

# **WORKER REPRESENTATION AND PARTICIPATION GUIDE**



**safe work australia**

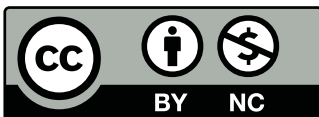


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Safe Work Australia works with the Commonwealth, state and territory governments to improve work health and safety and workers' compensation arrangements. Safe Work Australia is a national policy body, not a regulator of work health and safety. The Commonwealth, states and territories have responsibility for regulating and enforcing work health and safety laws in their jurisdiction.

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# 1. INTRODUCTION

This Guide provides information on the representation and participation of workers in health and safety matters at the workplace, as well as guidance on resolving health and safety issues. It supports one of the objects of the Work Health and Safety Act (the WHS Act), which is to provide for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety.

Worker representation provides a means for facilitating consultation, involving workers and giving them a voice in health and safety matters. The WHS Act recognises that workplaces have better health and safety outcomes when workers have input before decisions are made about health and safety matters that affect them.

A person who conducts a business or undertaking (PCBU) must consult, so far as is reasonably practicable, with workers who carry out work for the business or undertaking and who are (or are likely to be) directly affected by a work health or safety matter.

Part 5 of the WHS Act allows for workers to be consulted and represented through health and safety representatives and committees:

- A worker may ask for a Health and Safety Representative (HSR) to be elected to represent them on work health and safety matters. If a worker makes this request, work groups need to be established to facilitate the election. Where HSRs have been elected, the PCBU must consult with them.
- A Health and Safety Committee (HSC) brings together workers and management to assist in the development and review of health and safety policies and procedures for the workplace. A HSC must be established when a HSR or five or more workers makes a request to the PCBU.

This Guide focuses on these consultation and representation mechanisms. Further information about how to consult with workers and other duty holders is available in the *Code of Practice: Work Health and Safety Consultation, Cooperation and Co-ordination*.

## **WHO IS A 'WORKER'?**

Under the WHS Act, a worker is broadly defined to mean a person who carries out work in any capacity for a business or undertaking and includes employees, outworkers, apprentices, trainees, students gaining work experience, volunteers, contractors or subcontractors and their employees.

## **WHAT HAPPENS TO EXISTING HSRs AND HSCs ESTABLISHED PRIOR TO THE INTRODUCTION OF THE WHS LAWS?**

Existing HSRs, deputy HSRs and HSC members may continue in their role and will be recognised under the new WHS Act. Election processes for HSRs that have not been finalised by the time the WHS Act commences may be completed in accordance with previous laws and will also be recognised under the new WHS Act.

Workers may decide to either maintain the number and composition of existing work groups, negotiate new work groups to elect HSRs or vary existing work groups at any time following the commencement of the WHS Act.

For further information in relation to transitional arrangements for HSRs and HSCs in the Commonwealth and each State and Territory, contact the WHS regulator.

Work groups are formed to enable workers to elect HSRs to represent them on health and safety matters.

## 2. WORK GROUPS

### 2.1 Establishing work groups

Any worker or group of workers may ask the PCBU for whom they are carrying out work to facilitate the election of one or more HSRs. The PCBU must then facilitate the determination of one or more groups of workers.

Work groups are formed by negotiation and agreement between the PCBU and the workers who will form the work group or their representatives.

#### **WHAT IS THE PURPOSE OF NEGOTIATIONS?**

The purpose of negotiations is to determine how best to group workers in a way that most effectively and conveniently enables their health and safety interests to be represented and so that each member of the group can easily access their HSR.

To achieve this, the negotiations must determine:

- the number and composition of work groups to be represented by HSRs
- the number of HSRs (there must be at least one) and deputy HSRs (if any) to be elected for each work group
- the workplace or workplaces to which the work groups will apply. For example, a work group may apply to several workplaces for a business in the agricultural industry. A business or undertaking may have a workplace for harvesting and packaging produce and another workplace for selling food. Only one or two work groups may be needed in this scenario
- the businesses or undertakings to which the work groups will apply, in the case of workers carrying out work for more than one business or undertaking.

Work groups can be negotiated and agreed between one or more PCBUs and their workers, depending on the circumstances:

- **One business or undertaking on a single site.** For example, a large manufacturing company may establish multiple work groups to ensure shift workers are represented in work health and safety matters.
- **One business or undertaking on multiple sites.** For example, a telecommunications organisation carrying out work at various sites or a government department with offices in different buildings.
- **Workers working for more than one business or undertaking.** For example, on construction sites where workers of contractors and sub-contractors work for a principal contractor or in labour hire arrangements where workers work for the on-hire agency and the host business.

#### **WHEN SHOULD THESE NEGOTIATIONS START?**

A PCBU must take all reasonable steps to commence negotiations with the workers or their representatives within 14 days after a request has been made.

For example, this might involve organising a meeting to consult with workers where it is practicable for workers to come together. All workers should be consulted by either direct contact (for example, face-to-face conversations) or indirect contact (for example, email or phone).

In situations where all workers cannot come together to negotiate (for example, if there is a large number of workers or the workers are spread across different locations), workers may wish to authorise a representative(s) to engage in the negotiation process on their behalf.

A worker's representative may be a union delegate or official, or any other person the worker authorises to represent them in negotiations. If workers have chosen a person to negotiate on their behalf, the PCBU must negotiate with that person.

### **WHY DO HSRS NEED TO BE ACCESSIBLE?**

Workers need convenient access to a HSR so that they can express any concerns regarding their health and safety and so that they can readily be consulted by the HSR about health and safety matters in the workplace. This could mean consulting directly (for example, face-to-face conversations) or indirectly (for example, consultation via email or phone). It is, however, desirable that there be as much opportunity for face-to-face contact as possible.

### **WHAT FACTORS MUST BE TAKEN INTO ACCOUNT WHEN FORMING WORK GROUPS?**

Any relevant matter, including the following matters, must be taken into account when negotiating or varying work groups:

- the number of workers
- the views of workers in relation to the determination and variation of work groups
- the nature of each type of work carried out by the workers
- the number and grouping of workers who carry out the same or similar types of work
- the areas or places where each type of work is carried out
- the extent to which any worker must move from place to place while at work
- the diversity of workers and their work
- the nature of any hazards at the workplace(s)
- the nature of any risks to health and safety at the workplace(s)
- the nature of the engagement of each worker, for example, as an employee or as a contractor
- the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term work
- the times at which work is carried out
- any arrangements at the workplace or workplaces relating to overtime or shift work.

Languages spoken in the workplace should be considered when negotiating work groups, so that the interests of workers from culturally and linguistically diverse backgrounds are properly represented. In a multilingual workplace, the parties involved in work group negotiations should identify the language preferences of workers and try to structure work groups and the representation within them (multiple HSRs or deputies) to cater for their language needs.

In a business or undertaking that includes volunteer workers, the pattern, frequency and type of work carried out by volunteers will be relevant in determining appropriate consultation and representation mechanisms. As the nature and regularity of work carried out by volunteer workers may differ to that of paid workers, it may be appropriate in some instances to establish separate work groups for them.

### EXAMPLES OF WORK GROUP NEGOTIATIONS IN DIFFERENT CIRCUMSTANCES

- A large manufacturing plant operates three eight-hour shifts and workers and the person conducting the business are negotiating work groups. As this is a multi-union workplace, the workers from each trade group authorise a union official to represent them. The negotiating parties take into account all relevant matters and place particular weight on the nature of the hazards and risks at the workplace, as well as the shift work arrangements in deciding work groups that best allow each work group member access to a HSR. The parties agree that separate work groups are needed for each shift, each represented by a single HSR and deputy HSR. Within each shift, the work groups are arranged according to work area, as these are quite distinct both in their location and in the nature of potential health and safety risks involved.
- A multi-storey office block has been completed and workers have moved in to start work. The workers and the person conducting the business are negotiating about establishing work groups. The parties consider how best to allow each work group member access to an HSR, taking into account the fact that work is performed across a number of floors. The nature of the work and work environment is consistent across all floors except in the reception area, where delivery of stationery and other heavy items means that there are additional considerations in relation to manual handling. The parties determine that a HSR and deputy HSR will represent a work group for workers on every two floors. In addition, it is agreed that the workers working in the reception area will form a work group of their own due to the unique nature of their work.

### DO WORKERS NEED TO BE NOTIFIED OF THE OUTCOME OF THE NEGOTIATIONS?

Yes.

