

SESLHD PROCEDURE COVER SHEET



Health
South Eastern Sydney
Local Health District

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EXECUTIVE SPONSOR or EXECUTIVE CLINICAL SPONSOR	Director, People and Culture
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KEY TERMS	WHS, SafeWork NSW, Inspector, Improvement Notices, PIN Notice, Regulator Inspection, SafeWork Investigation, Notifiable Incident, SafeWork, Prosecution, Fine
SUMMARY	On-site inspections by SafeWork NSW, Entry Permit Holders and also Health and Safety Representatives have the potential for fines and prosecutions to be issued against the organisation. This document outlines the procedure to manage such visits.

COMPLIANCE WITH THIS DOCUMENT IS MANDATORY

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SESLHD PROCEDURE

Managing Notifiable Incidents and Regulator Interactions **SESLHDPR/269**

1. BACKGROUND

This procedure outlines how the organisation manages Work Health and Safety (WHS) regulator interaction, notifiable incidents, investigations, including inspections conducted by Entry Permit Holders or Health and Safety Representatives (HSRs) or SafeWork NSW Inspectors. All regulator interactions are required to be recorded, including formal notices such as:

- Improvement Notices
- Prohibition Notices
- Entry Reports
- Non-Disturbance Notices issued by a WHS Regulator
- Provisional Improvement Notices (PINs) issued by the workplace Health and Safety Representative (HSR). Note that a HSR can only issue PINs if they have completed the accredited 5-day training course.

This procedure identifies key responsibilities and provides direction for the management of regulator interaction and the issuing of formal notices, including actions involving receipt, communication, escalation, action tracking and compliance to a formal notice.

2. PURPOSE

SafeWork NSW are empowered under the Work Health and Safety (WHS) and Workers Compensation legislation to investigate workplace incidents and potential breaches of legislation.

Depending on the results of the investigation, SafeWork NSW may issue notices requiring the organisation to:

- Remedy unsafe work conditions or hazards
- Prohibit work from continuing until the hazard or risk is fixed
- Provide evidence of correct workers compensation insurance
- Issue on-the-spot fines for breaches of the legislation or
- Initiate investigations that may lead to prosecution.

HSRs (where they have completed the accredited 5-day training course) have similar powers under the WHS Act and may issue cease work orders and improvement notices requiring the organisation to:

- Remedy unsafe work conditions or hazards
- Prohibit specific work from continuing until the hazard is fixed OR
- Notify SafeWork NSW regarding safety concerns and request their assistance to further investigate incidents.

Entry Permit Holders (usually a union official) have similar powers under the WHS Act and these include:

- Providing advice and / or consult with relevant workers (examples):
 - assist health and safety representatives (HSR) if requested
 - assist in resolving issues as part of issue resolution
 - consult with relevant workers and the PCBU

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- assist with conducting an election of an HSR.
- inspect any work system, plant, substance, structure or other thing relevant to a suspected contravention of the WHS Act.

Under the various State and Territory Acts and Regulations in Australia certain powers to issue formal notices are conferred on parties with authorisation and obligations under those Acts and Regulations. Formal notices are instruments that may potentially be issued by a HSR or an Inspector acting under the jurisdiction of the relevant State or Territory WHS Act.

2.1. Types of Formal Notices

The following describe the type and intent of the formal notice:

Formal Notice	Description
Provisional Improvement Notices (PIN)	<p>A formal notice that may potentially be issued by a HSR to the employer when they believe there has been a contravention of the WHS Act or Regulations in their workplace. A PIN can potentially be issued by the HSR when consultation between the HSR and employer has failed to resolve the health and safety issue. It is important to note that a HSR may only issue a PIN after they have consulted with their employer about the alleged health and safety contravention and the issue has not been remedied. Ensure the validity of the PIN in line with relevant legislation (i.e. training of HSR, work group representation).</p> <p>Based on a PIN being provisional, the PCBU / Employer may dispute the issued PIN by referring it to the WHS Regulator for determination and resolution. Note: there are time limits imposed by the various jurisdictions on contesting the issued PIN.</p>
Improvement Notices (IN)	<p>Issued by an Authorised Officer (WHS Regulator Inspector) identified under the jurisdiction of that Act (State / Territory). The IN can be issued pursuant to a PIN following a workplace visit by an Inspector to resolve a disputed PIN, where a PIN has not been complied with or, where an Inspector reasonably believes that a person is contravening the Act or is likely that the contravention will continue or be repeated. The IN may contain directions and will specify a date by which time compliance is required (All States and Territories).</p>
Non-Disturbance Notice	<p>Issued by an Inspector authorised under the Act. A Non-Disturbance Notice is issued to the occupier of a place to prevent movement, interference with or disturbance of plant, substance or any other thing and, applies for no more than 7 days (All states with the exception of WA).</p>
Prohibition Notice (PN)	<p>Issued by an Inspector where there is reasonable belief that an activity is occurring at a workplace that involves or will involve an immediate risk to health or safety of a person. The Prohibition Notice prohibits the carrying on of the activity until the Inspector has certified in writing that the matters that give rise to the risk have been remedied. (All States and Territories).</p>

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Formal Notice	Description
Entry Notice	Issued by an Inspector advising the purpose of the visit, times of entry and departure, summary of observations, descriptions of actions taken by the SafeWork Inspector, powers exercised by SafeWork Inspector and whether photographs or recordings were taken.

Formal notices issued by the Inspectorate authorised under the Act in that jurisdiction must be complied with. However, there is provision for the organisation to seek internal review of the formal notice by the respective regulator.

2.2. Receipt and Notification of a Formal Notice

On receiving a formal notice, the recipient is to review the validity of the PIN or, for all other Notices, compliance to the Notice requirements. The recipient must also advise SESLHD Head of Health Safety and Wellbeing of receipt of a formal notice. Discussion must occur with the relevant Health Safety and Wellbeing team where there is an intention to dispute the PIN or seek regulatory review of the formal notice. The matter must also be referred to Legal Services for further advice on disputation of a formal notice.

On acceptance of the formal notice, the organisation is to notify and provide a copy of the notice to the relevant Health and Safety Partner and the Head of Health Safety and Wellbeing.

3. DEFINITIONS

Refer to Appendix 1 - Definitions.

4. RESPONSIBILITIES

General Manager / Executive Management will:

- ensure that systems are in place to meet legislative compliance for the notification of serious incidents
- provide advice to managers and staff on management of notifications of serious incidents to SafeWork NSW and coordination of SafeWork investigations
- determine if legal advice is required
- receive and act on information received related to serious incidents and injuries
- ensure appropriate response and mitigation of the issue
- report notifiable incident to SafeWork NSW when Head of Health Safety and Wellbeing (or their nominated delegate) is not available

Health and Safety Partner and Manager Health and Safety will:

- immediately notify the General Manager and Head of Health Safety and Wellbeing of any serious or notifiable incident
- immediately notify the General Manager and Head of Health Safety and Wellbeing of a visit or proposed by SafeWork
- report any serious or notifiable incidents to the Manager Health and Safety
- report notifiable incidents to SafeWork NSW with Executive support

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- provide relevant expertise on work health and safety issues
- consult with all relevant persons to resolve issues
- assist to develop a plan to rectify hazardous situations, with designated persons responsible for corrective actions within the required timeframe
- assist the manager responsible to organise any corrective actions needed and monitor effectiveness
- offer support to all relevant staff
- report back to SafeWork NSW when requested on identified issues within the specific timeframe
- assist managers in the investigation of safety issue/s raised related to a notifiable incident and SafeWork NSW Inspector visits.

Managers will:

- firstly take immediate action to mitigate harmful consequences of an incident
- immediately notify the General Manager of any serious or notifiable incident
- immediately notify the Health and Safety Partner or Manager Health and Safety
- consult with the local (Health and Safety Representative) HSR and /or WHS Committee Chairperson
- accompany the inspector during the inspection
- introduce the inspector to the essential relevant workers if requested
- record and refer to the WHS Consultant and your service Director for requests made by an inspector if not able to comply at the time of the request
- refer to the Health and Safety Partner to take receipt of any notices issues and clarify any details, and to forward any notices to the Health and Safety Partner and the General Manager.

