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SAFEWORK

SafeWork SA recognises that investigation plays an important role in the enhancement of workplace and public safety. The role of the enforcement process must be considered as complementing a range of strategies which together are designed to improve performance.

There is a commitment to promote improvements through education and industry specific support while recognising that resorting to legal enforcement powers will inevitably be necessary under some circumstances. The Agency will be assisted in this process through close consultation with our stakeholders to determine expectations and outcome criteria.

Fundamental to this approach is the recognition that consistency, appropriateness and transparency in investigation and prosecution issues are the highest priorities while recognising that the decision to prosecute in any particular case will depend upon a number of variables. In total, these must ultimately demonstrate a just and fair treatment for all those with whom the agency deals.

SafeWork SA is committed to providing a consistent and professional service to its customers. Investigations of workplace accidents and complaints are part of the Agency’s core business and it is acknowledged that the needs and rights of the injured, relatives of the injured and deceased, co-workers and employers should be handled in such a way that will cause minimal disruption to those involved. This must be balanced with a fair, transparent and thorough investigation process whereby matters will be investigated in a timely manner.

In order for SafeWork SA is to achieve this goal, all staff involved in any investigation process will ensure that investigations are completed within the timelines specified in the SafeWork SA Investigations SOP.

The pursuit of fairness and consistency will be furthered by procedures established in this manual through training of our managers and staff, and the simplification of processes ensuring that responsibility for decision making is appropriately delegated and bureaucratic processes are eliminated.

The development of this manual has only been possible through the cooperation and input from a wide range of staff. I commend this manual to you and believe it will assist in achieving excellence in service delivery for all the legislation administered by the Agency.

Michele Patterson
Executive Director
SafeWork SA
November 2008
PREFACE

The Compliance and Investigation Manual has been structured to enable staff to use it as a practical reference document for guidance in the process of investigation and associated compliance activities. It has been designed to facilitate a consistent approach by all staff involved with investigations, whether Work Health & Safety or Industrial Relations into alleged breaches of the legislation administered by the Agency. This manual sets out critical generic factors which will be considered throughout an investigation and when considering a prosecution. These include:

- the investigative mindset
- the investigation process
- the seriousness of the alleged offence
- whether the alleged offence is of significant public interest
- the necessity to maintain public confidence in the administration of the law (justice and equity)
- the consideration of either mitigating or aggravating circumstances
- the appropriateness of alternatives to prosecution
- any previous record of non-compliance
- the likelihood that the prosecution will succeed.

The achievement of a consistent and professional approach to service delivery is essential to ensuring the credibility of the Agency and staff, especially when those services involve the full extent of the legal system.

INVESTIGATIONS & LEGAL TEAM

(Investigations & Legal Teams principal responsibility is the management of SWSA investigations and legal processes.

THE LEGAL TEAM

- reviewing briefs of evidence
- Crown Law advice
- assistance in interpreting legislation
- maintaining register of previous Crown and other legal opinions
- legal precedents and decisions
- difficulties with external legal representatives
- settling correspondence
- coronial inquests and coronial reports
- investigation assistance and advice
- case conference
- technical matters that may require a policy decision
- wording of notices
- risk management
- guidance on investigation procedures
- compliance matters relating to the investigation
CHAPTER ONE: INVESTIGATIONS PROCESS FRAMEWORK

- Introduction
- The Investigation Process Framework
- How Investigators Make Decisions
- The Investigative Mindset
- Applying the Mindset
- Developing Hypothesis
- Testing Hypothesis
INTRODUCTION

The Investigation Process Framework is designed to guide investigators and managers through the investigation process, leading to a possible prosecution or other enforcement outcome.

It provides understanding of the decision making process within an investigation and concepts which underpin investigational knowledge.

Investigators require skills that allow them to adapt to fluid situations and apply investigational concepts that result in the acquisition of material and evidence to take an investigation forward.

This guide does not map a step-by-step approach for an investigator to strictly follow, but is intended to guide investigators within wider parameters by identifying investigational concepts and offering decision making opportunities to ensure the integrity and provenance of evidence is maintained.
INVESTIGATION PROCESS FRAMEWORK

Figure 1

Commenced within timelines specified in Investigations SOP:
- Fatalities – 24 hour
- Notifiables - 48 hours
- Complaints – 7 days

No further investigation or Alternative Compliance Actions

80% of investigation completed in 3 months
80% of investigation to CSO in 6 months
FOLLOWING THE INVESTIGATIVE FRAMEWORK

Where a workplace fatality, serious injury or illness, or dangerous incident\(^1\) is notified to SafeWork SA, the investigating inspector will attend the scene or site, and commence investigative actions. This will include obtaining information for statements from any victims, the complainant or any witnesses, as well as ensuring the integrity of the scene and evidence. These actions must take place within the following timelines:

- fatalities - within 24 hours
- serious injury or illness, or dangerous incident - within 48 hours.

Inspectors will assess the scene and circumstances of the incident and apply the ‘Fast Track Actions’ model if appropriate (see Chapter 3).

Investigations requiring assessment through the Assessment Panel. See Operational Guideline for Triage and Assessment Panel and/or on-going case conferences will have these conducted in accordance with SOP:WKP05/0109 Case Conference Procedure. Case conference timelines are:

- fatalities must be case conferenced within 48 hours
- serious injury or illness, or dangerous incident case conferences must be case conferenced within seven days
- significant incidents must be case conferenced within 24 hours.

If further investigation is deemed appropriate, the inspector shall develop an Investigation Plan as soon as practicable. Refer to Appendix A for exemplar plan. An Investigation Plan must be updated regularly and prepared to guide an investigation and in readiness for future evaluation case conference discussions.

The creation and updating of Investigation Plans ensure changes resulting from the acquisition of material/evidence obtained within an investigation are acted upon quickly and lines of investigation can be assessed/re-assessed.

Once the investigative evaluation process considers sufficient evidence exists for prosecution, the investigating officer prepares the brief of evidence and forwards it to the Legal Team for consideration. The process provides flexibility to allow the Legal Team to be consulted at any stage, however early consultation will be the exception and only occur with the more serious or complex investigations.

All teams should consult the Legal Team for serious offences or where specific Crown Law direction is required during the investigation. The Legal Team will deal with the brief of evidence and refer back if additional investigation is needed, or liaise with the Crown Solicitor’s Office for prosecution. The benefits of the investigative framework are:

- a generic investigative process is applicable to Work Health & Safety, Industrial Relations or Dangerous Substances Investigations
- early investigative intervention to ensure the recovery of evidence is maximised
- investigative support and direction for Inspectors
- timeliness of investigations
- appropriate utilisation of section staff
- consistent investigative standards across the agency
- consistent service delivery standards to victims.

\(^1\) Sections 35-37 Work Health & Safety Act 2012 (SA)
HOW INVESTIGATORS MAKE DECISIONS

Relatively little research has been conducted into the ways in which investigators make decisions. They usually rely on a set of working rules (or heuristics) that they develop from their experience of conducting investigations, or that they learn from colleagues.

These working rules enable investigators to gain an understanding of the situations they are faced with as well as the material they gather. Working rules are an efficient means of decision making and generally present few problems, although they do have limitations that investigators should be aware of to avoid making inappropriate decisions.

LIMITED PERSONAL EXPERIENCE

There may be a tradition of learning on the job and the range of working rules that investigators acquire depends on their personal experience. Consequently, an investigator’s ability to make decisions may be limited by the extent of their experience, previous exposure, and the degree to which they are able to adapt these to any given situation.

As the unique experience of each investigator contributes to the working rules they acquire, there will be considerable variation in the way that different individuals make decisions during investigations. Some variation is inevitable, and even desirable, but this can cause difficulties in designing and implementing audit regimes and judging individual performance.

THE UNCONSCIOUS NATURE OF WORKING RULES

Working rules can become so familiar to investigators that they are not always aware they are using them. This may lead to difficulties in describing how a particular decision was reached. Investigators may refer to these decisions as being based on hunches, gut reaction or intuition, and are unable to explain the rationale behind them.

This makes it difficult for others to understand the decision making process. In principle there may be nothing wrong with following hunches or gut reactions, but the investigator must expect to account for their decisions to others including victims, witnesses, supervisors, managers, and/or partners in the criminal justice system.

PERSONAL BIAS

There are occasions when decisions are unconsciously affected by personal perceptions of people, places and situations. Racism, sexism, previous encounters or union references can influence the thought process without the individual realising it. For example, an investigator attends the scene of a notifiable breach and decides not to conduct a witness search in the vicinity, assuming that no one will tell them anything worthwhile. In this situation, the opportunity to gather information from the immediate workers is missed which may have a detrimental effect on the investigation.

VERIFICATION BIAS

If investigators develop an early view as to what has occurred or who is responsible for an incident, there is a danger that they focus on the material that supports that view. This can result in a situation where they only gather material that supports their view, thus reinforcing their opinion that their view is correct. This will lead investigators to ignore alternative lines of enquiry or sources of material. Investigators should avoid taking a firm view on any point until they have gathered the maximum amount of material. Where information levels are low, well developed hypotheses can be powerful tools and their use is discussed later in this guidance (see Developing hypotheses later in this chapter).
AVAILABILITY ERROR

There is a danger that an investigator will base their decisions on material that is vivid and memorable, dramatic, emotionally charged or easy to visualise. Such material might be psychologically compelling, because it appears familiar or is linked to a memory, but it may not necessarily reflect the material at the investigator’s disposal.

Investigators should maintain an open and objective approach to gathering material and be prepared to challenge their own reasoning behind a decision. Using the investigative mindset and challenging personal perceptions will assist the investigator in avoiding availability error (see Investigative mindset later in this chapter).

OTHER FACTORS AFFECTING DECISION MAKING

There are a number of factors that may also adversely affect the quality of decision making. While no one can rid their mind of these ingrained flaws, anyone can learn to understand the traps and compensate for them. Factors that may affect decision making include:

- sweeping statements which over generalise and ignore contradictory evidence
- oversimplifying the facts by assuming clearly defined boundaries when it is not possible to do so
- making inferences from the particular to the general (e.g. assuming that because some are, all are)
- begging the question (e.g. taking things for granted which have not yet been proven)
- special pleading (e.g. stressing only one viewpoint and ignoring other more relevant or plausible opinions because they conflict)
- potted thinking; that is, using simplistic assertions in an unwarrantable fashion (e.g. using slogans or catchphrases in arguments)
- early assumptions about material or its source as it can potentially misdirect the focus of an investigation and cause relevant material to be overlooked
- investigators becoming overwhelmed by information, as this may result in the investigation losing direction or focus
- building unlikely hypotheses that do not reflect the known facts, and that ultimately cause the investigation to become misdirected
- wasted effort caused by investigative actions that although satisfactory, may be time consuming and not optimal to the investigation
- poor examination or evaluation of material (including investigative interviewing) as it may cause relevant lines of enquiry to be overlooked
- under-estimating the importance of victims or witnesses; a polite but disregarding approach by investigators may potentially cause victims and witnesses to become unhelpful or apathetic to the investigation or subsequent criminal proceedings.

The above limitations can have a detrimental effect on the quality of investigators’ decisions. However by being conscious of these limitations, investigators can adopt a disciplined approach to decision making.

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It should be noted that there are dangers in overstating the extent to which the use of investigators’ working rules for decision making are problematic. All work groups develop and use such rules and in reality there is no effective alternative. However investigators must be aware of the potential pitfalls, and actively challenge their personal perceptions and understanding.

THE INVESTIGATIVE MINDSET

The application of an investigative mindset will bring some order to decision making and the examination of material. There is no process map that will assist the investigator to develop the mindset. Rather, it is a state of mind or attitude investigators adopt which can be developed over time through continued use.

The investigative mindset involves applying a set of principles to the investigation process which enable investigators to develop a disciplined approach ensuring the decisions made are appropriate to the case, reasonable, and can be explained to others.

The investigative mindset can be broken down into the five following principles:

- understanding the source of material
- planning and preparation
- examination
- recording and collation
- evaluation.

UNDERSTANDING THE SOURCE OF MATERIAL

Understanding the provenance and characteristics of the source of material is essential to conduct an effective examination of it.

PLANNING AND PREPARATION

Usually the first opportunity to examine a source of material is the only opportunity. As the process of scene examination will invariably alter a scene, it is important to get it right the first time. Also, victims’ and witnesses’ recollection of events will fade or become contaminated by versions of events they later hear from others. Therefore, it is essential that all of the material they can provide be obtained as early as possible. The same principle applies for many other sources of material.

Careful planning is required to ensure that the examination reveals all available material the source can provide. Investigators should always be mindful of the aim, and in complex or difficult cases should consider referring to the objectives within the investigation plan before commencing the examination to ensure that important points are not overlooked.

EXAMINATION

The process of examination can be divided into three separate areas. The extent to which any area is relevant to a particular examination is determined by the source and its characteristics. Examination will usually include:

- account
- clarification
- challenge.

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3 Taken from the ‘core investigative doctrine’ and reproduced with permission from National Centre for Policing Excellence, London, England
ACCOUNT
The person carrying out the examination will generally interpret the account when examining sources of material. For example, an investigator may infer a particular breach from looking at photographs, injuries or from previous knowledge of an employer.

Those carrying out such examinations should be in a position to explain their findings or interpretations to others and should also consider alternative explanations (see Developing hypotheses later in this chapter).

The degree of difficulty involved in inferring an account from a source of material largely depends on the nature of the source, any legal or procedural considerations relating to treatment of the material, and the level of material that investigators already have. The more material investigators have about an incident, the easier it will be to draw inferences about the contribution a source can make to the investigation. Where the source of material is a victim, witness or potential defendant, an account should be obtained using the PEACE investigative interviewing model (see Investigative interviewing in chapter 5).

CLARIFICATION
Having obtained an account from the source, investigators should clarify any inconsistencies or ambiguities that it contains. This may involve testing it against other material already gathered, or identifying actions to acquire further material to clarify it. For example, when viewing a CCTV image the events shown may, on first consideration, appear to verify a witness’s account of an incident. However, the time shown on the image may be inconsistent with the time of the incident given by witnesses. Testing the accuracy of the clock on the CCTV system that generated the image would lead to material that either confirms or casts doubt on the witness’s reliability.

CHALLENGE
Experience shows that even sources of material that at first appear to be of unquestionable reliability can be wrong, and material that appears to indicate one thing can later be found to support a totally different interpretation. Therefore investigators should continually challenge both the meaning and the reliability of any material they gather.

Investigators should treat all material as potentially wrong, and regard all sources of material as potentially misleading. This is summed up by the ABC approach:

- Assume nothing
- Believe nothing
- Challenge everything.

Every account should be checked for inconsistency or conflict with other material as investigators are most likely to be misled because they have not paid attention to detail. Prima facie assumptions should never be made and material should never be accepted without question. Investigators should constantly search for corroboration.

RECORDING AND COLLATION
Before closing the examination of a source of material, investigators should consider:

- records of the examination that need to be made
- how the source is to be stored
- source security
- access arrangements to the source if it is under third party control.
EVALUATION

Evaluation should identify any immediate actions that need to be taken in relation to the source or the material that was gathered from it. These include actions to test the reliability of the source or the material gathered from it, or any fast track actions that may be needed to secure other material.

APPLYING THE INVESTIGATIVE MINDSET

Applying the investigative mindset to the examination of all sources of material will ensure that:

- the maximum amount of material is gathered
- its reliability is tested at the earliest opportunity
- immediate action is taken in relation to it
- relevant records are made
- the material is appropriately stored.

The first opportunity to examine a source of material and test its reliability may be the last. Therefore, where there is an opportunity to gather material early in an investigation it must be taken, as passing up such opportunities may mean they are lost forever.

In applying the investigative mindset, investigators should be mindful of decision making limitations and, in particular, should guard against being influenced by their first impression of the material. This is particularly true of material gathered from victims, witnesses and potential defendants in the early stages of an investigation, as they may still be traumatised or under stress caused by their involvement in, or witnessing of, an event.

Those who appear reluctant to assist, or even hostile, may have useful material that they will share with investigators if dealt with correctly. Conversely, those who appear compliant or willing to assist may be presenting self-serving versions of events.

Investigators must keep an open mind, be receptive to alternative views or explanations and should not rush to premature judgements about the meaning of any material or the reliability of its source. Accepting the material at face value risks overlooking alternative sources of material or interpretations, thereby losing the opportunity to examine them.

Application of the investigative mindset from the beginning assists investigators in identifying areas that require development or challenge through further investigative action. It also helps them to make structured and auditable decisions.

INVESTIGATIVE AND EVIDENTIAL EVALUATION

Material gathered during an investigation should be subjected to a periodical formal evaluation, as this allows the investigator and manager to review the investigation’s progress. This will occur within file reviews with Team Leaders and the case conferencing process.

Evaluation enables investigators to ‘step back’ from the rush of investigative action and to consider the investigation in ‘slow time’. Even though an investigation may appear straight forward, investigators should always be encouraged to take this step back. This enables them to formally evaluate the material, explore whether any additional lines of enquiry can be identified, and ensure that all existing lines of enquiry and investigative actions have been pursued and completed. It also allows them to review the actions and decisions already taken. This evaluation process is highly relevant regardless of the severity or complexity of the investigation.
Investigators must follow a standard model of evaluation, as this enables them to become competent in its use and evaluate material in a consistent, structured and auditable format. There are two types of formal evaluation that should be carried out during an investigation: investigative evaluation and evidential evaluation. Investigative evaluation should identify:

- what is known
- what is not known
- consistencies
- conflicts.

Evidential evaluation should consider:

- the overall strength of the case
- whether sufficient evidence exists against the complainant to proceed to prosecution.

In practice, both evaluations may be carried out more than once during an investigation using the same method (for ease of reference these are explained together). During the early stages of an investigation, a greater emphasis should be placed on investigative evaluation in order to identify a potential defendant and likely charges. Later, and particularly during the management and conduct phase of the investigation, the emphasis will shift toward ensuring that an evidentially robust case can be passed to the Legal Team for prosecution purposes.

In all cases, the evaluation outcome will be recorded on InfoNet within the case conferencing process. It should also be clearly recorded if it is not possible to identify further investigative action and all existing lines of enquiry have been pursued. The key differences between these types of evaluation are that investigators are free to use all available material even though it may not be evidentially admissible during an investigative evaluation, whereas investigators need to assess the strength of the case taking into account only the evidentially admissible material when carrying out an evidential evaluation. The Legal Team will guide investigators in this process.

**DEVELOPING HYPOTHESES**

Before developing hypotheses, investigators must have sufficient knowledge to make valid judgements. If not, they should seek assistance from their Manager/Team Leader and the Legal Team. Hypotheses should have a specific objective, based on the gap or conflict in evidence. All material relevant to an investigation should be considered and any assumptions or inferences that are made during this process should be explicitly recorded. A hypothesis should be a reasonable interpretation of the material available and should offer the most logical explanation of the facts as they are known. It is likely however, that there will be no single most logical explanation, but rather a series of hypotheses, each of which offers an alternative explanation.

**TESTING HYPOTHESES**

The purpose of developing hypotheses is to enable investigators to seek further material or to test an interpretation of material. By acquiring further material, one particular hypothesis may be shown to be correct. The material gathered as a consequence of a single hypothesis can provide positive reasons to discount all others.

Making judgements about hypotheses can be difficult. Hypotheses should only be used when absolutely necessary and in consultation with the Manager/Team Leader and the Legal Team. They should be based on known facts and stated assumptions and only made by those with knowledge of the relevant risks. Hypotheses should be constantly reviewed, and where they pertain to a vital element of the investigation, must be thoroughly and regularly reviewed by the Investigation Team.
CHAPTER TWO: VERBAL AND WRITTEN DIRECTIVES

- Cancellation/Suspension of Licences, Permits & Registration

Through the E-Manual:

Refer to Principles of Operation for the WHS Inspector; Operational Guidelines; Standard Operating Procedures and relevant WHS Model Operating Procedures for information on:

- Prohibition Notices
- Improvement Notices
- Non-disturbance Notices
- Expiation Notices
- Letters of Warning
CANCELLATION/SUSPENSION OF LICENCES, PERMITS AND REGISTRATION

Under certain conditions, inspectors may recommend to their manager that a person granted a licence, permit, certificate or registration under legislation administered by SafeWork SA, should have it suspended or cancelled.

Licences, permits, certificates or registration are found under the following categories:

- Certificate of Competency & Assessor Registration - *WHS Regulations*
- Amusement Structure Registration - *WHS Regulations*
- Blaster’s Licence (Petroleum, Mining, Opal Mining) - *WHS Regulations*
- Asbestos Removal Licence - *WHS Regulations*
- Plant Design Registration - *WHS Regulations*
- Plant Registration - *WHS Regulations*
- Licence to Keep Dangerous Substances - *Dangerous Substances Act*
- Auto gas Permit - *Dangerous Substances Regulations*
- Bulk Drivers Licence - *Dangerous Substances Regulations*
- Bulk Vehicle Licence - *Dangerous Substances Regulations*
- Licence to Store - *Petroleum Products Regulation Act.*
- A variety of licences/permits under the *Explosives Regulations* for licensing magazines and premises, destroying explosives, manufacturing, mixing, carrying, importing, purchasing, keeping and selling (fireworks), removing and destroying explosives.

Inspectors should check with their Team Leader or Manager regarding who has the authority (under the legislation) or the delegation to affect the suspension or cancellation.

