

Initial Response Guideline

This guideline is to be used in conjunction with the following:

- *Work Health and Safety Act 2012 (SA)*,
- *Principles of Operation*
- Framework for a common approach to work health and safety SafeWork SA event triaging
- Operational Guide No. 5 – SWSA Triaging and Assessment Panel
- *Standard Operating Procedure – Investigations*
- *Standard Operating Procedure – Evidence Management*
- *Model Operating Procedure – Entry to workplaces and related powers and obligations*
- *Model Operational Procedure – Power to require production of documents and answer questions*
- *Model Operational Procedure – Powers of Seizure*
- *Model Operating Procedure – Forfeiture, return and access to seized things*
- *Standard Operating Procedure - Critical Event Response*
- *On-Call Supporting Guidelines*

ACRONYMS:

Act	<i>Work Health and Safety Act 2012 (SA)</i>
CFS	Country Fire Service
HSR	Health and Safety Representative
MFS	Metropolitan Fire Service
MOP	Model Operating Procedure
PCBU	Person conducting a business or undertaking
PLC	Programmable Logic Control
SAAS	South Australian Ambulance Service
SAPOL	South Australian Police
SOP	Standard Operating Procedure
SWSA	SafeWork SA

PURPOSE:

SWSA is to respond to incident scene as soon as practicable and in accordance with the *Critical Event Response SOP* and the *SWSA Triage and Assessment Panel Guideline*.

The attendance at an incident scene is crucial in correctly identifying the cause of the incident, and therefore determining if a breach has occurred.

The purpose of this guideline is to provide information and instruction to any Inspector attending an incident scene to ensure appropriate evidence is collected and the chain-of-evidence is not broken.

First on scene Inspectors are to ensure that this guideline is followed, regardless if their position is assigned to an Industry Team or the Investigation Team.

Upon Receipt of a Notifiable Event:

1. SWSA receives notifiable events via the Help Centre Call Centre, email, fax and via the On-Call Inspector.
2. Any matter reported directly to an Inspector **MUST** be communicated to the Help Centre.
3. Upon receipt of the notification the relevant Industry Team Manager or Duty Manager will triage the incident and make a determination as to whether or not Investigation Team assistance is required and will consult with the Investigation Team Manager or Team Leader.
4. Once it has been determined that attendance is required, where possible two Inspectors from the Investigation Team will be allocated, along with a compliance team Inspector. It must be noted that Investigation Team Inspectors may not be available to attend on the day of the incident due to location, i.e. regional locations. Therefore the relevant compliance Inspectors need to undertake the actions noted in this document and take responsibility for appropriate evidence collection and chain of evidence.
5. If the matter is received on-call, the Lead Inspector must telephone the Duty Manager and if it involves a “critical event”, the Duty Manager must telephone Investigation Team Manager or Investigation Team Leader (if the manager is not contacted after 3 attempts).
6. If the matter involves a “Critical Event” or “Same-Day-Service” The Investigation Team Manager will then send a summarising email about the event to the following people:
 - Executive Director
 - Chief Inspector
 - CAED Managers
 - Director, Workplace Education and Business Services
 - Communication and Education Services Manager
 - Media Advisor
 - AGD:SWSA Media Inbox
 - Inspectors who are attending

7. If the matter is received on-call and involves a critical event, then the Duty Manager is to advise (text/phone call depending on the issue):
 - Executive Director
 - Chief Inspector
8. An Investigation Team Leader will make the necessary arrangements for an InfoNET file to be created for the notifiable event for the Investigation Team with all activities by all attending Inspectors recorded on this InfoNET File.
9. If compliance matters not related to the incident need addressing, then an associated proactive InfoNET file is to be created by the Industry Team:
 - Trigger Reason – Compliance Programs
 - Trigger Type – Routine Compliance Inspection

Before Entry:

1. The attending Inspectors are to confer as to the travel arrangements and to ensure each Inspector has their full kit of equipment and PPE, all electrical items are appropriately charged and an appropriate number of evidence bags are taken.
2. The Inspectors are to discuss the work allocation. The priority work must relate to the scene of the incident, scene control and evidence collection; then relevant compliance actions as identified - all Inspectors are to work together to achieve this with a lead Inspector identified.
3. All Inspectors are to be familiar with s163-166 of the *Work Health and Safety Act 2012 (2012) SA* and the *Model Operating Procedure – Entry to workplaces and related powers and obligations*.

On Initial Entry:

1. Inspectors are to commence their field notes, noting the time of arrival, time of entry, location details, and who is attending from SafeWork SA.
2. Where it does not cause unreasonable delay, Inspectors are to advise the relevant PCBU, the person with management or control of the workplace, and any HSR of the entry, ensure this information is detailed in field notes.
3. The Inspector is to advise relevant persons that they are entering the workplace under S163 of the Act and show their identification card and provide a business card.
4. The Inspector should also take steps to identify the correct legal entity.
5. If there are other authorities onsite, i.e. ambulance, MFS, SAPOL, CFS, SAAS an Inspector is to obtain the names, ID numbers (if applicable), and contact phone numbers, also gaining an understanding of what they are onsite for and what they have done.