Work Health and Safety Committee / Health and Safety Representatives are required to:

- On behalf of their work group provide representation to management on identified safety issues brought to their attention.
- Under special circumstances where a HSR is invited to perform an inspection in a workplace other than one belonging to their own work group, the HSR is expected to:
 1. notify the facility / services manager and the health and safety partner prior to performing the inspection.
 2. if the visit is unannounced due to incident/situation involving a serious risk to the health or safety, notify the facility / services Manager and the Head of Health Safety and Wellbeing as soon as they arrive onsite.
- Take reasonable steps to work with the Facility / Services Manager to address the identified safety issue/s prior to issuing a Provisional Improvement Notice or Cease Work Order.
- Where possible, advise the Facility / Services Manager that unless the safety issue is rectified a Provisional Improvement Notice or Cease Work order will be issued
- If they issue a Provisional Improvement Notice, ensure this is in writing and given to the Facility / Services Manager immediately, so that appropriate action can be taken to address the safety issues or concerns.

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Note: Facility / Services Manager refers to the most senior SESLHD Manager that is on site at the time the issue arises, example Executive Director of Operations, Director of Nursing etc.

Workers

- direct the inspector to the most senior manager available, and
- Cooperate and actively contribute to ensuring effective implementation of this procedure.
- Report all incidents to their manager and in IMS+ in a timely manner to enable the manager to determine if the incident may be notifiable.
- Do not disturb any incident site that may result in a SafeWork NSW notification.

5. PROCEDURE

5.1. Provision of information to SafeWork NSW Inspectors

Under the WHS Act there are two sections under which an inspector can request information:

- Section 155 – Normally a written request for information.
- Section 171 – Normally a workplace visit/entry.

When providing information to a SafeWork NSW Inspector they are required to make you aware of your right to “Abrogation of privilege against self-incrimination” under section 172 of the WHS Act.

Section 172 means, although you cannot refuse to answer a question or provide information on the grounds it may incriminate yourself, by providing the information it is not admissible as evidence against yourself in civil or criminal proceedings.

There are three stipulations to this legal privilege -

1. Should you provide false or misleading information then proceedings may occur.
2. There is no legal privilege for publicly available information such as published policies.
3. This is for information specifically requested, if you volunteer further information other than that requested then this volunteered information is admissible.

This means before providing any information to the inspector you should always confirm who they are and that you request legal privilege. You should use a statement such as “I do not want to provide this information but understand I have to by law”.

It is important that all workers are aware that although we are compelled to give information under the WHS Act, we need to be wary of what information we volunteer.

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5.2. Co-ordination of a SafeWork NSW Investigation or Inspection

The Health and Safety Partner and/or Manager assist in the investigation, as required in the following:

- arranging an appropriate time and meeting place
- accompanying the inspector while on site
- arranging access to the relevant staff (including interviews) if requested
- arranging access to the area where the incident occurred if requested
- provision of those documents specifically requested by the inspector
- maintain records of any communications and copies of documents exchanged
- keeping copies and records of anything given to or taken by the inspector
- notifying the relevant employer and employee representatives, the General Manager, WHS Committee Chairperson, and other key stakeholders, if not already aware.

5.3. Staff support

When managers and staff are required to assist with SafeWork NSW Inspections and investigations, support must be provided that, includes:

- Staff wellbeing and support service, and
- support when dealing with SafeWork NSW.

5.4. SafeWork NSW inspectors are requested to:

- Notify the Head of Health Safety and Wellbeing of their intention to visit the site or, if the visit is unannounced, notify the Head of Health Safety and Wellbeing as soon as they arrive onsite.
- Communicate with the relevant facility / services Manager, to ensure any required safety briefs are provided before entering the specific workplace.
- Show their SafeWork NSW identification on request.

5.5. Entry Permit holders are required to:

Refer to Entry Permit Holder's Memorandum of Understanding which will detail this requirement.