**N.B.** For further information or guidance refer to SOP: *SWSA06/0019 Registered Assessor Investigation* for further guidance on registered assessor investigations.
CHAPTER THREE: INVESTIGATIONS

- Introduction
- Administration
- Inspectors Field Note Books
- General Points on Note Taking
- Sources of Material and Evidence
- The Golden Hour
- Fast Track Actions
- Law of Evidence
- Sketches and Diagrams
- Taking of Samples
- Seizure of Evidence
- Issuing a Warrant - Petroleum Products Act 1995
- Issuing a Warrant - Dangerous Substances Act 1979
INTRODUCTION

An investigation is a probative search for the truth behind a given incident that uses evidence of facts to establish:

- what has occurred
- how it occurred
- who, if anyone, is responsible
- whether it could or should have been prevented.

The range of possible investigation outcomes includes a letter of closure; statutory notice(s); prosecution; no further action; and or wider prevention activities. Evidence that adequately supports the investigation outcome must be gathered.

ADMINISTRATION

At the commencement of an investigation that may lead to prosecution, the matter would usually have been received through the Help Centre and a new InfoNet file raised. The number allocated to this file will be recorded on all investigation material throughout the investigation process. The investigating inspector is also to develop an Investigation Plan for investigation planning and case conference purposes.

INVESTIGATION PLAN

An Investigation Plan is an investigation management tool that:

- identifies the essential elements required to prove the alleged offence
- identifies the evidence required to prove a breach of legislation
- identifies the material/evidence already obtained
- helps to plan how and when the remaining evidence will be obtained to meet specific timeframes for tasks and the investigation i.e. investigation completed in 150 days
- helps the investigator, Team Manager and Team Leader manage and monitor the investigation process

It is essential that investigators complete an Investigation Plan early in the investigation. The Legal Team will provide strategic guidance as to the investigative measures required to progress the investigation.

Appendix A shows a template Investigation Plan, this is accessed through Infonet Activities. This is a guide only as each plan will differ according to the incident and the facts of the matter being investigated.
MEDIA CONTACT

Where staff receive contact from any media outlet in regard to an investigation, the request must be redirected to the SafeWork SA Chief Media Advisor in the first instance. The media unit will then consult with the respective team manager and the Legal Team. If the Chief Media Advisor is unavailable, direct the request to the Executive Director.

Information of any kind should not be given to media representatives without prior discussion and approval of the relevant Director. Staff receiving requests for information from the media relating to an investigation should respond in the following way:

- politely remind the journalist that the Government has a media policy that you are bound to follow
- ascertain from the journalist what they want to know (without commenting)
- ask the journalist to call the Chief Media Advisor, and tell them that you will brief the media advisor about their request prior to their contact.

The Legal Team or the Investigations Team Manager will provide guidance and practical advice on the disclosure of information that may hinder the investigation.

INSPECTOR’S FIELD NOTEBOOKS

This section relates to the use of the A4 or A6 size ‘field note book’ for taking evidence and statements. Every field note book page is pre-numbered and each notebook should have the date of issue and the inspector’s name recorded on the front cover.

All completed notebooks are to be retained at an Agency office location in accordance with The State Records Act 1997. All notebooks remain the official property of SafeWork SA and can be subject to subpoena at any time during that period. They may also be the subject of a request for information under the Freedom of Information Act 1991.

Defence counsel may examine the inspector’s notes in court, so notes entered in the field notebook should relate only to factual evidence relative to the particular investigation.

GENERAL POINTS ON NOTE TAKING IN FIELD NOTEBOOKS

Written notes should be made progressively throughout the investigation and entries should be sufficient for your own recall. Furthermore:

- handwriting must be legible (acceptable for court use)
- each entry in the notebook shall begin with the time and date of entry
- entries shall be continuous from one report to the next
- no gaps between entries as these may be used to question the credibility of the report in a court of law
- all entries shall be made in ink.
Remember, these are your notes and you can record whatever you consider relevant at the time, whether it is words said, a picture or drawing, what you have seen, heard, touched, smelled or tasted. However, always remember that these documents are liable for scrutiny at court or other inquiry and you must remain professional in all that is recorded.

**NB:** Further information and guidance on field notes can be found in:

- Operational Guideline - Field Notes
- SAFE 11/0844 Inspectors Powers of Entry MOP

**SOURCES OF MATERIAL AND EVIDENCE**

**MATERIAL**

Understanding what material is, how it is generated during an investigation, and how it can be located, gathered and used are all central to an investigation.

The definition of material used throughout this document is:

> ‘Material of any kind, including information and objects, which is obtained in the course of an investigation, which may be relevant to the investigation, has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case’.

It may be difficult for investigators to predict what will or will not be relevant to the investigation, particularly during the early stages when the exact nature of what has happened and who is involved may still be unclear.

In the first instance investigators are advised to err on the side of caution and where it is legally permissible, to gather and retain as much material as reasonably available. Team Leaders, team managers, or the Legal Team can be consulted to determine whether the material should be retained for use in the investigation or subsequent court proceedings.

There are a number of potential sources from which the investigator can gather material.

These include:

- victims
- witnesses
- potential defendants
- locations (including incident scenes and the victim or potential defendant’s home or work premises)
- passive data generators; these are systems that collate or record data automatically and generate material which is not intended solely for the purpose of an investigation (e.g. CCTV recordings, telephone records, banking and credit card records)
- employer databases.
Material may present itself in different formats and any tangible object may be material. Intangible things such as sound or images can be reproduced in a format to be used as evidence (e.g. video or audio recordings). In practice the most common formats for material are:

- statements
- documents
- reports
- physical exhibits such as tools, clothing, equipment and biological or chemical material
- images
- audio or video recordings.

The skill of the investigator is not only to identify and locate potential sources of material, but also to understand how the material must be gathered and stored in a format that is evidentially admissible and that preserves the integrity of the item.

**HOW MATERIAL IS GENERATED**

The attrition of material during the investigation process illustrates the reduction in the total amount of material generated by an event to the eventual amount that is used in court. Ideally the total amount of material generated by an investigation will be collected by the investigator and be admissible as evidence, however, this is rarely possible.

**THE MATERIAL GATHERED BY THE INVESTIGATOR**

While the investigator’s aim is to maximize the amount of material that is collected, it is not always possible to collect all of the material generated by an event. Some physical material may be lost or destroyed, some witnesses may not be located, or some of the material may only be known to potential defendants who do not reveal it to others.

Starting an investigation as soon as possible after an event will enhance the investigator’s opportunity to gather the maximum amount of material (referred to as the golden hour principle).
While it should always be the investigator’s goal to gather material that will later be admissible as evidence, there will inevitably be occasions when this cannot be achieved. The rules that determine what material a court accepts as evidence are complex, and are often themselves contested within a trial (known as a *Voire Dire*).

As a consequence, all material may be judged to be admissible under certain circumstances. However, there are a number of general principles that mean that some material will not normally pass the evidential test - e.g. hearsay, second person testimony or some evidence of opinion (see chapter 6 – *Prosecutions*).

Even though the material is of a type that is generally not admissible, it does not mean that it should not be gathered, or that it will not assist the investigation. Such material may be highly valuable in setting parameters for other investigative activities or generating lines of enquiry that may produce other relevant, reliable and admissible material. Therefore it should always be gathered.

**THE GOLDEN HOUR PRINCIPLE**

‘The golden hour’ is a term for the period immediately following the commission of an offence/breach of legislation when material is abundant and readily available to the investigator (i.e. immediately following an accident). Rapid action in this period minimises the attrition of material and maximises the chance of securing material that will be admissible in court.

The longer an investigation takes to commence, the more opportunity there is for evidence to be lost, deteriorate or be destroyed. Research on the ability of witnesses to recall events show that early contact significantly aids memory recall.

The list below outlines some ‘golden hour’ considerations for investigators.

<table>
<thead>
<tr>
<th>Golden hour principles</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Victims:</strong> Identify, support and sensitively preserve evidence</td>
</tr>
<tr>
<td><strong>Scenes:</strong> Identify, preserve, assess and commence log</td>
</tr>
<tr>
<td><strong>Potential defendants:</strong> Identify and interview if appropriate</td>
</tr>
<tr>
<td><strong>Witnesses:</strong> Identify, support, prioritise and interview</td>
</tr>
<tr>
<td><strong>Log:</strong> Scene, decisions and rationale, circumstances, resources</td>
</tr>
<tr>
<td><strong>Family/Community:</strong> Identify, inform, primary support (needs, concerns, expectations, sensitivity)</td>
</tr>
<tr>
<td><strong>Physical Evidence:</strong> Preservation (tools, equipment, plant, documents, CCTV, ambulances, hospitals)</td>
</tr>
<tr>
<td><strong>Prevent Contamination:</strong> Victims, scenes, witnesses, potential defendants</td>
</tr>
</tbody>
</table>
THE MATERIAL THAT IS ADMISSIBLE AS EVIDENCE

As an investigation progresses, the amount of material capable of being used as evidence in court will be less than that initially gathered by the investigator. The interpretation of the rules of evidence are complex and investigators should review all information obtained and make a determination if the material is relevant to proving the elements of the offence. The Legal Team can assist in this decision making process. Materials obtained throughout an investigation that do not prove an offence are not provided be provided in the Brief of Evidence, but should be recorded on the Exhibit Log under ‘Other Evidence Available but Not Provided’.

FAST TRACK ACTIONS

During the course of any investigation, it is important to acknowledge that there will be certain investigative actions that need to be prioritised, as they may result in significant lost opportunity, if not acted on immediately. Fast track can be defined as:

‘Any investigative actions which, if pursued immediately, are likely to establish important facts, preserve evidence or lead to the early resolution of the investigation’.

Experience shows such actions will need to be taken in the first 24 hours of an investigation, particularly in relation to a fatality. Of equal importance is the realisation that while fast track actions are prevalent in the early stages of an investigation they can, and should, be commissioned at other key stages of an investigation: for example, the discovery of another scene, or the identification of a significant witness or a potential defendant.

Not all the suggested fast track menu items will be relevant to all the circumstances of each case, and equally the menu is not exhaustive. It is not intended to be a definitive menu, but rather act as broad guidelines that can be used in order to become case specific.

<table>
<thead>
<tr>
<th>Fast track menu</th>
</tr>
</thead>
<tbody>
<tr>
<td>• identify suspects</td>
</tr>
<tr>
<td>• scene examination</td>
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<tr>
<td>• scene forensics</td>
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<tr>
<td>• scene assessment</td>
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<td>• witness search</td>
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<tr>
<td>• victim enquiries</td>
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<tr>
<td>• media</td>
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<tr>
<td>• significant witness interview</td>
</tr>
<tr>
<td>• other critical actions.</td>
</tr>
</tbody>
</table>
PRIMARY OBJECTIVES OF THE INVESTIGATION

The primary objectives of any investigation must be to establish the contributing factors; to take actions to prevent recurrence; to identify any legislative breaches, and to identify potential defendants. These objectives are required to:

- prevent further injury or loss of life
- recover evidence to ensure further action is justified.

In many cases the investigation requires a rapid professional response once the contributing factors and potential defendant have been identified. This is to protect the integrity of forensic evidence and to ensure that it is not disposed of.

Thereafter, a careful, systematic approach to evidence recovery (particularly forensic evidence) is essential. Remember, forensic evidence may be documentary, and consideration should be given to the need for forensic accountancy, document examination, forgery, etc. When a number of potential defendants are identified, sufficient resources should be deployed to ensure the response is equally thorough for each potential defendant.

POTENTIAL DEFENDANT AT THE SCENE

There are many occasions when the potential defendant will be present at the scene. Remember:

- It is not unusual for potential defendants to present themselves at scenes in the guise of a witness.
- Investigators present at a scene should be briefed that should they be approached by any person asking questions about the incident/event, they are to record details of the enquiry, obtain details of the individuals and record the conversation they have had in the inspector's notebook. Potential defendants in the past have used this method for ulterior motives.

Against this background, consider:

- video or photographic stills of the scene, including persons present
- any form of CCTV within the premises, site or immediate area.

INCIDENT SCENES

To a large extent, the location and access to incident scenes will dictate early investigative strategies. It is important that potential crime scenes are both identified and protected.

Inspectors must liaise with any other Agency present to determine who has primacy over the scene. Generally the Police, Fire Service or State Emergency Service will be the main agencies involved, and all will have an individual identified as the forward commander or the incident controller.

Once SafeWork SA has control over a scene or when SafeWork SA is the first attending Agency, it is imperative that the safety of the inspector and other investigative personnel is considered.

The risk of personal injury or environmental contamination must be removed before a scene examination commences. Risks may include building/structural/plant collapses, chemical threats, or explosion.
If required, the investigator shall attempt to establish scene safety by contacting appropriate agencies for assistance with resolution of safety issues prior to entering the scene.

Before commencing evidence collection the investigator shall conduct a hazard identification and risk assessment of accessing the area. Once satisfied it is safe to ‘walk through’ the scene they need to assess scene boundaries, and:

- establish entry and exit paths to minimise scene disturbance
- visibly identify physical evidence
- document the location of visible evidence
- commence scene photography.

PHOTOGRAPHY/VIDEO RECORDING OF SCENE

Photographic recording of the scene is the responsibility of the investigating inspector and should be conducted in accordance with SOP: WKP 05/0127 Digital Evidence

Original films/videos should be retained as exhibits and stored appropriately and in accordance with instructions. Copies of films/videos should be catalogued for continuity purposes, including the persons to whom films/videos have been shown.

Systematic photography/video of scenes serves three main purposes:

- evidential value
- captures the moment for court, evidential and briefing purposes
- preserves the integrity of the scene; early recording of how the scene was found serves to counter any subsequent assertions about how inspectors handled the scene (e.g. continuity of evidence)

Aerial photographs may sometimes add a beneficial dimension to evidence and assist with geographical appreciation, although inspectors should be aware of damage associated with helicopter down draughts and the disturbance to the scene that this may cause. The requirement for aerial photography will be decided during any case conference.

OTHER EARLY SCENE CONSIDERATIONS

If you or someone you know have accidentally contaminated the scene - **own up** - it could save time, money and wasted resources.

Generally a scene will be handed over to SafeWork SA personnel once the emergency services have secured it to prevent further injury. It is important for the investigating inspector to liaise early with the lead combatant authority to ensure the integrity of the scene is maintained. This authority may be the police, fire service, paramedics or State Emergency Service.

It is important - particularly when fatalities are involved - that investigators know which emergency services are in attendance, which is the lead combatant authority and what their actions were in securing the scene. This will have an important bearing on the examination of forensic evidence.
For example, the fire service may have used a particular chemical to extinguish a fire. In this case, identification of this chemical should be recorded, and the forensic examiner informed to allow them to consider this fact during their examination of any exhibits.

Once the scene is handed to SafeWork SA, non-SafeWork SA personnel such as paramedics or industry experts must be accompanied into the scene and their personal details and reason for attendance recorded. All authorised persons entering the scene must wear their SafeWork SA vest and appropriate protective clothing and footwear.

This is to ensure:

- the health and safety of the individual and to protect them from hazardous substances etc.
- the scene is protected from the individual (i.e. scene disturbance, such as introduction of hairs, fibres and other items being taken into the scene is prevented and evidence is not removed from the scene)

Do not rush the examination of incident scenes - **you will only get one chance.**

**IDENTIFYING WITNESSES**

The identification and interviewing of potential witnesses is crucial to establishing and securing key facts early in the investigation. Interviews should be as accurate and detailed as possible and should follow the PEACE model on investigative interviewing (see chapter 5 - *Investigative interviewing*).

While a more in depth approach to identifying witnesses will be adopted at a later stage, consideration should be given to making enquiries in the following key areas during the fast track action phase:

- work colleagues
- supervisors
- union representatives
- WHS/IR representatives
- contractors & sub-contractors
- passers-by (if the scene is a public place)
- CCTV
- persons having legitimate access to the scene
- relatives
- private security videos from homes, shops and businesses
- local tradespeople and businesses
- press appeals are also vital in searching for witnesses.

**VICTIM ENQUIRIES**

Enquiries into the victim’s background are essential, particularly in fatality investigations. Early identification of the victim’s family may lead to establishing additional lines of enquiry previously unknown, such as usual working practices, known medical conditions, history with the employer, and workplace issues not known to immediate colleagues.
When questioning persons, investigators should be aware that questions might be perceived as intrusive and unnecessary. Therefore investigators should explain why such questions must be asked in order to lessen the fear of hidden agendas on the part of the investigating officers. Victim-related enquiries for fatalities should be pursued as a priority.

SOP SAFE 08/0805 Victim Liaison Procedure provides further detail on victim and family management following a workplace accident.

MEDIA - PRELIMINARY MEDIA STRATEGY

The investigation of serious workplace incidents or fatalities always attracts keen media interest, the level of which will be influenced by the type and perceived enormity of the incident. Simply put, a severe injury is most likely to spark interest from local and regional media sources, while high profile cases, such as fatalities, amusement ride injuries or explosions, are almost certain to attract national, and perhaps international, media interest. Both sets of circumstances will place particular demands upon the agency.

At an early stage of the investigation, the Investigation Team Manager will consult with SafeWork SA Executive to facilitate a preliminary media strategy. This allows inspectors to concentrate on their investigative role.

HOLDING STATEMENT

A holding statement is a communication to the media which outlines information that allows them to report on the matter without disclosing information that may prejudice the investigation. Generally this statement will be restricted to confirmatory information such as:

- ‘being treated as an investigation’
- ‘SafeWork SA is dealing with an incident’
- the location
- initial appeal for witnesses/information
- contact details for the investigation team.

Victim details are rarely given as part of the holding statement for compassionate reasons (to allow immediate relatives and friends to be informed), and for practical investigative purposes (formal identification where there is a fatality or to prevent information leaking into the public domain).

The decision to release details of the deceased should not be undertaken without the express authority of the Executive Director, and, in any event, not until the immediate family have been informed.

MANAGING THE MEDIA

A media strategy will involve SafeWork SA exercising management and control over the media. In many cases when it is anticipated media representatives will attend a principal scene, the SafeWork SA Chief Media Advisor will manage this in conjunction with the Investigations Team Manager, the Legal Team and the Executive.

SIGNIFICANT WITNESS INTERVIEWS

At any stage of an investigation, witnesses whose evidence is clearly of significant evidential value may be identified. This is particularly the case in respect of ‘significant witnesses’ who emerge at an early stage of an investigation.
Significant witnesses can be either of two groups of witnesses:

- a witness that may have been, or may claim to have been, an eye witness or witness to the immediate event in some other way
- a witness that stands in a particular relationship to the deceased or someone having a central position in the enquiry.

The descriptive ability of the first group of witnesses often becomes a matter of contention in court and a record of what they could immediately recall in their own language may be regarded as being ‘best evidence’. This record will be of considerable assistance to the investigating inspector in assessing the value of the witness over time. This person’s statement must be taken as soon as practicable after the event.

The second group of witnesses may well prove to be of greater value to the investigation because of the background information they can provide on the victim/deceased or someone else having a central position in the enquiry. Witnesses falling into this category may include spouses, parents, best friends, health and safety representatives, union officials or close work colleagues.

Investigators should also maintain an awareness of the cultural and religious beliefs of the witness in question, as this may prevent inaccurate assumptions based on that person’s behaviour. For example, silence in western culture often denotes guilt or something to hide, while in other cultures silence denotes respect.

WHAT IS EVIDENCE?

Evidence is testimony, an exhibit, or information supplied or given directly to an inspector (for presentation in court) by a witness which the court listens to and/or uses because its form, substance and source comply with certain legal requirements (i.e. the law of evidence as a whole). Evidence is testimony, whether oral, documentary or real. Evidence must be legally received in order to prove or disprove some fact in dispute.

TYPES OF EVIDENCE

It is important for inspectors to collect material that may be relevant to the investigation, regardless of what type of material it is. The prosecutor should be provided with all relevant materials to prove the elements of the offence. There are a number of forms of evidence that can be presented in court:

- oral evidence – spoken testimony of a witness perceived through their five senses
- real evidence – physical evidence the court can perceive or experience itself and draw conclusions from
- a view of something – scene of the accident
- re-enactment or demonstration
- photographs
- charts, tape recordings
- documentary evidence
NB: Obtaining *originals* is considered best practice. However if the person or defendant objects/refuses to provide *originals*, the inspector must consider the necessity for the original and if the original is required by the person or defendant i.e. it is essential to the operation of the business. In most cases a copy is considered sufficient. If a copy is taken it should be noted in the inspector’s field notes that they sited the original and the copy is a true and accurate copy of the original.

If it is deemed that an original document is required and Inspector should use their coercive powers under s.171 and ensure they comply with provision of s173 of the *Work Health and Safety Act 2012*. An Evidence Management Receipt should be issued for all evidence that is obtained by the inspector whether voluntarily provided or through use of coercive powers.

**SOURCES OF EVIDENCE**

Sources of evidence available to the investigator in any accident are:

- **People**: Witness observations, training, experience etc.
- **Positions**: Physical space and distance relationships
- **Process**: Components of the work system and sub-system
- **Plant**: In use and or available for use – does it comply
- **Papers**: Programmes, standards, procedures, directives, work records, performance, repair and maintenance records, etc.
- **Environment**: Should be considered and noted - lighting, temperature, wet, dry, flat, slope etc.

Inspectors should take particular care with how evidence is obtained, recovered or seized, ensuring that methods used will withstand cross-examination in court. If the methods do not maintain the integrity of the evidence or preserve the chain of evidence, the evidence may not be admissible in court.

**RANGE OF EVIDENCE**

The following list is a sample of the range of evidence that may be obtained during an investigation:

- investigating inspector statement
- statements taken from injured person/s, witnesses, company officials, employee representatives
- description of accident - equipment and materials, sequence of events
- measurements of the physical location and positioning of materials
- materials
- sketch and map evidence
- diagrams
- photographic evidence - camera, video
- physical evidence
- organisational records
- operational tags, charts, maintenance and repair records (by whom, what, where?)
- permits, licences (for all equipment relevant to the accident).
SKETCHES AND DIAGRAMS

Where appropriate, a sketch or diagram can assist to describe the incident. It should show a plan view of the site and indicate measurements from key reference points. Any sketch or diagram should be signed and dated by the person who created it.

