

# Worker Representation and Participation Guide

Guidance material

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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 and 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, a work group or 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. An HSC must be established when an 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.

## 2. WORK GROUPS

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

### 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 are proposed to 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 having regard to the need for each member of the proposed group to be able to readily 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 (in person or remotely) 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 text).

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?

When grouping workers in a work group, regard must be had to the need for an HSR to be readily accessible to each worker in their work group. This allows workers to express any concerns regarding their health and safety and means 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 text). 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 or seasonal 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 an 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 an 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.

A small charitable organisation has 14 staff who work across two offices in the same city. The workers and the person conducting the business are negotiating the establishment of work groups. The parties recognise that the type of work conducted across the offices is similar, there are a relatively small number of workers and the workers are well known to each other through regular joint staff meetings. The parties agree that one work group will be established. The parties agree that the HSR will be provided with dedicated time to consult with workers at the other site and will be supported to work out of the other office at regular intervals. This will ensure workers have direct access to the HSR and the HSR understands any health and safety issues specific to the second office.

## 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 variation 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

Employees often work with independent contractors and employees of independent contractors (who are all workers under the WHS Act). For example, a contractor may have their employees and subcontractors 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 where they perform their day-to-day activities.

### 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 its 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 an 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 no election is needed.

## Who is eligible to stand for election to be an 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 an HSR.

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

## Can a manager be an HSR?

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

## 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 an HSR and cannot simply appoint an HSR.

## What does a person conducting the election need to do?

<b>Action to be taken by person conducting the election</b>	<b>Tick</b>
1. Inform the person or persons conducting relevant business or undertaking of the election date	<input type="checkbox"/>
2. Invite all relevant work group members to nominate an HSR and vote in the election	<input type="checkbox"/>
3. Advise work group members of the election results	<input type="checkbox"/>
4. Advise any relevant PCBU of the election results	<input type="checkbox"/>

## How long is the term of office for an 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 an HSR if:

- they resign as an HSR by giving the PCBU written notice
- they no longer work in the work group
- the person is disqualified from acting as an 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 an HSR be removed from office?

An 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 an HSR be disqualified?

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

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

For example, a PCBU may apply to disqualify an HSR if the HSR issued a direction to cease work where, in the PCBU's 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 has the discretion to disqualify the HSR indefinitely or for a specified period of time. A person's disqualification would prohibit them from being eligible for election as an HSR during the period of disqualification.

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

## Are HSRs immune from prosecution under the WHS Act when performing their role?

An 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 also have duties as workers under the WHS Act. If a worker is elected as an 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 an HSR?

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

The WHS Act sets out specific powers and functions that an 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 an HSR has the right to exercise certain powers and perform certain functions, it is for the HSR to decide if, and when, they should be exercised. The WHS Act does not impose mandatory obligations or duties on HSRs to exercise the powers or perform the functions of an 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 issues
- 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 and its purpose
- 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. An 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 an 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 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.

## Can an 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, an 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 an 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 an HSR ask for a control measure to be reviewed?

An 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.

An HSR can only request the review if these circumstances affect 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 an HSR can request the review of control measures for lead, asbestos and major hazard facilities.

## In what circumstances may an HSR be present at an interview involving a work group member?

With the member's consent, an 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 an HSR?

An 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, an 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, an HSR may require assistance about:

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

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

## Do union officials need an entry permit when entering a workplace to assist an HSR?

This section applies if a union official wishes to enter the workplace of workers covered by the *Fair Work Act 2009* (Cth) (Fair Work Act) to assist an HSR.

The official must have an entry permit issued by the Fair Work Commission under the Fair Work Act (a Fair Work entry permit).

To exercise most of the entry rights under the WHS Act, a union official must hold both a valid and current Fair Work entry permit and a valid and current WHS entry permit issued by the relevant authority under the WHS Act (a WHS entry permit). For example, both a Fair Work Entry Permit and a WHS entry permit are required for a union official to enter a workplace to inquire into a suspected contravention, or to consult and advise workers. However, to enter premises to assist an HSR, a union official does not need to have a WHS entry permit, only a Fair Work entry permit.