5.6. Directors, Executive Management, General Management

If pre-planned by a SafeWork NSW Inspector, a HSR in a workplace other than that of their own work group or an Entry Permit Holder must:

- liaise with the Head of Health Safety and Wellbeing on any pre investigation matters and identify any legal advice deemed necessary
- appoint a senior manager to act as employer representative during the investigation if the Director/Facility Manager is unable to fulfil this role

During the Investigation:

- Meet and accompany the inspector, Entry Permit Holder or HSR (along with the Head of Health Safety and Wellbeing or their nominated delegate) during the investigation
- Act as chief spokesperson for the organisation during the investigation
- Cooperate with the inspector, Entry Permit Holder or HRs responding to questions clearly concisely and factually

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- Provide requested documentation.

After the inspection:

- Provide the Chief Executive with a brief concerning the investigation's outcome and regular updates on progress with implementation strategies to meet any SafeWork NSW requirements
- Act as chief spokesperson for the organisation about any post investigation follow up or communication
- Assist to manage improvement strategies to address any SafeWork NSW recommendations or agreed recommendations from Entry Permit Holders or HSRs in consultation with the relevant managers, workers and their representatives.

For more detail, refer to:

[SESLHDPR/727 – Workplace Safety Incident Management](#)

5.7. Head of Health and Safety / Health and Safety Manager

If pre-arranged by a SafeWork NSW Inspector, a HSR in a workplace other than that of their own workgroup or an Entry Permit Holder will:

- Arrange an appropriate time and place to meet the inspector, Entry Permit Holder or HSR
- Notify the Director and the HSR of the pending inspection
- Arrange for the relevant managers, workers and HSRs to be present during the investigation
- Prepare any relevant materials (risk assessments, training records, monitoring reports etc.) that relate to the matter
- Arrange support for the workers and/or managers if required
- Liaise with managers to arrange any transport/work release requirements for workers that need to be interviewed

During an inspection:

- Meet the inspector, Entry Permit Holder or HSR at the arranged time and place along with Facility Manager (or nominated senior manager)
- If a SafeWork NSW Inspector or Entry Permit Holder ask to sight their identification
- If a HSR, confirm the person is listed on the [SESLHD HSR register](#)
- Accompany the inspector, Entry Permit Holder or HSR during the inspection
- Keep a record of any materials, photos or other evidence taken by the inspector, Entry Permit Holder or HSR at the time of the inspection.

After the inspection:

- Coordinate improvement strategies to address any SafeWork NSW recommendations or agreed recommendations from Entry Permit Holders or HSR's in consultation with the relevant managers, workers and their representatives.
- Prepare a briefing note on the investigation for the CE on behalf of the Director/Facility Manager
- Provide the Director/Facility Manager with progress reports on the development and implementation of any improvement strategies

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- Keep records (and copies) of any documentation, materials or other evidence sent to SafeWork NSW
- Ensure any PINs or agreed arrangements are reported to NSW MoH via the periodical PINs and Prosecutions report.

5.8. Managers will:

If an inspector, Entry Permit Holder or HSR arrives unannounced:

- If a SafeWork NSW inspector or Entry Permit Holder ask to sight their identification
- If a HSR, confirm the person is listed on the [SESLHD HSR register](#)
- Notify the Director/Facility Manager and the Head of Health Safety and Wellbeing (or their nominated delegate) that the inspector or other HSR is present and ask them to wait until they arrive to accompany them during the inspection.

During an inspection:

- Ensure workers are available if required during the inspection
- Cooperate with the inspector and answer the specific questions clearly, concisely and factually
- Provide any requested documentation to SafeWork NSW Inspector
- Provide only requested documentation outlines in Entry Permit Holders Written Notification or agreed verbal brief in emergencies situations.

After the inspection:

- Develop and implement any improvement strategies to meet SafeWork NSW, Entry Permit Holders or HSR agreed recommendations in consultation with the Head of Health Safety and Wellbeing (or their nominated delegate) and relevant workers and their representatives

5.9. Workers

If an inspector (other than an HSR who belongs to the work group) arrives unannounced:

- If a SafeWork NSW Inspector or Entry Permit Holder, ask to sight their identification
- Immediately notify their manager of the inspector's, Entry Permit Holder's or HSR's presence

During an inspection:

- Cooperate with the inspector, Entry Permit Holder or HSR and answer questions clearly, concisely and factually
- Provide any requested documentation to SafeWork NSW Inspector
- Provide only requested documentation outlines in Entry Permit Holders Written Notification.
- You are only required to answer the questions and provide the specific information requested.