For example:

- positions of people and witnesses involved
- positions of equipment
- parts of materials, equipment and environmental structures broken, detached or otherwise damaged
- marks or other indications of impacts
- traces of movements (e.g. footprints, tyre tracks)
- defects and irregularities found in materials and equipment
- stains and or accumulations of fluids
- spilled or contaminated material
- debris lodged by impact or created by impact
- safety devices in both normal and abnormal places
- specific measurements (e.g. trapping points in machines).

SKETCH TECHNIQUE

- must mark the sketch ‘not to scale’
- start from a precise reference point which can be located at any time
- properly oriented by an arrow showing north
- properly identified with a title and the inspector’s name or initials, as well as the date it was made.

PHOTOGRAPHS

Points to observe:

- Photograph from several points of view.
- Use cardboard arrows, fluorescent tape, or some other indicator to highlight specific objects in the picture. A tape or ruler can be used to indicate the size of items in the picture.
- Photograph the entire scene from all angles, followed by close in views of key elements taking note of the compass direction that the photograph was facing.
- Photographs should be made in distant, medium and close sequences for complete description.
- At the time of taking the photograph, the inspector is to take note of the, date, time, direction, lighting and any other details that can assist to validate the photograph.
- The type of camera used make and model.
- Photographs which are taken by an inspector need to be transferred to the photolog template.
• Photographs which are taken by the inspector or any other person should have the following details recorded:
  – photographer’s name
  – date the photograph was taken
  – description of subject
  – location of the workplace.

Where the photographer is not the investigating inspector, a statement must be taken from the photographer to verify their photography if the photographs are used as evidence.

N.B. For further information and guidance refer to SOP WKP 05/0127 – Digital Evidence

TAKING OF SAMPLES

The taking of samples has become a key area of challenge by defence lawyers, not to mention an area of concern for the health and safety of the person taking the sample. By challenging how samples are obtained, packaged and managed, defence lawyers have an opportunity to cast reasonable doubt on the integrity of the evidence resulting in the sample becoming inadmissible at court.

To maximise the opportunity of admitting the evidence at court, and to minimise the health and safety risks of obtaining material of an unknown nature, subject matter experts should obtain all samples where the investigating inspector is concerned over the identity of a substance/item. Contact your team manager or the Legal Team who will consider collection by an expert. A statement must be obtained from the expert to indicate their actions and provide continuity of evidence.

There is a requirement for inspectors to conduct a risk assessment at the scene when determining whether to physically recover evidence. If there is uncertainty as to the substance or material involved or risks in recovering the sample, leave in situ and arrange with the team manager or the Legal Team to have the samples recovered by experts.

N.B. For further information or guidance refer to SOP WKP06/0454 Exhibit Property has detail on seizure and management of hazardous exhibits.

SEIZURE OF EVIDENCE

When an inspector obtains an item of evidence related to an alleged offence whether provided voluntarily or seized through the use of their inspector powers, a receipt for this item shall be provided to the owner of the item, occupier of the workplace or person responsible for the premises if requested. The receipt must be signed and dated by the investigating inspector and should accurately describe the item seized including model and serial numbers if applicable. The issuing of the receipt should be recorded in the Inspectors field notebook.
Items seized by the inspector need to be properly labelled and secured. Small items may be enclosed in plastic bags, sealed and labelled as follows:

- brief description of the item
- organisation name
- location from which the item was seized
- time and date
- inspector’s name
- A clear identifying system i.e. Inspectors initial and a sequential number or the receipt number with the item number.

**NB:** inspectors must ensure that all items of evidence are kept in a manner that will maintain the chain of evidence. The above details must be recorded in the inspector’s field notebook.

For further guidance, refer to:

- **SOP WKP 06/0454 – Evidence Management.**
- **SOP WKP 06/0127 – Digital Evidence Management.**
- **MOP 11/0835 – Powers of Seizure**
- **MOP 11/0812 – Documents and Questions**
- **MOP 11/0815 Forfeiture of Seized Evidence**
ISSUING A WARRANT – WORK HEALTH AND SAFETY ACT 2012 (SA)

- Refer to Model Operating Procedure SAFE 11/0808 Search Warrants

ISSUING A WARRANT - PETROLEUM PRODUCTS ACT 1995

An authorised officer may, with the authority of a warrant issued under the Petroleum Products Act 1995, or in circumstances, in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on a premises.

Pursuant to section 44(2) of that Act, a magistrate may issue a warrant if satisfied that it is reasonably required for the administration or enforcement of that Act. There are no prescribed forms under the Petroleum Products Act 1995 or the Magistrates Court Rules for a warrant application. However, the Crown Solicitors Office has prepared a warrant application form (attached at the end of this section), which is to be filed in the Magistrates Court. This warrant document acts as both the application and then the warrant itself, once signed by the magistrate.

The application must be accompanied by an affidavit as per Form 36 of the Magistrates Court Rules (copy enclosed at the end of this section). In the affidavit, the authorised officer must set out the basis for applying for the warrant and the reasons why the warrant is required for the proper administration or enforcement of the Act.

On receipt of the documents (or by earlier arrangement by telephone) the Magistrates Court will arrange for the matter to be heard by a magistrate in chambers. The magistrate may either issue the warrant, refuse to issue the warrant, or require further information. The magistrate may require the authorised officer to give evidence under oath if not satisfied that there is sufficient information in the affidavit.

The Crown Solicitor’s Office will need instructions (from the Legal Team) to prepare the documentation and attend before the magistrate. In any event, the authorised officer will need to attend before the magistrate in case further evidence is required.

NB: A warrant is not required where it is reasonably believed that immediate action is required. However it is vital that the authorised officer has reasonable belief and they must record what the reasonable belief is.

The Legal Team shall be consulted prior to the application for any warrant.
PETROLEUM PRODUCTS REGULATION ACT 1995 – WARRANT APPLICATION

Petroleum Products Regulation Act, 1995

WARRANT UNDER SECTION 44

WHEREAS

1. I. ................................................. a Magistrate have received an application, made personally and verified by affidavit, for a search warrant from ..................................................... . an authorised officer under the Petroleum Products Regulation Act, 1995;

2. Upon the application, I am satisfied that the warrant is reasonably required for the administration or enforcement of the Act;

I AUTHORISE the above named officer, with such assistants as the officer considers necessary in the circumstances, to use reasonable force to break into or open any part of, or anything in or on the premises situated at

DATED this ...................................... day of ................................................................. 20

.................................................

Magistrate
Form 36 – Affidavit (for use with Warrant Application)

MAGISTRATES COURT SOUTH AUSTRALIA

Form 36

AFFIDAVIT

Registry:

File No:

Complainant/Informant:

Defendant:

I, [full name, address and occupation] of

make oath and say/affirm:

1.

2.

SWORN (or AFFIRMED) by the deponent )

at this )................................................

) (signature of deponent)

day of 20

..............................................................  .

(signature, name and title of person before whom affidavit sworn)
ISSUING A WARRANT – DANGEROUS SUBSTANCES ACT 1979

A warrant may be issued under the Dangerous Substances Act 1979 if a Magistrate is satisfied that there are reasonable grounds to believe:

- that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle
- that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act
- that access is otherwise reasonably required to a place or vehicle in connection with the administration, operation or enforcement of this Act.

An authorised officer may make an application for the issue of a warrant under the Dangerous Substances Act either personally, by facsimile or by telephone [section 28(2)], and the grounds of warrant application must be verified by affidavit [section 28(3)]. An application for the issue of a warrant may not be made by facsimile or telephone unless, in the opinion of the applicant, a warrant is urgently required and there is insufficient time to make the application personally [section 28(4)].

Section 28(5) and (6) set out in detail the provisions that apply to applications made by facsimile and telephone. In the case of facsimile application an affidavit must be provided, and in the case of telephone application, the authorised officer must provide that same information to the magistrate over the telephone.

A magistrate for the purposes of the Dangerous Substances Act 1979 is a Master of the District Court. The two masters of the District Court are currently Mr Berry SM and Mr Kelly SM. The Crown Solicitor’s Office has prepared a warrant, which has now been approved by the Chief Judge of the District Court (copy attached at the end of this section). This document acts as both the application and the warrant, once signed by the magistrate.

The application must be accompanied by an affidavit as per Form 36 of the Magistrates Court Rules (copy enclosed at the end of this section). The matters to be referred to in the affidavit of the authorised officer are set out in section 28(1), namely the reasonable grounds to believe:

- that a contravention of the Act has been, is being, or is about to be, committed in or on a place or vehicle
- that something may be found in, or on, a place or vehicle that has been used in, or constitutes evidence of, a contravention of the Act
- that access otherwise reasonably required to a place or vehicle in connection with the administration, operation or enforcement of the Act.

The magistrate may either issue the warrant, refuse to issue the warrant, or require the authorised officer to provide further evidence.

The Crown Solicitor’s Office will need instructions from the Legal Team to prepare the documentation and attend before the magistrate. It may be that there is insufficient time to do so, in which case the authorised officer will need to make the application themselves. In any event, the authorised officer will need to attend before the magistrate in case further evidence is required.
Dangerous Substances Act 1979 – Warrant Application

Dangerous Substances Act, 1979

WARRANT UNDER SECTION 28

WHEREAS

1. I…………………… a Magistrate having received an application, made personally/by facsimile and verified by affidavit, for a search warrant from

. ................................ . an authorised officer under the Dangerous Substances Act, 1979;

2. Upon the application, I am satisfied that there are reasonable grounds to believe:

   (a) That a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or

   (b) That something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or

   (c) That access is otherwise reasonably required to a place or vehicle in connection with the administration, operation or enforcement of this Act.

   (Strike out whichever is inapplicable).

3. And noting the facts upon which I rely as grounds for the issue of this warrant as follows:

   ………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………

   I authorise the above named officer, with such assistants as he or she considers necessary, to use reasonable force to break into or open any part of, or anything in or on, the place

   ………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………

   This Warrant shall expire at the expiration of one month from the date appearing below.

DATED this ……………………day of ……………………………………………………………. 20

……………………………………………………
Magistrate
Form 36 – Affidavit (for use with Warrant Application)

MAGISTRATES COURT SOUTH AUSTRALIA

Form 36

AFFIDAVIT

Registry:

File No:

Complainant/Informant:

Defendant:

I, of (full name, address and occupation)

make oath and say/affirm:

1.

2.

SWORN (or AFFIRMED) by the deponent )

at this ).................................................................

) (signature of deponent)

day of 20

(signature, name and title of person before whom affidavit sworn)
CHAPTER FOUR: STATEMENTS

- Introduction
- Who is a Witness?
- Primary Goal of Investigative Interviewing
- Practical Points When Taking Statements
- Main Features of a Witness Statement
- The Statement
- Statements From Non-English Speaking People
- Example of a Witness Statement
INTRODUCTION

The interviewing of witnesses and victims is of equal importance to that of interviewing potential defendants, as witness testimony is of immense value to the investigation. In an ideal world the witness would be an intelligent and articulate person who is capable of imparting a comprehensive detailed account of what they saw. However, this is rarely the case.

Inspectors must be able to adapt to a wide range of personalities, including those who have difficulty expressing themselves. Adopting the PEACE investigative interview framework (see Chapter 5, Investigative Interviewing) enables investigators to maximise memory recall, affording opportunities to acquire all material from a witness.

WITNESS INTERVIEWING

Investigators can both obtain and impart information through interviews. The investigator must establish trust with the interviewee, as many witnesses fear the consequences of providing information such as incurring the wrath of employers, of being passed over for promotion or being ostracised by work colleagues.

Therefore, they must trust in the competence of the investigator to deal appropriately with the information they provide. If they have confidence in the interviewer they are more likely to provide them with a full and accurate account. Witnesses have a right to expect that they will be listened to and receive fair treatment.

CORE SKILLS

Investigative interviewers need to develop the following core skills:

- planning and preparation for interviews
- establishing a rapport
- effective listening
- effective questioning.

WHO IS A WITNESS?

A witness is defined as:

‘…one, who sees, knows or vouches for something. One who gives testimony under oath or affirmation in person, by oral or written deposition, or by affidavit. A witness must be legally competent to testify’.

Despite the difference in definition, all victims are also potential witnesses. For the purpose of this manual all references to witnesses includes victims, unless specifically stated otherwise. The success of any investigation is largely dependent on the quality of material obtained from victims, witnesses and potential defendants.

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WITNESS STATEMENT

Listed below are the evidentiary requirements of a witness statement:

- the material in the statement must be relevant to the matter under investigation
- it should always be in the witness’s own language
- a witness cannot give evidence about something which another person told them about (hearsay)
- a witness can give evidence of matters which they saw, smell, said, or heard the accused say, but not what they thought
- a witness can only give opinion evidence if they are a qualified expert
- physical evidence has to be admitted into evidence through a witness who gives the evidence about the item in their statement.

In the preparation of a statement you must constantly keep in mind the purpose for which it is to be used. The reasons for this are:

- to clearly demonstrate the extent and nature of the available evidence, thereby assisting decisions as to whether there is sufficient evidence to support any proposed charge
- for the guidance of the prosecutors if proceedings are taken
- the statements will provide prosecutors with the basis upon which they will conduct the case
- for reference by the witness at a later date to refresh their memory prior to, and at, court.

WHO CAN BE A WITNESS?

The range of people from whom a statement should be taken will depend upon the type of investigation, and the people in control of the activity where the incident took place. For example:

- Injury sustained to person/s:
  - injured person if available
  - witnesses to the incident
  - supervisors
  - chairperson/member of the safety committee/employee representative
  - management representatives
  - first emergency services personnel on scene
  - police (if they attended, SAPOL format statements are accepted).

- Dangerous occurrences where injury is not sustained:
  - witnesses to the incident
  - management and people in control of the workplace
  - maintenance officer, where appropriate
  - supplier of plant, equipment or substance – where appropriate
  - manufacturer of plant, equipment or substance, where appropriate.
The earlier points simply highlight persons or occupations that may have material relevant to the investigation and it is not an exhaustive list. Obtaining statements from victims and witnesses is crucial in any investigation, however, there may be occasions when it is necessary to conduct a fast track interview with a witness who possesses material that is likely to rapidly progress the investigation, and possibly result in:

- the early identification of a potential defendant
- the recovery of material/evidence connected with the offence
- preventing the imminent disposal or destruction of material connected with the investigation
- preventing the commission of other offences/breaches
- bringing the investigation to a rapid conclusion.

In these circumstances the investigator has to consider the immediate needs of the witness, who may require medical attention or the presence of a suitable adult. Common sense has to be applied, and the interview should be limited to obtaining sufficient information to immediately progress the enquiry.

The circumstances surrounding the fast track interview should be recorded in the inspectors running log or notebook, and permission to conduct the interview obtained from medical staff if the witness is receiving non-urgent attention. Invariably, volume investigations will not require an explicit interview strategy. Nevertheless all investigators should be aware of the anxiety and misapprehension that witnesses may feel when they are exposed to justice processes.

For many, this will be the only time in their lives that they have been a victim or witness and they may not understand how the criminal justice system operates. Therefore, they will require reassurance and information throughout the process. Whether tasked with a volume or major investigation, investigators must recognise the individual needs and concerns of witnesses.

**ASSESSING A WITNESS**

The investigator is required to make an initial assessment of the witness prior to conducting any interview, in order to determine whether they can be categorised as:

- **Vulnerable by reason of:**
  - age (if under 18 years of age an appropriate adult must be present)
  - mental disorder
  - significant impairment of intelligence and social functioning
  - physical disability
  - physical disorder.

- **Intimidated by reason of:**
  - age (if under 18 years of age an appropriate adult must be present)
  - social, cultural or ethnic background
  - domestic and employment circumstances
  - religious beliefs
  - political opinions
  - behaviour towards the witness on the part of the accused/employer, members of the workforce
  - any other person who is likely to be an accused or witness in the proceedings.
SUPPORTING A WITNESS

All witnesses will require a degree of support during any investigation. In some circumstances this support may be provided by verbal reassurances from the investigator.

In more serious investigations, support may also be given by deploying specially trained individuals, or by providing information regarding a number of community and charitable organisations that offer valuable services to witnesses. These services that can assist the investigator to support a witness include:

- victim support schemes – including the witness service
- social services
- health service
- race equality councils
- religious organisations or groups.

Investigators must recognise the impact that being a witness to an event can have on an individual. The person may feel shocked, traumatised, vulnerable or intimidated by the experience. Adopting a calm, reassuring approach and providing information about support organisations can assist in alleviating anxiety and fear.

In the majority of cases, investigators can support witnesses by providing relevant information about the progress of the investigation and any significant developments. Witnesses should be provided with the following details:

- the name of the investigating Inspector
- contact details for the investigating Inspector
- incident reference number (if applicable).

When a potential defendant is identified or charges are laid, the witness should be informed and kept updated about court appearances. This will be undertaken by the Investigation Liaison Officer in most cases.

PRIMARY GOAL OF INVESTIGATIVE INTERVIEWING

While there are similarities between different forms of professional interviewing, important differences arise from the special requirements of each. There is also a primary goal in each case.

For the investigative interviewer, obtaining information, gathering evidence and seeking the truth are the primary goals. Interviews with witnesses, victims or potential defendants will help determine the facts from which later decisions are made.

THE IMPORTANCE OF INTERVIEWS WITH WITNESSES AND VICTIMS

A major source of evidence in an investigation comes from interviews with witnesses and victims. These interviews should be accurate and in as much detail as possible, as this information may enable you to validate or challenge a potential defendant’s version of events.
ADMISSIONS FROM A WITNESS

An admission from a witness may go some way to supporting a subsequent prosecution and conviction, but should not be solely relied on to guarantee it.

Evidence should always be sought within the interview that will help validate any admissions that are made. Faced with an admission, you should seek further details to help confirm the account. However fairness must be applied and the potential defendant must be made aware of their rights before they are questioned further.

JUDGES RULES

It is a basic tenet of the Common Law that a person is not obliged to self-incriminate. The right to not self-incriminate can, however, be removed by Statute. This will be discussed at a later stage in relation to the Inspector's 'coercive powers'.

Voluntary Admissions

Inspectors should use the 'The Judges Rule' when they are not using their 'coercive powers' that is a statement/admission is made voluntarily by a person (an individual). If a person makes admissions to an offence then an Inspector must warn that person 'I am going to ask you some further questions. You are not obliged to answer them. However anything you do say may be given in evidence. Do you understand that?'

Coercive Powers

If an Inspector is using their 'coercive powers' under s171 of the Work Health and Safety Act 2012, the 'Judges Rule' does not apply and should not be used. However an Inspector is still required to undertake a number of actions including:

- Produce Inspector identification
- Advise that that are requiring questions to be answered or document provided under their s171 inspectors powers
- *Advise of s172 – the right of individuals to not self-incriminate
- Give advice that they do not have to produce information covered by s269 – legal professional privilege
- Put requirement for the production of documents in writing (Notice to Produce), unless immediate access is required
- Give warning that failing to comply without reasonable excuse (see s172 and s269), is an offence which is punishable by conviction and a maximum $10,000 fine

* A company does not have the right the not self-incriminate under s172.

N.B. For further information and guidance refer to the:

- MOP for Power to Require the Production of Documents and Answer Questions; and
- Operational Guideline of Legal Professional Privilege
- S171 Compel Script
Do not take the accuracy of what is said for granted, as later challenges to the truth or fairness of a confession can always be made by the defence. You should anticipate these challenges by obtaining evidence from all other available sources as well as during the interview with the potential defendant.

**VULNERABLE WITNESSES**

Vulnerable people may include otherwise capable people who, by virtue of the nature of the offence and their experiences as witnesses, victims or potential defendants, are too distressed to give a good account of themselves.

This may mean that they are incapable of providing a reliable and accurate account of the incident under investigation. The kind of action you need to take after having identified a witness as being potentially vulnerable or intimidated, very much depends on the circumstances.

However, the possibility that the witness will be interviewed on a more substantive basis, either by visually recorded statement or by means of an audio or written statement, should always be kept in mind. For this reason, you need to think about what you are going to say to the witness and how you are going to say it.

Firstly, you will need to ask questions necessary to gain an understanding of what is alleged to have happened, and to determine your initial action. Such initial action is likely to focus on any need for first aid or medical attention, the preservation of the scene and physical evidence, securing other witnesses and the identification of potential defendants.

To go beyond this in a bid to obtain more information than necessary may result in allegations being made that the witness testimony has been contaminated prior to the substantive interview taking place. Therefore, you will need to balance finding out what you need to know from the witness to determine your initial action, with the prospect of contaminating the witness evidence on a case-by-case basis. How much you need to know will depend on the circumstances of the case as they are presented to you.

The Legal Team will provide guidance in relation to interviewing vulnerable witnesses or victims.

It is important that you make a written record as soon as possible after any discussion with a vulnerable or intimidated witness, as this may assist any other inspector who subsequently takes over responsibility for the investigation, and may be required at any later trial.

You will then need to inform your Team Leader or Team Manager who will ensure that all appropriate action has been taken and that concerns about vulnerability are communicated to the Legal Team as appropriate.

**PRACTICAL POINTS WHEN TAKING STATEMENTS**

Dealing with witnesses is an exercise in public relations, as the inspector’s attitude may have tremendous impact upon whether the witness will be hostile or friendly.

The witness statement is an accumulation of all information the witness has given the inspector and is made in a documentary format. The statement is used at a later date to help refresh the witness’s recollection at court or be used as evidence in the event that the witness has died or is not able to attend the proceedings. The defence may also use it to challenge the witness if there is an attempt to change the story.