Initial Examination:

1. Upon arrival to the incident scene, Inspectors are to conduct a dynamic risk assessment, ensuring their personal safety, safety of their colleagues, and safety for all other persons are appropriately identified and controlled.
2. Establish if the scene has been moved, changed, altered or disturbed in any way. If so, establish – who, what, when, how, why.
3. Before moving into the scene, conduct a scene appreciation – walk around the scene without walking over evidence, gaining perspective and context of the scene itself, with the **aim to identify causal factors** – not whether or not a matter will proceed to an investigation.
4. Causal factors include:
 - Task factors
 - Was a safe work procedure used,
 - had conditions changed prior,
 - were the appropriate tools and materials available, and if so were they used, were safety devices or equipment used and working properly.
 - Material factors
 - Was there an equipment failure
 - what caused it to fail,
 - was the machine poorly designed,
 - is the plant adequately guarded,
 - if guards are inadequate or absent ascertain why,
 - if guards were inadequate, what else was required,
 - if guards were removed determine who, why, when etc.,
 - if plant involves a PLC (or any other data collection device), consider the need to engage an expert,
 - what the plant suitable for the task,
 - were hazardous products involved,
 - were they clearly identified,
 - was a less hazardous alternative possible and available,
 - was the raw material substandard,
 - should PPE have been used, was the PPE used,
 - regular service/maintenance for equipment,
 - were daily checks occurring, how were faults reports,
 - were the users of PPE properly educated and trained,
 - were warning systems installed?
 - Environmental factors
 - Noise,
 - vibration,
 - lighting,
 - temperature,
 - chemical exposure,
 - housekeeping,
 - facility layout,
 - accessibility.

- Management factors
 - Organisation of work,
 - policies/procedures available and implemented,
 - work schedule/load,
 - Work design/job requirements,
 - adequate supervision, training
 - People factors
 - Fitness of individual,
 - were policies/instructions followed,
 - knowledge of expectations,
 - poor standards,
 - horseplay,
 - failure to wear PPE or follow instructions,
 - fatigue/stress factors,
 - organisation pressure factors.
5. Via conversations with relevant persons at the scene, i.e. PCBU representatives, ask relevant questions to gain an initial concept as to the potential root cause of the incident, ensuring that there are no pre-determined conclusions drawn as to whether or not the matter is likely to proceed to a prosecution brief – the initial examination is to determine the potential causal factors that led to the incident.
6. It is also useful to include sketches of the scene in field notes.

Evidence Collection:

1. When collecting evidence, Inspectors must consider what is relevant to assist in determining the cause of the incident. It is best to seize more evidence in the initial phases so that evidence is not lost; as evidence can be returned if it is deemed irrelevant to the matter.
2. Chain of evidence is crucial to maximise the opportunity of admitting the evidence at court.
3. Inspectors also need to consider personal safety when seizing evidence, ensuring they are not placing themselves or others at risk.
4. Inspectors are not to operate the PCBU owned equipment, have a PCBU representative operate equipment as necessary
5. Any item collected, is to be seized in accordance with S175-S188 of the Act, and where possible placed in an evidence bag.
6. If an item is crucial to the initial investigation, involves data collection device such as a PLC and requires an expert, or is but too large to seize on first attendance then a non-disturbance notice **must** be issued.
7. Any evidence collected must be noted in the field notes at the time, ensuring the evidence receipt number is recorded.

8. Evidence must be returned to the SafeWork SA Office and secured in the appropriate evidence room with the property register completed.

Photographic Evidence:

- Photographs are key to presenting an understanding of the site and relevant pieces of evidence and it is crucial in understanding the incident scene.
- Photographs are to be taken of the site entrance, the entire scene from all angles at a long distance, medium and close sequential photographs to give the viewer the best opportunity of understanding the scene.
- To emphasise distance, height, or a very large item, a tape measure, ruler, or person is to be included in the photograph to indicate the size of the item.
- At the time of taking photographs the Inspector is to take note via the field notes of the distance from the object/s, date, time, direction, lighting and any other details that can assist to validate the photograph.
- Field notes are to include the type of camera used, the date, and description of the subject.
- If the photographer is not a SWSA Inspector, a statement must be taken from the photographer to verify their photographs.
- To protect the integrity of the photographs, Inspectors are to follow the Digital Evidence Management SOP.
- It is the responsibility of the Inspector who obtained the photographs to create a master copy which must be secured in the evidence room and create a working copy kept in the InfoNET hard file with all details noted in Inspector field notes.

