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Provisional improvement notices (PINs)

Health and safety representatives (HSRs) can issue a provisional improvement notice (PIN) for an issue affecting the workgroup they represent.

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Last updated

01 December 2017

 [worksafe.qld.gov.au/injury-prevention-safety/managing-risks/health-and-safety-representatives-and-health-and-safety-committees/provisional-improvement-notice-pins](https://www.worksafe.qld.gov.au/injury-prevention-safety/managing-risks/health-and-safety-representatives-and-health-and-safety-committees/provisional-improvement-notice-pins)

Health and safety representatives (HSRs) can issue a provisional improvement notice (PIN) for an issue affecting the workgroup they represent.

- **What is a PIN?**

A PIN:

- is a tool to improve health and safety in a workplace, encouraging employers and workers to openly discuss health and safety hazards and risks in their workplace
- is a written direction from a health and safety representative (HSR) to a person who holds a duty under the *Work Health and Safety Act 2011* (the Act) requiring them to fix a workplace health and safety problem
- should only be used if agreement to fix the problem cannot be reached through the normal consultation processes.

Provisions within the Act allow elected HSRs who have the appropriate training to issue PINs where the contravention affects the workgroup for which the HSR represents.

- **Who is a HSR?**

A HSR is a worker, elected by their co-workers for the purpose of representation within their workgroup. The HSR represents the workers within the workgroup in the process of workplace consultation, fostering cooperation and developing partnerships between the person conducting a business or undertaking (PCBU) (e.g. employer, principal contractor) and workers to ensure workplace health and safety.

HSRs are entitled to carry out inspections and review the circumstances of workplace incidents. They are also entitled to participate in the workplace health and safety committee. A HSR does not need any experience or special qualifications but is entitled to attend a training course prescribed under the regulation and have all reasonable costs of that course met by the employer. An employer must allow a HSR to exercise their entitlements during their ordinary working hours.

- **Benefits of having HSRs issue PINs**

Allowing HSRs to issue PINs provides an alternative option to attendance by a WHS inspector. The involvement of HSRs, well informed about the workplace, means the action would be local and immediate.

HSRs can foster consultation between workers and PCBUs about achieving workplace health and safety at a workplace. They provide a process for PCBUs and workers to identify and resolve issues that affect the workplace health and safety of persons at workplaces.

The entitlement to issue a PIN is simply another 'tool' in the toolkit for HSRs to carry out their existing function. The difference is that this tool is enforceable and typically a WHS inspector will only become involved if there is a dispute or non-compliance with the PIN.

PINs can only be issued by a qualified HSR. A qualified HSR is a representative who has completed training in the giving of PINs.

With the introduction of the Act, there is a transitional provision that allows all elected HSRs to issue PINs from 1 January 2012 to 31 December 2012 without having the approved training.

Registered Training Organisations (RTOs) wishing to deliver the standalone PINs training module should contact the Workplace Health and Safety Infoline on 1300 362 128.

HSRs are advised to keep a copy of their Statement of Attendance, issued by the RTO that conducted their training, as evidence they are qualified to issue PINs in relation to their workgroup.

• Where can a HSR issue a PIN?

The workgroup for which the HSR represents is the area negotiated between the PCBU and the workers who will form the workgroup or their representatives. A HSR is only entitled to issue a PIN in respect of a contravention committed that affects the workgroup for which they represent.

• When can a HSR issue a PIN?

A PIN may be issued if the HSR:

- 'reasonably believes' that a person is breaching or has breached a provision of the Act in circumstances that make it likely that the breach will continue or be repeated
- has not been possible to fix the problem by consultation.

The HSR cannot issue a PIN to a person unless he or she has first consulted the person.

The 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 for the same matter.

• How is a 'reasonable belief' formed?

Before a HSR issues a PIN, the HSR needs sufficient evidence to form a 'reasonable belief' of the contravention.

A reasonable belief is formed by making observations, asking questions, taking measurements, accessing records etc and then weighing up that information to make the decision to issue a PIN.

It is important that the problem is clearly and specifically identified when forming a reasonable belief.

Examples (These examples are indicative and provided as guidance only)

- Cleaning staff are working in an office building after hours, using the stairwell to move between floors. The stair treading is coming off in places, creating a tripping hazard for the cleaners (and others who might use the stairwell).

