous substance register

Each **ESF** has a hazardous substance register. All movement of dangerous or hazardous evidence in or out of the ESF must be recorded in this register.

Evidence with human residues

Human residues are tissue, bone fragments and bodily fluids.

For evidentiary purposes, the location of human residues and body fluid spill patterns can be of benefit, and the **Inspector** should evidence them by photograph and sketches.

With the exception of evidence such as minor blood stained gloves or clothes that can be sealed in a plastic evidence bag, all human residues will be removed from evidence before it is transported to an ESF. Should the item require cleaning prior to removal from a place, the investigating **Inspector** shall contact the Investigation Team for assistance in engaging a suitable cleaning service.

- Refer to [AGD Infectious and Communicable Diseases Fact Sheet](#)

Evidence Relocation

Relocation

Inspectors have a number of options to manage evidence following seizure. These are:

- Relocate evidence that can be carried by hand in a sedan type motor vehicle themselves ; or
- Contact the Investigation Team to make arrangements for the collection and transport of the evidence; or
- Issue a 'DIRECTIONS FOR SEIZED EVIDENCE' notice under the WHS Act section 177(4) directing the person in control of the evidence to take it to defined reasonable location, e.g. an ESF
- **Inspectors** must contact the Investigation Team to facilitate access to the **ESF** and to ensure correct and safe placement of the thing into the **ESF**.

If in doubt of which of the above options to take **Inspectors**, in conversation with their manager, will decide the most appropriate evidence relocation option in each particular circumstance.

Large or extraordinary evidence that cannot be relocated

Inspectors have two options for securing large or extraordinary evidence that cannot be transported. These options are:

- Engage a security company to guard the evidence; or
- Issue a 'DIRECTIONS FOR SEIZED EVIDENCE' notice under the WHS Act section 177(4). See MOP Powers of Seizure.

Inspectors should seek advice from a Team Leader in the Investigation Team for advice on and assistance with the most appropriate option.

Evidence Storage Facilities

The main SafeWork SA ESF are at:

- Keswick: for documents, DVDs/CDs and medium-sized exhibits; and
- Pine Lea: for large exhibits at, dangerous and hazardous substances and asbestos affected evidence.

The Manger Primary Industries, Resources, Country Compliance and Engineering Team (PIRCCE) is responsible for ensuring each regional office has a suitable area set aside for the storage of evidence. The areas selected must be secure, have controlled access, and hold a SafeWork SA Evidence Management Receipt Book.

Regional **Inspectors** shall discuss with their manager alternative storage arrangements for evidence that is too large or hazardous to be stored in a regional office. The Investigation Team is also available to assist with these discussions.

Initial storage considerations

At the time of seizure, the seizing **Inspector** shall obtain, from the owner or person in control of the evidence, the initial storage requirements for the particular item of evidence.

When first placing evidence in an ESF, the lodging **Investigator/Inspector** in conjunction with an Investigation Team Leader will consider the initial storage information provided by the owner and take steps to ensure evidence is initially stored to maintain the evidence's integrity and avoid adversely affecting the asset value. For example, this may include blocking the wheels up. Where possible, all large and extraordinary evidence will be covered with a tarpaulin or similar.

Medium to longer term storage considerations

The **Inspector** who has carriage of a file (the lead **Inspector**) will contact the owner of large and extraordinary evidence and obtain detailed requirements for longer term storage. The **lead Inspector**, in conjunction with the Site Manager Pine Lea, will take steps to avoid adversely affecting the item's asset value, whilst maintaining the evidential value. For example the regular inspection of plant for fluid leaks, pest infestation, tyre inflation and the charging of batteries.

Evidence storage & integrity

SafeWork SA will store seized evidence to maintain both the evidentiary and, as far as practicable, the asset value of the evidence. This is particularly important for plant and machinery. SafeWork SA will endeavour to return all seized evidence in the same condition as when it was seized.

While the lead **Inspector** has primary responsibility for maintaining the integrity of all small evidence items such as documents, tapes, and master copy DVDs; this responsibility is shared with all officers involved in the investigation.

All **Inspectors** have the responsibility for maintaining the integrity of evidence stored in an ESF.

The storage and maintenance requirements for evidence stored in an ESF will be documented by the lead **Inspector** and attached to the particular item of evidence.

Evidence lodgement

Contact the following people to arrange lodgement of evidence into an ESF:

- a Team Leader or administration staff from the Investigation Team; or
- the relevant PIRCCE Team Leader if the evidence is to be stored in a regional ESF (other than Pine Lea).