As soon as practicable after the negotiations are completed, the PCBU must notify the workers of the outcome of the negotiations and of any agreed work groups. The notification can be in any form that effectively communicates the outcome, for example by sending an email to all workers who are affected by the outcome.

### CAN A WORK GROUP BE CHANGED?

Yes, the parties to an agreement on work groups may negotiate a variation at any time.

Variations to a work group might need to be made if circumstances change or if the existing arrangements are no longer satisfactory, for example if another HSR is needed or the business or undertaking is restructured.

The PCBU must notify workers of the outcome of the negotiations and any work group variations as soon as it is practicable to do so.

### WHAT IF NEGOTIATIONS FAIL?

Negotiations have failed if:

- the PCBU has not taken all reasonable steps to commence negotiations with workers within 14 days after:
  - a request is made, or
  - a party to the agreement requests the agreement be varied
- an agreement cannot be reached on a matter to determine or vary an agreement for work groups within a reasonable time after negotiations have started.

If there is a failure in negotiations to establish or vary an agreement, any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector to either decide the issue in dispute or assist the negotiations.

In the case of a single business or undertaking, an inspector can decide an issue. In this role, the inspector will have regard to all the parties' views and aim to facilitate an agreement to suit all parties. In some circumstances, an inspector may decide work groups should not be determined or that an agreement should not be varied.

Once the inspector makes a decision, it is taken to be an agreed determination. In other words, the parties are bound by the decision. However, if an affected worker, their representative, a PCBU or HSR does not agree with the decision, they can request the regulator to review the inspector's decision.

### 2.2 Multiple businesses or undertakings

Workers often work with independent contractors and employees of independent contractors. For example, a contractor may have their workers working alongside the employees of the principal employer, therefore working in similar conditions, using similar work practices and being exposed to similar hazards and risks.

The WHS Act allows multiple businesses or undertakings and their workers to establish work groups if workers are carrying out work for different businesses or undertakings. A worker may be part of more than one work group. For example, an on-hire worker may be a member of the on-hire firm's work group as well as a member of a work group in the business that engages the worker to carry out work.

#### **HOW ARE WORK GROUPS FOR MULTIPLE BUSINESSES OR UNDERTAKINGS ESTABLISHED?**

The work groups are established by negotiation and agreement between each of the PCBUs and their workers.

Establishing work groups for more than one business or undertaking does not need to affect how existing work groups at each business or undertaking operate.

A party to negotiations, or to an agreement, may withdraw from the negotiation or agreement at any time by providing reasonable notice (in writing) to other parties. If a party has withdrawn from an agreement, the other parties must negotiate a variation to the agreement, which remains valid in the meantime.

#### **WHAT IF NEGOTIATIONS FAIL?**

Where an agreement cannot be reached to establish or vary work groups for multiple businesses or undertakings, an inspector can be asked to assist the parties with negotiations. An inspector will facilitate reaching an agreement but cannot make a determination. If all parties still cannot agree, the PCBUs involved may choose to negotiate with their own workers to determine work groups for a single business or undertaking.



### **EXAMPLE: NEGOTIATING WORK GROUPS INVOLVING ON-HIRE WORKERS**

A labour hire business is contracted by a logistics company to provide 10 labourers to hand pack shipping containers. Container packing is associated with significant risks such as manual handling injuries, forklift/pedestrian incidents and slips, trips and falls. The logistics company employs 80 workers, who are currently divided into a number of work groups with each group represented by one HSR. The receiving warehouse workers work on the early shift, the order picking warehouse workers work the day shift, the dispatch warehouse workers are afternoon workers and fork lift drivers have been introduced for the night shift.

The logistics company and labour hire business both have duties under the WHS Act to provide a safe working environment for the 10 labourers. The logistics company also has duties to provide a safe workplace for existing workers. A meeting is arranged between the labour hire business, the logistics company and its workers to review existing work group arrangements. The workers of the logistics company authorise their union to represent them at these negotiations. The on-hire workers authorise the leading hand as their representative in the negotiations.

The negotiations involve the union delegate, the on-hire workers' representative, and a management representative of the logistics company and the labour hire business. All relevant matters are taken into account during negotiations including the nature of the risks, the area where the work is carried out and the work shifts. It is agreed that the container packing area requires specialised workers, whereas the workers in the other areas are multi-skilled and carry out varied tasks across the workplace. An agreement is reached to establish a separate work group for the container packing area in addition to the existing work groups. The 10 on-hire workers form part of the new work group, as do 10 employees of the logistics company. It is agreed to vary the existing work groups to change the composition of the workers in these work groups.

It is determined that one HSR and a deputy HSR would be required for the container packing work group and these HSRs are authorised to represent on-hire workers when on site.

## 3. ELECTING HEALTH AND SAFETY REPRESENTATIVES

HSRs and deputy HSRs must be elected by members of the work group they will represent. All workers in a work group must be provided with every reasonable opportunity to nominate HSRs and vote in the election.

Workers from the work group determine how an election is to be conducted (if one is needed). Any PCBUs must be informed of the election date as soon as practicable after the date has been decided. Members of the work group and relevant PCBUs must also be informed of the election outcome.

The election process may be informal, for example with a show of hands. Alternatively, it may involve a more formal process such as the use of ballots. If the majority of workers in a work group agree, the election may be conducted with the assistance of a union or other organisation or person.

If there is more than one work group, there needs to be a separate process to elect HSRs for each one.

### **IS AN ELECTION ALWAYS NEEDED TO VOTE FOR A HSR?**

No.

If the number of candidates nominated for election equals the number of vacancies in the work group, the candidates are deemed to be 'elected' and there is no need to proceed with an election.

### **WHO IS ELIGIBLE TO STAND FOR ELECTION TO BE A HSR?**

To be eligible for election, a worker must be a member of the work group they will represent and must not be currently disqualified from being a HSR.

A work group member may nominate themselves or another member of the work group to stand for election.

### **CAN A MANAGER BE A HSR?**

A worker who has management responsibilities can be a HSR if they are a member of a work group and are elected by the workers of that work group to be a HSR.

However, it is important to understand that the HSR role is to represent workers in health and safety matters and not to fix health and safety problems in the workplace. Although managers, supervisors and team leaders are workers with the right to have their work health and safety interests represented, they often have specific health and safety duties they are required to carry out in their management role. A manager who is also a HSR may therefore be placed in a difficult position. For example, they may be the person with whom a work health and safety concern is raised (as the HSR), and at the same time be the person who, at least initially, has a responsibility on behalf of the PCBU to respond to that concern.

### **CAN MORE THAN ONE HSR REPRESENT A WORK GROUP?**

If everyone involved in the negotiations agrees, more than one HSR may be elected for a work group and the HSRs may perform their roles at the same time. This may be particularly beneficial where there are large numbers of workers who perform similar work.

### **WHO CAN VOTE IN AN ELECTION?**

All members of the work group are entitled to vote in an election. This includes contractors and any other worker in that work group.

### 3.

#### WHAT IS THE ROLE OF A PCBU IN AN ELECTION?

The PCBU to which the work group relates must provide any resources, facilities and assistance that are reasonably necessary to enable elections to be conducted, for example providing reasonable access to printing resources so election notices can be displayed in the workplace. Other resources and facilities include access to a meeting room or to the internet.

The PCBU must not unreasonably delay the election of a HSR and cannot simply appoint a HSR.

#### WHAT DOES A PERSON CONDUCTING THE ELECTION NEED TO DO?

| Action to be taken by person conducting the election  | Tick                     |
|---|--------------------------|
| ■ Inform the person or persons conducting relevant business or undertaking of the election date | <input type="checkbox"/> |
| ■ Invite all relevant work group members to nominate a HSR and vote in the election             | <input type="checkbox"/> |
| ■ Advise work group members of the election results   | <input type="checkbox"/> |
| ■ Advise any relevant PCBU of the election results  | <input type="checkbox"/> |

#### HOW LONG IS THE TERM OF OFFICE FOR A HSR?

The term of office can be up to 3 years. If re-elected, another term of office would begin.

However, a person ceases to be a HSR if:

- they resign as a HSR by giving the PCBU written notice
- they no longer work in the work group
- the person is disqualified from acting as a HSR
- the majority of members (half the number plus one) of the work group decide that the person should no longer represent the work group.

#### HOW CAN A HSR BE REMOVED FROM OFFICE?

A HSR is removed from office when the majority of work group members sign a written declaration and when the HSR, the majority of work group members and any relevant PCBU have been informed of the decision.