Despite repeated requests from the cleaners' HSR to the building manager,

the problem has not been fixed. The issue is unresolved so the HSR issues a PIN to their employer. The employer then addresses the issue with the building manager for resolution.

- Towards the end of a shift in a commercial kitchen, workers may experience slips, trips and falls due to several missing floor tiles. This hollowed area allows pooling of water and oil which is tracked throughout the kitchen. This is most likely to cause an incident and there have been two recorded near miss incidents. The HSR consults with the kitchen supervisor but the issue remains unresolved. The HSR issues a PIN to the kitchen supervisor.

NOTE: If the HSR has a reasonable concern that to carry out the work would present a serious risk to the worker's health and safety, from an immediate or imminent exposure to a hazard, then instead of issuing a PIN to fix the problem other action – such as bringing the matter immediately to the attention of the worker and the PCBU – should be taken.

Examples include:

- risk of falling objects from height
- risk to public from falling objects
- unsafe operation of cranes
- unguarded plant
- working unprotected at heights
- inappropriate removal of asbestos.

• Who can be issued with a PIN?

A health and safety representative (HSR) can issue a provisional improvement notice (PIN) to any person they reasonably believe is contravening or has contravened a provision of the *Work Health and Safety Act 2011*, provided that the alleged contravention to which the PIN relates is a matter that affects, or may affect, the health or safety of workers in the work group represented by the HSR.

The power of the HSR to issue a PIN is not limited to the person conducting a business or undertaking (PCBU) who determines the work group that the HSR represents.

Example (This example is indicative and provided as guidance only)

A work group has been formed in consultation with a single PCBU construction contractor (the contractor). All the workers in the work group are employees of the contractor and the workers have elected a HSR to represent them.

The contractor is engaged to perform construction work by a principal contractor (also a PCBU) on a construction project.

The contractor's workers have requested the elected HSR to raise a safety matter regarding non-compliance with general workplace facilities requirements (e.g. housekeeping and the means of entering and exiting the workplace).

The contractor and principal contractor concurrently have the same duty regarding the general workplace facilities.

The HSR consults with both the contractor and principal contractor regarding the matter. At the completion of this consultation the HSR reasonably believes that the principal contractor is contravening the general workplace facilities requirements and that this continued contravention is affecting the health or safety of workers in their work group.

In this case the HSR may issue a PIN to the principal contractor.

- **When does a HSR not have a right to issue a PIN to a PCBU?**

A HSR is unable to issue a PIN to a PCBU they reasonably believe is contravening or has contravened a provision of the WHS Act where the alleged contravention does or did not affect the health or safety of workers in their work group.

Example (This example is indicative and provided as guidance only)

Two stores operate side by side in a managed shopping complex.

The workers at one store (Store A) have elected an HSR to represent them; the workers of the other store have not.

The workers at Store B have raised a health or safety concern with their PCBU regarding uncontrolled falling object risks. After consultation with the PCBU the matter remains unresolved.

The workers at Store B ask the HSR of Store A to issue a PIN to their PCBU for non-compliance with the falling object regulation.

The HSR does not have the right to issue a PIN on the Store B PCBU, as the alleged contravention does not affect any of the workers represented by the HSR.

The workers of Store B must resolve the matter by following the agreed issue resolution procedure or, if there is no agreed procedure, the procedure contained in the [Work Health and Safety Regulation 2011](#).

In addition, a HSR can only issue PINs after undertaking the required training.

The Safe Work Australia website provides information on the powers and duties of HSRs in relation to the issuing of PINs and is outlined in the [Worker Representation and Participation Guide](#).

- **What is consultation?**

A vital first step that must be undertaken by the HSR is to consult with the person to try and resolve the problem. It may also be appropriate for the HSR to take the matter to the health and safety committee (if established) where the issue may affect multiple areas of the workplace.

Workplace Health and Safety Queensland will consider that consultation has occurred prior to the issue of a PIN if the HSR has:

- verbally or in writing provided information to the person about the contravention and ways to remedy the contravention or likely contravention or the things or operations causing the contravention or likely contravention

- allowed the person an opportunity to express their views and to contribute within a reasonable time to remedy the alleged contravention or resolve the matters or activities causing the alleged contravention
- taken into account the view of the person before issuing the PIN
- advised the person of the outcome of consultation in a timely manner.