If the necessary person is not immediately available to lodge evidence, the seizing **Inspector** shall maintain control of such evidence until it is lodged.

When evidence is lodged in an ESF, the relevant member of the Investigation Team will ensure, if necessary, that a property label is completed and affixed to the evidence.

The relevant Investigation Team staff will also:

- ensure any evidence is placed in the most suitable place within an ESF;
- ensure that ESF site and content integrity is maintained;
- preserve the reportable chain of evidence for the particular evidence after lodgement;
- preserve the reportable chain of evidence for all other evidence already stored;
- assist with the return or disposal of evidence;
- maintain a list of evidence stored at the ESF; and
- audit property movements at all ESF's.

The PIRCCE Team Manager will ensure each regional office nominates an officer who will then be trained in and carry out the above functions at a local level.

Evidence management receipt books

The evidence management receipt book (receipt book) is used to record:

- seizing evidence;

- lodging and removing evidence into/from an ESF;
- returning evidence to the owner; and
- transferring evidence from one location to another location.

SafeWork SA Corporate Services maintains stock of receipt books and will issue each **Inspector** and ESF with a receipt book. Each receipt is individually numbered for audit purposes.

Evidence bags

Evidence bags come in three sizes to enable the secure storage of:

- master copy DVDs for photographic, audio and audio-visual evidence (see Digital Evidence Management SOP); and
- other items such as samples, gloves and hand tools (if they will fit).

A timely decision should be made on whether any original documents seized are going to be retained as evidence or returned. If they are going to be retained, any necessary working copy should be produced (scanned or photocopied) then the original sealed in an evidence bag. No alterations are to be made to the original document (such as hole-punching) before placing in the evidence bag. If the document seized is the owner's only copy and they need to be able to refer to it themselves; a copy of the original document must be made and supplied to them.

At the conclusion of an investigation, evidence bags will be hole punched and placed in the respective investigation hard docket as the contents are deemed to be State Records.

Evidence bags are single use, so the need to reopen a bag (once evidence has been sealed in it) should be kept to a minimum by, for example:

- taking working copies of photos saved on a master disk at the time the master disk is created; and
- scanning and or taking photocopies of any documents seized prior to sealing the originals in the evidence bag.

In the event that an evidence bag must be opened it should be witnessed by a relevant staff member in the Investigation Team or another **Inspector**. Details regarding when the bag was opened, why and by whom, must be recorded in both the Property Register and the **Inspector's** field notebook.

The original evidence bag and its contents must then be re-sealed in a new evidence bag.

Inspection or Testing of Evidence

Pursuant to section 181 (1), the following persons are entitled to inspect a seized thing at all reasonable times and, if it is a document, to make copies:

- the person from whom the thing was seized;
- the owner of the thing; and
- a person authorised by either of the above
 - With respect to an authorisation, the WHS Act does not specify such authorisation be in writing. It is best practice if a written authorisation is obtained to protect the **Inspector** or property officer from allegations of allowing access by unauthorised persons.

Access to a seized thing by these persons for inspection or copying does not apply if it is impracticable or unreasonable. For example, access may be impracticable if a thing has been tendered as evidence before a court. An example of unreasonableness is the request for immediate access of a thing that is stored off site.

A decision to refuse access is not a reviewable decision under the WHS Act.

Evidence is often inspected whilst in storage by the investigating **Inspector**, the owner, or expert witnesses and lawyers employed by either SafeWork SA or the owner.

If, for any reason, evidence needs to be accessed by an external person, the relevant Investigation Team staff will organise in conjunction with the **Investigator** concerned for the evidence to be booked out and taken to a meeting room at Keswick.

At all times when any evidence is being inspected or examined within an ESF, the investigating **Inspector** plus the PO ??? (as a minimum) should be present. The reason for this is to maintain site security and a reportable chain of evidence for all other evidence stored in the ESF.

Once the inspection is complete, the evidence will be logged back into the ESF. The booking out and in is recorded in the ESF Property Register and should also be noted in the **Investigator's** Field Note Book.

Destructive testing

Should any seized evidence require destructive testing, the investigating **Inspector** is to seek approval from the Manager Investigation Team.