#### WHEN CAN A HSR BE DISQUALIFIED?

An application for disqualification can be made to the designated court or tribunal if a HSR has:

- exercised a power or performed a function as a HSR for an improper purpose, or
- used or disclosed any information he or she acquired as a HSR for a purpose other than in connection with the role of HSR.

For example, a PCBU may apply to disqualify a HSR if the HSR issued a direction to cease work where, in the PCBUs view, the HSR did not have a reasonable concern that the work could pose a serious health and safety risk to a member of their work group.

The court or tribunal would have the discretion of disqualifying the HSR indefinitely or for a specified period of time. A person's disqualification would prohibit them from being eligible for election as a HSR during the period of disqualification.

### 3. ELECTING HEALTH AND SAFETY REPRESENTATIVES

Any person can apply to disqualify a HSR if they have been adversely affected by the exercise of a power or performance of a HSR or how the HSR has used or disclosed information they obtained as a HSR.

#### **ARE HSRs IMMUNE FROM PROSECUTION UNDER THE WHS ACT WHEN PERFORMING THEIR ROLE?**

A HSR cannot be held personally liable and cannot be prosecuted for anything done or omitted to be done in good faith:

- when exercising a power or performing a function under the WHS Act, or
- in the reasonable belief that the thing done or omitted to be done was authorised under the WHS Act.

Acting in good faith involves carrying out HSR powers and functions with honest and sincere intentions or beliefs.

HSRs only have duties as workers under the WHS Act. If a worker is elected as a HSR, they continue to have the same duties as other workers and must:

- take reasonable care for their own health and safety;
- take reasonable care not to adversely affect the health and safety of others;
- comply with any reasonable instructions given by the PCBU to allow it to comply with its duties
- co-operate with any reasonable policy or procedure relating to health and safety at the workplace.

#### **DEPUTY HSRs**

It will not always be possible for the HSR who was elected for a particular work group to be present and available to represent their work group when needed. For example, the HSR may be away from work through illness, on leave or may be working an irregular shift. In the HSR's absence, a deputy effectively becomes the HSR and has the powers of that role.

Deputy HSRs are elected in the same way as HSRs. Most arrangements apply equally to deputy HSRs as they do to HSRs, including:

- term of office
- grounds for disqualification
- HSR immunity
- entitlement to training

#### **WHEN CAN A DEPUTY HSR EXERCISE THE POWERS OF A HSR?**

If a HSR ceases to hold office or is temporarily unable to carry out their role as a HSR because of absence or any other reason, an elected deputy HSR can perform the functions and powers of a HSR for the relevant work group.

However, a deputy HSR will not be able to direct a work group member to cease unsafe work and issue a Provisional Improvement Notice (PIN) unless they have completed an approved HSR training course.

If a HSR ceases to hold office, a new election for the HSR position should be conducted.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

The responsibility for providing a healthy and safe workplace rests with the PCBU. The HSR, however, has a major role to play in representing members of their work group and bringing issues to the attention of the PCBU.

### WHAT ARE THE POWERS AND FUNCTIONS OF A HSR?

The WHS Act sets out specific powers and functions that a HSR can perform in the interests of the workers they represent. The powers and functions are intended to enable HSRs to effectively represent the interests of the members of their work group and to contribute to work health and safety matters.

Although a HSR has the ability to exercise certain powers and functions, HSRs can choose to exercise them. The WHS Act does not impose mandatory obligations or duties on HSRs to carry out the powers and functions of a HSR.

The powers and functions of HSRs are to:

- represent the workers in their work group in relation to work health and safety matters
- monitor the measures taken by the PCBU to comply with the WHS Act in relation to their work group members
- investigate complaints from work group members about work health and safety
- inquire into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the business or undertaking.

In exercising a power or performing a function, HSRs may:

- inspect the workplace where their work group works at any time after giving reasonable notice to the PCBU
- inspect the workplace where their work group works at any time without notice in the event of an incident or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard
- accompany an inspector during an inspection of any part of the workplace where their work group works. Inspectors must, as soon as practicable after entering a workplace, take reasonable steps to notify the relevant PCBU as well as any HSRs of the entry
- attend interviews between one or more work group members and an inspector or the PCBU. For example, interviews may be required after an incident has occurred, for return-to-work purposes or as part of issue resolution processes. A HSR can only attend interviews with the consent of the worker and the interview must be about work health and safety matters
- request the establishment of a HSC
- receive information concerning the work health and safety of workers in the work group
- whenever necessary, request the assistance of any person
- in some circumstances, direct a work group member to cease unsafe work or issue a Provisional Improvement Notice (PIN)
- in some circumstances, request a review of a control measure where the duty holder has not adequately reviewed the control measure as required under the WHS Regulations.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### **CAN A HSR INSPECT ANY PART OF THE WORKPLACE WHERE THEIR WORK GROUP MEMBERS WORK AT ANY TIME?**

Yes, after giving reasonable notice to the PCBU. What is 'reasonable notice' will depend on the circumstances in any given case, and on what the PCBU and HSR jointly consider is reasonable. In many cases, notice should be provided 24 hours prior to an inspection.

However, a HSR may immediately inspect the workplace without providing notice in the event of an incident or any situation involving an immediate and serious risk to health or safety in any part of the workplace where members of their work group work. The threat may be one that affects a member of the work group or any other person in that part of the workplace.

### **HOW CAN A HSR CARRY OUT WORKPLACE INSPECTIONS?**

Inspections can take various forms, including:

- regular inspections of the workplace
- regular inspections of particular activities or processes
- specific inspections arising from complaints or concerns by members of the work group
- inspections before and following substantial change to the workplace (for example, to plant or work processes)
- inspections after an incident or injury.

The requirements of each particular workplace will determine what type of inspection should be carried out. More frequent inspections may be needed in high-risk industries and workplaces subject to frequent change.

Inspections may include a visual inspection of any process, equipment, machinery or substance involved.

HSRs may choose to conduct inspections on their own or jointly with a management representative. The HSR is entitled during any inspection to discuss health and safety issues with the workers in their work group.

### **WHEN CAN A HSR ASK FOR A CONTROL MEASURE TO BE REVIEWED?**

A HSR may request the PCBU to review a control measure if the HSR reasonably believes that the PCBU has not adequately reviewed the control measure in response to the following circumstances:

- the control measure is not effective in controlling the risk it was implemented to control
- a change occurs at the workplace that could present a new or different health and safety risk that the control measure may not effectively control
- a new relevant hazard or risk is identified
- the results of consultation indicate a review is necessary.

A HSR can only request the review if the above circumstances affects or may affect the health and safety of a member of their own work group.

The request should be made in the first instance by consulting the PCBU and discussing the issue with them. The HSR should explain the reasons why they believe a control measure is or may not be effective in the circumstances.

The WHS Regulations include specific circumstances where a HSR can request the review of control measures for lead, asbestos and major hazard facilities.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### **IN WHAT CIRCUMSTANCES MAY A HSR BE PRESENT AT AN INTERVIEW INVOLVING A WORK GROUP MEMBER?**

With the member's consent, a HSR may be present at an interview concerning health and safety between one or more work group workers and an inspector or the PCBU.

Interviews such as these may occur, for example, in the course of inspections, after incidents, for return-to-work purposes or as part of issue resolution processes. The worker is entitled to have their HSR present at an interview with an inspector or the PCBU. The worker may wish to consult with the HSR before and/or after an interview.

### **WHO CAN ASSIST A HSR?**

A HSR can request the assistance of any person. This may be a person with additional knowledge of work health and safety, either within the workplace (for example, another HSR) or someone who does not work at the business or undertaking (for example, a health and safety consultant or a union official).

The aim of this power is to enable HSRs to access advice if this is required to assist in carrying out their powers and functions. For example, a HSR may require assistance about:

- how to perform inspections at the work place
- technical advice to deal with a particular hazard or issue
- how to negotiate agreed procedures.

A union official assisting a HSR may also be a WHS entry permit holder. In this case, the person is not seeking access to the workplace as a WHS entry permit holder and cannot exercise any of the WHS entry permit holder's rights. If they seek to do so, they must arrange to re-enter the workplace as a WHS entry permit holder and follow the entry requirements for WHS entry permit holders.

A PCBU is not required to pay the person who provides assistance.

### **CAN A PERSON ASSISTING A HSR ACCESS THE WORKPLACE?**

If it is necessary to enable a HSR to access assistance, that assistant is entitled to access the workplace.