If a union official who holds a WHS entry permit enters premises to assist an HSR and not as a WHS entry permit holder, the union official cannot exercise any of their WHS entry permit holder's rights once on the premises. If the union official wishes to exercise any of their WHS entry permit holder's rights, they must arrange to re-enter the workplace as a WHS entry permit holder and follow the requirements for entering as a WHS entry permit holder.

The reason only a Fair Work entry permit is required for a union official to enter to assist an HSR is because, in those circumstances, the union official is not seeking access to the workplace in their capacity as a WHS entry permit holder. However, if the reason the official does not have a WHS entry permit is because it has been revoked, or they are currently suspended or disqualified from holding a WHS entry permit, a PCBU may also refuse them access to the premises to assist an HSR.

*Other requirements of the Fair Work Act and WHS Act*

Before entering, and on entry to, a workplace for any purpose under the WHS Act, a union official must comply with the relevant procedural and conduct requirements under both the Fair Work Act and the WHS Act.

Further information about the Fair Work Act requirements for union officials exercising rights of entry can be obtained from the Fair Work Commission ([www.fwc.gov.au](http://www.fwc.gov.au)).

## When can a person assisting an HSR access the workplace?

If it is necessary to enable an HSR to access assistance, that assistant may access the workplace providing the HSR has provided at least 24 hours' but not more than 14 days' notice of the proposed access to the PCBU and the person with management or control of the workplace.

A PCBU can refuse access to a person assisting an 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 an HSR if:

- the HSR failed to give at least 24 hours', but not more than 14 days', notice of the assistant's entry to the PCBU and the person with management control of the workplace, or
- the assistant has had their WHS entry permit revoked, or they are currently suspended or disqualified from holding a WHS entry permit.

If a person assisting an HSR 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 to the workplace, including a person assisting an HSR, must comply with a reasonable instruction given by the PCBU about work health and safety matters.

## Can an HSR exercise their powers outside their work group?

Yes, but only in two circumstances.

An 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 an HSR access workplace information?

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

The information an HSR may require access to can differ between workplaces, for example, an 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.

An 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, an 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 require the licence be produced for inspection.

## Can an HSR have access to a worker’s personal and medical information?

An 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.

## Can an HSR use work time to perform their functions and powers?

Yes, the PCBU must allow an 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 an 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 an 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 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 an 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 an HSR issue a PIN?

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

A PIN can be issued when the HSR reasonably believes a person:

- is contravening a provision, or
- has contravened a provision and it is likely that the contravention will continue or be repeated.

This is an objective test – there must be sufficient facts or evidence to support the HSR's belief about the contravention.

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.

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 (by issuing an improvement notice or by deciding not to issue an improvement notice).

## Who can be issued a PIN?

A PIN may be issued to *any person* who owes a duty under WHS laws. 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 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 the health and safety of people in the workplace (thereby contravening the WHS Act or Regulations), the HSR may issue a PIN to the PCBU and serve it on the supervisor who has control of the workplace. 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 failed 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 to ensure so far as is reasonably practicable that the workplace is without risks to health and safety.

## 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 an 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 recommendations about how the contravention can be remedied.

<b>PIN information</b>	<b>Tick</b>
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 by which 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 recommendations 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 recommendations that refer to a Code of Practice and offer a choice of ways the contravention can be remedied.	<input type="checkbox"/>

## Can an HSR make minor changes to a PIN?

Yes, an 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.

## 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 in 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 that is believed to have been contravened
- where the PIN refers to a matter that is not related to the health and safety contravention.

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

## Can an HSR cancel a PIN?

Yes, an 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.

A person including the person who has been issued with a PIN, must not intentionally remove, destroy, damage or deface a PIN that is being displayed during the period that it 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.

## 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 a review is made, the time limit for compliance ceases to apply (and no offence would be committed).

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 to whom it was issued. 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, or
- 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.