**NB:** The *Work Health and Safety Act 2012* (SA) does not differentiate between minors and adults. However, if the witness is under 18 years of age, the inspector must seek concurrence from their parent/guardian or another adult recognised by the minor to conduct the interview.
This will assist in preventing any unnecessary criticism of SafeWork SA’s investigation procedures. The parent/guardian or other person must countersign each page of any statement.

Before obtaining a statement which will be used as evidence in Court concerning a breach of legislation, the following activities should be completed:

- ensure that statements are conducted at a location which maintains confidentiality and is conducive to witness response
- prior to the commencement of the statement, the inspector shall explain the procedure to be followed during the recording of their statement to the witness
- it should be explained that the statement may be used as evidence in a court of law
- it should be explained that the witness may be required to restate their statement in a court of law
- it should be explained they may be liable to prosecution if they wilfully stated in it, anything that I know to be false or do not believe to be true
- the witness shall be advised of the proposed method of recording their statement (e.g. tape recorded or written in the inspector’s A4 field notebook), and they must be provided with an explanation of the process involved in the taking of a statement.

PROVIDING COPIES OF STATEMENTS

The inspector should not provide copies of a statement to a witness. If a statement is to be considered to be released this should be discussed with your Manager before providing a copy of a statement. The reasons are primarily because you are writing the statement as you see it, and there is a risk that the witness will return to work and show it to other employees or the employer.

This may become problematic if enforcement action is to be taken against an employer, as disclosure of statements will make them aware of all the evidence before being interviewed about the offence. The defence could also suggest other peoples testimony has been tainted by knowing the content of another’s statement.

There is also potential for companies or managers to place undue pressure on employees to obtain their statements in order to give the company an indication as to any possible prosecutions.

Employers who obtain the statements of employees may realise they are liable for prosecution and place obstructions in the path of the investigator or unlawful influences over the employees to retract or amend their accounts.

MAIN FEATURES OF A WITNESS STATEMENT

The statement should be taken in a logical sequence and all statements must include:

- the following preamble:
  
  ‘This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness. This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false or do not believe to be true’.

- the name, occupation, date of birth
- **N.B.** the residential address, contact telephone number/s of the witness should not be recorded on the statement but noted in the inspector’s field notes.

- the name and title of the inspector taking the statement, the location, the date and the time it was taken

- introductory paragraphs including details that determine the activity, qualifications, experience, and position of the witness

- a statement body - i.e. the main points recorded in sequence, as the circumstances occurred

- a conclusion that covers any point not previously stated and that brings the statement to its natural conclusion.

**NB:** Read the statement over slowly and clearly, making sure that the witness understands to what they are testifying. Ask them whether they wish to add, change or remove anything, and if it is a correct record.

It is also important that:

- any alterations made with the witness’s statement are initialled by the witness

- any errors which may occur during the statement are drawn to the attention of the person making it and they should be asked to append their initials where they correct any such errors

- the signature of the person, the date the statement was made are placed at the foot of the statement and that the investigator taking the statement witnesses this signature

- if the statement is more than one page, that each page is signed by both the witness and recording officer

- if a person refuses to make a statement an inspector should consider the use of their coercive powers. This decision should be taken in light of the value of the evidence the witness may give and managing the relationship with the witness.

- if a person refuses to make a statement, and you elect not to use coercive powers, the fact that they declined to make a statement, reasons for their refusal, their work details (position, etc.) and their importance in relation to proving the case, are recorded in the inspector’s field notebook - this information will be important to the prosecutor, who may consider other legal methods of compelling the witness to assist.

Also remember:

- An individual has the right to refuse to incriminate themselves and may decline to give a statement. If this occurs, the inspector should then request information in a question and answer format.

- A corporation does not have the right to decline to answer questions for fear of self-incrimination.
THE STATEMENT

Before commencing to take a written statement from a witness, refresh yourself with the PEACE investigative interview model. Have the witness tell the story in their own words without interruptions. You may then proceed to question them on points you consider necessary and matters raised by them, which need further elaboration. When you are satisfied that you have elicited all the relevant information from the witness, proceed to present it in statement form.

When interviewing:

- keep your witness to the point
- do not include issues that are irrelevant. As a general rule, if you are in doubt about the relevance of a particular piece of information, include it
- do not put words into the mouth of the person whose statements you are recording
- always quote the exact words as said by the witness.

NB: A statement full of faults is hard to examine, as it is difficult to see the account in an orderly, logical sequence.

When taking a statement consider:

- the purpose the statement is required to fulfil
- the main features of the statement
- how the statement should contain all the evidence that the witness may correctly give
- how the sequence of the written statement should follow that of the oral evidence
- the need for correct signatures and witnessing of these
- the requirement to prepare statements that contain all of the features to be proven by the witness, and the need for extreme attention to detail
- encouraging concise descriptions and ensuring that the exact words are recorded
- requesting the person making the statement to sign each page of the inspector’s notebook
- that neatness in statement presentation leads to ease of reference and indicates efficiency on the part of the officer making the submission
- that all, or as many elements of the alleged offence are addressed in the statement
- placing facts obtained from the witness in a logical sequence, and in the same order the witness will be required to give their evidence in court.

STATEMENTS FROM NON-ENGLISH SPEAKING PEOPLE

When it is necessary to take a witness statement from a person whose native language is not English, it is essential that the services of an interpreter be obtained if there is any doubt of their understanding of English.

When using an interpreter, you should take a statement from both the witness and the interpreter, as the interpreter is the only person that can give evidence as to what the witness has said. Ensure that you find out from the interpreter the correct language used, whether it is a single language, or a mixture of languages.

Independent interpreters are available through: Multicultural and Ethnic Affairs Commission and Office, Interpreting and Translation Centre, Ph.8226 1990.
EXAMPLE OF A WITNESS STATEMENT

Appendix B provides an example of a statement illustrated using an actual witness statement from a fatal accident investigation.

Note the attention to detail of the witnesses recall of events – this is good evidence. This is a result of the inspector asking the witness (during the interview) questions that ensured they provided only information relevant to the inspector’s enquiries.

INSPECTORS STATEMENT

As this statement is the core of a brief of evidence, it is worth investing the time to get it right. The investigating officer’s statement must clearly present the facts grounded thorough investigation. It is not about providing opinions.

MAIN FEATURES OF AN INSPECTORS STATEMENT

An inspector’s statement should outline all of the following points and include all information that is relevant to the investigation:

- detail the times and dates of the relevant facts and circumstances of the observations made and actions taken during the investigation
- document conversations the Inspector has had with persons suspected of committing offence(s) in the first person, particularly any admissions made. This conversation should be transposed from the accurate and contemporaneous notes made by the Inspector
- Other conversations should be included only if they are relevant to the matter and can be summarised. A reference to the conversation should be made using similar language as below:
  
  I had a conversation with Mr Bill BLOGGS, the plant supervisor. I recorded notes of that conversation in my field notebook at the time. Mr BLOGGS advised me that {insert summary of conversation}

- detail the facts and circumstances associated with the gathering and production of relevant evidence to establish a chain of custody.
  - where and from who evidence was gathered;
  - how it was preserved; and
  - how it was secured; and
  - if it was ever accessed and when and by whom.

The statement follows this structure:

- The first paragraph is standard: ‘This statement made by me…’
- The second paragraph outlines the inspector’s employer, experience and qualifications (if relevant).
The following paragraphs set out the background of the Agency’s involvement, i.e. how you went about the inspection, including dates and approximate times. This may include information such as:

- When and how you were notified of the incident.
- When you first attended and/or talked to someone, who else was involved (SWSA inspector, company representatives) and what you did.
- Details of all documents obtained, how they were obtained and from whom. Ensure any reference to documents is clear and specific, e.g. ‘document titled contract of employment on XYZ letterhead, signed by Mr Bloggs and dated 12 February 2007’.
- Details of all photographs taken i.e. identifying number and describe each photograph. If the photograph is a re-creation of the incident, state this by writing ‘re-created’ in brackets (include a brief description of the camera used i.e. digital camera, make and model, as follows:
  - P1000101.JPG: Ford 4000 tractor showing proximity to sealed road
  - P1000102.JPG: from loading dock to area of accident.
- Enforcement notices issued.
- Any observations you made.
- Details of any measurements taken.
- Diagrams (if relevant) of layout.
- Any steps you took to assist compliance and follow up on progress of compliance with improvement and prohibition notices. If the employer attempted to comply, but was unable to do so through no fault of their own, explain their efforts and the nature of the obstacle. Also alert the reader to opportunities for progress that the employer failed to exploit.
- Details of statements taken, by who, where, when (signed, amendments).

When finalised ensure:

- the inspector signs every page
- it is in chronological order.

EXAMPLE OF AN INSPECTOR'S STATEMENT

Appendix C provides an example of a statement illustrated using an actual inspector’s statement from a notifiable matter.

ADDITIONAL STATEMENTS

An addendum statement is a further statement made by a witness or an inspector:

- who wishes to put more information into their original statement
- has recalled further details
- realise they have made a mistake
- as a result of a request by an Inspector due to further information being obtained, or other reason.
An addendum statement is made in the same manner as the witness’s or inspector’s original statement. Both original and addendum statement contents are entered into evidence via oral testimony.

The addendum statement:
- explains the changes or additions to the original statement
- contains an introductory paragraph that links it to the original statement
- must be clearly labelled
- should be prepared in the same way and signed in the same way as the original statement, but noting it is an addendum statement

There is no need to re-do the original statement to incorporate the changes. Re-doing the original statement will leave the witness and inspector vulnerable during cross examination as it may appear information has been hidden not simply remembered.

**EXAMPLE WORDING**

*Any addendum statement must include the following introductory statement ‘This is an addendum statement to a statement which I signed and dated on [date] in relation to [ ]’*

*OR*

‘On [ date ] I made a statement to Inspector [ name ] in relation to [ incident ]. That statement was true and correct, however following [ insert circumstances ] I now recall [ insert new information ].’
CHAPTER FIVE:
INVESTIGATIVE INTERVIEWING

- Introduction
- The Seven Principles of Investigative Interviewing
- Giving Interviewing a Structure: ‘PEACE’
- The ‘PEACE’ Investigative Interviewing Framework
- Working With Solicitors
INTRODUCTION

This chapter provides practical advice to guide investigators through the process for the investigative interviewing of victims, witnesses and potential defendants in accordance with the PEACE investigative interviewing model. This model maximises the quantity, reliability and accuracy of material gathered.

The primary goals for the investigative interviewer are:

- obtaining information
- gathering evidence
- seeking the truth.

Interviews with witnesses, victims or potential defendants will help determine the facts on which later decisions are taken, and are a major source of evidence in an investigation. Interviews should be accurate and as detailed as possible, as the information provided by witnesses and victims may enable you to validate or challenge a potential defendant’s version of events.

The interview structure must follow the recommended PEACE model.

Recording an interview with an alleged potential defendant may be done in a variety of ways. The preferred method of interviewing will be:

1. video and audio recorded
2. audio recorded only
3. contemporaneously hand written and then typed.

The PEACE model is easily applied to all interviews, regardless of how the interview is captured.

THE SEVEN PRINCIPLES OF INVESTIGATIVE INTERVIEWING

We shall examine each of these principles in turn, as they provide an authoritative guide to investigative interviewing.

Principle 1

The role of investigative interviewing is to obtain accurate and reliable information from potential defendants, witnesses or victims in order to discover the truth about matters under investigation.

This principle embodies a number of important points and reiterates what we have been saying about the principles of investigative interviewing being applicable to witnesses, victims and potential defendants.

All information obtained during the interview should be accurate, in that it is as complete as possible without omission or distortion, in order to discover the truth about matters under investigation.

The information also needs to be reliable, in that it has been given truthfully and will stand up to subsequent scrutiny. Information can be used to further the investigation, open up other lines of enquiry or act as a basis for questioning others.
**Principle 2**

Investigative interviewing should be approached with an open mind. Information obtained from the person who is being interviewed should always be tested against what the interviewing officer already knows or what can reasonably be established.

An open mind means that nothing should be pre-judged and you must be equally prepared to believe what people might say, and to guard against deception. While witnesses and victims are generally trustworthy, you must be aware that they can invent stories to protect a friend, work colleague or the employer, or to distract you from their own involvement.

Potential defendants may also make false admissions in order to protect others. Therefore, you must use your intelligence and common sense. This principle requires that you consider what the interviewee says in light of what you know.

**Principle 3**

When questioning anyone, an investigator must act fairly in the circumstances of each individual case.

This means taking into account the characteristics of the person that you are talking to. For example, you may need to be more understanding with a person who has had no previous experience of being investigated. This can be done by introducing and phrasing questions more carefully. Conversely, people who have more experience of the investigation process may need to be dealt with in a firmer manner.

It would be unfair to allow your personal interests, views or feelings to influence your attitudes or behaviour in favour of, or against, any individual. Witnesses, victims and potential defendants should be given a fair hearing whatever your personal feelings about them may be.

It is the circumstances or merits of each case that must determine the amount of time we give to those who allege they have been victimised, who claim to have relevant information, or who deny committing an offence.

Our reactions to people as individuals inevitably influence our judgements about what they have to say. With training and practice we can question people and respond to the information they wish to provide fairly and without prejudice.

**Principle 4**

The investigative interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.

An investigating officer has the duty to obtain accurate and reliable information. However, obtaining a complete and reliable account from witnesses, victims and potential defendants may not always be easy. Witnesses, victims and potential defendants may provide false information, untruthful answers, be economical with the truth or just downright dishonest.

As the investigator seeks the truth, they are entitled to be sceptical if this is justified in the interest of fairness, and where there is good reason for suspicion, it is right to be persistent on these grounds alone.

Equally, inspectors may also be persistent if they feel there is more information that could be provided; careful and continued questioning will ensure that this occurs.
**Principle 5**

**Even when a potential defendant exercises the right of silence, investigators still have a right to put questions.**

This principle reaffirms the right of inspectors to put questions to those they believe can help establish the truth of a matter under investigation.

Potential defendants have the right to remain silent. The practical problem for the interviewer is not so much whether to continue questioning, but how to continue questioning in an effective and acceptable way. As the potential defendant must be given an opportunity to respond to all the relevant questions, you must ensure that you have asked all the relevant questions. It is important that you give the potential defendant sufficient time to decide whether or not to reply and to formulate their answer.

Also keep in mind that the problem of reluctance to answer questions is not limited to the case of the criminal potential defendant; witnesses and victims may also be reluctant to talk for various reasons.

**Principle 6**

**When conducting an interview, investigators are free to ask questions in order to establish the truth.**

In court, the lawyers are adversaries and have to pit their wits against one another according to rules that the judge will enforce. Lawyers' questions are constrained by the rules of evidence. This principle reminds you that an investigation to discover the truth is not the same as proving an argument in court; it is not subject to the same rules.

An investigator can ask those questions that need to be asked in order to establish the truth. You need not be constrained by the rules governing the admissibility of evidence, although your questioning must be professional.

**Principle 7**

**Vulnerable people, whether victims, witnesses or potential defendants, must be treated with particular consideration at all times.**

‘Vulnerable’ witnesses are:

- children under 18
- people whose quality of evidence is likely to be diminished because they:
  - are suffering from a mental disorder (defined by the Mental Health Act 1993)
  - have a significant impairment of intelligence and social functioning
  - have a physical disability or are suffering from a physical disorder
- anyone else who may be in need of particular consideration.

It is important to recognise that being vulnerable does not automatically exempt or disqualify a person from being interviewed. Vulnerable simply refers to people who are incapable of fully representing themselves or protecting their own interests. Inspectors must ensure that prior to interviewing or taking a statement from any of these groups, that an appropriate adult is present to represent the interests of the person.
GIVING INTERVIEWING A STRUCTURE: PEACE

PEACE is a process that provides structure for an investigative interview. The term interview structure recognises that the interview is something we build or create. PEACE stands for:

- **P** Preparation and Planning
- **E** Engage and Explain
- **A** Account
- **C** Closure
- **E** Evaluation

As the interviewer, you are primarily responsible for the planning and conduct of the interview. A well planned and carefully conducted interview has a good chance of obtaining accurate and reliable information. The PEACE structure helps you achieve this.

Obtaining an admission from a potential defendant is always a satisfying outcome to any interview, however many potential defendants do not admit their guilt or try to justify it with mitigating circumstances. The adoption of the PEACE interview model provides a structure where inconsistencies or lies are readily identified, are subject to challenge during the interview, and are capable of being proven in court. Quite often, the ability for prosecutors to prove a potential defendant is lying is of equal weight to that of an admission.

The successful interviewer must be armed with all relevant information or evidence before challenging a potential defendant. Therefore, before challenging during an interview, be prepared with all information to maximise the impact of the challenges.

THE PEACE INVESTIGATIVE INTERVIEWING FRAMEWORK
PLANNING AND PREPARATION

During the course of an investigation it may be necessary for you to conduct a number of interviews with victims, witnesses or potential defendants. You will need to decide the order in which to conduct these interviews to maximise their effectiveness.

The timing of interviews within an investigation needs to be carefully managed, and the objectives of any particular interview must be clearly defined. First of all, you need to decide whether or not an interview with a particular person is necessary now, or whether there are more important priorities to attend to.

How you interview and the effectiveness of that interview will be influenced by the amount and quality of the information you have previously obtained from other sources (see Chapter 4: Introduction to investigations – Sources of material and evidence). Defining your objectives will help clarify fundamental decisions that have to be made about the interview.

Also consider the interview requirements and strategy, such as where to conduct the interview. All these decisions constitute part of the planning and preparation phase.

The following points should be considered in relation to each other in the planning and preparation phase of all interviews:

- how the interview may contribute to the investigation
- what is known about the interviewee, and what needs to be established
- offences and points to prove
- practical arrangements
- pre-interview disclosure of evidence and management of active defence

Each point should be considered when preparing for an interview. The circumstances of each case will determine the importance of each of these points and their impact on one another.

HOW THE INTERVIEW MAY CONTRIBUTE TO THE INVESTIGATION

Planning and preparation for an interview gives you an opportunity to review the investigation, establish what evidence is available and decide what you want to achieve in your interviews. Every interview must be prepared with the needs of the investigation in mind, and you have to consider how the evidence from this interview might help you establish the truth of the matter under investigation.

Consider such questions as:

- Which persons need to be interviewed and in what order?
- Why is the viewpoint of a particular interviewee so important?
- What information do I now need to obtain?
- Do I interview the interviewee now, or wait until I have obtained more information about the circumstances of the offence?

Such questions will help you obtain relevant and useful information from the interview. Investigations or Legal Teams can provide advice on interview strategy.
WHAT IS KNOWN ABOUT THE INTERVIEWEE AND WHAT NEEDS TO BE
ESTABLISHED?

To interview effectively you need to take account of the interviewee as an individual. Consequently, you may need to gather the necessary background knowledge. Information that will help you to establish the interviewer/interviewee relationship includes:

**Age**

Knowing their age will help determine the most appropriate time for the interview and whether an appropriate adult will be needed.

**Gender**

It may be important to consider the gender of the interviewee. For example, a female worker may feel more comfortable talking with a female inspector, and this should be accommodated where possible. Consider whether you are the most appropriate person to conduct the interview.

**Culture**

Culture can affect the way a person prefers to be addressed, and so you must consider how formal your approach needs to be.

Does the interviewee have a strong regional dialect, and if so, will you be able to understand them? Does the interviewee understand or speak English? Consider the use of an interpreter.

**Education**

Knowing a person’s educational background and achievement can provide an indication of their vulnerability. Interviewees who are disadvantaged because of an intellectual incapacity may not understand the caution or significance of your questions, and the implications of their answers.

**Physical and mental health**

Some interviewees may be vulnerable because of the condition of their physical and mental health. You should be alert to signs and symptoms of health problems during your planning and preparation.

If you do not feel able to make an informed decision, consider getting advice from a suitably qualified person.

**Traumatic experience**

Consider not only the background and personal characteristics of the interviewee, but also the experiences they have recently undergone as a witness, victim or potential defendant.

This may affect the timing of interviews because of their need for treatment, counseling or social support. Also consider your own mental and physical state after witnessing an incident, as you may not be in the best frame of mind to conduct an interview.

**Offences and points to prove**

It is important in all interviews that you know the points necessary to prove the offence, or possible offences, in question. However, the need to cover these points should not
dominate the interview by controlling the flow of information, nor should it artificially constrain or distort the account of events given by an interviewee.

Therefore, it is important that the interviewee is encouraged to provide a full explanation of the event(s) before being asked specific questions that are relevant to the proof of any offences that may have been committed. You must clearly identify all the possible offences that you are investigating as part of your planning and preparation. You should determine the points to prove and any defence that might be offered within the evidence matrix.

**Practical arrangements**

Practical arrangements are an important consideration in the planning and preparation for an interview. These practical issues apply to the planning of witness, victim and potential defendant interviews. Consider:

- visiting the scene
- searching the premises
- interview location
- interviewer roles
- time
- equipment
- exhibits and property.

**Visiting the scene**

Visiting the scene of an incident or an offence can assist your planning and preparation for interviews, particularly if you have no previous knowledge of the location.

**Recording the scene for future reference**

Where necessary, obtain photographs or a video recording of the scene. If this is not practicable, make or obtain a sketch plan of the scene. This evidence-gathering process will assist you and other investigators to become orientated with the event. It will also provide the interviewer with information that may be needed to conduct an effective challenge to an interviewee’s account.

This process will also assist the Crown Solicitor’s Office (CSO), the subsequent case at court, as well as the magistrate when they try to visualise the scene when determining the evidence.

