

## More information about

# Provisional Improvement Notices

## Health and safety representatives



October 2012

### Background

When a health and safety issue arises in a workplace, ideally the employer and HSR will negotiate a resolution in the first instance. Where such negotiations are ineffective and/or the HSR believes on reasonable grounds that the issue involves a contravention of the *Occupational Health and Safety Act 2004* (the Act) or the *Occupational Health and Safety Regulations 2007* (the Regulations), the HSR may issue a PIN.

### What is a PIN?

A PIN is a written direction requiring a person to remedy the contravention (or likely contravention).

### When can a HSR issue a PIN?

A PIN may be issued if the HSR believes, on reasonable grounds, that a person is contravening or has contravened a provision of the Act or Regulations in circumstances that make it likely that the contravention will continue or be repeated. However, the HSR may issue the PIN only after consulting with the person about remedying the contravention (or likely contravention).

### What is meant by 'consultation prior to the issuing of a PIN?'

WorkSafe considers that consultation prior to the issue of a PIN has occurred if the HSR has:

- verbally or in writing provided information to the duty holder (or management representative if the duty holder is an employer) about the provision of the Act or Regulations the HSR believes is being contravened or likely to be contravened
- allowed the person the opportunity to express their views and to contribute in a timely fashion to remedy the alleged contravention or resolve matters or activities causing the alleged contravention
- taken into account the views of the person before issuing the PIN.

Consultation can still be said to have occurred even if the duty holder does not respond to the HSR in a reasonable time or at all. The degree of consultation required will be determined on a case-by-case basis and must be reasonable in all the circumstances. Consultation can still be said to have occurred even if there is no agreement between the HSR and the duty holder.

### Who can a HSR issue a PIN to?

A PIN may be issued to any 'person'. This could be the employer (either an organisation or an individual person) or an individual, such as a worker. 'Person', as defined in the OHS Act, also includes 'a body corporate, unincorporated body or association and a partnership'. Therefore, the person doesn't necessarily have to be in the workplace – it could also be a designer of plant, buildings or structures or a manufacturer or supplier of plant or substances.

### Where can a HSR get a PIN form?

PIN forms can be downloaded from:  
[www.worksafe.vic.gov.au/hsr](http://www.worksafe.vic.gov.au/hsr)

It is not compulsory to use a form to issue a PIN, but they may assist in ensuring that the required information listed below is included.

### What must the HSR write on the PIN?

A PIN must:

- state the HSR's belief on which the issue of the notice is based and the grounds for that belief
- specify the provision of the Act or Regulations that the HSR believes has been or is likely to be contravened
- specify a day (at least eight days after the day the notice is issued) before which the person is required to remedy the contravention or the activities causing it.

A HSR may also provide directions in the PIN about fixing the alleged contravention, but is not required to do so.

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

No. A separate PIN should be completed for each alleged contravention or likely contravention of the OHS Act or Regulations.

### Will a mistake in a PIN make it invalid?

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, then the PIN will be valid. However, if the defect or irregularity, when viewed objectively, may mislead the person to whom it is issued, does not sufficiently identify the person to whom the PIN is issued or would cause or likely cause substantial injustice, then the notice will be invalid.

# More information about Provisional Improvement Notices

## How must a PIN be served?

This may be done by any of the following means:

- by delivering it personally to the person or sending it by post or fax to the person's usual or last known home or business address
- by leaving it for the person at the person's usual or last known home or business address with a person who is apparently over 16 years old and who apparently works or resides there
- by leaving it for the person at the workplace to which the notice relates, with a person who is apparently over 16 years old and who is apparently the occupier for the time being of the workplace.

Note: The conclusion that the person is apparently over 16 years old and apparently works or resides there will be based on factors such as the physical appearance of the person, the person's behaviour and/or the belief of others.

## What must the person who is given (or served with) a PIN on behalf of their employer do after receiving it?

If the person is a worker, they must bring the PIN to the attention of their employer. Employers are advised to develop procedures to ensure that any PIN given to managers or supervisory staff is passed on promptly, as it is the employer's responsibility to deal with the PIN in a timely manner.

## What must the person who is issued with the PIN do after receiving it?

Employers and any other persons who are issued with a PIN (eg: a manufacturer, a designer, a partner in a business) must bring the PIN to the attention of all other persons whose work is affected by the notice and display a copy of the notice prominently in that work area.

WorkSafe considers that 'prominent display' 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.

## What choices does the 'person' who is issued with the PIN have?

The recipient of a PIN must comply with it within the specified time frame. Failure to do so is an indictable offence. If the recipient wishes to dispute the PIN, they can call in a WorkSafe Inspector within seven days of the PIN being issued. The person issued with a PIN must either call in a WorkSafe Inspector within seven days of receiving the PIN or comply with the PIN in the time specified. Failure to do so is an offence under the Act.

## What happens when an Inspector is called in?

Employers or a person issued with a PIN (eg: a manufacturer, a designer, a partner in a business) may ask WorkSafe to arrange for an Inspector to attend the workplace to enquire into the circumstances the subject of the PIN. The Inspector must come to the workplace as soon as possible and before the date specified in the PIN for the contravention or likely contravention to be remedied. The Inspector may perform any functions or exercise powers under the Act that he/she considers reasonably necessary in the circumstances.

## What will the Inspector do?

Following his/her enquiries, the Inspector will do one of the following:

- affirm the PIN if the Inspector believes that the Act or Regulations have been contravened or if there are circumstances that make it likely that the contravention will continue or be repeated
- affirm the PIN with modifications if it is necessary to correct defects and/or include additional information
- cancel the PIN if the Inspector believes that the recipient is not contravening or has not contravened the Act or Regulations or if the PIN does not meet the requirements of the Act.

The Inspector will give a written notice of their decision to the HSR who issued the PIN and the person to whom it was issued. This PIN enquiry outcome notice must include the basis for the Inspector's decision to either affirm or cancel the PIN and, if affirmed, the penalty for contravening the affirmed PIN and how either person may seek a review of the Inspector's decision.

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

### Further information

Visit: [worksafe.vic.gov.au/hsr](https://worksafe.vic.gov.au/hsr)

Contact the WorkSafe Victoria Advisory Service on 1800 136 089 or [info@worksafe.vic.gov.au](mailto:info@worksafe.vic.gov.au)

More information can also be found at: [ohsrep.org.au](https://ohsrep.org.au)

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