## Why would an inspector cancel a PIN?

The inspector will cancel the PIN if they find that it was not validly made because one of the essential requirements has not been met. For example:

- the HSR has not had the required training
- the HSR did not consult with the relevant person before issuing the PIN
- the PIN does not state how the WHS Act or Regulations is being or has been contravened
- there is insufficient evidence to support a reasonable belief that a person is contravening or has contravened a provision and it is likely that the contravention will continue or be repeated.

An inspector may also cancel a PIN if they consider that this is the correct or preferable decision having regard to all the circumstances. A PIN will not be considered to be invalid if there is a formal defect or irregularity, unless this causes or is likely to cause substantial injustice.

The inspector may also decide to make some changes to the PIN and then confirm it with these changes. For example, the inspector might adjust the compliance date, include more appropriate ways to remedy the issue or correct the name of the duty holder.

## What can an HSR or other party do if a PIN is cancelled by the inspector but there is still a WHS issue remaining?

There may be options available if a PIN has been cancelled by the inspector following a review and the HSR (or anyone else) considers that the WHS issue that was the subject of the PIN remains, but this may depend on why the PIN was cancelled.

The main remedy is to make a request that the regulator internally review the inspector's decision to cancel the PIN. This request can be made by the person issued with the PIN, the HSR who issued the PIN, an affected worker or another affected HSR or a PCBU.

If a PIN is cancelled because it is considered invalid the HSR may wish to issue a new PIN (where the error or omission has been corrected). Often an inspector will encourage this to occur if they have been asked to review the PIN and a WHS issue is unresolved. If the inspector gives reasons for their decision to cancel the PIN, the HSR should take this into account in deciding whether a new and revised PIN may be validly issued.

An 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.

### **The inspector may exercise their compliance powers to resolve the issue**

If the inspector cancels a PIN this does not mean that the WHS issue or concern is dismissed. If the matter remains unresolved, the inspector can work with the HSR and any other relevant parties to resolve the issue or take other enforcement action.

HSRs and others are encouraged to ask inspectors to do so if they are still concerned after a PIN has been cancelled.

Inspectors have broad compliance powers and if they consider that there is a WHS risk remaining (either the same issue that was covered in the PIN or a different one) they may:

- provide information and advice about how it could be remedied;

- investigate possible contraventions of the WHS Act or Regulations using their broad powers (e.g. to make inquiries, inspect and examine anything), and/or
- issue an improvement notice or prohibition notice.

If an inspector does not issue a notice, they will still want to ensure that the risks to workers and others are eliminated or reduced so far as reasonably practicable at that time or that there are measures in place to manage the risks going forward.

### **The issue resolution process could be initiated and an inspector could provide assistance**

An HSR or worker, or other party, may choose to commence the issue resolution process set out in Division 5 of Part 5 of the WHS Act if they consider that there remains a WHS issue after the inspector has cancelled the PIN and the inspector has not taken any compliance actions.

The aim of this process is for all parties involved to work out a resolution to the issue. Often this process may have occurred before an HSR issued the PIN but it could also be used after the review of a PIN and subsequent cancellation.

Parties to the issue would discuss the matter, and if it remains unresolved, then they would need to commence the agreed procedure for resolving issues in that workplace or otherwise use the default procedure in the WHS Regulations.

If an agreement cannot be reached through this process, the parties may wish to seek the inspector's assistance to resolve the issue under section 82. For more information about this process, see **Section 7** of this Guide – Resolving Issues.

## 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.

### What is alternative work?

A PCBU can direct the worker to carry out 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 an HSR direct a worker to cease work?

An 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 an HSR of another work group.

An 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 to cease work, the HSR must first attempt to resolve the matter by consulting the PCBU for whom the workers are working, unless the risk is so serious and immediate or imminent that it is not reasonable 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 and 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 an HSR, whenever reasonably requested by the representative, to ensure the health and safety of the work group workers
- to allow an 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 an HSR access to information relating to the health and safety 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 an 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 exercise their powers and perform their functions under the WHS Act
- to pay HSRs for the time spent performing their role at the same rate that they would be entitled to receive if performing their normal duties during that period.