Use of Evidence in Court

In the event that a matter proceeds to either the Coroner's or Industrial Courts for further action, arrangements may need to be made for large evidence to be transferred from an ESF to the respective Court. **Inspectors** should seek assistance from a Team Leader in the Investigation Team who will facilitate such a transfer.

Return of Evidence no longer required

Seized evidence will be returned as soon as a 'No further investigation' decision is made at case conference or file review. **Inspectors** do not need to wait until a file is closed before returning or arranging the return of seized evidence.

Any seized evidence can only be returned or disposed of after ensuring that:

- the investigation is complete; and
- where applicable, the Director Investigations or Manager Investigation Team has approved return of the evidence; or
- all court action by SafeWork SA, including appeals, has finished; and
- the coroner does not require the evidence; and
- the evidence is not subject to a court order requiring its retention; and
- the evidence has been restored to a condition similar to when it was seized and any notices that need to be issued have been issued; and
- the evidence is being returned to the legal owner; or
- the person approving the forfeiture of evidence is the legal owner.

Forfeiture of seized evidence

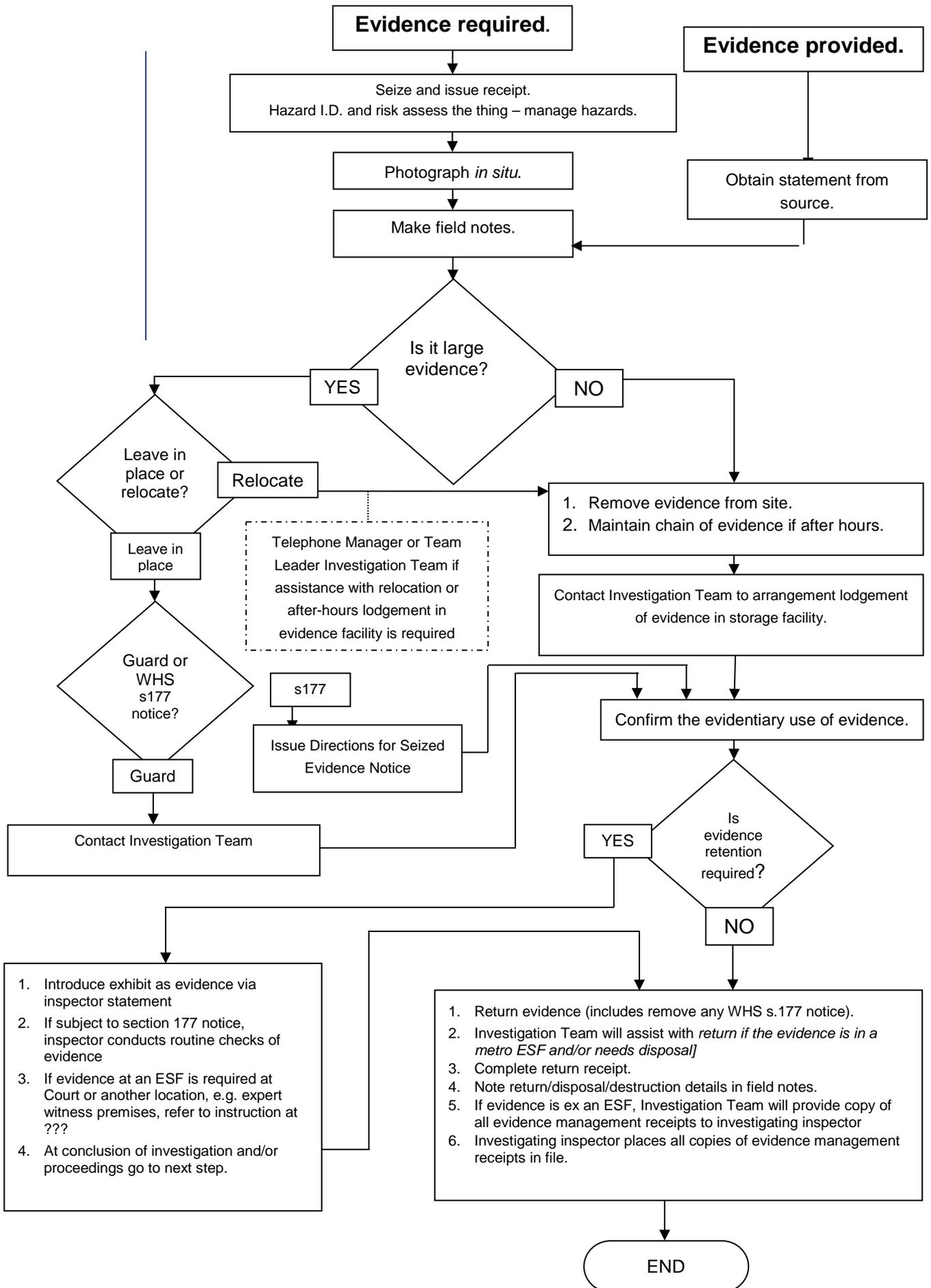
If SafeWork SA decides an item of evidence should not be returned to the owner, the evidence can be forfeited under the provisions of section 179 of the WHS Act. For further information, refer to *MOP 11/0814 Forfeiture of Seized Evidence*