**Interview location**

Some interviews with witnesses or victims may be carried out at a place other than SafeWork SA premises. You should always consider surroundings and the possibility of noise and interruptions (e.g. many people would prefer their own home, but this may not allow enough peace and quiet).

Remember that recalling information from memory requires concentration and therefore somewhere quiet. Consider whether it is appropriate to use the person’s house or place of work, or, if there are exhibits, how you will get them there. You also need to consider the possible implications of interviewing a witness or victim at home or at work, if either place was the scene of the incident.
**Interviewers’ roles**

There are real advantages when two inspectors are able to conduct interviews together and it is important that they work together in planning and preparing for the interview.

The roles and responsibilities of each officer should be considered and agreed to before the interview. Thorough preparation will avoid the possibility of the second officer interrupting or breaking planned silences or pauses between questions.

Your plan should include when the second officer is going to ask questions; this might be at the end of each topic or when the first officer has finished asking all their questions in relation to all the topics.

Avoid at all costs the situation where interviewers interrupt each other or where each asks alternate questions, as this results in a poor and dysfunctional outcome.

**Exhibits and property**

Some exhibits and property may be too large to show in an interview room or at the home address and so alternative arrangements may need to be made, such as using photographs or video recordings of the items. All property should be clearly marked and identified to assist in the interview. Ensure that exhibit management is part of the planning stage for interviews.

**PRE-INTERVIEW DISCLOSURE OF EVIDENCE AND MANAGEMENT OF ACTIVE DEFENCE**

If you have reviewed your evidence and decide to interview the potential defendant, you must consider whether and when to disclose the various pieces of information in your possession to a defence lawyer. In some cases you may feel it appropriate to disclose all your information to the defence lawyer prior to the interview. However, there is no requirement for you to do this.

The Legal team can assist in preparing an interview strategy and managing disclosure to defence lawyers during the interview stage.

Investigators still retain the right to decide how much information they will disclose prior to interview. The Legal Team can provide assistance on matters regarding disclosure of information to interviewees and/or their legal representatives.

Remember, the important points to consider are:

- what to disclose
- when to disclose
- how you are going to disclose – i.e. verbally or in written format
- what not to disclose
- why you are not disclosing particular information
- how to handle non-disclosure if challenged
- recording your decisions.
MAKING A WRITTEN INTERVIEW PLAN

A written interview plan summarises the aim(s) of an interview and provides a framework on which to base your questioning. A written plan will give you the confidence and flexibility to conduct a professional and effective interview.

You should consider including:

- the range of topics and key points you plan to cover
- the points necessary to prove the possible offence(s) under investigation
- any points which may be a defence for committing the offence(s) under investigation
- introduction of exhibits
- evidence which suggests he/she might have committed the offence
- plans to handle information/evidence that emerges from the interview not previously known
- any other points arising from your notes.

These points may be added to during the interview as the interviewee introduces new information which requires clarification or challenge.

A written plan will assist you to:

- keep track of what has been covered and what remains to be dealt with
- identify areas where the interviewee’s account conflicts with what is already known or, has been suggested in other accounts
- identify new information while keeping track of the purpose of the interview
- identify any issues that have not been covered.

N.B. A template for an Interview Plan can be located in E-Manual or Word templates.

INTRODUCTION TO THE INTERVIEW PHASE

As shown in the diagram below, the interview is divided into three phases:

1. **Engage** and Explain
2. **Account, Clarification** and **Challenge**
3. **Closure**

At the earliest opportunity you should establish a relationship with the interviewee and seek to maintain it throughout. This is what is meant by **engage**.
At the beginning of an interview you will need to explain the purpose of that interview, the rights of the individual, ground rules and any relevant procedures to ensure the interviewee understands. Account, clarification and challenge, is where you obtain the interviewee’s full account of events. You may need to clarify or challenge this account because of inconsistencies in what they have said or with other evidence in your possession.

Engage and explain is the first phase of an actual interview. During this phase you begin to establish a relationship between yourself and the interviewee. Engage is the first step in order to encourage conversation. Explain is used because the interviewee must understand the purpose of the interview.

ENGAGING IN CONVERSATION

Engaging someone in conversation is not always an easy task, especially if the person is a stranger. Factors such as their background, age and gender may also make it more difficult. Witnesses, victims and potential defendants are usually strangers and from diverse backgrounds and therefore the way you initially engage with them in conversation will not be the same in every case.

MANAGING FIRST IMPRESSIONS

First impressions may influence how a conversation develops, and interviewers and interviewees can be influenced by appearance, manner and speech, regardless of what is said.

Factors such as interviewer or interviewee anxiety may make it difficult to manage first impressions. You may believe that a witness is reluctant to speak to you or that a potential defendant has been advised not to answer your questions.

An interviewee may not have had any previous contact with an investigator. This may cause the interviewee to be anxious. The result of this is that both parties may enter into conversation reluctantly, thereby confirming that their anxiety was justified.

Therefore you must give thought as to how you are going to manage the opening of the interview.

CREATING THE RIGHT ATMOSPHERE

In any investigative interview it helps to have an understanding between the interviewer and interviewee. To establish a working relationship you should treat them as individuals with a unique set of needs by personalising the conversation.

This can be done by:

- how you address the interviewee
- establishing their immediate needs/concerns
- showing an interest in them and their individual circumstances
- showing empathy (as appropriate).

Your responses to an interviewee must not be the result of a stereotypical image based on culture, clothing, speech, behavior, etc.

Your aim is to create an atmosphere in which the interviewee will want to talk to you.

Sometimes your efforts may not be effective due to personality differences, or the offence being such that the witness, victim or potential defendant wishes to talk with another inspector (e.g. an inspector of their own gender). In these circumstances, you must consider stopping the interview and finding someone else to conduct it. The new interviewer will need to be fully briefed about the interview to date.
Establishing a professional, working relationship is just as important in a potential defendant interview as in any other. You may find this takes more effort because of the statutory requirements imposed on investigators when interviewing potential defendants, however, you can establish a working relationship by acting in a professional and considerate manner before the interview begins. This can be achieved by:

- keeping the interviewee informed of what is happening (e.g. when they are going to be interviewed)
- being realistic about how long your preparations will take and trying to keep the person informed
- ensuring that the interviewee receives sufficient refreshments
- ensuring their legal entitlements have been appropriately dealt with
- considering whether there are any domestic issues that the interviewee may be worried about, such as collecting children from school.

Some of these tasks may not be your responsibility but by ensuring they have been carried out and keeping the interviewee informed, you will help develop a good working relationship.

**EXPLAINING THE INTERVIEW PROCEDURE**

As you engage the interviewee in conversation you can begin to explain the purpose of the interview and the form it will take. This will consist of three main issues:

- reason(s) for the interview
- routine(s) that will be adopted
- outline of the interview.

**Reason(s) for the interview**

The interviewee may know why they are being interviewed, but it would be wrong to assume this without checking first. They may simply be unclear of the potential importance of their contribution to the investigation. As in many cases this will be their first contact with an investigatory Agency, it is important to ensure they have a clear idea of what is expected of them.

Do not assume that an interviewee is familiar with investigations and the criminal justice system. With potential defendants, this means ensuring that they know and fully understand the reasons for their interview.

**Routine(s) that will be adopted**

While you may be familiar with interviewing and the routines that are involved, many interviewees are not. Therefore, it is useful to explain these routines at an early stage to help relax the interviewee.
The routines include:

- introducing and explaining the roles of any other persons present, (with potential defendants this must be done with the tape running)
- informing the interviewee as to how, why and by whom notes or a statement will be taken
- explaining the introduction of exhibits
- explaining the formalities of writing a statement
- explaining the use of audio/video recording of interviews.

**Outline of the interview**

You should explain to witnesses, victims and potential defendants that they will be asked to give their account of the incident under investigation, and give them a chance to ask any questions or express any concerns that they may have about the process at this stage.

**ESTABLISHING THE TRUTH**

All interviewees need to know that your primary purpose is to establish the truth of the matter under investigation. The following sections cover the **ground rules**, which you should explain in all investigative interviews.

*Tell all without editing anything out*

Interviewees should be encouraged and permitted to give an account of all that they know and to tell you everything that comes to mind, unedited.

*They can tell it their way*

In all investigative interviews, the interviewee needs to know that they can give an account of what happened in their own words. They should give the full story, as they understand it to have happened. This is particularly important with young or vulnerable people.

*They should give as much detail as possible*

Detailed accounts will help establish the truth better than accounts that are vague or too general.

*They must not fabricate or make up answers to please you or anyone else*

Explain that if they don’t know something, they should say so and not be influenced by what they think you or others might want them to say.

*Need to concentrate*

Recalling an event from memory can be difficult, especially after a period of time has passed or when there has been other distracting things going on. When the matter under investigation is painful, embarrassing, complicated or confusing, remembering things accurately and giving a truthful account of them can be even more difficult.

Tell the interviewee you understand that considerable effort and concentration is required and that they will be given time to remember and provide their account.
Explaining to potential defendants their rights/procedural requirements

There are a number of legal requirements that have to be complied with so that the potential defendant is aware of their rights. The procedural elements of potential defendant interviews should become part of establishing a professional, working relationship. Their purpose is to inform the potential defendant of their rights and what is going to happen.

ACCOUNT, CLARIFICATION AND CHALLENGE

Account

When working through this section, please remember that the term ‘interviewee’ includes witnesses, victims and potential defendants.

Having engaged the interviewee in conversation and explained what you expect of them, you must now obtain the fullest account that they can, or will, provide. There are a number of essential processes you must go through to obtain an accurate and reliable account.

These are:

- obtaining the interviewee’s own uninterrupted account
- expanding and clarifying their account
- challenging the interviewee’s account, when necessary.

In this section you will consider what each of these processes involves and examine the problems of coordinating them. Techniques for helping an interviewee to provide a full and accurate account of events are as follows:

- establishing a rapport
- listening skills
  - taking turns to speak
  - expecting the interviewee’s contribution
  - identifying conversational topics
- questioning skills
- monitoring and evaluating progress.

These are the conversational basics required of all interviewers when obtaining an accurate and reliable account. The focus is on whether the witness, victim or potential defendant is cooperative or uncooperative. It is important to note that interviewees can move from being cooperative to uncooperative - and vice versa - at any time during the interview process.

Consequently, during the planning and preparation stage, the interviewer(s) will need to consider how they will deal with possible changes in the interviewee’s behavior. They will also need to be fully alert during the interview in order to detect such changes.

OBTAINING AN ACCOUNT

You will recall that the purpose of an investigative interview is to obtain the truth (accurate and reliable information) about the matter under investigation. During the engage and explain phase you will have given the interviewee ground rules on how to provide their account. The following guidelines should assist you to obtain a complete account, whether you are dealing with a witness, victim or potential defendant.
SETTING THE SCENE

As an interviewee will be recalling an event that they experienced days, weeks, months, or even years previously, it is often difficult to recall details easily and accurately. The interviewee’s ability to recall will not only be influenced by time but by trauma as well. However, if the interviewee is given time to concentrate and is willing to make the effort, more details about the incident may be recalled.

Many people already use the technique of setting the scene or context. For example, when trying to find an important item such as a purse or wallet you might ask yourself a simple question in order to retrace your movements. This same concept can be applied to assist interviewee recall.

THE FREE RECALL INTERVIEW

In the majority of situations the interviewee, in particular witnesses and victims, will be willing to cooperate with the investigator and will have no difficulty in recalling information. In this case the interview should be reasonably straightforward, although all the relevant questions still need to be asked. In this situation, you might start by obtaining an uninterrupted account, without any need to set the scene.

STATEMENTS THAT SET THE SCENE

- think about what you were doing
- think about what was happening
- focus on everything you can see
- concentrate on who was with you
- think about what you could hear
- concentrate on what was said
- concentrate on how the weather was at the time
- think about how you were feeling.

In between each statement you make, allow time for the interviewee to think, concentrate and focus. Remember the interviewee is silent at this point as they are working hard to recall information. The more time and effort you spend on setting the scene without actually leading the interviewee, the more information the interviewee will give.

OBTAINING AN UNINTERRUPTED ACCOUNT

By now you would have set the scene and you should now ask the interviewee to give an uninterrupted account of everything they know about the matter under investigation. This process has the following advantages:

- you get to know their version without prompting or interrupting them
- interviewees have a chance to explain their views, and should feel they have had an opportunity to say what they wish.

As the interviewee gives their first account, listen carefully and note areas that you wish to obtain further details about, such as clothing worn, the route traveled, or what happened at a particular place or time. Interviewees must be given sufficient time to provide their first account.
On occasion you may not obtain a first account. This may be because an interviewee does not understand what they are required to do, even after careful explanation. When this happens you must consider the aim(s) of the interview as stated in your written plan and systematically cover the questions/topics that you identified during planning and preparation.

**USE OPEN QUESTIONS**

Ask interviewees open questions, as it encourages them to talk and provides an inspector with the best opportunity to elicit information. Questions should begin with:

- Who
- What
- Where
- When
- Why
- How.

Starting a sentence with one of these words requires the interviewee to reply with an expanded answer, which is essential for the interviewing inspector to verify facts known.

Asking closed questions will provide the interviewee with an opportunity for a one word response – usually 'yes' or 'no'. Try to avoid questions beginning with:

- ‘Did you…’
- ‘Have you…’
- ‘Is it true…’
- ‘Is it correct…’.

Such questions will offer the interviewee an opportunity to respond with little or no explanation.

It will undoubtedly help the interviewee if they are given the opportunity to draw a plan or sketch of the area where the incident took place. It will also assist the interviewee and members of the jury at a later date, should the matter come to trial.

**ENCOURAGE REPEATED ATTEMPTS TO RECALL**

During the interview, encourage the interviewee to search through their memory extensively. It is extremely unlikely that everything available in their memory will be recalled initially.

**EXPANDING AND CLARIFYING THE ACCOUNT**

The first account given by an interviewee may be incomplete and may be able to be expanded upon with appropriate probing questions. Often an interviewee’s account will need to cover a broad time span or range of events and it may be difficult for them to manage such a wide range of information all at once. Subsequent questions must be put systematically to ensure they have remembered all they can. The interviewee can be helped by placing them into context for a particular part of their account. Appendix C demonstrates how such a process of may occur, with the interviewee recalling the event.
IDENTIFYING TOPICS/EPISODES

To assist the interviewee you will need to break down the questioning of their account into manageable topics or episodes, as identified during your planning and preparation. These areas can then be modified or added to, as the interviewee provides their account.

Breaking down the account in this way helps to:

- keep track of what has been covered
- understand new information introduced by the interviewee and fit it into the overall investigation.

You can then expand their account by systematically probing each topic and asking for more details when necessary. Use an open question to start probing the areas you have identified and keep asking questions about each topic until you have all the information you need, or until the interviewee is unable to provide any more information.

SUMMARISE

You should summarise what has been said about each aspect of their recall to check that your understanding is accurate, before moving on to the next. To maintain the conversational flow you should link the summary to the next topic with an open question. For example:

‘You removed the guard from the machine and noticed it was broken. What happened next?’

Apart from giving you the opportunity to check your understanding of what has been said, summarising also gives the interviewee the opportunity to add to or alter what they have said. This helps maintain a professional working relationship by showing the interviewee you have listened to and understood what they have said.

This should encourage the interviewee to continue their account and be increasingly open with you as the interview progresses. Summaries also have the benefit of allowing the interviewee a break as you contribute to the conversation.

Summarising also provides an opportunity for the interviewer to reinforce their memory, as there may be a lot of information in one topic area. To avoid becoming overloaded with information you may need to summarise the interviewee’s responses before the end of the topic, and then summarise the whole topic before moving on.

CLARIFICATION AND CHALLENGE

Clarification is required when you find inconsistencies in the interviewee’s account, or when you are unclear about what the interviewee is saying. Often clarification will occur when obtaining the expanded account, however, sometimes you may wish to note the inconsistency and raise it later.

NEED TO CHALLENGE/CLARIFY

After the interviewee’s account and with clarification if necessary, you may feel the interview can be concluded, as there may be little or nothing to challenge. Alternatively you may feel that although a challenge may be required, it is inadvisable at this stage; for example where you need to make additional enquiries before interviewing a potential defendant further, or you may no longer believe they were involved in the offence.
If you are satisfied that a challenge is not required, you should move to the next interview phase of closure. However, if there are areas of an account that require challenge, you may wish to adjourn the interview while you revise your plan.

Challenge is your response to an interviewee’s account that is inconsistent with other material/information/evidence in your possession. This would normally involve a potential defendant’s account although there will be occasions when it will involve witness and victim accounts. Emphasis should be placed on exploring these inconsistencies in a confident and co-operative manner.

The task is one of challenge, not criticism and the manner in which it is accomplished must be professional and positive.

SUMMARISING WITHIN THE INTERVIEW

Using summaries are vital when conducting lengthy or complex interviews, particularly with potential defendants. This will not only demonstrate that you are listening to the interviewee but will assist you to retain all the information.

THE ‘NO COMMENT’ RESPONSE

There will be occasions when interviewees, whether on legal advice or otherwise, will respond to questions by stating ‘no comment’. The well prepared interviewer should not be swayed by this response. The interviewer may ask all the relevant questions as if the interviewee was responding and give time for each question to be answered. It is important that the interviewer puts the alleged offence to the interviewee so they have an opportunity to respond. It remains their choice to stay silent.

WHEN A CHALLENGE IS REQUIRED

The account needs to be challenged when you have good reason to believe that an interviewee is deliberately withholding relevant information, or knowingly giving a false account. On occasions it might not be inappropriate to challenge their account, as it is incomplete. Quite often it is advantageous to wait until the interviewee has completed their account in detail before challenges are put to them, as challenges can have a significant impact on an interviewee, particularly potential defendants.

INCONSISTENCIES WITH OTHER EVIDENCE

What an interviewee says may be inconsistent with evidence from other sources. This evidence may have come from other interviewees or consist of material or forensic evidence. Inconsistency with other evidence does not necessarily mean that the interviewee is lying or even mistaken, although it will require exploration either immediately or in the future.

It is important to keep in mind that both clarification and challenge refer to the task of exploring the reasons for evasiveness or inconsistencies with the interviewee. They do not refer to the manner in which you do this. The next section will consider how to conduct clarification or challenge in an appropriate and professional manner.

There are three aspects to consider when challenging an interviewee’s account:

- the timing of your challenge
- adopting a clarification-seeking approach
- asking for an explanation of the discrepancies.
THE TIMING OF YOUR CHALLENGE

The timing of some challenges can be planned, particularly with evidence that you decide not to disclose to the defence immediately. Within the PEACE model, best practice suggests that such challenges should take place towards the **latter part of the account** stage, however there can be no hard and fast rule about when to challenge an interviewee’s account of events.

Normally you wouldn’t challenge an interviewee while they are actually giving their account, as doing this might discourage them from continuing to give their explanation. Challenges may occur in response to the interviewee’s version of events given before or during an interview that are contrary to other evidence in your possession.

ADOPTING A CLARIFICATION SEEKING APPROACH

You should explain to the interviewee that you wish to explore certain areas or points again. It is important that you present your continued questioning as a form of problem solving to which the interviewee can contribute. That way, the interviewee is not put on the defensive and they find it easier to change their account or to add to it, without embarrassment or losing face.

ASKING FOR AN EXPLANATION OF THE DISCREPANCIES

You must ensure that any discrepancies or gaps in evidence that require an explanation are clearly put to the interviewee. To begin with, you should ask them for suggestions as to how discrepancies have occurred between their account and the evidence you have gathered.

If the interviewee is evasive, ask them for anything they might be able to add to what they have said, reiterate the purpose of your enquiries and **indicate the openness of your search for the truth**. Explain that you will be continuing your enquiries until satisfied that you have an accurate and reliable understanding of what has happened.

Initially, do not try to give an explanation of why the discrepancies have occurred, and remember to give plenty of time for the interviewee to respond to your query. Eventually you may need to state openly that you think the interviewee is lying. This comment in itself is not oppressive.

Use the conversational techniques discussed earlier (personalisng by using their preferred name, asking open questions, listening actively, expecting the interviewee’s contribution and summarising their explanations), before moving onto the next problem.

THE ROLE OF THE SECOND INTERVIEWER

Interviewing of witnesses and victims is often done on a one to one basis. As lead interviewer, you would have negotiated your strategy with the second interviewer and briefed them accordingly prior to the interview commencing. This should have been done during the planning and preparation stage.

Where there is a second inspector in an interview, you should allow them the opportunity to question areas they may have identified as being ambiguous, or requiring clarification. You need to decide whether the second interviewer will come in at the end of each:

- topic
- interviewee’s phase or interviewer’s phase; or
- before/after the first officer’s challenge phase.
There is no right or wrong answer but the correct use of a second interviewer can be advantageous. You will need to consider the skills and knowledge of the second interviewer in relation to yours.

You will also need to consider the effect of two interviewers on the interviewee and the possibility of confusion as they attempt to deal with questions from more than one interviewer.

Part of a second interviewer’s role will be monitoring during a tape recording of an interview and noting the time/tape counter every so often. This is best practice during any interview when you think there is something important on the tape or something that you may wish to quote verbatim.

**CLOSURE**

The interview should be closed when you have properly concluded that no purpose will be served by continuing. It is important to plan the closure of an interview, as it should be done in a courteous and professional manner. When the interview is clearly drawing to a close, you should aim:

- to ensure that there is mutual understanding about what has taken place
- to verify that all aspects have been sufficiently covered
- to explain what will happen in the future
- to facilitate a positive attitude towards providing accurate and reliable information in the future.

The following section will consider how this can be achieved.