Consultation can have occurred even if the relevant person does not respond to the HSR in a reasonable time or there is no agreement. There does not have to be a two-way exchange, only the opportunity for this to occur. The time period for consultation or degree of consultation required will depend on the circumstances and must be reasonable for the relevant circumstances.

• How must a PIN be served?

The HSR should give the PIN to the person to whom it was issued (i.e. the person who committed the contravention).

However, if the HSR cannot give it to the person, they may leave it for them at the workplace to which the PIN relates. The person with whom the PIN is left with must:

- be at least 16 years old
- be, or appear to be, in control of the workplace or the work to which the notice relates (it should be given directly to the employer or their representative e.g. a manager or supervisor, rather than to a worker).

See section 209 of the [Work Health and Safety Act 2011](#).

• What must the PIN contain?

A PIN must state:

- that the HSR believes the person is contravening, or has contravened, a provision of the WHS Act or regulations in circumstances that make it likely that the contravention will continue or be repeated
- the provision of the WHS Act or regulations that the HSR believes is being, or has been, contravened
- briefly, how the provision is being or has been contravened
- the day (at least eight days after the notice is issued) by which the person is required to remedy the contravention or likely contravention.

An HSR may suggest a range of options that they reasonably believe will remedy the situation. Duty holders are not required to implement these options where other measures resulting in the same or better safety outcomes can be applied.

Download [Form 44 - Provisional improvement notice \(PIN\)](#) (PDF, 127.44 KB) .

• Can more than one contravention be put in a PIN?

No. A separate PIN should be completed for each contravention of the Act or Regulation. This is because certain information must be set out for each contravention, including the:

- part of the legislation being contravened (if known)
- reasons for the belief about the contravention
- the date by which to comply with the PIN.

Putting more than one element in each box on a PIN form could make the PIN difficult to understand. It would also leave the PIN open to challenge because it may not be clear which reason, possible remedy and time limit applies to which contravention.

• Will a mistake in the PIN make it invalid?

This depends on the type of mistake. A PIN must contain all of the required information outlined above and may be invalid if it does not contain them.

However, a PIN is not invalid merely because of:

- a formal defect or irregularity in the notice (e.g. the information in the PIN is inaccurate or incomplete in some way)
- a failure to use the correct name of the person to whom the notice is issued (as long as the notice sufficiently identifies the person).

A formal defect or irregularity does not automatically invalidate the PIN. If the information given is not misleading, does not cause a substantial injustice and sufficiently identifies the person to whom the PIN is issued, the PIN remains valid. However, if the defect or irregularity, when viewed objectively, may mislead the person to whom it is issued, then the PIN will be invalid.

Examples of a defect or irregularity that could mislead the person receiving the PIN and that could cause a substantial injustice include the writing on the PIN being illegible or capable of multiple meanings.

• What must the person do if issued with a PIN?

The person issued with a PIN must:

- bring it to the attention of everyone whose work is affected by it
- display a copy of it in a prominent place at or near the workplace or part of the workplace where work is being carried out that is affected by the notice
- provide a copy of the PIN and details on its status to the Regulator at WHSnotification@oir.qld.gov.au or by calling 1300 362 128 as soon as practicably possible.

Note: a prominent place means open display in a place where the notice will be seen without prior knowledge that it is there, and where the relevant people will come across it in the normal course of events and be able to examine it (e.g. on a staff noticeboard, a broadcast email to all staff).

Employers are advised to develop procedures to ensure that any PIN issued to management or supervisory staff is passed on promptly, as it is the employer's responsibility to deal with the PIN.

See section 97 of the *Work Health and Safety Act 2011*.

• What choices does the recipient of a PIN have?

Compliance

The recipient of a PIN must comply with it within the specified timeframe (must be at least **eight calendar days**). Failure to comply with the PIN within the timeframe given is an offence.

WHSQ will consider compliance with a PIN has been achieved where appropriate action has been taken by the person by the remedy date.

For example, an employer has received a PIN in relation to risks associated with poor housekeeping in the warehouse. As a result the employer has purchased (and has evidence, such as an invoice) a racking system to ensure adequate and safe storage of materials in the warehouse. However, the supplier is unable to supply and install the racking system by the remedy date specified in the PIN. In this case WHSQ would consider appropriate action has been taken by the remedy date to address the issue. At the workplace the employer should inform the HSR of the matter and in some cases the HSR may decide to re-issue a PIN with a new remedy date.

