

# IMPROVEMENT NOTICES

The purpose of this guideline is to ensure the correct process is followed when issuing of an Improvement Notice (Notice), and that the contents of the Notice are: based on the WHS legislation, clearly reasonable and do not create an injustice for the person who must comply with it.

References:

WHS Act Sections [191 to 215](#).

Model Operating Procedures for:

- [Issue of Notices and other general requirements relating to all Notice types](#)
- [Improvement Notices](#)
- [Powers of Entry](#)

The following icon is used to indicate mandatory requirements 

## 1. Before writing a Notice

- Identify the sections of the [WHS Act](#) and [Regulations](#) that are relevant – see [Notice Reference Table](#)
- Check any relevant [Approved Codes of Practice](#) to identify what may be [reasonably practicable](#) in the circumstances?
- Form a [reasonable belief](#) that a person is either ( [s191](#)):
  - contravening a provision of this Act; or
  - has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated?
- Collect evidence that supports your [reasonable belief](#)?
  - Observations have been recorded in field note book and/or [photos or video](#) taken.
  - Information from [documents](#) has been recorded and/or documents copied or [seized](#).
  - Information from discussions with witnesses and others has been recorded in note book and/or a statement/s taken.
  - Advice provided by technical specialist if relevant.
  - Information from one source has been verified with information from another source.
- Consider if there are any valid [reasons to not issue](#) an Improvement Notice?
- If you are [not going to issue the notice during your visit](#) (e.g. need to do further research), advice the PCBU & HSR and ensure the inspection report reflects your observations, powers exercised and intention to issue a Notice/s.

## 2. When writing the Notice

- Decide if you will write a manual Notice or produce one via [Infonet](#).
- Have discussions with the relevant duty holder/s and HSR before completing any Notice. [Why?](#)
- Complete the Notice ( [s192-3](#)). Sections that are 'optional' to complete are marked with a '?'.
  -  **NOTICE ISSUED TO:** ([Multiple Duty Holders](#) ; [correct duty holder & legal entity](#); [Gov Dept](#))
  -  **DETAILS OF CONTRAVENTION:** Ensure you reference the most relevant section of the WHS Act and Regulations and [only one contravention per Notice](#).
  -  **BRIEF DESCRIPTION OF HOW THE PROVISION IS BEING OR HAS BEEN CONTRAVENED:** Ensure you clearly write the contravention relying on wording from the legislation as much as possible and include the evidence of how you formed reasonable belief.
  - ? DIRECTIONS AS TO THE MEASURES TO BE TAKEN TO REMEDY OR PREVENT THE CONTRAVENTION:** Compliance with a direction in a Notice is mandatory. You can only direct a person to do something that is required by the Act and/or a regulation – no more and no less. The link between what you are directing them to do and the requirement must be obvious.

Any relevant ACOP should be referred to in the directions and the reference **MUST** include a qualifier such as: 'take action in accordance with the ACOP for ... or take other appropriate action that achieves an equal or higher standard of safety'. This reflects the flexibility allowed by ACOPs; and minimises both

the risk of an 'injustice' and any subsequent need to cancel or review the Notice. [See: Operational Guideline No 2 on referring to ACOPs in Notices:](#)

**RECOMMENDATIONS (IF ANY):** Recommendations are not mandatory and they are appropriate for making reference to the practical measures and suggestions on how safety may be achieved and where additional guidance may be found. [More Information](#)

- THIS CONTRAVENTION MUST BE REMEDIED BEFORE:** The timeframe for compliance will depend on the level of risk and discussions with the duty holder, HSRs and/or workers [more information](#). The compliance date should be a normal business day. [Why?](#)
- Consider if there is any extra information available that may assist the duty holder in understanding what they could do to achieve compliance. Either provide this extra guidance with the notice (e.g. a Safeguard) and/or explain when you deliver it how and where they might be able to access extra information or assistance.

[\(Click here for sample notices\)](#)

### 3. When issuing the Improvement Notice

- Confirm that the [contravention still exists](#) - if the Notice was completed after leaving the workplace.
- Deliver the Notice via one of the following methods  [s209](#) :
  - o Personally (this is preferred method of delivery if at all practicable – [Why?](#))
  - o By post, fact or electronic transmission
  - o Leaving it with a person over the age of 16 at the duty holders place of business or residence
  - o Leaving it with a person at the workplace who appears to have management or control of the workplace.
- Ensure the relevant HSR or worker representative gets a copy of the Notice. [More Information](#)
- Explain to the person:
  - o The requirement to [display the Notice](#) (see top of front page Notice) ( [s210](#)).
  - o How to request an internal review of the Notice.
  - o That they need to contact you for an extension if they are unable to meet the deadline, **BEFORE** the deadline is past.
  - o That they are encouraged to speak to you or your Manager if they have any questions or concerns regarding the notice.

### 4. After the Notice has been issued

- Make a note in your field notebook of how you issued the Notice and who you gave it (and any copies) to.
- Ensure the Notice number and compliance date is [recorded on InfoNET](#).
- Follow up before the compliance date to check on the progress to achieving compliance.
- Verify that the Notice has been complied with by:
  - o attending the workplace to check; and/or
  - o receiving information from the duty holder that confirms the action they have taken to comply and if necessary verify this information with another source.

### 5. Minor changes or extensions

Inspectors can make [minor changes](#) to a Notice to correct minor errors, clarify intent or reflect changes to address or other circumstances ( [s206](#)). Only the [Regulator](#) can cancel a notice that is incorrect or [invalid](#) ( [s194](#)).

You can [extend the due date](#) only if the date by which the matter had to be remedied has not passed ( [s194](#)). Make a note on the notice itself or send an email confirmation. Record the reasons for the extension in your notebook, on InfoNET and in any Inspection Report ([Inspection Reports MOP](#)). Only the Regulator can extend a Notice that is past its due date.

### 6. Failure to Comply

If a duty holder fails to comply with an Improvement Notice the options taken by an inspector will depend on the reasons for non-compliance. Possible actions include:

- o Issuing a new Notice (if there has been a legitimate attempt to comply or reason for non-compliance).
- o Issuing an expiation Notice based on failure to comply with s193.
- o Applying to the Industrial Relations Court for an [injunction](#) ( [s214-15](#)).
- o Initiating a prosecution for failure to comply with a Notice.

If the relevant safety issue referred to in the original Notice has not been address and the Notice has expired, you should issue a new Notice, having re-established your reasonable belief that the risk still exists.