However, a PCBU can refuse access to a person assisting a HSR if they have reasonable grounds to do so, for example if the person who attends the workplace has previously acted improperly at the workplace by intentionally and unreasonably delaying, hindering or obstructing any person, disrupting work or otherwise acting in an improper manner.

A PCBU may also refuse access to a person assisting a HSR if the assistant has had their WHS entry permit revoked, or they are currently suspended or disqualified from holding a WHS permit.

If a person assisting a health and safety representative has not been allowed to access the workplace, the HSR may ask the regulator to appoint an inspector to assist in resolving the matter. In this situation, an inspector can provide advice or recommendations to help the parties reach agreement and ensure the parties understand their rights and obligations as set out in the WHS Act. However, the inspector is not empowered to make a decision regarding the right of access.

Visitors, including a person assisting a HSR, should comply with any reasonable work health and safety policies or procedures at the workplace.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### **CAN A HSR EXERCISE THEIR POWERS OUTSIDE THEIR WORK GROUP?**

Yes, but only in two circumstances.

A HSR may exercise powers and functions for another work group at the business or undertaking if the HSR (and any deputy HSR) for that work group is found, after reasonably inquiry, to be unavailable and if:

- there is a serious risk to health or safety from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group, or
- a member of another work group asks for the HSR's assistance.

### **CAN A HSR ACCESS WORKPLACE INFORMATION?**

Yes, a PCBU must allow a HSR access to information.

The information a HSR may require access to can differ between workplaces, for example, a HSR may request access to:

- information relating to any work-related incident or disease, including statistical records, such as an injury register
- an asbestos register and asbestos management plan, which a person with management or control of a workplace must ensure ready access to the HSR at any time
- health and safety policies and procedures, including Safe Work Method Statements
- safety data sheets for the chemicals that are used in the workplace
- technical specifications for equipment regarding noise, vibration or radiation emission
- results of occupational hygiene measurements, including dust levels, noise levels or chemical fumes
- reports on work health and safety matters, including reports prepared by consultants for the PCBU
- minutes of HSC meetings
- information provided by manufacturers and suppliers about plant, equipment or substances at the workplace
- health monitoring information that does not contain personal or medical information about a worker.

A HSR can choose to exercise their power to inquire into a work-related risk that could affect the health and safety of their work group. For example, a HSR may inspect the licence of a person who will operate a forklift where they believe that person is not qualified to operate the forklift. In this circumstance, the HSR has the power to be provided with the licence for inspection.

### **CAN A HSR HAVE ACCESS TO A WORKER'S PERSONAL AND MEDICAL INFORMATION?**

A HSR is not allowed to have access to any personal or medical information concerning a worker without the worker's consent, unless the information:

- does not identify the worker
- could not reasonably be expected to lead to the identification of the worker.



## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### **CAN A HSR USE WORK TIME TO PERFORM THEIR FUNCTIONS AND POWERS?**

Yes, the PCBU must allow a HSR to spend a reasonable amount of time necessary to carry out their HSR functions and powers.

The amount of time necessary for HSRs to perform their role will vary between workplaces. The HSR and PCBU should consult and agree on how much time may be needed to perform any anticipated powers and functions required of the HSR. When agreeing on how much time is needed for a HSR to fulfil their role, parties should consider:

- the type of work or proposed work in the workplace
- the level of risk involved in the work
- the effectiveness of risk controls
- the individual needs of workers in the work group relevant to their health and safety, for example, people who have disabilities or who communicate in different languages
- attendance at meetings, for example, HSC meetings, work group meetings and meetings with people assisting a HSR
- the size and complexity of the work group
- the size and complexity of the workplace
- the number of HSRs in the workplace and in the work group.

### 4.1 Provisional Improvement Notices

A Provisional Improvement Notice (PIN) is a notice that is issued to a person requiring them to address a health and safety concern in the workplace.

A PIN may be issued if a HSR reasonably believes that a person is contravening or has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated.

The HSR may issue a PIN requiring the person to:

- remedy the contravention
- prevent a likely contravention from occurring
- remedy the things or operations causing the contravention or likely contravention.

When can a HSR issue a PIN?

A HSR can issue a PIN only if the HSR has completed an approved HSR training course, or previously completed that training when acting as a HSR of another work group.

A PIN can be issued when the HSR believes a person is contravening or has contravened a provision and it is likely that the contravention will continue or be repeated.

A contravention that could continue or be repeated may include:

- excessive noise levels in the workplace
- an ongoing requirement to manually lift heavy objects
- regular exposure to hazardous chemicals that are used in the workplace
- unguarded machines
- lack of consultation on work health and safety matters.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

Before issuing a PIN, the HSR must consult the person whom the HSR believes is contravening the provision in the WHS Act or Regulations. This means that the HSR should:

- provide information, either verbally or in writing, to the person about fixing the alleged contravention or activities causing the contravention. At this point the HSR does not need to specify which part of the WHS Act or Regulations the issue relates to (though the HSR can do so if they wish.)
- allow the person an opportunity to express their views and give them adequate time to fix the contravention
- take into account the views of the person before issuing the PIN.

Consultation can still be said to have occurred even if:

- the person does not respond to the HSR in a reasonable time or at all
- there is no agreement between the HSR and the person. The person does not have to agree that there is or is likely to be a contravention or agree on how to fix the matter.

A PIN cannot be issued for a matter that an inspector has already addressed.

### WHO CAN BE ISSUED A PIN?

A PIN may be issued to any person. This can include a PCBU (either an organisation or an individual person) or other duty holders such as workers, officers and other persons at the workplace.

It is important that the PIN is issued to the duty holder who has responsibility for the contravention specified in the PIN.

The duty holder should be clearly identified on the PIN so that there can be no confusion as to whom it is addressed to and is expected to comply with its requirements.

A PCBU could be a body corporate, unincorporated association, partnership or an individual. Therefore, the 'person' doesn't necessarily have to be in the workplace; the PCBU could also be a designer, manufacturer or supplier of plant, substances or structures.

Because HSRs mainly deal with PCBUs as the primary duty holder, PINs are often issued to the corporation and physically given to the management representative the HSR has consulted with at the workplace.

### EXAMPLES

- A worker finds that a valve from a steam line becomes displaced, allowing a jet of steam to escape. The worker refers the issue to the HSR who takes it up with the supervisor. The supervisor, after consulting with the HSR on how it can be fixed, may settle the matter on the spot by calling in maintenance staff immediately. If the leak is not fixed, however, and the HSR believes that the leaking pipe poses a risk to people in the workplace (thereby contravening the WHS Act or Regulations), the HSR may issue a PIN to the PCBU and serve it to the supervisor. The supervisor must bring the PIN to the attention of the PCBU, who has an obligation to remedy the contravention. In this example, a PIN would state that the HSR believes there is a contravention of section 19 of the WHS Act.
- Cleaning staff are working in an office building after hours, using the stairwell to move between floors. Due to an electrical problem, the lights have recently gone out in the stairwell causing poor visibility. Despite repeated requests from the HSR to the building manager, the problem has not been fixed. The issue is unresolved so the HSR issues a PIN to the building manager. In this example, the HSR believes that the building manager has contravened section 20 of the WHS Act.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### DOES THE PIN NEED TO BE IN WRITING?

Yes.

It is not compulsory to use a specific form to issue a PIN, but it may assist a HSR to follow the necessary steps to issue a PIN. A form that may be used is at Appendix A.

If there is more than one contravention, a separate PIN must be written for each one.

### WHAT INFORMATION SHOULD BE INCLUDED IN A PIN?

A PIN must contain information about the contravention, but it also may contain directions about how the contravention can be remedied.

| PIN information   | Tick                     |
|---|--------------------------|
| 1. A PIN <b>must</b> identify the person (can be an organisation or individual) who the HSR believes: <ul style="list-style-type: none"><li>■ is contravening a provision in the WHS Act, or</li><li>■ has contravened a provision of the WHS Act and it is likely that the contravention will continue or be repeated.</li></ul> | <input type="checkbox"/> |
| 2. A PIN <b>must</b> state the provision the HSR believes is being, or has been, contravened  | <input type="checkbox"/> |
| 3. A PIN <b>must</b> contain a brief outline of how the provision is being, or has been, contravened  | <input type="checkbox"/> |
| 4. A PIN <b>must</b> state the date the contravention or likely contravention is required to be remedied. This date must be at least eight days after the PIN is issued.  | <input type="checkbox"/> |
| 5. A PIN <b>may</b> include directions about: <ul style="list-style-type: none"><li>■ how the contravention can be remedied</li><li>■ how to prevent a likely contravention</li><li>■ the matters or activities that are causing the contravention or likely contravention</li></ul>  | <input type="checkbox"/> |
| 6. A PIN <b>may</b> include directions that refer to a Code of Practice and offer a choice of ways the contravention can be remedied.   | <input type="checkbox"/> |

### CAN A HSR MAKE MINOR CHANGES TO A PIN?

Yes, a HSR can make minor changes to a PIN for any of the following reasons:

- for clarification, such as simplifying language or removing jargon
- to correct errors or references
- to reflect changes of address or other circumstances.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### HOW CAN A PIN BE GIVEN TO A PERSON?