Physical Evidence:

- When collecting physical evidence, consider what could be useful in an investigation and do not discount any relevant evidence as evidence can always be returned if it is determined it is irrelevant after appropriate consideration.
- Before removing any evidence, Inspectors must photograph the evidence prior to moving it, and taking a sketch of the layout and location may also be useful.
- Consider equipment involved in the incident, any other ancillary equipment, i.e. chains, slings, failed components, PPE, debris etc.
- Always ask about CCTV footage and obtain if available, ensuring the transfer of the CCTV footage to a CD etc. is appropriately recorded in field notes. It is important to record in field notes who you received the footage from, plus any information such as device used, location, angles, and direction of cameras for the footage, including the date, place etc.
- If the equipment is too large to immediately seize, i.e. a power press, then the attending Inspector is to issue a Non-Disturbance notice (NDN), to protect the evidence. If there is a concern that the scene may be interfered with, telephone the Investigation Team Manager/Team Leader for advice on security provisions.
- If the equipment uses a PLC (i.e. a screen), then a NDN must be issued to protect the integrity of the PLC information and ensure the item is not turned off.
- Ensure that any evidence received is noted in your field notes as well as issuing an Evidence Receipt, in accordance with s178 of the Act.
- Inspectors collecting evidence are to follow the Evidence Management SOP, Powers of Seizure MOP.

Documentary Evidence:

- When collecting documentary evidence it is important to consider what evidence is needed to prove the elements of the offence. Items to consider include:
 - Items to prove the incident involves a PCBU – i.e. letterhead, business cards, EBA, wage records, time records etc.
 - If the entity involves a trust, the Inspector must seek to obtain the trust deed in order to identify the trustees.
 - Items to prove that the person was an employee/engaged and the PCBU employed or engaged that person at that particular location on that particular day – i.e. wage records, employment contract, time records etc.
 - Items to prove that the activity was required, and the work carried out was influenced or directed by the defendant – i.e. job description, SOPs, training records etc.
 - Items to prove that the task entailed a risk (Likelihood and severity) - from work, environment, plant, system, lack of supervision, lack of training– i.e. any previous hazard/incident reports, daily check records, maintenance records, manufacturer's instructions etc.
 - Items to prove the incident was foreseeable – i.e. hazard identification documents, risk assessments, SOPs, manufacturer's instructions, near-miss reports, daily checks on plant, WHSC minutes etc.
 - Items to prove that there are reasonable and practicable control measures that should've been in place – i.e. manufacturer's instructions etc.
- If there are documents that you need, but not currently available, i.e. kept at another site, issue a S171 Notice to Produce.
- Ensure that any evidence received is noted in your field notes as well as issuing an Evidence Receipt, in accordance with s178 of the Act.
- Inspectors collecting evidence are to follow the Evidence Management SOP, Powers of Seizure MOP.

Potential Defendants:

- It is important that potential defendants are considered as part of the initial response, ensuring that any potential defendants (especially individuals) are given an appropriate caution before answers to questions that could incriminate them.
- Potential defendants could include:
 - PCBU
 - Workers
 - Designer
 - Manufacturer
 - Importer
 - Supplier
 - Installer/commissioner

Potential Witnesses:

- Identifying witnesses is an important factor to consider when attending the scene for the first time. Obtain relevant names, contact and availability information from the following:
 - Injured
 - Witnesses to the incident
 - First on scene
 - First aiders
 - Supervisors
 - Other workers who use the equipment or complete the task involved in the incident.
- It may be necessary to take a statement from a witness during the initial response, if the person is leaving the state immediately. However, consideration needs to be given to the state-of-mind for the individual and the fact that it is likely to be too early to determine what the relevant questions that needs to be asked and the potential addendum statement requirements in the future.

Statutory Notices:

- It is crucial to ensure relevant statutory notices are issued to prevent immediate risk of the incident occurring again.
- It is also important to ensure if there are similar tasks or equipment being used that this is considered also to ensure a similar incident cannot occur.
- It may also be necessary at the time of the initial response, or during another visit to conduct a walk-around of the workplace to determine if there are any unrelated hazards that have not been appropriately identified or controlled. This is to be done by the relevant Industry Team Inspector, with the support of attending Inspectors if possible.
- Notices relevant to the incident are to be written by the Lead Inspector with notices not related to the incident to be written by other/compliance Inspectors.

Return to the Office:

- Once all SWSA Inspectors have returned to the office, **all evidence is to be appropriately placed in the Evidence Room**, ensuring the Property Register is completed. No evidence is to be left unsecured.
- An overview of the incident is to be discussed at the next Assessment Panel Meeting.
- If the incident was not attended to by the Investigation Team, and the relevant Compliance Team believe the matter warrants further investigation, then it needs to be referred to the next available Assessment Panel, or Case Conference involving the Investigation Team Manager or Proxy.
- If the incident was attended to by the Investigation Team, an initial case conference is to be arranged by the Inspector within 5 working days to discuss potential lines of enquiries/breaches and discuss the draft Investigation Plan.
- The Investigating Inspector and Compliance Inspectors are to liaise with each other to ensure all relevant progress is shared and known to each Inspector.