FURTHER INFORMATION

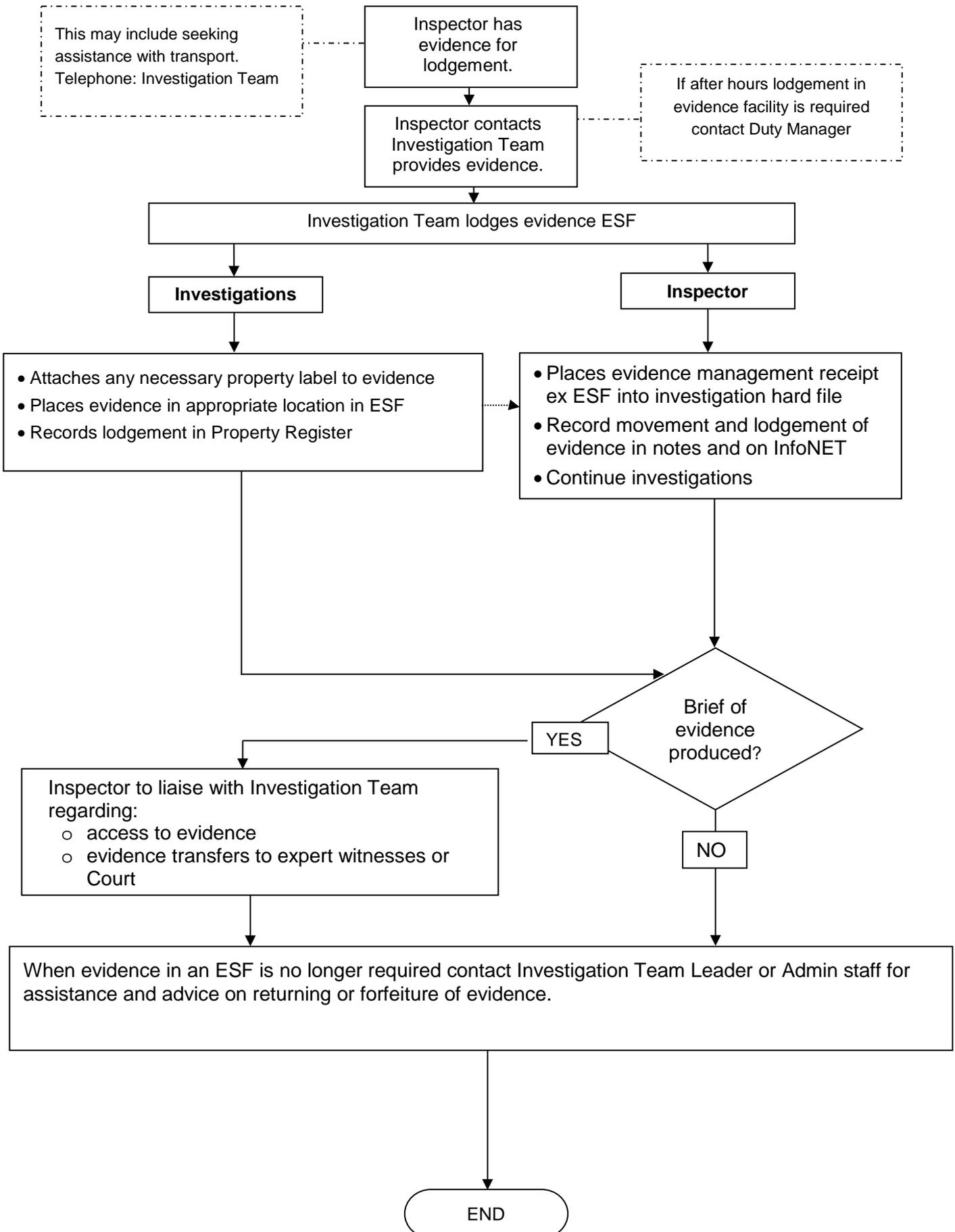
Related documents:

- SOP: Digital Evidence Management
- SOP: Investigations
- *MOP Forfeiture of Seized Evidence*

Appendix A: Overview of evidence seizure, lodgement and return process



Appendix B: Process map - Evidence lodgement and removal from a storage facility



APPENDIX C: Glossary of Terms

After hours	5.30pm to 8.30am Monday to Friday and all day Saturdays, Sundays and Public Holidays.
Critical Event	Means any critical incident or other matter reported to SafeWork SA that is deemed a ' Critical Event ' by: <ul style="list-style-type: none"> • a CAED Team Manager • the Investigation Team Manager • the On-Call Duty Manager • the Chief Inspector • the Director Investigations • the Executive Director.
Critical Incident	Means a notifiable incident or other serious safety-matter reported to the Help Centre that they have rated as a 'Category 1- High Priority: ' Critical Incident '. The following type of incidents are always be coded by Help Centre as 1 – High Priority: <ul style="list-style-type: none"> • Death of a person • Serious Injury or illness • Dangerous Incident • High Profile Public Event/Incident that may attract Media Attention • Minister or MP including any incident/injury in their building • Entry Permit Holder notification/complaint
Dangerous Incident	Under section 37 WHS Act <i>means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to—</i> <ul style="list-style-type: none"> (a) <i>an uncontrolled escape, spillage or leakage of a substance; or</i> (b) <i>an uncontrolled implosion, explosion or fire; or</i> (c) <i>an uncontrolled escape of gas or steam; or</i> (d) <i>an uncontrolled escape of a pressurised substance; or</i> (e) <i>electric shock; or</i> (f) <i>the fall or release from a height of any plant, substance or thing; or</i> (g) <i>the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or</i> (h) <i>the collapse or partial collapse of a structure; or</i> (i) <i>the collapse or failure of an excavation or of any shoring supporting an excavation; or</i> (j) <i>the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or</i> (k) <i>the interruption of the main system of ventilation in an underground excavation or tunnel; or</i> (l) <i>any other event prescribed by the regulations, but does not include an incident of a prescribed kind.</i>
Notifiable Incident	Under section 35 of the WHS Act <i>means-</i> <ul style="list-style-type: none"> (a) <i>the death of a person; or</i> (b) <i>a serious injury or illness of a person; or</i> (c) <i>a dangerous incident.</i>
Inspector	Means an 'Inspector' or 'Authorised Officer' appointed under the: <ul style="list-style-type: none"> ■ <i>Work Health & Safety Act 2012 (SA)</i> ■ <i>Dangerous Substances Act 1979</i> ■ <i>Mines & Works Inspection Act 1920</i> ■ <i>Petroleum Products Regulations Act 1995</i> ■ <i>Shop Trading Hours Act 1977</i>

Investigators	Inspectors who work in the Investigation Team
Lead Investigator	Is the person recognised as managing or taking the main role in an investigation
On-Call Duty Manager	The Team Manager listed as the Duty Manager on the On-Call Roster when SafeWork SA is notified of any incident or complaint after hours .
On-Call Inspector	The CAED Inspector listed as the ' On-Call Inspector ' on the On-Call Roster when SafeWork SA is notified of any incident or complaint after hours .
On-Call Investigator	The Investigator listed as the ' On-Call Investigator ' on the On-Call Roster when SafeWork SA is notified of any incident or complaint after hours .
Serious Injury or Illness	<p>Under section 36 WHS Act – <i>means an injury or illness requiring...</i></p> <p>(a) <i>immediate treatment as an in-patient in a hospital; or</i></p> <p>(b) <i>immediate treatment for—</i></p> <ul style="list-style-type: none"> (i) <i>the amputation of any part of his or her body; or</i> (ii) <i>a serious head injury; or</i> (iii) <i>a serious eye injury; or</i> (iv) <i>a serious burn; or</i> (v) <i>the separation of his or her skin from an underlying tissue (such as degloving or scalping); or</i> (vi) <i>a spinal injury; or</i> (vii) <i>the loss of a bodily function; or</i> (viii) <i>serious lacerations; or</i> <p>(c) <i>medical treatment within 48 hours of exposure to a substance,</i></p> <p><i>and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.</i></p>