After an inspection:

- Participate in the development and implementation of any improvement strategies to meet SafeWork NSW requirements.

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6. DOCUMENTATION

- Appendix 2 and Appendix 3 – Process Flowcharts
- Records of Investigation
- Written Notices provided by Entry Permit Holders
- Any records used for the investigation e.g. SWP's, Risk Assessments, etc.
- Notices issued
- All records must be documented and maintained, including responses and actions to address any notices, including monitoring and reporting on action plan implementation progress.

7. AUDIT

The procedure will be reviewed to determine how effective the process operates when it is initiated, and during the MOH WHS audits conducted every two years.

8. REFERENCES

External

- [Work Health and Safety Act 2011](#)
- [Work Health and Safety Regulation 2017](#)
- [SafeWork NSW Code of Practice - Work health and safety consultation, coordination and cooperation](#)
- [SafeWork NSW incident response and investigations – what to expect – Customer Service Standard](#)
- [SafeWork Australia Incident Notification Information Guide](#)
- <https://www.safework.nsw.gov.au/resource-library/when-to-notify-blood,-body-fluid-and-needlestick-exposure-incidents>
- [SafeWork Workplace Inspections](#)

Ministry of Health

- [NSW Health Policy Directive PD2018_013 - Work Health and Safety: Better Practice Procedures](#)

Internal

- [SESLHDPR/727 – Workplace Safety Incident Management](#)
- [SESLHDPR/271 – Work Health Safety and Wellbeing Statement of Commitment](#)
- [WHS Definitions Dictionary](#)
- [WHS Record Keeping Matrix](#)
- [iMS+ Incident Management Reporting System](#)

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9. REVISION AND APPROVAL HISTORY

Date	Revision No.	Author and Approval
April 2011	1	Peter Kuszelyk, WHS Officer, Health safety and Wellbeing. Amended to reflect change to Local Health Network and Cluster.
____ 2013	2	Peter Kuszelyk, WHS Officer. Amended to reflect change to WHS Act and Codes of Practice.
August 2017	3	Desktop Revision and Links Update - John Parkinson, WHS Consultant
October 2017	3	Updates endorsed by Executive Sponsor
March 2022	4	Revise and update links, references, titles, workflows and changes in WHS compliance obligations. Document title changed. Rosanna Martinelli – Head of Health Safety and Wellbeing. Approved by Executive Sponsor.