**VERIFICATION AND CONSOLIDATION**

Answers to the following three key questions must be considered before interview closure:

- Have you covered all the questions you want to ask?
- Has the interviewee provided all the information they are able and willing to provide?
- Have you covered all the aims of your interviews?

These questions are most easily answered by reviewing the topics covered during the interview and the information obtained.

**REVIEWING THE ACCOUNT**

Reviewing the account tests whether closure is appropriate and consolidates the information provided in the interview. Explain to the interviewee that you are going to summarise what has been covered and give them an opportunity to confirm, alter, clarify, deny or add anything they wish.

Where potential defendants have remained silent, or refused to answer questions, you can summarise by systematically going over the main points. This tends to highlight the allegation and any defence which may be open to them but which they have declined to comment on. This ensures that the potential defendant has no doubt about what has been covered or where they have adopted their ‘right of silence’.
**DEALING WITH NEW INFORMATION: OPENING A NEW ACCOUNT PHASE**

Do not hesitate to raise additional issues that arise during your summary, and be on the lookout for signs that the interviewee might have more to say. A potential defendant may indicate willingness, either verbally or non-verbally, to answer questions about topics on which they had previously remained silent or a witness/victim may suggest they have relevant information that has not yet been discussed. Be prepared for these eventualities.

You may respond by re-entering the account phase immediately, or if a break is required, adjourn the interview and effectively start the account phase again.

Consider the PEACE interviewing model again. Closure provides the opportunity to re-enter the engage and explain or account stages, which allows you (and the second interviewer, where present) to explore any new information in a systematic manner.

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**QUESTIONS FROM THE INTERVIEWEE**

Once you have summarised the interviewee’s account you should ask them if they have any questions. An interviewee may want to clarify whether they will be required to attend court and what this entails. They may also have worries or concerns about their personal safety, or another query. A willingness to listen at this point may prove fruitful, not only in obtaining new information, but also in their attitude towards you and other investigators in the future. If they do ask questions, give honest answers; if you do not know the answer, say so.

Do not discuss the matter of possible prosecution. Point out that this matter is currently under investigation and no decision has been made to prosecute. This is a matter for the Legal Team and the Crown Solicitor’s Office.

**THE CLOSURE**

Having summarised the interviewee’s account and answered any questions they might have, you are then in a position to close the interview. There are a number of points that need to be covered at this stage, depending on whether the interviewee is a witness, victim or potential defendant.

For example, an interview with a potential defendant must end with the following questions:

- Have the answers you have given during this interview been made of your own free will?
- Have any threats, promises or inducement been held out to you to make this interview?
EVALUATION

Evaluation is an integral part of an interview, and concludes the PEACE interview model. The interview is only effective if you:

- know why and how it is to be carried out (planning and preparation)
- assess its significance (evaluation).

From the interview you need to evaluate:

- the information obtained
- the whole investigation in the light of the information obtained
- your performance, either alone or jointly in the case of more than one interviewer.

EVALUATE THE INFORMATION OBTAINED

Evaluate the information provided during the interview and ask yourself the following question:

‘What effect has this new information had on the investigation as a whole?’

Often this can be accomplished by posing a series of questions and evaluating the answers. The questions and answers will be evaluated during the case conference process.

AIMS AND OBJECTIVES

Consider your interview plan and your initial aims and objectives:

- Were these revised during the interview? If so, why?
- Have you achieved your (possibly revised) objectives?
- Have you covered the points needed to prove the offence(s) in question?

NEW INFORMATION

Similarly, you should consider:

- What new information do you now have?
- Is it consistent with evidence already obtained?
- Are there any conflicts to be resolved?
- What further enquiries do you need to make?

RE-EVALUATE THE EVIDENCE IN THIS INVESTIGATION

The above questions will assist you to assess what impact the interview has had on the investigation and what action you need to take next. Consider how your investigation has changed as a result of this interview. For example, having interviewed an employer and inspected their systems, it may become apparent that the person alleging a breach of a safe system of work is acting contrary to a safe system outlined within company policy. This effectively places the complainant in a position liable for prosecution.
The interview may also have given you new lines of enquiry to follow, such as the involvement of another person not previously known about, or it may have confirmed and strengthened your previous view of the investigation. Be precise about what evidence you actually have to support your understanding of this incident and identify where you are merely putting forward an opinion.

In the case of interviews with potential defendants, you should now ask the following questions:

- Should the potential defendant now be eliminated from your enquiry?
- What evidence do you have to support the allegation that the potential defendant committed the offence?
- Is there sufficient evidence to prosecute them for an offence?

You will have to answer these questions carefully. Make careful note of the reasons for your conclusions and what further action needs to be taken.

**EVALUATE YOUR PERFORMANCE**

To improve your interviewing skills you need to learn from experience. This means that in addition to evaluating the evidence, you must also evaluate your own performance:

- What did you do well?
- What could you have done better?
- What areas can you develop?
- How will you acquire these skills?

Evaluate the whole PEACE process and look back at your planning and preparation to establish where your interviewing can be improved. Evaluate your performance and set goals to improve it where necessary. The more interviews you conduct the more competent you should become. If you are working with a colleague, feedback should be given on each other’s interviewing.

Many enforcement agencies have a formal evaluation and supervision process where trained supervisors examine interviews, give feedback and advise on how to develop interview skills. The important point in evaluating performance is the setting of appropriate aims and objectives whether by yourself or with a supervisor, in order to develop your skills as a professional investigative interviewer.

**SUMMARY**

The PEACE model represents all five phases of the investigative interview:

- Planning and Preparation
- Engage and Explain
- Account, Clarification and Challenge
- Closure
- Evaluation.

The model highlights the need for flexibility by the interviewer when moving between phases and is applicable to all categories of investigative interviewing despite differences in emphasis between witnesses, victims and potential defendant interviews.
WORKING WITH SOLICITORS

At times a person will request that a solicitor or other support person sit with them while they give a statement or participate in an interview. It is important in this case not to presume that the person has something to hide or is guilty of any crime. Remember, most people who are required to give a statement or participate in an interview probably have never done so before and may feel apprehensive or nervous.

A solicitor cannot request to be present during any interview process, as the request must come from the person being interviewed. If a request is made for a solicitor or other support person to be present, then the investigator is obliged to allow the solicitor or support person in. Any solicitor present during a statement or interview is there only to ensure that the legal rights of the person being spoken to are protected. They are not there to answer questions on behalf of the person. If a solicitor or support person attempts to provide information on behalf of the person being questioned, the investigator should politely remind them that they should refrain from answering questions on behalf of the interviewee.

The solicitor or support person should allow the interview to take place without hindering or obstructing the inspector conducting the interview. It is not considered to be hindering or obstructing the inspector if the solicitor advises an interviewee of their legal rights or seeks to stop the interview to discuss a matter with the interviewee in the absence of the inspector (i.e. outside the room) during the course of the interview. The inspector must record details of any interruptions. A solicitor can only be present during the interview if they are acting for the person being interviewed. The solicitor who acts for a defendant company has no right to be present if you are interviewing an employee (either during a formal interview or during a simple statement taking process).

The solicitor’s representation at the interview should be clarified and recorded as part of the interview process. If you are interviewing a person under the age of 18, the parent or guardian must be present. There is no obligation upon an inspector to advise a person that they have a right to legal representation at any interview, unlike that required by a police officer who has arrested a person.

CONFLICT OF INTEREST

Sometimes the investigator may, for whatever reason, form a belief that there is a potential conflict of interest when a solicitor attends an interview. This may be because the investigator is aware that the solicitor acts for the company employing the person from whom a statement is required. The investigator may ask any solicitor to identify who they are representing during the interview.

The solicitor can only attend any interview at the request of the person being interviewed. If the person being questioned does not want the solicitor present then the investigator must request the solicitor to leave. On some occasions the solicitor representing the person being questioned may also be engaged by the persons’ employer. If this is the case the investigator may advise the person being interviewed that this is the case, however, an investigator cannot refuse entry to a solicitor unless the person being questioned requests it.

At no time should an investigator accuse or even suggest to a solicitor that they have a conflict of interest. The solicitor is to decide if such a conflict exists. If a third party is present during a statement or recording of an interview, the investigator should record the name or the person, the reason why they are present and that the person being questioned agrees to the person’s presence.
CHAPTER SIX: PROSECUTIONS

- Introduction
- The Law of Evidence
  - What is Evidence?
  - Exclusionary Rules
  - Judicial Discretion to Excluded Evidence
- Corroborative Evidence
- Chain of Evidence
- Prosecution Considerations
- Statement of Injury Loss or Damage
- Inspectors Brief of Evidence
- Brief of Evidence Checklist
INTRODUCTION

Producing briefs of evidence is a critical task of the SafeWork SA (SWSA) inspectorate. If these are done well it will save time and result in a smooth progression to prosecution.

This programme aims to help participants understand what constitutes quality brief writing. It will provide you with tools, techniques and the opportunity to practice them so that you are more confident about writing and preparing a quality brief of evidence.

If the brief proceeds to court you will be expected to testify. It can be a daunting experience. Aside from the pressure of public speaking, an inspector’s knowledge, training and judgement may be questioned, and in some instances it may seem that SWSA is on trial.

The following chapter provides information about what an inspector can do to prepare, what kind of information a brief of evidence should contain and how the inspector can effectively present evidence to enable alleged breaches to be proven.

A brief of evidence must clearly detail two issues:

1. the specific allegation that is said to constitute the offence
2. how the allegation is to be proven.

Companies take prosecutions very seriously as the outcomes could be any of the following:

- fines
- prosecutions reported in the newspaper
- an increase in the Return to Work levy
- prosecutions reported in corporate reports
- an order to pay compensation
- proof of a prosecution may have implications for civil proceedings.

Increases in penalties have already meant more employers decide to go to court, resulting in more pressure on the Crown Solicitor’s Office (CSO) and SWSA.

THE LAW OF EVIDENCE

Underlying any investigation is the need to substantiate its findings with evidence. Where the investigation is likely to result in prosecution or other judicial review, the evidence must comply with a wide-ranging set of rules and principles, collectively known as the law of evidence. This determines what material the Court may consider as admissible.

This chapter provides an overview of the theory that underpins the investigation procedures detailed in the following chapter.

This includes:

- admissibility of evidence
- types of evidence
- corroborative evidence
- chain of evidence
- standard of proof
- elements of an offence.
Inspectors should consult their team manager, Team Leader or the Legal Team with specific legal or evidentiary issues. The law of evidence:

- consists largely of principles based on fairness and the practical requirements of the justice system; and
- derives from the Evidence Act (SA) 1929 and the Common Law\(^5\)

While there are many established laws, rules and principles relating to evidence, a presiding judge or magistrate retains significant discretion when deciding whether to include particular evidence. A judge can rule any evidence to be inadmissible if it is judged to have been obtained unfairly, illegally or by coercion.

**WHAT IS EVIDENCE?**

Evidence is information or an exhibit given by a witness directly to an inspector that the Court will consider because of its form, substance and source, to comply with the law of evidence. It may be oral, documentary or real testimony that proves or disproves a fact in issue.

**ADMISSIBILITY**

For a magistrate or judge to determine that evidence is admissible, the evidence:

- must be relevant to a fact in issue
- must not be subject to an exclusionary rule of evidence
- must not be subject to judicial discretion to exclude it.

The Legal team will assist inspectors to ensure all evidence presented to Court will be admissible.

**RELEVANCE TO A FACT IN ISSUE**

Only evidence deemed by the Court to be relevant will be admitted. To be relevant, the evidence must render one of the facts in issue either more or less probable.

All relevant evidence should be located and secured during an investigation including evidence that supports the defence case. If uncertain about the relevance of an item, **secure it**. The Crown Solicitor’s Office will decide on the evidence to be presented in Court, and the Magistrate will make the final decision as to its relevance.

If material is not secured or seized at the scene, vital evidence may be lost and an opportunity to present it at court will be missed (see chapter 5 – *Investigations* for further description).

**EXCLUSIONARY RULES**

The exclusionary rules of evidence are:

- hearsay
- character
- privilege
- opinion.

\(^5\) Laws determined by judges in Court
HEARSAY

Hearsay is evidence not perceived by a witness’s own senses, but communicated to them by another person. For example:

‘Jim told me he was using the band saw at the time of the accident’.

A document is hearsay unless produced by a witness who used, prepared or possessed it. Confessions and admissions are also hearsay but are exceptions to the hearsay rule. Other exceptions are unlikely to impact on an inspector; however an inspector should consult the Legal team, their Team Manager or Team Leader if necessary.

The Legal Team can give advice and provide guidance on hearsay evidence and its reliability and use within an investigation. The use of hearsay can have benefits during the course of an investigation and requires management from an early stage.

OPINION

Opinion evidence is not generally admissible. The function of a witness is to state the facts as objectively as possible, and as they perceived them. It is the Court’s role to form an opinion on the basis of these objective facts.

CHARACTER

Evidence of an accused person's character is not generally admissible.

PRIVILEGE

Privileged information is not admissible as evidence. There are two types of privileged information an inspector may encounter:

- privilege against self-incrimination - a natural person cannot be required to make statements that may incriminate them
- legal professional privilege - documents communicated to a party’s legal counsel produced for the dominant purpose of conducting or defending legal proceedings, are inadmissible.

- N.B. Refer to SAFE 11/0802 Documents & Questions MOP for detailed guidance on privileged information and self-incrimination rights under the Work Health & Safety Act 2012 (SA) and the Operational Guideline for Legal Provisional Privilege.

An example of legal professional privilege is where a defendant produces a report of an incident for the dominant purpose of defending a legal action.

Expert opinion evidence is an exception. The opinion of a person with special skill, technical knowledge or professional qualifications on a subject may be admitted as evidence once their expertise is proven to the Court.

Expert opinion evidence is beneficial only if it can be demonstrated that the opinion is formed independently of the party that engages the expert. For this reason an inspector:

- cannot be called as an expert witness
- must take care not to influence, or be seen to influence, an expert witness.
The Chief Inspector, Compliance and Enforcement must approve the engagement of an expert witness. Contact Investigations and the Legal Team for assistance.

JUDICIAL DISCRETION TO EXCLUDE EVIDENCE

Magistrates also have a general discretion to exclude evidence, including voluntary admissions, if:

- the evidence is unreliable
- it would be contrary to public policy to allow it; or
- it would be unfair to the defendant to allow it\(^6\).

The defendant must establish on the balance of probabilities, that the discretion ought to be exercised. To reduce the likelihood of this an inspector should:

- allow a potential defendant every opportunity to cooperate before invoking their powers under the *Work Health, Safety Act 2012* (the Act)
- practice procedural fairness principles.

COLLABORATIVE EVIDENCE

Corroboration means to strengthen or confirm. Corroborative evidence is independent evidence that tends to support the truthfulness of another witness’s testimony. Courts look for corroboration to support evidence, but may act on an uncorroborated testimony. Less evidentiary weight is likely to be placed on it however, and its influence on the Court may be reduced.

CHAIN OF EVIDENCE

The chain of evidence is a detailed paper trail recording the receipt, custody and movement of an exhibit, and is introduced with the exhibit at trial to protect its integrity and admissibility. Therefore where it was sourced from and how it was handled from the time of seizure should be documented to dispel any notion that the exhibit has been interfered or tampered with. An omission at any stage in the chain of evidence can jeopardise the exhibit’s use in Court.

PROSECUTION CONSIDERATIONS

STANDARD OF PROOF

Legal actions brought under the Act are criminal actions and must be proven beyond reasonable doubt. This means that if the Court is not satisfied beyond reasonable doubt that the accused committed the offence charged, the charge is not proven. The requirement for this standard of proof extends to investigations that will not lead to prosecution, such as:

- technical investigations
- registered assessor investigations
- notices, where the recipient may apply for review
- expiation notices, where the recipient may elect to be prosecuted.

\(^6\) Foster (1993) 66 ACrimR 112 at 117-118
STRICT LIABILITY

Most offences against the Work Health and Safety Act 2012 (SA) are offences of strict liability. This means there is no need to prove intention (the mental element of an offence)\(^7\), or recklessness to secure a conviction. The prosecution must only prove that the guilty act, which is the breach of the legislation, was done.

THE ELEMENTS OF AN OFFENCE

The elements of an offence are the individual matters to be proven by the prosecution before the accused can be convicted of the specific offence charged\(^8\).

VICTIM IMPACT STATEMENT

Under Cabinet administration instructions, Principle 14, Declaration of Rights for Victims of Crime Act and the Criminal Law (Sentencing) Act, an administrative and legislative responsibility lies with the prosecutor to advise the court of the impact on the victim of the crime, where the victim requests this to be known. This is achieved by the use of a statement of injury, loss or damage.

The purpose of a victim impact statement is to convey to the court (following the recording of a conviction) the effect the crime has had on individuals, and to assist the sentencing court when deciding an appropriate sentence. This includes ordering the potential defendant to pay compensation.

SafeWork SA’s involvement in the tendering of statement of injury, loss or damage is to facilitate the process by:

- making the victim(s) aware that a process for victims of crime exists
- providing potential victims with the necessary forms and information
- providing a thorough explanation of the reason for statement of injury, loss or damage and advice on its completion and content
- processing and tendering the completed forms to the Industrial Court, through the Crown Solicitor’s Office.

This does not include helping the victims to fill out the necessary paperwork. As the process implies, the appropriate paperwork must be completed in the victim’s own hand, and should be based on the impact the crime has had upon them. It should be completed using a dark pen to ensure a legible photocopy for the brief.

The investigating inspector should emphasise to the victim(s) that the whole process is voluntary on their part. SafeWork SA only acts as the conduit for the processing of the completed forms and all paperwork must be treated with sensitivity and confidentiality.

The victim(s) must also be made aware that statements will be made available to the sentencing court and to the defence.

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\(^7\) With the exception of an aggravated offence against the Work Health, Safety and Welfare Act 1986 under section 59.

\(^8\) Butterworths Concise Australian Legal Dictionary
If the victim(s) elect to complete a statement of injury, loss or damage, they are not obliged to use the form attached to the E-Manual, however they should address the issues covered in the form in whatever format they elect to use.

INSPECTOR’S BRIEF OF EVIDENCE

A brief of evidence is written to:

- demonstrate to the CSO there is sufficient evidence to justify a commencement of prosecution proceedings
- convince a defendant not to go to trial and to enter a plea
- provide the CSO with the evidence to enable them to successfully prosecute a defendant; that is, by containing the material to be used in court to convince a Magistrate beyond a reasonable doubt that the allegations are true.

A brief of evidence must provide the evidence necessary to prosecute a matter in court beyond a reasonable doubt. To achieve this, all of the elements of an offence against the Act must be proved to this standard.

You must ensure that:

- two copies of the brief are produced; one copy that contains all the original material which is kept securely, and the other identical to the original brief is the working copy for SWSA and the inspector and is sent to the CSO office.
- the evidence is set out in a logical sequence
- the brief contains copies of all original evidence (documents, photographs and exhibits) that is relevant to the investigation to prove the elements of the offence.
- all copies of the brief are identical for easy reference.

THE IMPORTANCE OF EVIDENCE

The most important word to keep in mind when you are writing and preparing a brief is evidence. Evidence is something used to support an argument or allegation. It is the proof, confirmation, substantiation and verification and demonstrates why something is true.

THE DIFFERENCE BETWEEN EVIDENCE AND EXPLANATION

It is important to understand the difference between an explanation and evidence. This is because often, in error, people offer an explanation rather than providing evidence.

Think about it this way:

- how something happened = explanation
- how we know (and prove) how something happened = evidence.
THE IMPORTANCE OF QUALITY

As briefs must be disclosed to the defence before trial, they must be comprehensive. If the CSO can depend on SWSA to provide quality briefs, then they will be able to act with greater confidence and efficiency when it comes to prosecution. In addition, a well prepared, well written and logical brief that contains all evidence to prove an alleged breach may often convince the defence to plead guilty.

It is important to know that even if a plea is secured, the CSO must present sentencing submissions in court to the Magistrate or jury which are based on the brief of evidence. The quality of the brief also has a direct impact on penalty.

A brief of evidence is an informational report – it simply presents the facts of the matter. Therefore, it is important to stay focused on the purpose and include only the information required to achieve it. For example, an inspector’s frustration level with a given case can be at its maximum when they sit down to write a brief of evidence, which may lead them to describe every unnecessary detail. Avoid doing this and just present the evidence. To have credibility, the tone of a brief must be neutral and objective.

The CSO is only the first obstacle your brief must overcome. From there it goes to the defendant, and then usually it will go to court. The working relationship between SWSA inspectors and the CSO is a partnership – you are part of the same team working towards the same goal of successful prosecution.

The CSO is looking out for you to ensure your brief holds up, and that if it goes to court and you are in the witness box that you have credibility to secure a prosecution. Because of this the CSO will sometimes need to rigorously question inspectors to ensure all bases are covered.

The court seeks the answer to two questions:

- In what way did the employer breach legislation?
- What is the most appropriate penalty for this situation?

If your own instincts about an argument suggest that it would not pass the ‘smell test’, you can be sure that a magistrate will find it lacking. Try to get inside the case and look at the evidence from the court and the defendant’s point of view.

Your purpose in writing is not to justify yourself or your Agency or to contradict the opinions of others. Rather it is to present watertight evidence to the CSO, the defendant, and then ultimately the magistrate.

Prosecution is not just about punishing one employer; it is about demonstrating to the court, other employers, and the public that SWSA values workplace safety. It also shows that as an inspector you take workplace safety seriously, and that you have an important (and public) role to play in what SWSA does. Being well prepared for court is a necessary part of that role, as this will allow you to feel confident and appear credible.

Your goal is for the magistrate to feel that your brief confirms their sense of the right outcome.