A PIN can be given to a person:

- by delivering it personally to the recipient or sending it by post, facsimile or electronic transmission to the person's usual or last known home or business
- by leaving it for the person at the person's usual or last known home or business with a person who appears over 16 years old and who appears to work or reside there
- by leaving it for the person at the workplace to which the notice relates, with a person who is or appears to be a person with management or control of the workplace.

### WILL A MISTAKE ON A PIN MAKE IT INVALID?

A PIN is still valid if it sufficiently identifies the duty holder that the PIN is issued to, even if the correct name of the organisation or person has not been used. For example, a PIN is not considered invalid if the name of a person contains a spelling mistake or the formal name of the organisation has not been used.

A PIN is not automatically invalid because of a formal defect or irregularity in the notice unless that defect or irregularity causes or is likely to cause substantial injustice.

Examples of when a defect or irregularity could cause a substantial injustice include:

- where the PIN states the wrong provision has been contravened
- where the PIN refers to a matter that is not related to the health and safety contravention

If a HSR becomes aware that they have issued a PIN that might be invalid, they should cancel the PIN and issue a new one.

### CAN A HSR CANCEL A PIN?

Yes, a HSR may cancel a PIN at any time by providing a written notice to the person the PIN was issued to. A valid PIN does not need to be cancelled once it has been complied with.

### DOES A PIN NEED TO BE DISPLAYED AND MAINTAINED?

Yes.

As soon as it is practicable, the person issued with a PIN must display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace, at which work that is affected by the notice is being carried out.

A place that is prominent is easily accessible, noticeable and where workers or other persons affected by the PIN will come across it in the normal course of events and be able to examine it.

The person who has been issued with a PIN must not intentionally remove, destroy, damage or deface a notice that is being displayed during the period that the notice is in force.

### MUST A PIN BE COMPLIED WITH?

Yes.

Unless an inspector is requested to review the PIN, the person who has been issued with the PIN must comply with the notice within the specified time.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### **CAN A PIN BE REVIEWED BY AN INSPECTOR?**

Yes.

The person issued with a PIN, or if they are a worker, their PCBU, can ask the regulator to appoint an inspector to review the PIN. However, this request must be made within seven days after the PIN was issued. The regulator must ensure that an inspector attends the workplace as soon as practicable after a request has been made.

If a request for an inspector is made, the PIN is temporarily suspended until the inspector determines the matter.

The inspector must review the PIN and inquire into the circumstances surrounding the issue. An inspector can review a PIN even if the compliance period has expired.

### **HOW DOES AN INSPECTOR REVIEW A PIN?**

The inspector would seek information from both the HSR who issued the PIN and the person who it was issued to. The review would include finding out why a PIN was issued, whether the PIN was correctly issued and why it is being disputed.

After an inspector has reviewed the PIN, they must either:

- confirm the PIN
- confirm the PIN with changes
- cancel the PIN.

Confirming the PIN, with or without changes, is taken to be an improvement notice that has been issued by the inspector under the WHS Act. An improvement notice still requires a person to remedy a contravention, but it is issued directly from the inspector.

Once an inspector has reached a decision, they must then give a copy of their decision to the person who requested the PIN to be reviewed, and also to the HSR who issued the PIN. However, if the person issued with the PIN, the HSR who issued the PIN, an affected worker, another affected HSR or a PCBU does not agree with the decision, they can request the regulator to review the inspector's decision.

## 4.2 Ceasing unsafe work

A worker can refuse to carry out work or stop the work they are doing on their own initiative if they have a reasonable concern that carrying out the work would expose them to a serious health and safety risk arising from an immediate or imminent exposure to a hazard.

### **WHAT DOES A WORKER NEED TO DO AFTER CEASING WORK?**

A worker who has ceased carrying out work must:

- as soon as practicable, notify the PCBU that they have ceased work
- remain available to carry out suitable alternative work.

## 4. FUNCTIONS AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

### WHAT IS ALTERNATIVE WORK?

A PCBU can offer the worker suitable alternative work until they can resume normal duties. The work must be safe and appropriate for the worker and either at the same workplace they normally work at or at another workplace.

For example, if a PCBU offers a worker alternative work that requires them to drive a forklift, the worker needs to be licensed to carry out that work.

### WHEN CAN A HSR DIRECT A WORKER TO CEASE WORK?

A HSR can only direct that work cease if the HSR has completed an approved HSR training course, or previously completed that training when acting as a HSR of another work group.

A HSR may direct a worker in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk, emanating from an immediate or imminent exposure to a hazard.

Before issuing the direction, the HSR must first attempt to resolve the matter by consulting the PCBU whom the workers are working for, unless the risk is so serious and immediate or imminent that there is no time to consult before giving the direction. In these situations the HSR must carry out the consultation as soon as practicable after giving the direction to cease work.

If the risk is not serious, immediate or imminent, the HSR must consult with the PCBU to attempt to resolve the matter. This may involve:

- following an agreed issue resolution procedure or, if there is no agreed procedure, the default procedure in the WHS Regulations (see Chapter 7 of this Guide)
- issuing a PIN
- calling an inspector.

The HSR must always inform the PCBU of any direction to cease unsafe work given by the HSR to workers.

### CAN AN INSPECTOR ASSIST IN THE MATTER?

Yes. The PCBU, the HSR or the worker can ask the regulator to appoint an inspector to assist in resolving the issue at the workplace.

### CAN CEASING WORK AFFECT EMPLOYMENT ENTITLEMENTS?

Entitlements, such as authorised leave and superannuation benefits, are not affected in any way if a worker has ceased unsafe work, provided that the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work.

# 5. DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

## 5.1 General duties

A PCBU has the following obligations to HSRs:

- to consult, so far as is reasonably practicable, with HSRs on work health and safety matters at the workplace
- to confer with a HSR, whenever reasonably requested by the representative, to ensure the health and safety of the work group workers
- to allow a HSR access to information that the PCBU has relating to hazards and risks affecting the health and safety of the workers in the work group
- to allow a HSR access to information relating to the health and safety of the work group workers
- to allow HSRs to attend interviews concerning work health and safety between one or more workers (with their consent) and an inspector or another person conducting the business or undertaking at the workplace (or their representative). The HSR should be informed of any such interview and the HSR and worker may wish to consult before and/or after the interview.
- to provide their HSRs with resources, facilities and assistance that are reasonably necessary to enable the HSR to exercise their powers and perform their functions under the WHS Act
- to allow a person assisting a HSR to have access to the workplace if it is necessary to enable the assistance to be provided
- to permit the HSRs to accompany an inspector during an inspection of any part of the workplace where a member of the HSR's work group works
- to provide any assistance to the HSR required by the WHS Regulations
- to allow the HSR as much time as is reasonably necessary to perform their powers and functions under the WHS Act
- to pay HSRs performing their role the same amount they are entitled to receive when performing their normal duties.

However, a PCBU:

- must not provide any personal or medical information concerning a worker without the worker's consent, unless the information does not identify the worker and could not reasonably be expected to lead to the identification of the worker
- is not required to pay for a person who provides assistance to the HSR
- can refuse a person assisting the HSR access to the workplace if:
  - the PCBU has reasonable grounds to do so
  - the assistant has had their WHS entry permit revoked, or is currently suspended or disqualified from holding a WHS permit.

## 5. DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

### **WHAT RESOURCES, FACILITIES AND ASSISTANCE DOES A HSR NEED?**

A PCBU must provide any resources, facilities and assistance that are reasonably necessary to enable the HSR to carry out functions and exercise their powers.