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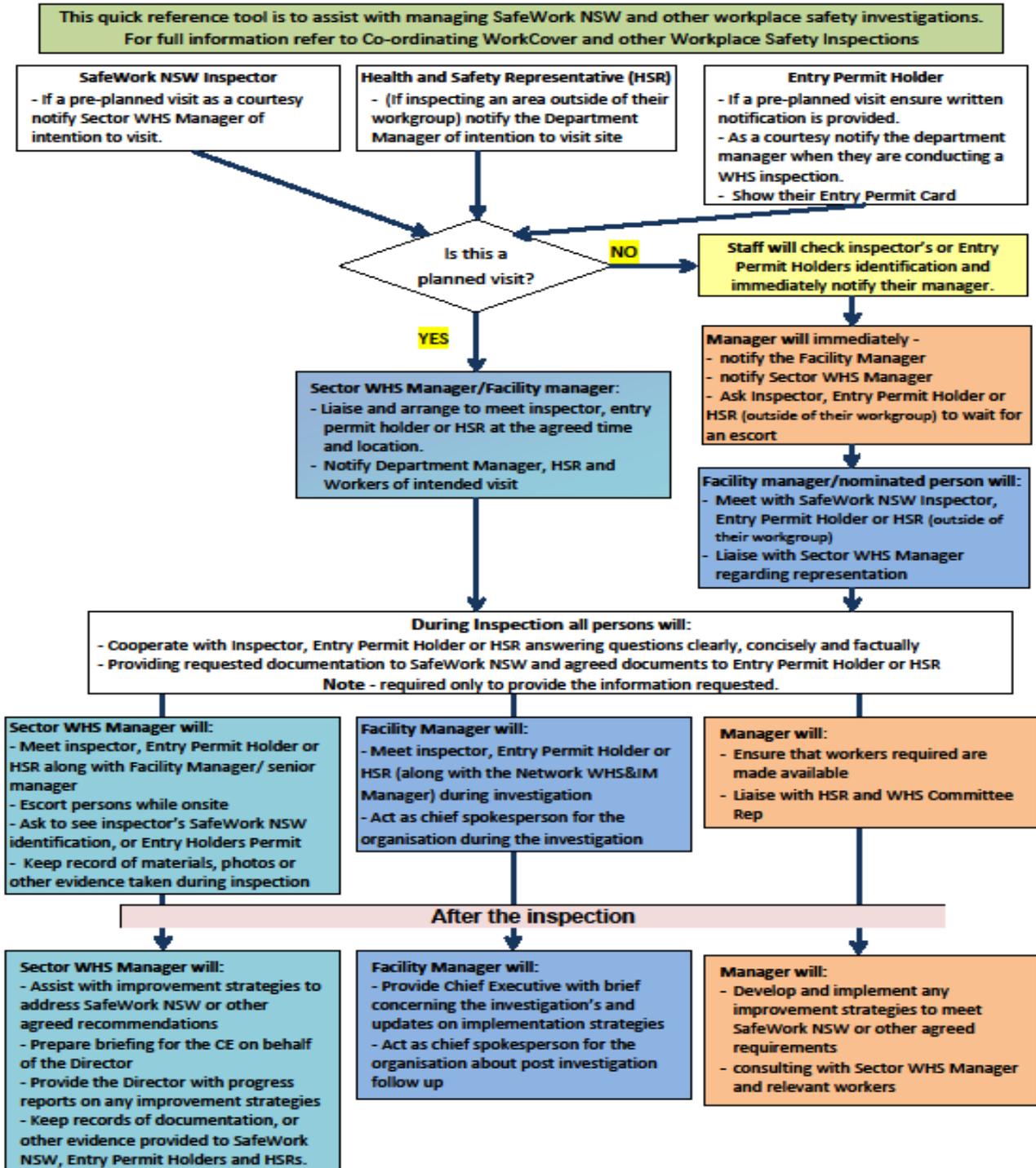
Appendix 1 - DEFINITIONS

Key Term	Definition
Health and Safety Representative (HSR)	a person elected by the work group using the formal and documented election process (SESLHDPR/020 Nomination and Election of Health and Safety Representatives Guidelines) to represent the workers on work health and safety matters for a term of three (3) years. <ul style="list-style-type: none"> The HSR can elect to attend an accredited five day SafeWork NSW approved training. On completion of the training, the HSR will be registered on the SafeWork NSW database.
Accident	Any incident that results in injury or property loss
Incident	Any unplanned event resulting in, or having a potential for, injury, ill health, damage or other loss.
PCBU	Persons conducting a business or undertaking
Preservation of site	The site where a notifiable incident has occurred must not so far as reasonably practicable be disturbed until a SafeWork NSW Inspector arrives at the site or an earlier time if directed by a SafeWork NSW Inspector. The incident site is able to be entered if it is safe to do so in order to provide first aid and treatment to an injured person or to prevent further property damage.
SafeWork NSW	State’s workplace health and safety regulator.
Staff	They can be worker, employees, or anything else; together they are called staff. Employees are people who are being paid wages or salary by their employer whereas, staff are not necessarily being paid. Staff includes contractors and volunteers, they do not have to be employed but employees have legal status.
Worker	Under the Work Health and Safety Act 2011 (WHS Act), a worker includes any person who works, in any capacity, in or as part of the business or undertaking. You are a worker under health and safety legislation if you are an: <ul style="list-style-type: none"> employee independent contractor or subcontractor (or their employee) employee of a labour hire company outworker, such as a home-based worker apprentice or trainee a student gaining work experience volunteer.