Review

The person who has been issued with the PIN may request it to be reviewed by a WHS inspector. The review must be requested within **seven calendar days** of the PIN being issued. The PIN will then be suspended until the WHS inspector makes a decision. At the same time the employer should inform the HSR that the PIN has been referred to WHSQ for further investigation.

A review of a PIN enquiry can be requested by contacting the Workplace Health and Safety Infoline on 1300 362 128.

See section 100 of the *Work Health and Safety Act 2011*.

• What happens when an inspector is called in?

The WHS inspector will visit the workplace as soon as practicable after the request is made to review the PIN. It would be expected that a WHS inspector will contact the person who made the request within two working days. At that time the inspector will advise the person (e.g. PCBU or HSR) of the proposed visit date.

The WHS inspector must enquire into the circumstances relating to the issuing of the PIN and may either confirm, confirm with changes or cancel the PIN. In doing this, the WHS inspector will give written notice to the HSR who issued the PIN and to the person to whom it was issued in the form of an inspection report, if the WHS inspector attended the workplace. If the WHS inspector resolved the issue by distance and did not attend the workplace, they will advise the parties of the outcome through written correspondence.

The WHS inspector's inspection report or written correspondence will state:

- the inspector's decision
- the reasons for the decision
- that the person may apply within **14 calendar days** for the decision to be reviewed
- how the person may apply for the review.

If the WHS inspector confirms the PIN or confirms the PIN with changes, the PIN is taken to be an improvement notice issued by the WHS inspector. The decision of the WHS inspector is also a reviewable decision –this is the same as an improvement or prohibition notice issued by a WHS inspector.

The recipient of a PIN affirmed by a WHS inspector must comply with the PIN. Failure to do so is an offence.

Depending on the circumstances, a WHS inspector may also issue an improvement, prohibition or infringement notice at the same time.

- **What happens if a HSR issues a PIN and the circumstances are not remedied by the remedy date?**

If the HSR thinks there has been a delay in resolving the problem (e.g. issue has not been fixed by the remedy date) or that the action taken is inadequate, the HSR should contact Workplace Health and Safety Infoline on 1300 362 128. An inspector will enquire into the circumstances relating to the issue of the PIN, and offence provisions apply if, all other circumstances taken into account, the person has not complied with the PIN.

- **Who can cancel a PIN?**

A PIN remains in force until the matter has been resolved, unless:

- the HSR who issued the PIN cancels the notice in writing to the person (which they may do at any time)
- a WHS inspector has been called to the workplace and cancels the PIN.

See section 92 and 102 of the *Work Health and Safety Act 2011*.

- **How can a decision be reviewed?**

A person (including a corporation or body corporate), whose interests are affected by a decision made by an inspector (or other person under the Act), can apply for a review of the decision.

You must complete an Application for Internal Review of Decision form. Download [Form 17 – Application for internal review of a decision](#) (PDF, 136.17 KB) or phone the Workplace Health and Safety Infoline on 1300 362 128. You must apply for a review of a decision within **14 calendar days** after you are told of the decision. There is no application fee.

After lodging the form written confirmation of your application will be sent to you. Your application will be reviewed within **14 calendar days** of being confirmed. A new decision will be made that either confirms or varies the original decision, or sets aside the original decision and makes a decision in its place.

You will receive written confirmation of the result within **14 calendar days** after the new decision has been made. This will include the reasons for the decision and explain your rights to appeal against the decision.

- **What protection is offered to HSRs?**

An employer must not dismiss a worker, or otherwise act to the detriment of a worker, for the substantial reason that the worker is, or has performed a function as, a workplace health and safety representative.

Examples of acting to the detriment of a worker include:

- unwarranted transfer of the worker
- reducing the worker's terms and conditions of employment.

An employer is guilty of an offence if they act to the detriment of the worker.

See section 105 of the *Work Health and Safety Act 2011*.

- **Can action be taken against a HSR who misuses a PIN?**

Yes. Where a person considers that a HSR has issued a PIN unreasonably, the HSR can have their entitlement to issue a PIN cancelled or suspended, or be disqualified from being a HSR altogether.

Example, if a qualified HSR issues a PIN to harm an employer rather than to remedy a dangerous work situation.

The person affected by the decision or the regulator may apply to the Queensland Industrial Relations Commission for the disqualification of the representative's entitlement.