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 entry permit.

### What resources, facilities and assistance does an HSR need?

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

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 an HSR is exercising their powers as an 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 must 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 an HSR or deputy HSR has made a request, the PCBU must allow them to attend a training course in work health and safety as soon as practicable within the period of 3 months after the request is made. HSRs and deputy HSRs are entitled to attend an initial training course of up to five days. They are also entitled to up 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, and
- be chosen by the HSR.

HSRs are entitled to choose a course of training in work health and safety approved by the regulator. The HSR may choose to consult with the PCBU (e.g. seeking views on suitability of courses) or seek advice (e.g. from worker representatives) when choosing the course of training. HSRs will need to reach agreement with the PCBU on time off for attendance and the reasonable costs of the training course. If the HSR and the PCBU cannot reach agreement on these matters, either party may ask an inspector for assistance.

Issues that might be considered when the HSR is choosing a course 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 initial training course again. An HSR is, however, entitled to up to one day's refresher training each year following the completion of the initial training course.

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.

## Should an HSR be paid normal salary for the days they attend training?

Yes. If an 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 the initial training course which runs on consecutive days beyond their normal work 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 an 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 an HSR represents workers from more than one business or undertaking?

If an 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:

- 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
- whether the course being requested is an approved training course
- how relevant the proposed courses are to the HSR's role in this work group
- the cost of attending the course, including associated costs.

Where an inspector has decided on a course, the PCBU must allow the HSR to attend the 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).

## 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 an HSR, deputy HSR or a member of an HSC.

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

## 6. HEALTH AND SAFETY COMMITTEES

An Health and Safety Committee (HSC) is a useful forum for consultation on work health and safety issues. A committee enables a PCBU 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.

Templates for HSC constitutions, agenda and minutes are provided at **Appendix B**.

### 6.1 Establishing an HSC

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

#### Who should be on an HSC?

The membership of an 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 the PCBU and workers can't agree to establish an HSC?

If workers and a PCBU cannot agree on the constitution of an 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, an 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 specialist consultants to advise on WHS matters if needed.

### How often must an 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 to 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 an HSC is busier than usual and will require more time to carry out the functions of an 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 an 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 an 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 an HSC determine its own procedures?

An 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 needs to 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 an 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 an 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 an HSC?

Although there is nothing to prevent a small business from establishing an 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 an HSC be used for resolving health and safety disputes?

The WHS Act encourages PCBUs to agree on issue resolution procedures with their workers. While the HSC may provide advice on issues, resolving individual matters may not be a role for the HSC. For example, the HSC may not include the parties to a particular issue. For more information about issue resolution, see **Section 7** of this Guide – Resolving Issues.

## How can managers effectively support HSCs?

The effectiveness of an 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 work of 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 issue resolution provisions in the WHS Act outline how an health and safety issue can be resolved, with the aim of resolving issues as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue. The intention is that issues should be resolved 'once and for all' to the extent that is possible in the circumstances.

The WHS Act encourages PCBUs to agree on issue resolution procedures with their workers. If there are no agreed procedures, the default procedure for issue resolution under the WHS Regulations 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
- 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 at least one worker who is not in a work group is affected by the issue, the worker(s) or their representative.

### Involving representatives in an issue resolution process

At any stage in the resolution of an issue, a party may nominate a person or organisation to assist, represent or support them while resolving the issue (a 'representative').

Depending on the nature of the WHS issue, advice or assistance from a range of experts may be required to reach an appropriate and informed resolution between the involved parties. A representative does not necessarily need to have health and safety expertise and could include people such as a designer of a piece of equipment at the workplace or a person with workplace consultation and negotiation skills.

Where a party invites a representative to participate in the process, they should notify the other parties of their involvement in a timely manner, especially if their representative is authorised to act on their behalf. Notification of a representative's involvement does not have to be communicated in writing.

A representative of a party (e.g. a union or employer organisation) may, if requested by the party, enter the workplace to attend discussions with a view to resolving the issue. See page 15 for further information on right of entry to the workplace, including entry permits.