PLANNING

Planning is an important stage of writing as it will enable you to achieve a logically structured and organised brief that meets its objectives.
The planning stage can be time-consuming. However without it you can waste valuable time, and risk producing a brief that does not meet its objectives. The following steps are suggested:

**Step 1:** define the purpose of the brief

**Step 2:** identify your audience

**Step 3:** determine the facts/evidence to include

**Step 4:** evaluate the facts/evidence

**Step 5:** organise the facts/evidence

**Step 6:** determine what else will help

**Step 7:** prepare the brief.

### STEP 1: DEFINE THE PURPOSE OF THE BRIEF

Whenever you write, the most important first step is to define the purpose of that piece of communication. In other words, what are you trying to achieve as a result of writing it?

A brief of evidence is written to:

- demonstrate to the CSO there is sufficient evidence to justify a commencement of prosecution proceedings
- convince the defence not to go to trial and to enter a plea
- provide the CSO with the evidence to enable them to prosecute - that is, to provide them with the material to be used in court to convince a magistrate beyond a reasonable doubt that the allegations are true.

The key words in the preceding bullet points are:

- demonstrate
- justify
- convince
- enable.

Use these words as a checking tool when you have finished your brief to test if you have achieved them.

### STEP 2: IDENTIFY YOUR AUDIENCE

Before you write anything, identify your audience (reader) as closely as you can. Choose your words, supporting information and organisation of material to suit them and your message. Who are you trying to reach?

The audience of a brief of evidence includes:

- the CSO
- the defendant (and his or her legal representatives)
- the magistrate.
Here are some questions to consider about your audience:

- What background information does/do the reader(s) have?
- What information do they need (bearing in mind they have not seen/heard what you have) to understand the situation?
- How relevant is the information that you are providing?
- How well does/do the reader(s) understand the subject?
- What do I need to do (or need to avoid) to look credible to my reader(s)?
- What are the responsibilities of the reader(s)?
- Will the reader/s be looking for flaws in my evidence?
- What information technique is most likely to achieve my aims? (Decide whether it is highly technical, statistical, a general overview, whether it involves examples or references, or whether diagrams, photos, videos, etc. may help).

**STEP 3: DETERMINE THE FACTS/EVIDENCE TO INCLUDE**

A good way to tackle this step is to ‘step into the shoes’ of the people who will be reading it. Consider what facts/evidence would:

- demonstrate to the CSO that they would have a good prospect of successfully prosecuting if the matter went to court
- convince a defendant not to go to trial
- convince a magistrate that a conviction should be recorded.

Brainstorming can help you to consider what should be included from the angle of each of these readers. For example, start with the CSO. What do they need to know to feel confident they have what it takes for success? Then evaluate your facts/evidence against what would be required to convince the defendant not to go to trial. Then finally, follow the same process from a Magistrate’s point of view.

**STEP 4: EVALUATE THE FACTS/EVIDENCE**

There is always a fine balance between writing a concise brief and a thorough brief. Remember, good business writing is always concise without sacrificing the necessary detail.

Once you have brainstormed the facts/evidence to include, evaluate them by asking:

- Have I left out any critical facts/evidence?
- Have I included facts/evidence that have no bearing on this situation?
- Are these true facts/evidence, or are they matter of opinion?
- Have I presented facts/evidence that demonstrate how and why the incident occurred, or have I focussed on the facts/evidence of the incident?

Always remember, while you have investigated the incident and seen and heard first-hand what occurred, your audience has not had this benefit.
STEP 5: ORGANISE THE FACTS/EVIDENCE

The content of the brief should be organised into sections with headings and subheadings that are accurate and logical to permit quick reference to specific information. Always present the sections in the same order. The brief should be:

- in the SWSA brief folder
- separated into sections with dividers clearly marked to reflect the numbering in the table of contents.

STEP 6: DETERMINE WHAT ELSE WILL HELP

Always consider if there is another way of presenting evidence to make it easy for your audience to understand the situation. Often a visual is clearer than a written description. As commonly said - ‘a picture is worth a thousand words’.

For example:

- a photograph with written labels/explanations (e.g. to indicate different parts of a piece of equipment, or to show where an employee’s hand was at the time of the injury)
- a diagram of a situation could be used by a witness to demonstrate something (e.g. where someone was standing at the time of an accident or the direction a piece of equipment fell)
- video to show a machine operating.

Any of these methods may make your job of presenting evidence much easier, and consequently make it simpler for your audience to understand the evidence.

STEP 7: PREPARE THE BRIEF

At this point you have a sound framework to write the brief and it is time to put the ‘meat on the bones’.

WHAT ACCOMPANIES A BRIEF OF EVIDENCE?

There are two memorandums you will need to write that are not included in the brief of evidence, and that do not go to the CSO. They are:

- internal memorandum to manager
- internal memorandum – executive summary.

INTERNAL MEMORANDUM TO MANAGER

The internal memorandum to manager is used to transfer files between the investigating team and the Chief Inspector, Compliance and Enforcement. It should contain:

- an InfoNet file number
- brief outline of the matter
- name of the injured person
- name and location of the person
- date of the incident.
INTERNAL MEMORANDUM - EXECUTIVE SUMMARY

The executive summary provides an overview of the brief. This is the memorandum to the manager plus a few extra pieces of information. It is generally no more than 1-2 pages, and it states broad findings. As its purpose is for the reader to quickly grasp the gist of the brief, it must provide a clear and concise account of what your investigation has achieved.

The executive summary must contain:

- a file number
- date of the incident
- issue or subject of the investigation
- persons or organisations involved
- where the incident occurred
- age of employee and years employed
- main outcomes of the investigation

**NB:** This internal memorandum will remain within the Agency and should not be released if at any time the brief of evidence is provided to anyone outside SafeWork SA.

WHAT DOES A BRIEF OF EVIDENCE CONTAIN?

Brief of Evidence Templates are available through the E-Manual or in Word File/New/My Templates/Brief of Evidence

COVER PAGE OF BRIEF

The cover page must provide the following information:

- name of your team and location
- nature of the brief, i.e. injury, death
- name and address of the employer
- name of the injured employee
- date of the incident
- name of the investigating inspector
- be marked confidential.
PROSECUTION DETAILS FOR CONSIDERATION BY THE CROWN SOLICITOR

This section provides an outline of the basic information to lay the complaint including:

- defendant's name
- defendant's (registered) address
- date of offence
- place where offence allegedly occurred
- last day for laying complaint
- details of injured person (name, address, telephone, facsimile, mobile phone)
- details of investigating inspector (name, address, telephone, facsimile, mobile phone)
- details of corroborating inspector (name, address, telephone, facsimile, mobile phone)
- details of complainant (name, address, telephone, facsimile, mobile phone). Note: the complainant is a public officer; this will usually be the manager
- witnesses (name,).
- witness contact list is a separate document containing witness contact details (this is put at the front of the brief and does not appear on the table of contents list)

ALLEGED (RECOMMENDED) BREACHES OF LEGISLATION

This section will list:

- all alleged breaches
- basis for alleging each breach
- investigator's recommendations
- prior convictions (if any).

ALLEGED (RECOMMENDED) BREACHES

List all breaches you believe have occurred, including any breaches of legislation or regulations. If the alleged breach involves non-compliance with an Approved Code of Practice, you should identify that fact – provide evidence of its approval.

If it is alleged there has been non-compliance with an Australian Standard or Code of Practice that is not an Approved Code of Practice, it must be made clear that the document is not an Approved Code of Practice. If you are unsure whether there has been a breach of the type proposed, consult your team manager and/or principal inspector, who will contact the legal team or the CSO when necessary.

BASIS FOR ALLEGING (RECOMMENDING) THE BREACH

Provide an explanation of the breach. For example, if the breach was:

Division 1.3.4(1) of the repealed OHS&W Regulations 1995:

*Failed to ensure that an employee received suitable and adequate information, instruction and training for any task that he or she may be required to perform at work.*
A suitable explanation would be:

The employer failed to adequately train the injured employee in the risks associated with the task of using the electric guillotine on rolled paper reams. Training consisted of a 15-minute demonstration by an apprentice operator that did not refer to the dangers associated with angled cutting. No supervision was provided on the day in question. The task was to perform an angled cut of a large ream roll. Since the accident the employer has implemented a training, instruction and information programme for the task of cutting reams of paper in all configurations that includes the need for different hand positions and clamping for angled cuts.

This process is intended to specifically identify what the breach is. Do not just regurgitate the words of the Act or the Regulations.

PRIOR CONVICTIONS (IF ANY)

Check with the prosecution administration officer for previous convictions. List any prior convictions or other compliance issues that reflect the standard of Work Health and Safety practice by the employer. If there has been a conviction, obtain the reasons given by the magistrate for the finding of guilty (if applicable) and the sentencing remarks.

TABLE OF CONTENTS

A good table of contents is vital because it is the ‘road map’ for the CSO. The Brief of Evidence Template will create a table of contents, and should be followed in most cases with irrelevant content deleted.

Always follow the same order for sections of a brief and the table of contents. Also remember to revise the table of contents if you add evidence at any stage, and always provide a copy of the revised version to the CSO.

COMPANY SEARCH AND/OR BUSINESS NAME SEARCH

The law recognises two different types of ‘person’:

- natural person
- body corporate.

NATURAL PERSON

The term natural person is used to distinguish people from bodies corporate. A person is a legal entity and as such they have legal capacity, rights and responsibilities.

A natural person can conduct business in various forms e.g. as a sole trader, as part of a partnership (two or more persons acting together with a view to profit), or as a trustee.

Natural persons can conduct business in their own name, e.g. sole trader – [underline]; partnership – [underline] and [underline]; or as a trustee – [underline] as Trustee for the [underline] Trust.
PARTNERSHIPS

A partnership is not a legal person (it is not an entity). This means that charges can be laid only against the individuals that make up the partnership (e.g. if the partnership consists of and , then the defendants would be the individuals in the partnership, i.e. and ).

In some cases, for example in contract law, the conduct of one partner can bind the other partners. This is not the case in criminal law. For that reason, where a partnership operates a business being investigated by SWSA for an alleged breach, the involvement of all the partners in creating the situation of risk must be investigated. This will determine which partner or partners should be charged.

Partnerships do not show up on company searches. If there is a business name, then do a search to obtain proof of who the proprietors are (see below). If there is no business name, evidence needs to be obtained about who the proprietors are from business records (e.g. financial statements and records, deed of partnership, etc.).

BODIES CORPORATE

A body corporate has the same legal capacity as a natural person, in that they can enter contracts (buy and sell), employ people, sue and be sued, be required by legislation to do things, and be accountable for breaking the law.

There are many forms of body corporate. A company is a corporate entity created by law. It has the powers of an individual, and can sue or be sued in its own right. It has officeholders, Director(s), secretary/ies and a registered office. It has member(s) and it has perpetual succession (i.e. it continues even if its members die or resign).

There are many types of bodies corporate: statutory corporations (such as WorkCover and universities), incorporated associations and companies registered under the Corporations Law. Companies come in different types; proprietary limited company (Pty. Ltd.), limited company (Ltd.), public company listed on the stock exchange (Ltd.), no liability company (N.L.), and unlimited proprietary company (Pty.).

To identify the correct defendant we must ascertain who had the duty under the relevant section of the Act. For example it is:

- whoever is the employer (for s19(1) offences). (Note extended definition of employer in s4(2) of the Act)
- the owner of plant (under section 24A offences)
- the owner of a building (section 23A(2) offences)
- any other person obliged under the relevant legislation.

Care must be taken to identify the relevant corporate entity by conducting a company search. This is particularly important where for taxation or other reasons, an employer operates as part of a corporate group (i.e. where a group of companies is used to hold assets and carry on what appears to be a single business).

In this case, documents evidencing the employment relationship with the person put at risk (for example, a contract of employment or pay records) must be obtained, and specific questions will be required in the record of interview to identify the exact entity concerned. This may require a request to the company to explain its position in the corporate structure and identify what each entity within the structure does.
Failure to do this may lead to the wrong entity being charged. If that occurs and it can be shown that the entity is not the employer, the charge will be dismissed (and if the time limit has passed, no charge against any other entity can be laid).

BUSINESS NAMES

Individual persons and companies can trade under their own name or under a business name. A business name is not a legal entity; it is merely a name under which an entity (i.e. the individual or company) trades. For that reason care must be taken to distinguish between the business name and the actual entity that carries on business under that name.

Business names are registered with the Commissioner for Consumer Affairs. The records of the Commissioner can be searched via the same search facility that provides company searches, or through the Office of Consumer and Business Affairs. A business name search provides details of the entity and the individual or company that carries on the business. For example a search may show that the business called John James Roofing is carried on by John James (an individual).

CONFIRMATION OF AUTHORITY

This form establishes that a person has been given the authority to speak for and on behalf of the company, and a current director of the company must sign it. Always check that the person giving the authority is a current director by undertaking a company search. This form must be completed before organising the record of interview so that it is clear that the person to be interviewed has authority to speak for and on behalf of the company.

LOG OF EXHIBITS AND DOCUMENTARY EVIDENCE

Use the documents log template to provide a numbered list of all documentary and non-documentary evidence. This will include:

- documents
- other evidence seized and/or referred to in statements.

Documents include:

- expert reports
- documentation and expert reports for any sample testing, description of samples and reasons for the testing
- Standard Operating Procedures (SOP)
- group certificates, payslips
- policies, guidelines
- contracts, work agreements
- training manuals
- training records
- medical records. (relevant to the injury or on-going medical treatment)

Non-documentary evidence includes:

- an item of plant (log should refer to its location)
- a tool or piece of equipment
- a sample of solid, liquid or gas
- personal protective equipment (PPE)
- any evidence that it is physically impractical to include in the brief

You must provide a photograph of such non-documentary evidence (if other photographs do not show it).
If an inspector seizes evidence, all details (where, when, from whom and what) should be recorded in a field notebook and must later be included in the statement prepared by the inspector (investigating officer’s statement).

If an inspector receives evidence from another, a statement must be taken from that person stating details of what the evidence is, how the inspector received it and other relevant details (e.g. if the evidence is a photograph(s) or video and type of camera used). Notes should be made in a field notebook at the time this occurs.

To ensure admissibility of evidence:

- take a formal statement from the other person about how they came into possession of that evidence
- record details of obtaining evidence from that person in the investigator’s statement.

When receiving photographs or other evidence from a police officer, a statement about how they came into possession of the evidence is required. If they do not intend to create their own statement then the inspector must take a statement, record it and include it in the brief. Record details in a field notebook then use these notebook details in the inspector’s statement.

**PHOTOGRAPHIC LOG AND COPIES OF PHOTOGRAPHS AND VIDEOS**

Using the photographic log, number and describe all photographs and videos. If a photograph is one of a re-created situation, state this in the log.

Include copies of all photographs, not originals. These will be any photographs described in the investigator’s statement or in the statement from the photographer (if not the investigator).

Ensure copies of photographs are clear and complete (i.e. ensure the actual photographs and their descriptions are not ‘cut off’ during the copying process). Ensure there is a label for each photo; however it must not contain evidence or opinion. For example, a suitable label would be:

- view from south of scaffolding; not
- view of scaffolding showing where worker fell

Photographs may include those:

- taken at the time of an incident
- of a recreated situation
- of evidence.
EXPERT REPORT(S)

Experts may be engaged to prepare reports as they can give opinion evidence supporting the prosecution’s case. The defence can also engage experts. Before an expert is engaged, SWSA must write a letter to engage their services and outline information required. Costs must be established up front, and expenditure approval may need to be obtained in some situations. Always consult your manager and the Legal Team regarding the consultation of experts.

Costs related to engaging an expert may be able to be recovered when seeking court costs.

WHAT A BRIEF OF EVIDENCE DOES NOT CONTAIN

There are some documents you will use to prepare to write a brief of evidence that are not included in the brief itself. These include:

- InfoNet activity reports
- investigation plans
- assessment panel or case conference documents
- internal correspondence (emails - except those that establish chain of evidence, memos, notification document).

No part of the brief shall contain offensive, derogatory or provocative remarks about any person, whether a proposed defendant, a witness or solicitor. At all times the brief must remain neutral and factual.

WHAT MAKES A GOOD BRIEF OF EVIDENCE?

DETERMINE YOUR PURPOSE AND KEEP IT IN MIND

A good strategy is to keep the brief’s purpose in mind while you are investigating. This will ensure you have all the facts you need to write a quality brief of evidence.

As mentioned earlier, the purpose of a brief of evidence is to:

- demonstrate to the CSO there is sufficient evidence to justify a commencement of prosecution proceedings
- convince defence not to go to trial and to enter a plea
- provide the CSO with the evidence to help them prosecute (that is, the material to be used in court to convince a Magistrate beyond a reasonable doubt that the allegations are true).

DESCRIPTION

Your audience has not witnessed the situation, people or event you are discussing, so their only knowledge of it will come from your description. Give them enough information to place the analysis that will follow into a context.
When writing a brief, your job is to record the varying aspects of a situation in detail. In many respects your brief of evidence is like a well-written piece of journalism. In nearly every situation, the journalist looks to address the five **Ws**.

**What:** What did you observe? What occurred on the day? What training was offered? What steps were taken after the incident? What led to the incident? Note what boundaries you imposed to limit the observations you made. What were your general observations of the situation? For example as an inspector, what was your observation of an equipment installation or a standard operating procedure?

A word of warning: be very careful not to provide your opinion – you must stick to observation facts.

**Where:** Describe background information that sets the scene or context of the observation. Where did the incident occur?

**When:** Record factual data about the day and time. It may also be appropriate to include background information or events which impact upon the situation you observed.

**Who:** Note the participants in the situation. Who are they in terms of position? Record who is doing what and saying what, who delivered any training and who supervised.

**Why:** Describe why the incident occurred. Again, be careful not to state your opinion of why. The why must clearly link back to facts and observations presented. The why is the conclusion you can objectively draw from the findings.

**ANALYSIS**

Now that you have provided the reader with a description of the situation, people or events you observed, you need to provide an evaluation of what you have observed and let the reader know how these events and observations relate to the broader context of your discipline (for example, Regulations, Acts, Approved Codes of Practice or other Australian Standards).

Part of your task in analysis is to determine which observations are worthy of comment and evaluation, and which observations are more general in nature. It is your theoretical framework that allows you to make these decisions. You need to show that you are looking at the situation through the eyes of an informed viewer, not a layperson.

Be careful in your analysis on what you have observed. Do not manipulate observations to fit into a predetermined recommendation. To help you combat this, consider the following questions that might be useful when analyzing your observations:

- What is the meaning of what you have observed?
- Why do you think what you observed happened? What evidence do you have for your reasoning?
- What events or behaviours were typical or widespread?
- Do you see any connections or patterns in what you observed?
- Why did the people you observed do it that way? What are the implications of this? Do you agree with this method?
- What were the strengths and weaknesses of the methods/approaches you observed?
- Do you see connections between what you observed and the Act, Regulations, Approved Codes of Practice or other Australian Standards?
ORGANISATION

The ideas you present in your brief will only have their full value recognised when they are clearly expressed in logical, easy to follow text. A brief may be well prepared and written but if it is disorganised, the reader’s job is very difficult. In addition it can undermine your credibility.

It is critical to ensure a well organised brief for two reasons:

1. To ensure it is easy to follow and read and can be used effectively by the CSO.
2. To reflect agency professionalism.

This applies not just to the brief but all aspects of the work prepared by the investigator (including statements).

USEFUL TECHNIQUES AND TOOLS

*Headings and sub-headings:*

Headings break up the text into clear packages of information and allow the reader(s) to retrace their reading easily. Ensure each heading accurately summarises the text below it.

*Dividers:*

Use dividers to separate each section of the brief.

*Organise your facts chronologically:*

Generally organising your evidence chronologically ensures your reader(s) can easily follow the brief.

*Paragraphs*

Use short paragraphs. One paragraph should deal with one topic or idea.

*Group*

Group related issues together so that they provide a clear and logical sequence.

*Bullet points*

Bullet points are easy to follow as they create white space on your page, which increases readability.

THE VALUE OF KEEPING YOUR AUDIENCE IN MIND

You are writing for busy people who are accustomed to listening to concise presentations of legally significant facts, and the arguments that can be logically drawn from them. Your audience includes:

- your team manager and the Legal Team
- the CSO
- the defendant
- the Magistrate.
Your manager and the Legal Team will revise your brief before sending it to the CSO. These people need to feel confident you have covered all bases. However it is not their job to edit for accuracy and correctness.

Consider the needs of the CSO. What do they need? What do they not need? What will help them do the best job for us?

Remember the defendant will be looking for holes in your argument. This means you need to be pedantic with every aspect of your brief.

Magistrates cherish clarity and brevity, and a focus on relevant matters.

Follow the principles outlined in this programme and you will gain credibility with your audience.

THE APPROPRIATE LEVEL OF DETAIL

Determining the appropriate level of detail largely comes with experience. You must write as concisely as possible without compromising the evidence. However be careful not to include absolutely everything just for the sake of it.

To establish a credible chain of evidence, detail is required. For example if a piece of equipment is seized, the detail of who has had possession of it at every point is critical. Too little detail here will undermine integrity.

However there are times when too much detail may confuse the issue or simply result in more reading time for your audience.

*Too much detail:* I called Jenny Jones on her mobile phone.

*Sufficient detail:* I telephoned Jenny Jones.

*Too much detail:* I met with Chris Black and Mary Smith in the boardroom of Fast Accounting, at their Adelaide city location.

*Sufficient detail:* I met Chris Black and Mary Smith at Fast Accounting.

*Too much detail:* I entered the building from the west side and the door was slightly ajar.

*Sufficient detail:* I entered the factory.

