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## INSPECTOR POWERS UNDER THE WORK HEALTH AND SAFETY ACT

Under the *Work Health and Safety Act 2012 (SA)* (the WHS Act), Inspectors will play an important role in securing compliance and enforcing the WHS Act and the *Work Health and Safety Regulations 2012 (SA)* (the WHS Regulations).

### WHO SHOULD READ THIS?

This fact sheet should be read by a person conducting a business or undertaking (PCBU), workers and anyone else who attends a workplace.

### WHO CAN BE AN INSPECTOR?

The regulator can appoint any of the following to be an inspector:

- a public sector employee under the *Public Sector Act 2009*;
- the holder of a statutory office;
- a person who is appointed as an inspector or authorised officer under a corresponding work health and safety law; or
- any other class of person that has been prescribed by the regulations (for example, to allow for the appointment of particular work health and safety experts to meet the regulator's short-term, temporary operational requirements).

### FUNCTIONS AND POWERS OF AN INSPECTOR

- To provide information and advice about compliance with the WHS Act.
- To require compliance with the WHS Act through the issuing of improvement and prohibition notices.
- To investigate contraventions of the WHS Act and assist in the prosecution of offences.
- To assist in the resolution of work health and safety issues at workplaces, including issues related to access to a workplace by an assistant to a health and safety representative and issues related to the exercise or a right of entry by a WHS entry permit holder.
- To review disputed provisional improvement notices.
- To investigate contraventions of the WHS Act and assist in the prosecution of offences.
- Other functions or powers conferred by the regulations.

### GENERAL POWERS OF ENTRY OF AN INSPECTOR

Inspectors may enter any place they reasonably suspect is a workplace at any time and without prior notice to exercise their powers.

However, as soon as practicable after entry to a workplace or suspected workplace, an inspector must take all reasonable steps to notify the following persons of the entry and the purpose of the entry:

- the relevant PCBU at the workplace;
- the person with management or control of the workplace; and

- any health and safety representative for workers carrying out work for that PCBU at the workplace.

Upon entry to a workplace an inspector may do any or all of the following:

- inspect, examine anything and make enquiries at the workplace;
- take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recording);
- bring to the workplace and use any equipment or materials that may be required;
- take and remove samples for analysis of any substance or thing without paying for it;
- require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers;
- exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of the WHS Act;
- require the production of documents;
- copy and retain documents;
- ask questions and conduct interviews;
- seize anything as evidence;
- request a person's name and address; and
- take affidavits.

An inspector cannot enter a place that is used only for residential purposes unless they:

- have the consent of the person with management and control of the premises; or
- the inspector has authority under a search warrant; or
- the inspector believes there is no reasonable alternative means of accessing a suspected workplace.

An inspector may apply to a magistrate to obtain a search warrant for any place. A magistrate will issue a search warrant if they believe that there may be evidence of an offence against the WHS Act at the place. If a warrant is granted it will expire seven days after it is issued.

## **YOUR OBLIGATIONS**

A person must provide reasonable help required by an inspector to exercise the inspector's powers. It is an offence for a person at a workplace to refuse to do this without a reasonable excuse.

A person must comply with an inspector's direction when they exercise their enforcement powers under the WHS Act, for example, power to:

- seize dangerous workplaces, plant, substances etc;
- issue improvement notices;
- issue prohibition notices; and
- issue non-disturbance notices

A person must not hinder or obstruct, impersonate, assault, threaten or intimidate an inspector. It is an offence to any of these things.

### **Important**

This information provides guidance on work health and safety matters. It may refer to legislation that has been amended or repealed and should not be taken as a statement of law. To ensure compliance with your legal obligations, you should always refer to the current Work Health and Safety Act and Regulations.