### PCBU representatives

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

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.

A PCBU may also seek assistance from an internal or external party for technical or expert advice or assistance, such as a legal representative, or an official from an industrial association or employer body.

## Worker Representatives

Under the WHS Act, 'representative' in relation to a worker means the worker's HSR, a union representing the worker or any other person the worker authorises to represent them.

Depending on the nature of the issue needing to be resolved and the worker's individual circumstances, there are a broad range of representatives a worker may wish to involve in an issue resolution process.

An appropriate representative may include someone from within or associated with the workplace, such as:

- their HSR
- a representative from the relevant union(s)
- a colleague
- a specialist or expert in the subject of the dispute.

Some workers may wish to seek the support of someone from their personal support network, for example:

- family member or close friend
- translator
- medical practitioner
- community/ mental health support worker
- carer, disability advocate or support worker
- spiritual or religious leader
- a legal representative.

## Commencing an issue resolution process

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's attendance 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 an HSR can issue a PIN or a direction to cease work.

Practical examples of how the issue resolution process works are included at **Appendix C**.

# Appendix A – Provisional Improvement Notice template

## PROVISIONAL IMPROVEMENT NOTICE (PIN)

This PIN is issued under section 90 of the *Work Health and Safety (WHS) Act*. This PIN requires the duty holder to whom it is issued to remedy a contrivention, prevent a likely contravention from occurring or remedy the things or operations causing the contravention or likely contravention of the Act or Regulations. Section 97 requires that the person to whom a PIN is issued must, as soon as possible, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace at which work is being carried out that is affected by the PIN. See reverse of this form for information on things that must be done or taken into account before a PIN is issued by an HSR.

<b>1: Health and Safety Representative (HSR):</b>		
<b>First Name:</b>	<b>Last Name:</b>	
<b>Contact number:</b>		
<b>Work Group represented:</b>		
<b>2: PIN issued to:</b>		
<b>Name of duty holder:</b> (i.e. name of organisation or individual natural person as relevant)		
<b>Address:</b>		
<b>State/Territory:</b>	<b>Postcode:</b>	
<b>3: PIN given to (If the PIN is given to someone on behalf of the duty holder):</b>		
<b>First Name:</b>	<b>Last Name:</b>	
<b>Position:</b>	<b>Contact number:</b>	
<b>4: I have consulted with the duty holder prior to issuing this PIN (section 90(3) of the WHS Act):</b> <input type="checkbox"/>		
<b>5: Details of contravention:</b>		
Site location: _____		
I, _____ reasonably believe on _____ at _____		
<small>insert Health and Safety Representatives name</small>		
<small>insert date</small>		
<small>insert time</small>		
that you <input type="checkbox"/> are contravening a provision or <input type="checkbox"/> have contravened a provision in circumstances that make it likely that the contravention will continue or be repeated of the:		
<input type="checkbox"/> <i>Work Health and Safety Act</i> , section _____		
<input type="checkbox"/> <i>Work Health and Safety Regulation</i> , regulation _____		
<b>Brief description of how the provision is being or has been contravened:</b>		
.....		
.....		
.....		
.....		
.....		
<b>Note:</b> The HSR may, but is not required to, specify recommendations that they believe could be taken to remedy or prevent the contravention or likely contravention or matters or activities causing the contravention or likely contravention:		
.....		
.....		
.....		
.....		
<b>6: Compliance:</b>		
<b>Date PIN issued</b>	<b>Date compliance with PIN required</b>	<b>Signature of HSR</b>
/ /20	/ /20 <small>(Minimum of 8 days after date PIN issued)</small>	

## General Information about PINs

1. An health and safety representative (HSR) may issue a PIN if they reasonably believe 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. An 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. An HSR cannot issue a PIN unless the HSR has completed an approved initial HSR training course or completed that training when acting as an HSR for another work group or completed equivalent training under a corresponding WHS law.
6. An 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 an HSR to direct that unsafe work cease.
10. If there is more than one contravention, a separate PIN for each contravention must be issued.
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 a review of the PIN (see point 8 above).