What is reasonable in the particular circumstances will depend on a range of factors, including the nature of the work and the working environment, the workplace hazards and the composition of the work group. Resources, facilities and assistance may include:

- access to a private room, desk and chair for discussions or interviews
- a computer with internet and email access
- access to a telephone
- facilities for photocopying and filing, including a lockable filing cabinet and shelves
- access to a room for work group meetings
- access to relevant technical equipment, for example, a noise meter
- the use of notice boards
- if required, transport or travel expenses to commute between workplaces.

### **SHOULD HSRs BE PAID AS NORMAL WHEN THEY PERFORM THEIR FUNCTIONS AND POWERS?**

Yes.

HSRs should not be disadvantaged for taking on the role of HSR. When a HSR is exercising their powers as a HSR or performing any of the functions the WHS Act gives them, they must be paid the same amount that they would be entitled to receive for performing their normal duties. Payment should include any allowances to which the worker is entitled.

## 5.2 HSR Training

It is not mandatory for HSRs to be trained. However, HSRs should be encouraged to take up their training entitlement to provide them with the skills and knowledge to perform their role effectively. HSRs can issue PINs and direct work to cease only if they have been trained. Untrained HSRs can perform all other functions.

### **ARE HSRs AND DEPUTY HSRs ENTITLED TO WORK HEALTH AND SAFETY TRAINING?**

Yes.

If a HSR or deputy HSR has made a request, the PCBU must allow them to attend a training course in work health and safety. HSRs and deputy HSRs are entitled to attend an initial training course of five days. They are also entitled to one day's refresher training each year, with the first refresher training commencing one year after the initial training.

The course of training in work health and safety must:

- be approved by the regulator
- be chosen by the HSR in consultation with the PCBU.



## 5. DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

Consultation means that the HSR must:

- inform the PCBU of the proposed course
- give the PCBU the opportunity to present views about the suitability of the proposed course and suggest alternatives
- take those views and suggested alternatives into account when deciding which course to attend.

It is desirable for HSRs and the PCBU to agree on which course the HSR should attend. Issues that might be considered include:

- timing of attendance – the sooner HSRs attend training after being elected, the more effective they will be in performing their role
- cost of courses, where prices differ substantially
- costs of attendance for remotely located workplaces including travel and accommodation expenses. In such circumstances, the arrangements that would apply for any other work-related professional development course will determine what is reasonable
- the relevance of any hazard-specific course to the work group
- the total number of workers requiring training.

### **WHAT FURTHER TRAINING IS THE HSR ENTITLED TO ATTEND?**

If the HSR or deputy HSR is re-elected in the same work group and has already participated in initial HSR training, they do not have an entitlement to take time off work with pay to attend the five-day training course again. A HSR is, however, entitled to one day's refresher training each year following the completion of initial training.

Although the HSR is not entitled to receive further training under the WHS Act, the HSR and PCBU may agree that the HSR attend or receive further training. This may include attending a conference on work health and safety.

### **WHAT IS THE OBLIGATION OF A PCBU IN RELATION TO TRAINING HSRs?**

A PCBU must allow each HSR and deputy HSR paid time off to attend training, equivalent to what they would otherwise be entitled to receive for working during that period. HSRs should not be disadvantaged in any way as a result of accessing the training that the WHS Act entitles them to.

HSR training is part of normal work-related activity. HSRs are entitled to receive their normal/expected earnings during course attendance. Normal/expected earnings include pay entitlements relating to shift work, regular overtime, higher duties, allowances or penalty rates that would have applied had the HSR been at work.

For each HSR and deputy HSR, a PCBU must:

- as soon as practicable (and within a period of three months after the request is made) allow the HSR time off work to attend the training
- pay the course fees and any other reasonable costs associated with the HSR's attendance at the training.

Other reasonable costs could include travel, accommodation, meal and other incidental expenses.

## 5. DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

### **SHOULD A HSR BE PAID NORMAL SALARY FOR THE DAYS THEY ATTEND TRAINING?**

Yes.

If a HSR or deputy HSR has been granted time off work to attend HSR training, a PCBU must pay them the amount they would be entitled to receive when performing their normal duties.

There are circumstances in which HSRs may need to attend a course that is being conducted outside their normal working hours. For example, this might apply when an HSR:

- normally works two days a week and attends a five-day course run on consecutive days
- has a rostered day off during the course
- has a shift that does not overlap or overlaps only marginally with the course's hours.

All time spent at a course by a HSR (including casual employees) must be treated by the PCBU as time at work.

The PCBU should consider changing rosters or shifts to accommodate any HSR who attends training. If it is necessary for the HSR to work hours in excess of the normal weekly hours, additional hours must be compensated in the same manner as other additional hours are treated.

HSRs should not be disadvantaged in any way as a result of accessing the training that they are entitled to.

### **WHO PAYS IF A HSR REPRESENTS WORKERS FROM MORE THAN ONE BUSINESS OR UNDERTAKING?**

If a HSR represents a work group with workers from more than one business or undertaking, the PCBUs must equally share the cost of HSRs exercising their powers and functions, course fees and other reasonable costs. However, the PCBUs may agree to share costs in different portions. For example, where most of the work group carry out work for one business or undertaking, that PCBU would pay the majority of HSR-related costs.

At any time, the PCBUs can negotiate and agree to change how costs are shared.

### **WHAT HAPPENS IF THE HSR AND PCBU CANNOT AGREE ON HSR TRAINING?**

Either party may ask the regulator to appoint an inspector to decide the matter if the PCBU and HSR cannot come to a timely agreement (as soon as practicable and within three months) about:

- the HSR course selection
- allowing time off for the HSR to attend training
- the payment of course fees and other reasonable attendance costs.

In forming an opinion on the matter, the inspector may consider:

- the issues that are in dispute
- that the person requesting training is entitled to the training
- the training preferences of the HSR, in consultation with the PCBU
- whether the course being requested is an approved training course
- how relevant the proposed course is to the HSR's role in this work group
- the cost of attending the course, including associated costs.

## 5. DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

Where an inspector has decided on a matter, the PCBU must allow the HSR to attend a course and pay the relevant costs.

If a PCBU or HSR does not agree with the inspector's decision, they can request the regulator to review the decision.

### 5.3 Keeping a list of HSRs

Keeping a list of HSRs enables workers to find out who can represent them if a work health and safety issue arises. To ensure the list is readily accessible to workers, the PCBU must display the list in a place that is accessible to all relevant work groups. The list should be displayed in a central location, such as a notice board or on the workplace intranet.

A PCBU must ensure that:

- a list of each HSR and deputy HSR (if any) is prepared and kept up-to-date
- a current copy of the list is displayed at a principal place of business and at any other workplace that is appropriate to the constitution of the relevant work group(s).

The person conducting the business or undertaking must provide a copy of the up-to-date list to the regulator as soon as practicable after it is prepared.

### 5.4 Discrimination

The WHS Act prohibits a PCBU from discriminating against a worker, for example by dismissing a worker or treating a worker less favourably because that worker is, has been or will be a HSR, deputy HSR or a member of a HSC.

The WHS Act also prohibits requesting, instructing, inducing, encouraging, authorising or assisting another person to engage to discriminate against a worker on these grounds.

## 6. HEALTH AND SAFETY COMMITTEES

A Health and Safety Committee (HSC) is a useful forum for consultation on work health and safety issues. A committee enables PCBUs and worker representatives to meet regularly and work co-operatively to develop policies and procedures to improve work health and safety outcomes. As such, they are particularly useful for effective consultation in workplaces where there are several persons conducting businesses and undertakings.

### 6.1 Establishing a HSC

A PCBU must establish a HSC within two months after being requested to do so by a HSR or five or more workers at the workplace. However, a PCBU can also decide on their own initiative to establish a HSC for their workplace.

#### **WHO SHOULD BE ON A HSC?**

The membership of a HSC may be agreed between a PCBU and the workers at the workplace.

At least half of the members of the HSC must be workers who have not been nominated by the PCBU.

Unless they do not wish to participate, HSRs are automatically a member of the relevant HSC. If there is more than one HSR at the workplace, the HSRs may agree among themselves as to who will be on the HSC. They may agree to have more than one HSR join the HSC.

Representatives of the PCBU on the HSC should be persons involved at senior management levels in the organisation who are able to make decisions about health and safety.

Representatives of the PCBU should be drawn from senior managers, managers, supervisors, safety officers, technical experts and personnel officers. This ensures that the committee is provided with the necessary level of decision making, knowledge and expertise regarding company policy, production needs and technical matters concerning premises, processes, plant, machinery and equipment, and systems of work.