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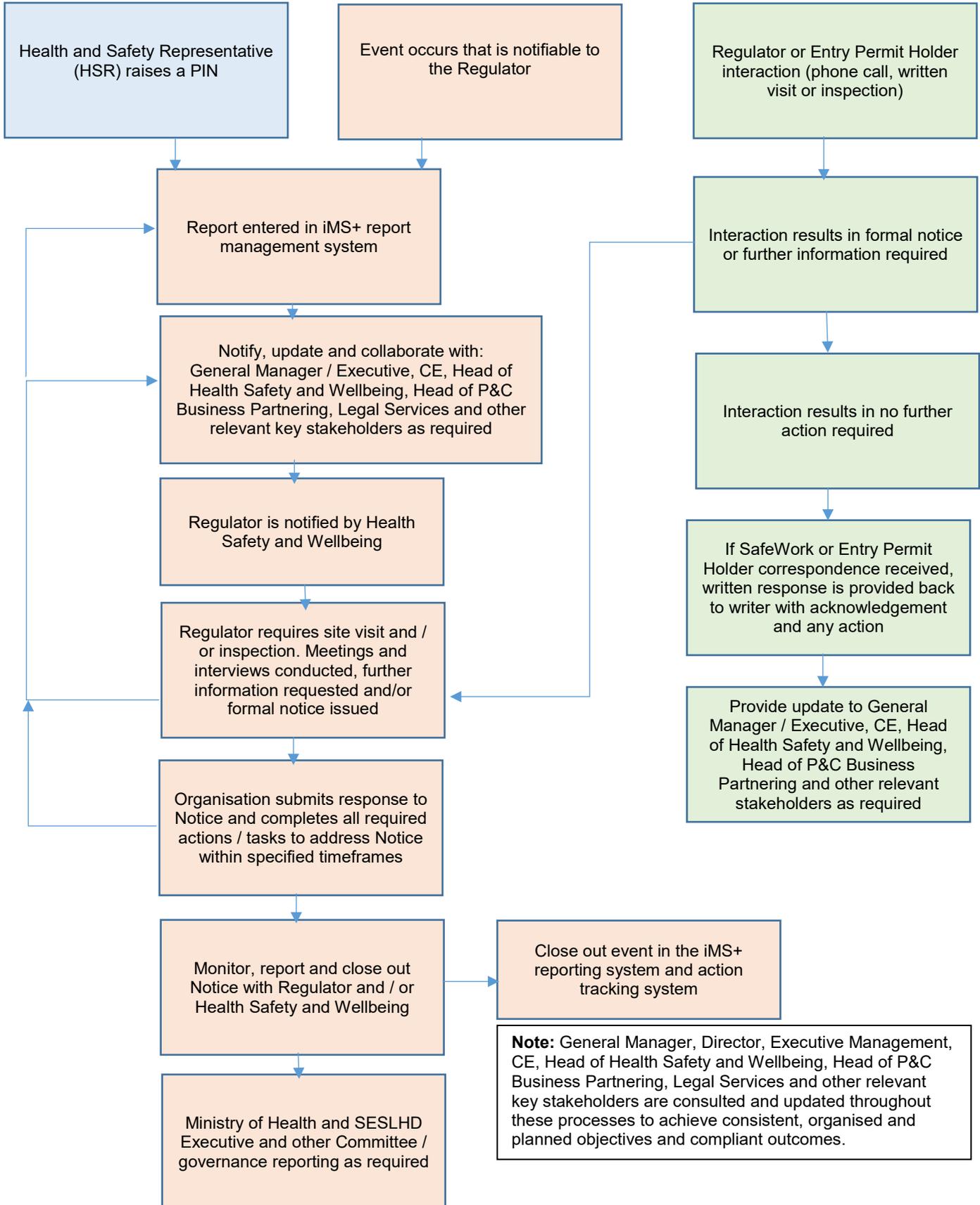
Appendix 2 – Process Flowchart for Managing SafeWork or other Safety Inspections

Managing SafeWork or other Workplace Safety Inspections



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Appendix 3 – Process Flowchart for Managing Notifiable Incidents and Regulator Interactions



Note: General Manager, Director, Executive Management, CE, Head of Health Safety and Wellbeing, Head of P&C Business Partnering, Legal Services and other relevant key stakeholders are consulted and updated throughout these processes to achieve consistent, organised and planned objectives and compliant outcomes.