# Appendix B – Health and safety committee templates

Note: these templates should be considered in conjunction with the information contained in Worker Representation and Participation Guide.

These templates are intended to provide a starting point for health and safety committees and should be adapted by the committee to suit its needs.

Refer to the Work Health and Safety Act (Part 5, Division 4) for specific requirements for health and safety committees.

[insert PCBU name]

## Health and Safety Committee (HSC) – Constitution

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<b>Responsible Officer:</b>	[insert name/ position title]
<b>Responsible area:</b>	[insert unit title]
<b>Approved by:</b>	[insert position title]
<b>Approved and commenced:</b>	[insert date]
<b>Review by:</b>	[insert date]

---

### 1. Purpose of the HSC

Requirements under the WHS laws: there are no specific requirements in the WHS laws for what this section of a constitution should include. However, you should ensure the purpose is consistent with the HSC's agreed functions (see item 2).

Notes: It may be useful to include a section on the purpose of the HSC, so everyone is clear about its role and importance.

#### **Sample text**

This purpose of the HSC is to provide (insert PCBU) and its workers with opportunities for effective consultation and participation in decision making about workplace health and safety matters.

The HSC provides a forum where work health and safety matters can be raised and discussed freely and respectfully.

### 2. Function of the HSC

Requirements under the WHS laws: The basic functions of an HSC are set out in the WHS Act (s 77). This is reflected in the basic text below.

Notes: The PCBU and the HSC can agree to additional functions for the HSC.

You may also want to explain the functions of the HSC in more detail, just so everyone is clear exactly what is expected.

#### **Sample text - basic**

The HSC will consider and make recommendations on health and safety issues.

The role of the HSC is to:

- provide an environment for cooperation and consultation between (insert PCBU) and workers on health and safety issues
- assist in developing health and safety standards, rules and procedures that will be followed at the workplace
- perform other functions as agreed to by the HSC and (insert PCBU)

The HSC reports to the (insert position/team title).

### **Sample text – more detailed**

The HSC will consider and make recommendations on health and safety issues.

The role of the HSC is to: (adjust for workplace)

- provide an environment for cooperation and consultation between (insert PCBU) and workers in initiating, developing and implementing measures to ensure the health and safety of workers
- consider and make recommendations on proposed changes to the workplace, work organisation or work practices that may affect the health and safety of workers
- assist in the development of health and safety standards, rules and procedures that will be followed or complied with at the workplace
- recommend the establishment, maintenance and monitoring of procedures and programs concerning worker health and safety
- keep informed about relevant topics on health and safety, including (insert – you may like to specify)
- consider and make recommendations related to the training, education and promotion of work health and safety
- examine health and safety audit or monitoring reports, and reports of hazards and work-related incidents, and make recommendations about any changes that need to be made in the workplace
- develop procedures for selecting new plant for the workplace
- provide advice on the selection of workplace health and safety consultants
- perform other functions as agreed to by the HSC and the (insert PCBU)

The HSC is a consultative committee not a management committee. It will not consider matters which can be and should be decided by management or by the individual(s) closest to the source of the issue or grievance.

The HSC reports to the (insert position/team title).

## **3. Membership**

Requirements under the WHS laws: The requirements for membership are set out in the WHS Act (s 76). The membership may be agreed between the PCBU and the workers, as long as:

- at least half of the members are workers who are not nominated by the PCBU, and
- any health and safety representatives are members (if they consent).

If there is more than one HSR at the workplace, the HSRs may agree who will be on the HSC. They may agree to have more than one HSR on the HSC.

Notes: The WHS laws do not specify who should represent the PCBU on an HSC. However, representatives of the PCBU should provide the necessary level of authority to make decisions, and knowledge and expertise regarding company policy, production needs and technical matters.

### **Sample text - basic**

The HSC will comprise of (insert list of positions).

At least half of the members of the committee must be workers and not personnel nominated by (insert PCBU).

Observers or guests may also be invited to sit in at meetings.