Where specialist health and safety personnel are not members of the committee, the HSC may consider co-opting them in an advisory capacity.

#### **WHAT HAPPENS IF WE CAN'T AGREE TO ESTABLISH A HSC?**

If workers and a PCBU cannot agree on the constitution of a HSC within a reasonable time, any party may ask the regulator to appoint an inspector to decide the matter.

The inspector can decide the constitution of the HSC or that the committee should not be established. Before making this decision, the inspector should have regard to the high priority the WHS Act places upon consultation and representation.

The inspector's decision is taken to be an agreement between the workers and the PCBU. However, if an affected worker, a PCBU or HSR does not agree with the inspector's decision, they can request the regulator to review the decision.

## 6.2 HSC functions

The functions HSCs can perform are broad. HSCs can consider the management of health and safety across the whole workforce. In this way, the activities of the HSC can complement the role of the HSRs, whose powers are usually limited to issues affecting their particular work group.

HSC functions include:

- facilitating co-operation between the PCBU and workers to instigate, develop and carry out measures to secure the work health and safety of workers
- assisting in developing health and safety standards, rules and procedures that will be followed or complied with at the workplace
- other functions agreed by the PCBU and members of the HSC.

For example, a HSC can be involved with:

- the formulation of agreed procedures, such as issue resolution procedures and the committee's own procedures
- analysing reports of hazards, work-related incidents and statistical trends, so that reports can be made to management
- making recommendations for corrective action
- examining health and safety audit or monitoring reports
- considering reports and information provided by inspectors
- considering reports that HSRs may wish to submit
- developing procedures for selecting new plant for the workplace
- assistance in the development of safe working procedures
- linking with workers' compensation and return to work programs
- the selection of consultants.

### HOW OFTEN MUST A HSC MEET?

HSCs must meet at least once every three months and also at any reasonable time when at least half of the HSC members makes a request.

The HSC members may decide to meet more than once every three months. Members may want consider the following issues when deciding how often the committee should meet:

- the expected volume of work to be handled by the HSC
- the size and location of the workplace
- the number of workers and composition of the workers at the workplace
- the nature of the work being carried out
- the nature of the hazards at the workplace.

Reasonable time should be allowed during each meeting to ensure discussion of all business. Importantly, the PCBU should ensure that work arrangements are such that all worker members of the HSC are able to attend during paid time.

### **SHOULD A PCBU ALLOW HSC MEMBERS TO ATTEND HSC MEETINGS AND CARRY OUT THEIR FUNCTIONS?**

Yes.

PCBUs must allow each member of the HSC to spend the time that is reasonably necessary to attend HSC meetings or to carry out functions as a member of the HSC.

There may be times when a HSC is busier than usual and will require more time to carry out the functions of a HSC. For example, when an organisation merges with another, the committee may require time to revise health and safety standards, rules and procedures.

### **SHOULD HSC MEMBERS BE PAID AS NORMAL WHEN THEY PERFORM THEIR FUNCTIONS?**

Yes.

Any time that a member of a HSC spends attending committee meetings or carrying out HSC functions must be with the same pay that they are entitled to if they were to perform their normal duties during that period.

### **WHAT INFORMATION CAN A HSC MEMBER ACCESS?**

The PCBU must allow the HSC to access any information they have relating to:

- hazards (including associated risks) at the workplace
- the work health and safety of the workers at the workplace.

However, the PCBU must not allow the HSC to have access to any personal or medical information concerning a worker without their consent, unless the information:

- does not identify the worker
- could not reasonably be expected to lead to the identification of the worker.

### **CAN A HSC DETERMINE ITS OWN PROCEDURES?**

A HSC may choose to determine its own procedures for organising and conducting meetings.

It is recommended that the dates of the meetings be arranged well in advance, even to the extent of planning a program six months or a year ahead. In these circumstances, all members of the committee and all HSRs and deputies in the workplace (not all may be members of the HSC) should be given a personal copy of the program listing the dates of the meetings. Notices of the dates of meetings should also be published where all workers can see them.

HSC members should get a copy of the agenda and accompanying papers at least one week before each meeting. Every effort should be made to ensure scheduled meetings take place. Where postponement cannot be avoided, an agreed date for an alternative meeting should be made and announced as soon as possible.

The HSC may need to develop procedures and rules for the planning and conduct of meetings. Issues the committee should consider include:

- who will chair the meeting
- whether there will be a quorum for meetings
- who will take the notes or minutes of the meetings
- who will issue the notes or minutes

- who will draw up and issue the agenda
- how long items will remain on the agenda
- processes by which decisions will be made.

In certain workplaces, it might be useful for the HSC to appoint subcommittees to study and report on particular health and safety issues. The HSC should decide whether to record full and detailed minutes of meetings or simply to keep summary notes. Where notes are preferred to minutes, these should include details of decisions made, who is responsible for carrying out these decisions and the timetable for action.

A copy of agreed minutes or notes of each meeting should be supplied as soon as possible after the meeting to each member of the HSC and a copy sent to each HSR for the work groups covered by the committee. A copy of the minutes or notes should also be sent to the most senior executive responsible for work health and safety matters, and arrangements should be made to ensure that senior management is kept informed generally of the work of the committee. Copies of the notes or minutes should be displayed or made available by other means for the information of workers.

### **DOES MEMBERSHIP OF A HSC IMPOSE LEGAL DUTIES ON WORKER MEMBERS?**

There are no additional duties imposed by the WHS Act on worker members (including HSRs) of the HSC, other than their duties as workers.

### **HOW LARGE SHOULD A HSC BE?**

The overall aim, while keeping the size manageable, should be to ensure that the HSC is representative of the workplace. In large workplaces, a single committee may be too large or too small to adequately reflect the needs of the workplace. In these circumstances, it may be necessary to set up several committees with communication links for co-ordination between them. Criteria that may be relevant when determining whether more than one committee needs to be established include:

- the size and complexity of the workplace
- the nature and degree of risk involved in the workplace
- the structure of the work group
- the optimum size of committees.

### **SHOULD SMALL WORKPLACES HAVE A HSC?**

Although there is nothing to prevent a small business from establishing a HSC, such committees are more common to medium to large workplaces. Because large workplaces tend to involve more complex management structures, HSCs are often an effective means of co-ordinating a systematic approach to health and safety across the organisation.

However, small workplaces that do not have an HSC should nevertheless involve staff in developing policies and procedures and in periodically reviewing their effectiveness in line with the PCBU's duty to consult with workers on health and safety matters. In workplaces with HSRs, this must involve the HSR.

### **SHOULD A HSC BE USED FOR RESOLVING HEALTH AND SAFETY DISPUTES?**

Health and safety dispute resolution is not an appropriate function for HSCs. Dispute resolution requires specific procedures and the nature of committees makes them unsuitable for resolving issues.

### **HOW CAN MANAGERS EFFECTIVELY SUPPORT HSCS?**

The effectiveness of a HSC will depend on a number of factors. Significant among these will be the degree of co-operation the committee has been able to develop and the respect with which the workplace parties, especially the chief executive officer and management team, view the committee's work. The following activities could assist in maintaining the drive of a committee's work:

- regular meetings with effective publicity of the committee's discussions and recommendations
- speedy decisions by management on the HSC's recommendations and, where necessary and appropriate, prompt action with effective publicity
- mechanisms for ensuring all workers are informed about and support the committee
- setting priorities and monitoring results.

Good communication between the committee, management and workers will also contribute to the effectiveness of the HSC. For example, outcomes of the meetings might be placed on prominent notice boards and verbal briefings or emails organised by the HSRs to update workers. If appropriate, the committee will need to determine what languages are spoken in the workplace to ensure that information is provided in multilingual form where necessary.

In addition, there should be a genuine desire on the part of management to draw on the knowledge and experience of workers and to improve the standards of health and safety at the workplace.

Worker representatives and/or HSRs should be given time during work hours to prepare for and attend committee meetings and for reporting the outcomes to other HSRs and workers in the workplace.



## 7. RESOLVING ISSUES

An 'issue' is any concern about health and safety at the workplace that remains unresolved after consultation with the affected workers and the relevant PCBU has occurred. For example, an issue could include a difference in opinion on whether something is a potential risk to health and safety or whether a particular control measure is adequate. Other issues may involve the means by which workers are consulted or participate in health and safety decisions.