However there are times when detail could be important. In the following example you could be misled into thinking the weather is not important: ‘At the time I inspected the loading area it was raining’. Potentially, the weather may be important in terms of a comparison to weather conditions at the time of the incident, and the time of your inspection and their impact on the incident.

Looking at another example, to write: ‘training and supervision were not adequate’ is insufficient. You would need to indicate specifically what training and supervision occurred. For example, ‘Training was limited to a 10 minute toolbox meeting half an hour before carrying out the repairs, and no supervision was offered during the work.’
WELL EXPRESSED

A well-written brief that is easy to read is the aim. This is not about trying to impress your reader. Learn to qualify your statements and restrict your claims to what is reasonable.

Avoid statements beginning with: ‘It is obvious that…’ or ‘All…’ unless you are quite certain of what you are saying.

Your brief will lack credibility if it displays too many of the following characteristics:

- long, convoluted sentences that talk around the facts instead of directly addressing them
- needless repetition, including repetition of rules in the section that should instead be applying those rules to the case facts
- too many adjectives or adverbs
- personal attacks on employers
- the insertion of personal opinion or emotion (‘I think’, ‘we feel’)
- any conclusion or recommendation that should ‘clearly’, ‘obviously’ or ‘undoubtedly’ be reached.

CHOOSE YOUR LANGUAGE

Be careful to use language your audience understands. For example:

- avoid jargon - do not make the assumption others will understand the technical language or jargon you use every day
- use acronyms correctly - write the full name first with the acronym in brackets and then use the acronym thereafter, e.g. SafeWork SA (SWSA).

USE THE ACTIVE VOICE

Sentences can be written or spoken in the active or passive voice. In the active voice, the subject of the sentence acts upon something or someone. In the passive voice, the subject is acted upon. For example:

Active voice: the crane left a path of destruction.

Passive voice: a path of destruction was left by the crane.

Learn to use the active voice because it is a more powerful and straightforward form of expression and uses fewer words to convey the same message. Using passive voice often leaves unanswered questions in the reader’s mind.

BE CONSISTENT – STANDARDS COUNT!

Maintaining consistency and adhering to standards demonstrates professionalism. It also ensures your audience can easily follow your brief because every time they read a SWSA brief it will be consistent, regardless of the author.

Here are some standards to follow:

Dates: must always be written day/month/year, 12 December 2006. Do not use any commas and do not use ‘nd’, ‘th’ or ‘rd’ after the day.
**Times:** must always be written in a 12-hour clock (e.g. 1.00pm or 1.00am). If you are writing times which have been recorded in your contemporaneous notes they can be exact (e.g. 2.25pm). However, if writing from memory, precede the time with approximately (e.g. approximately 2.30pm).

**Names:** always check the spelling of names of people, businesses, etc. In addition, ensure every reference is correct. For example, Stephen and Steven are not interchangeable. They are two different spellings.

When referring to a person in the first instance use their title, Christian name and then surname (e.g. Mr Fred BROWN). From that point on use their title and surname (e.g. Mr BROWN).

When recording a person name their last name should be in capitals.

**Templates:** You must use the templates available for all brief of evidence documents. Do not copy them onto your computer for re-use. Every time you write a brief, access templates to ensure you are using the current version.

**CHECK YOUR TONE**

Your brief should exude a tone that is:

- reasonable
- neutral
- objective
- confident
- specific.

Do the facts appear neutral and objective or are they unnecessarily argumentative? Let the story speak for itself without characterisation or commentary. Avoid vague words or phrases. It is a mistake to express your arguments in terms of what you would or could argue, or what something seems or appears to be as such language projects a less confident tone. For example, ‘It appeared to be a truck’. It either is or is not a truck. Another example: ‘There seemed to be no SOP in existence’. There either is or is not a SOP in existence.

However there are times when it is appropriate to use less definitive language because it is accurate. For example, ‘John BROWN appeared to read the statement’. This is accurate because you really cannot say with certainty that he read it – he may have just been looking at the statement.

**TIMELY**

Adherence to the investigative process framework described in chapter one will provide guidance and support to investigators, which will ensure investigations are completed timely.

**CHECK YOUR WORK AND SOLICIT AN EDITOR**

The final stage in writing your brief is editing. This stage is a significant one, and you are required to be pedantic because your audience will be. Thorough editing helps identify:

- spelling mistakes (especially those your computer will not identify)
- awkward and or incorrect grammar
- verb/subject agreement
- correct tense – discuss events in the past and legislation/law in the present
• breakdowns in the logic of the brief’s organisation or conclusion
• fulfilment of the brief requirements
• inconsistencies in formatting and other standards.

Editing will allow you to make the minor adjustments or changes to expression that can greatly improve the flow of your brief or make your ideas clearer. Attention to content as well as surface errors in the editing stage is critical.

It is good practice to check your brief thoroughly for a particular aspect, and then check thoroughly for another aspect. This means in your haste to complete your brief, you will not neglect editing for different features. An editing checklist can be a useful tool.

Know your own writing style. What are your general strengths and weaknesses? What feedback have you received about your writing? Tailor your self-editing system to your specific needs. Another worthwhile strategy is to establish a relationship with someone whose judgement you trust to review your drafts. Have that person read your draft for clarity, completeness, content and conciseness.

USE YOUR COMPUTER TOOLS

Computer tools make parts of editing very easy, but it’s surprising how many people do not use them. Always, always do a spelling and grammar check when you have finished each document by selecting Spelling and Grammar (F7) from the Tools menu. It will take you through the entire document step by step.

LISTEN TO YOURSELF

The best technique for improving writing clarity is to read it out loud. Our eyes gloss over problems as they move across the page, and make incomplete things whole. By reading aloud you will catch errors and missing words and you will become aware of repetition. The final virtue of reading aloud is that it reveals sentences that are simply too long. Any sentence that requires you to draw breath in the middle needs to be at least cut in half. A short simple sentence that fully expresses a single idea should always be your goal.

EDIT FOR COMPLETENESS

Before sending your brief to the Legal Team, carry out a final edit for completeness. The following questions will help ensure your brief is complete:

• What am I alleging is the offence and have I proved this?
• What happened?
• What precautions were taken?
• When did it happen?
• Why did this happen?
• What caused the incident?
• Who was involved?
• How did the incident happen?
• How was equipment or machinery used?
• What training was offered?
• Where were people when this occurred?

Three final questions on your editing checklist should be:

• What offence am I alleging?
• Have I been able to prove this beyond a reasonable doubt?
• Are my facts correct?
CHAPTER SEVEN: MANAGEMENT OF AN INVESTIGATION

- Introduction
- Managing People
- Communication
- Managing Risk
- Community Impact Assessments
- Quality Assurance
- Managing Actions
- Record Keeping
- Exhibit Management
- Briefing and Debriefing
INTRODUCTION

The successful management of an investigation requires planning, organisation, control and motivation. An investigation may entail managing any or all of the following:

- resources
- people
- risk
- quality assurance
- actions
- record keeping
- auditable decision making
- communications.

Where resources are limited, investigators must prioritise the needs of the investigation in line with the resources available. This can be particularly difficult during the initial investigative phase.

There is now a greater emphasis on full and accurate record keeping within an investigation, including the use of resources. Where it is anticipated that significant resources will be used in an investigation, the relevant team manager will record the fact and work with relevant Director’s to ensure appropriate resources are allocated.

If a manager, independent review panel or Court reviews an investigation or its methods, those undertaking the review must be able to determine that the investigator’s decisions and actions were reasonable. Accurate record keeping will provide a key point of reference in the event of any enquiry or review.

MANAGING PEOPLE

Managing people is integral to any investigation. There are two components to people management within an investigation. They are: managing colleagues within the agency, and managing relationships with individuals who may assist the investigation or may provide material to the investigation⁹.

Depending on the nature and complexity of the investigation, an investigator will have to manage and interact with a variety of diverse individuals. These may include not only victims, witnesses and potential defendants, but also:

- colleagues
- various experts or subject specialists
- solicitors or legal representatives (defence and prosecution)
- representatives of partner agencies.

Given the potential range of individuals that investigators will have to interact with, the following list provides some behavioral traits to assist them in managing themselves and others. This is not a definitive list, nor is it in any particular order of priority.

COMMUNICATION

Investigators must be able to communicate effectively and adapt to change. Through effective listening, interpretation and understanding of information, they can formulate questions and test their understanding of the case. The ability to transmit and receive information accurately is crucial to the progress of an investigation.

⁹ Smith and Flanagan (2000)
SENSITIVITY AND PERCEPTION

Investigators need to be conscious of their behaviour and its possible effect on others. Avoid stereotyping, personal bias and discrimination. Also, being aware of other people’s reactions will assist investigators to build and maintain productive relationships.

PRACTICAL SUPPORT

Investigators should identify the individual needs of victims and witnesses and as far as is practicable offer support and assistance in meeting those needs.

INFLUENCING SKILLS

This is the ability to develop logical and practical arguments or proposals that are likely to identify solutions to problems and be able to persuade people to take a different stance or viewpoint.

ASSERTIVENESS

This is the ability to express beliefs and opinions in a forthright manner while taking account of other people's rights and opinions. The investigator's reactions to others should be positive and not aggressive.

MANAGING RISK

Health and safety legislation demands that risk is assessed and managed to prevent or reduce the likelihood or impact of harm to:

- victims
- witnesses
- potential defendants
- the general public
- SafeWork SA staff
- emergency services
- the local community
- local businesses.

A number of areas of investigation are susceptible to risk, and every investigator is responsible for managing these potential risks by undertaking appropriate risk assessments. Areas of an investigation that are susceptible to risk include:

- harm to an individual or group of individuals
- corruption of evidence
- failure of a victim or witness to attend court.

The measures taken to deal with risk can range from being relatively simple - such as the provision of prevention advice- to complex (e.g. providing witness protection). Investigators must be able to:

- recognise any risks that may occur during an investigation and the likely impact upon individuals, the investigation or the organisation itself
- make appropriate decisions to manage that risk
- keep detailed records demonstrating the steps taken to manage and monitor risk
- communicate details to others of the risk, or the strategies established to deal with it (e.g. colleagues, victims or witnesses).
SafeWork SA has policies and procedures for assessing and managing risk and investigators should understand these processes. Failure to deal with risk can be detrimental to the health and safety of individuals, do irreparable damage to the investigation, and lead to a lack of public confidence in the Agency’s competence.

During the course of an investigation, risk assessment should be subject to regular reviews to ensure that identified risks have been adequately managed. If any new risks are identified or the nature of the investigation changes significantly, a new risk assessment should be carried out.

COMMUNITY IMPACT ASSESSMENTS

During the course of an investigation one of the risks that investigators may have to manage is the impact the event/breach will have on the local community.

Community impact assessments will not need to be routinely undertaken. For various reasons some investigations attract increased attention in the local community or the media. This may be because of the seriousness of the offence or because there is a particular feature which raises public awareness. Investigators will need to assess the effect the event or breach has had on the community on a case-by-case basis.

Through consultation, the assessment will help to improve community confidence and encourage the free flow of information to assist in monitoring community reactions. Where consultation has taken place with the local community and interested parties, thought should be given to how information can be shared, acted on and if appropriate, disclosed. Any community impact document will be subject to the provisions of disclosure.

QUALITY ASSURANCE

The investigation process framework is a quality control capability and investigative supervision system to ensure that standards of investigation are complied with.

Investigations of more serious crime, such as fatalities, will be subject to the same formal review procedure. The evidential evaluation stage also provides quality assurance of the investigation process and double-checking of brief quality and admissibility of evidence to ensure that the case against the potential defendant is evidentially robust.

Irrespective of this additional review of an investigator’s work, there still remains a primary obligation on supervisors and managers to ensure that initial investigative actions are conducted thoroughly and in a timely manner. This quality assurance process will provide information to supervisors and managers that will assist in developing investigators’ skills through their personal development reviews.

MANAGING ACTIONS

The nature and complexity of an investigation will to some extent dictate the investigative action that investigators must manage. Agency Standard Operating Procedures may also dictate the level of investigative response and activity.

A sole investigator, assisted in varying degrees by other inspectors or other specialists, will conduct most volume investigations. In these cases the investigator has to prioritise their investigative actions, some of which will be evident from the initial attendance to the victim or the crime scene. Other investigative action entails developing and completing lines of enquiry, and recording the decision-making process that underpins this action. This assists colleagues, supervisors and managers to verify the progress of the investigation and to advise on prioritisation issues to support the investigation. It is essential that inspectors assisting investigations provide their statement accounting for their actions as soon as possible.
In significant investigations more than one investigator may need to be deployed. These investigations are also likely to generate multiple investigative actions and the collation of numerous documents. The Chief Advisor, Compliance and Investigations will manage and coordinate these events to allow investigators to focus on their particular role within the investigation.

**RECORD KEEPING**

An auditable record of the reasons for taking a particular investigative action must be kept. This will provide invaluable information for the initial, and any subsequent, investigator as well as for the organisation.

It will also provide an overview of the investigation and can be used to record areas such as:

- investigative actions (the options preferred and considered)
- any investigative strategy used
- risk assessments
- resource considerations
- health and safety considerations.

Records are kept in a variety of formats depending of the seriousness and complexity of the offence under investigation. However, generally they will be recorded within the body of the evidence matrix.

Timely and accurate records provide an audit trail of why decisions were taken and what factors were considered or discounted by the investigator in arriving at that decision. The recording of this information demonstrates the accountability and integrity of the investigative process.

Auditable decision making means:

- recording what has been done and why it was done, the reasons for taking particular investigative actions and what the outcome was
- providing an audit trail that can be followed in the event of review, scrutiny, or new material coming to light.

Investigators must be able to justify why a decision was made and be confident that others will be able to understand why they arrived at that decision. Auditable decision-making enables investigators to recall a particular investigation long after the event, as an individual’s recollection of events may become inadvertently distorted, even over a short period of time. This will be achieved through the investigation process framework and completion of an accurate evidence matrix.

Records of the decisions made at the time of the investigation are more likely to be accurate and credible. If new information subsequently comes to light the original investigative actions can be reviewed, documents and exhibits can be located, and the investigation can be progressed without unnecessary delay.

Keeping full and accurate records may also reduce the risk of cases collapsing where doubt can be cast on the integrity of evidence or when there are technical faults in the evidence gathering process. It also avoids unsafe convictions, and the costs and any consequent negative publicity associated with appeals and retrials.
EXHIBIT MANAGEMENT

During the course of an investigation, the investigator will gather material, which may be in a physical, documentary, or biological format.

This material will be referred to as exhibits and will require collation, examination and storage to maintain their integrity and provenance. The investigator must maintain accurate and comprehensive records of all exhibits. As each exhibit is recovered during an investigation, a record should be compiled detailing the:

- precise description of the material recovered
- precise location of recovery
- time, day and date of recovery
- individual who produces it
- individual who recovered it
- location and method of storage.

If the material is subsequently removed from storage this should also be recorded, detailing the reasons for this and the name of the person who removed it. Advice on the recovery, handling and storage of exhibits can be obtained from the Legal Team.

In large scale, serious or complex enquiries, a dedicated Exhibits Officer may be appointed. The exhibits officer is responsible for maintaining an exhibit register detailing all of the above. Additionally, they will be responsible for bringing significant items to the attention of the investigator at the earliest opportunity.

N.B. For further information and guidance refer to:
- SOP WKP 06/0454 – Evidence Management.
- SOP WKP 06/0127 – Digital Evidence Management.
- MOP 11/0835 – Powers of Seizure
- MOP 11/0812 – Documents and Questions
- MOP 11/0815 Forfeiture of Seized Evidence

BRIEFING AND DEBRIEFING

Briefing is a method of imparting or exchanging information. Briefings can be to senior investigators and managers or to colleagues and team members. They can also be used as a means of motivating people to work as a team by explaining what is expected of them and to measure and monitor the progress towards an objective.

Debriefing is an opportunity for the investigator to obtain and share feedback on the outcomes of an investigation. Briefing and debriefing are powerful learning tools for the investigator and the organization as they identify good practice and areas for development.

Effective briefing and debriefing requires knowledge of the following:

- the subject – outline the facts or circumstances to the audience
- the individuals to be briefed – in particular, their level of competence and capability
- the objective – the investigator must ensure that they and the audience know what they want to achieve, how this will be accomplished and by whom.

The above factors require the investigator to undertake a degree of planning. Briefings should not be conducted informally and all briefing and debriefing notes should be kept for disclosure purposes.
Below are two models for briefings. IIMARC is a model for briefing downwards. This is generally used for briefings to operational staff, such as a briefing to attend a company and conduct a search of premises for documents and to highlight roles and responsibilities to staff.

SAFCOM is a model for briefing upwards. This model is generally used to brief managers on the outcomes of a particular operation or event.

These models are only suggestions and can be used if deemed appropriate.
# IIMARC BRIEFING MODEL

| INFORMATION       | What is the ‘action’ about?  
  (This can be compared to the ‘Situation’ in the acronym SAFCOM). | This will include the following considerations:  
  • When will it commence?  
  • How long will it last?  
  • Where is the venue?  
  • Is the action covered by legislation?  
  • Are any other agencies involved and do they have specific legal responsibilities? |
|-------------------|-------------------------------------------------------------------|
| INTENTION         | What is the intention?  
  (This can be compared with the ‘Aim’ in the acronym SAFCOM). | This will detail what needs to be achieved as far as is reasonably practicable, causing the least disruption to normal community life, returning to normality as soon as possible. |
| METHOD            | How will the intention be achieved? | This will include the following considerations:  
  • What is the command structure, who is in command and where will they be during the action?  
  • There must be clear tasking, detailing who is responsible for what.  
  • Is there a need for a rendezvous point (RVP) or marshalling area and cordons, if so where are they to be sited?  
  • What routes should vehicles take and where must they be parked, are there maps/sketch plans available?  
  • What is the policy for dealing with arrests/prisoners, who will deal with them and where should they be taken?  
  • Is there any liaison with any specialist agencies or outside agencies and what is their role? |
| ADMINISTRATION    | What are the administrative issues surrounding the ‘action’? | The list of considerations is endless and may include the following:  
  • Briefing – where will it take place, briefing aids required, who will attend, etc?  
  • Security and Disclosure – who needs to know, unused and sensitive material, communication, etc?  
  • Contingency Plans: what could go wrong, what will happen, etc.  
  • Custody issues – location, interviewing, interpreters, etc.  
  • Personnel – start/finish times and locations, transport, overtime, refreshment, toilet facilities, equipment/tools, protective clothing, welfare, etc.  
  • Media issues – press liaison, press releases, etc.  
  • Intelligence – information known, information to be gained, etc.  
  • Legal issues – legislation handouts, warrants, authorities, etc. |
| RISK              | What are the weaknesses and threats and what could go wrong? | Issues will include the following considerations:  
  • What are the health and safety/duty of care issues in respect of operational team, support services, the public and potential defendant?  
  • How can weaknesses/threats be lessened or eliminated, what are the plans to cope with them?  
  • Are staff deployed in sufficient numbers, are they adequately trained/equipped, have they been properly briefed?  
  • Is there a need for a community care assessment plan to minimise adverse effects on the local community?  
  • If anything goes wrong, what would need to be done, how could existing resources be diverted, could they cope, could a change of purpose be achieved, could resources employed within the operation be readily deployed at short notice, is there a need for a reserve, etc. |
| COMMUNICATIONS    | How will communication be maintained throughout the action? | Issues will include the following considerations:  
  • Security implications  
  • Radios: type, channel, spare batteries, call signs, radio silence, etc  
  • Mobile Phones, contact telephone numbers and loud hailers  
  • Will all communication go through the Operational Commander? |
## SAFCOM BRIEFING MODEL

| SITUATION | What is the problem?  
(This can be compared to the ‘Information’ in the acronym ‘IIMARC’) | What is the situation or problem?  
The officer needs to be able to give a clear and factual outline. |
|-----------|-------------------------------------------------|--------------------------------------------------|
| AIM       | What is my aim?  
(This can be compared with the ‘Intention’ in the acronym ‘IIMARC’) | What is the officer’s aim in addressing the situation?  
The officer requires a clear aim, how can an operation be planned without a clear idea of what it is supposed to achieve? |
| FACTORS   | What are all the factors that make up or contribute to this problem? | This is a risk assessment.  
The officer needs to consider:  
a) What factors may affect the operation?  
b) What steps need to be taken to reduce risk, if that is possible?  
c) What resources will be required? |
| CHOICES   | What are the various solutions? | The officer is expected to examine all possible ways of addressing the situation and conduct an assessment/analysis of each method. |
| OPTION    | What is my preferred option?  
(This can be compared with the ‘Method’ in the acronym ‘IIMARC’) | Having examined the available choices the officer needs to decide on the preferred option and be able to explain why.  
a) Is it effective?  
b) Is it proportionate?  
c) Does it represent best value?  
d) Is it achievable? |
| MONITORING| How will the preferred option be monitored in order to ensure the aim is achieved? | The officer needs to have a method of monitoring whether the preferred option is achieving the aim.  
1. How will success be measured?  
2. Mobile phones, contact telephone numbers and loud hailers.  
3. Will all communications go through the Operational Commander or the control room? |
APPENDICES

N.B Please note that all templates for investigations are available through the E-Manual or Word/New/My Templates

- A – Investigation Plan Exemplar
- B – Witness Statement Exemplar
- C – Inspectors Statement Exemplar
### APPENDIX A: INVESTIGATION PLAN

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**Note:**
Once this document is final (agreed as to actions to complete),
Please print for Team Leader / Manager to sign and date.
Once signed by Team Leader / Manager, scan to PDF and attach to activity.
Expanding & Clarifying the Account

First Free Recall

Sketch

Second Free Recall

Recall

Recall

Recall

Context

Context

Context

Context

Context