The WHS Act encourages PCBUs to agree on issue resolution with their workers. If there are no agreed procedures, the default procedure for issue resolution under the WHS Regulation must be followed. The default procedure includes the minimum requirements for any agreed procedures.

### **WHO IS INVOLVED IN RESOLVING A WORK HEALTH AND SAFETY ISSUE?**

The parties to the issue will be involved in resolving the issue. This means:

- the PCBU with whom the issue has been raised or their representative (e.g. a member from an employer organisation)
- any other PCBU or their representatives who is involved in the issue
- where at least one worker in a work group is affected by the issue, their HSR or the HSR's representative
- where a least one worker who is not in a work group is affected by the issue, the worker(s) or their representative.

A representative of a party (e.g. a union representative or employer organisation) may, if requested by the party, enter the workplace to attend discussions with a view to resolving the issue.

A PCBU must ensure that their representative is not a HSR and is sufficiently competent to act as the person's representative and has an appropriate level of seniority.

A representative with an appropriate level of seniority can include someone who is a manager in the business or undertaking and able to either decide or facilitate decisions to resolve issues at the workplace. To be sufficiently competent to represent a PCBU, the representative should have a general knowledge and understanding of work health and safety laws, how to manage and resolve work health and safety issues, as well as the duties, functions and powers of the parties involved with the issue.

When a work health and safety issue arises, the parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue according to the relevant agreed procedure, or if there is no agreed procedure, the default procedure set out in the WHS Regulations.

### **WHAT IS AN 'AGREED PROCEDURE'?**

Agreed procedures for resolving issues can also be established for a workplace. Issues can be resolved using agreed procedures that must, as a minimum, include the requirements set out in the WHS Regulations. Agreed procedures must be set out in writing and be communicated to all workers affected by those procedures.

An 'agreed procedure' is an agreed process or outline of the steps involved in resolving health and safety issues in the workplace.

For a procedure to be an 'agreed procedure' it must meet the following criteria:

- It must be agreed. This means that it is consensual and there has been genuine consultation and agreement between the PCBU, the HSRs and workers.
- It must not be imposed by one party or the other or arise out of a flawed process for reaching agreement, for example:
  - where only a select group of workers were involved in developing the procedure
  - where agreement is reached through an unrepresentative process, for example not all HSRs or all HSC members or all relevant workers and their representatives were able to participate in the agreement process.
- It must outline a process or steps for resolving issues, not just set out what the outcome would be in specified circumstances.
- It must relate to health and safety issues and not a procedure that exists solely for other purposes, such as a grievance or complaint procedure, unless such a procedure is agreed to be utilised for health and safety issues.

The 'agreed procedure' must also be consistent with the WHS Act and cannot remove the power of an HSR to issue a PIN or to exercise any other power that the WHS Act gives them.

### **WHAT IS A DEFAULT ISSUE RESOLUTION PROCEDURE?**

The WHS Regulations set out the default procedure for issue resolution. The default procedure provides for any party to the issue to commence the procedure by informing the other parties involved that there is an issue to be resolved and the nature and scope of the issue.

In attempting to resolve the issue, the default procedure requires the parties to have regard to relevant matters, including:

- the degree and immediacy of the risk to workers or other persons
- the number and location of workers and other persons affected by the issue
- the measures, both temporary and permanent, that must be implemented to resolve the issue
- who will be responsible for implementing the resolution measures.

### **WHAT HAPPENS AFTER AN ISSUE HAS BEEN RESOLVED?**

If the issue is resolved, details of the issue and the resolution must be set out in a written agreement, if any party to the issue requests this.

If a written agreement is prepared:

- all parties to the issue must be satisfied that it accurately reflects the resolution
- the agreement must be provided to all people involved with the issue and (if requested) to the HSC at the workplace.

At any stage in the issue resolution process, a worker can still bring a work health and safety issue to the attention of their HSR.

### **WHAT IF THE ISSUE IS NOT RESOLVED?**

If reasonable efforts have been made to resolve an issue and it remains unresolved, any party to the issue can ask the regulator to appoint an inspector to assist at the workplace. There does not have to be agreement about whether reasonable efforts have been made to resolve the issue in order for an inspector to be requested. As long as one party considers that reasonable efforts have been made, an inspector can be requested.

The inspector's role is to assist in resolving the issue. An inspector could exercise any of their compliance powers under the WHS Act, including providing advice, investigating contraventions or issuing an improvement notice.

At any time during the process or if a request to the regulator is made a worker is still entitled to exercise their right to cease work, or a HSR can issue a PIN or a direction to cease work.

# APPENDIX A- PROVISIONAL IMPROVEMENT NOTICE (PIN) TEMPLATE



1. A health and safety representative (HSR) may issue a PIN if they reasonably believe, on reasonable grounds, that a provision of the Work Health and Safety Act (WHS Act) or any regulation:
  - is being contravened; or
  - has been contravened in circumstances that make it likely that the contravention will continue or be repeated.
2. A PIN is issued to the relevant duty holder to remedy a contravention of the Act or Regulations. The duty holder may be an individual natural person or an organisation such as a company or public authority. The duty holder doesn't necessarily have to be in the workplace where the HSR works – for example, they could be a designer of plant, buildings and structures; or a manufacturer or supplier of plant or substances. However, the contravention must relate to the work group the HSR represents.
3. A HSR can issue a PIN to the relevant duty holder by one of the methods listed in section 209 of the WHS Act. For example:
  - delivering it personally to the duty holder, or
  - leaving it for the duty holder at the workplace to which the PIN relates with a person who is in management or control of that workplace (for example, leaving it with the area manager).

If the above methods of delivery are not possible the HSR can send it by post, fax or electronic transmission to the home or business address of the duty holder or leave it for the duty holder at their home or business with a person over 16 years who lives or works there.

4. The HSR must consult with the duty holder about remedying the contravention prior to issuing the PIN.
5. A HSR cannot issue a PIN unless the HSR has completed an approved initial HSR training course or completed that training when acting as a HSR for another workgroup or completed training equivalent to HSR training under the WHS Act.
6. A HSR cannot issue a PIN in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter (see section 90(5) of the WHS Act).
7. The duty holder to whom the PIN is issued is responsible for fixing the identified contravention by the date written in 'Date compliance with this PIN is required'. It is an offence under section 99 of the WHS Act for the person not to comply with the PIN by the 'Date compliance with the PIN is required' – penalties apply.
8. If the PIN recipient wishes to dispute the PIN, they can contact the regulator and request an inspector to review the PIN – this must be done within seven days of the 'Date of issue' of the PIN. The inspector will review and inquire into the circumstances that are the subject of the PIN and can do this even after the compliance date for the PIN has expired. An inspector can confirm, confirm with changes or cancel the PIN. A copy of a decision by an inspector must be given to the applicant for the PIN review and the HSR who issued the PIN. If the PIN is confirmed (with or without changes), the PIN is taken to be an improvement notice issued by the inspector.
9. For urgent issues that are an immediate threat to the health and safety of any person, a PIN may not be an appropriate means to address the situation. Refer to section 85 of the WHS Act regarding the right of a HSR to direct that unsafe work cease.
10. If there is more than one contravention, a separate PIN for each contravention must be written.
11. If the PIN contains formal irregularities, defects or fails to use the correct name of the person to whom the PIN is issued, the PIN may still be valid. The PIN will not be valid, however, if the formal irregularity or defect causes or is likely to cause substantial injustice to the PIN recipient or if the PIN fails to sufficiently identify the PIN recipient (see section 98 of the WHS Act.)
12. A reasonable time should be allowed between the 'Date PIN issued' and the 'Date compliance with PIN required', to enable compliance to be achieved. However, the date for compliance must be at least eight days after the date of issue.
13. The HSR should retain a copy of the completed PIN for their records.
14. If the issue has not been remedied by the 'Date compliance with PIN required' and an inspector has not already attended, the regulator should be contacted. If the HSR is a union member, the HSR can also advise their union.
15. The PIN recipient must as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace that is affected by the PIN.
16. A person must not intentionally remove, destroy, damage or deface a PIN that is displayed during the period the PIN is in force.
17. A failure to do any of the things referred to in points 15 and 16 is a contravention of the WHS Act and penalties apply.
18. If the person to whom the PIN is issued disagrees with the PIN or believes they will have difficulty complying with it, they should discuss this with the HSR who issued the PIN. They may also request an inspector to attend (see point 8 above).