The list of HSC members will be made available to all workers via [insert any or all of the mechanisms you will use to communicate the list of HSC members e.g. email, intranet, noticeboard etc].

### **Sample text – more detailed**

The HSC will comprise of: (adjust for workplace)

- health and safety representatives
- other worker representatives (authorised by workers)

(insert PCBU)-nominated representatives, e.g.

- Health and Safety Manager
- Area/Departmental Manager or their delegate
- nominated Secretary
- xxx
- xxx.

At least half of the members of the committee must be workers and not personnel nominated by (insert PCBU).

The HSC can request personnel with specific expertise to join the committee from time to time.

The HSC may agree to form sub-committees to complete specific work arising from the HSC.

The list of HSC members will be made available to all workers via [insert any or all of the mechanisms you will use to communicate the list of HSC members e.g. email, intranet, noticeboard etc].

Observers or guests may also be invited to sit in at meetings.

## **4. Appointment process**

Requirements under the WHS laws: There are no specific requirements in the WHS laws for how members join the committee or the term of membership.

Notes: However, HSRs are automatically members of the HSC if they consent. The WHS Act (s 60-64) specifies election procedures and terms of office for HSRs, which would determine their time on the HSC.

If there are no HSRs, then the PCBU and workers may decide to hold a nomination/election process for worker representatives on the HSC.

You may choose to set out how the Chair will be decided. The Chair could be the occupant of a specific position, or involve the HSC agreeing or electing a member for a specific term.

### **Sample text - basic**

The Chair is agreed by the HSC.

HSRs are automatically members of the HSC if they consent.

HSRs whose term is still current will be permitted to renew membership in line with their elected period.

(If needed e.g. no HSRs) Workers may be nominated to the HSC by the workers. If the number of nominees is greater than the number of vacancies, then an election will be held.

(insert PCBU)-nominated members are appointed by (insert PCBU).

### **Sample text – more detailed**

The Chair is a member of the HSC, elected by the HSC. A Deputy Chair will also be elected. The election for the Chair's position is called as soon as practicable after a position becomes vacant and are held at least every X years.

HSRs are automatically members of the HSC if they consent.

(If needed, e.g. no HSRs) The election for worker representatives is called as soon as practicable after a position becomes vacant and are held at least every X years.

HSRs whose term is still current will be permitted to renew membership in line with their elected period.

Elections may be required more frequently if a member resigns, ceases to be a worker in the work group for which they were elected or is removed by a majority of the members of the work group.

## **5. Decision making procedure**

Requirements under the WHS laws: There are no specific requirements in the WHS laws for how the HSC is to make decisions.

Notes: In performing its functions, it is likely that the HSC will need to come to agreement on some matters (e.g. what recommendations it will make or advice it will provide). The HSC may agree that it will make decisions by consensus. In this case, the HSC will need to decide how matters will be dealt with when consensus cannot be reached.

It is important to note the WHS Act encourages PCBUs to agree on issue resolution procedures with their workers. While the HSC may provide advice on issues, resolving individual matters may not be a role for the HSC. For example, the HSC may not include the parties to a particular issue. For more information on issue resolution, refer to the Chapter 7 of the Worker Representation and Participation Guide.

### **Sample text - basic**

The HSC will make decisions with the agreement of all members. If all members are not in agreement, if possible, the issue will be reconsidered at a later meeting. If agreement is still not achieved, it will be referred to the (insert PCBU position title/team).

### **Sample text – more detailed**

The HSC will decide issues by consensus. Where a consensus cannot be reached, if possible, the issue may be adjourned to allow for further consideration. If the issue can still not be agreed, it can be referred to the (insert PCBU position title/team).

A motion moved by an HSC member must be seconded to be carried to consensus or vote.

Resolving issues or disputes within the workplace will be dealt with in accordance with (insert PCBU) agreed procedures for health and safety issue resolution (insert name/link if exists, or default procedure).

## **6. Meetings and minutes**

Requirements under the WHS laws: The WHS Act (s 78) requires HSCs to meet at least once every 3 months and at any reasonable time at the request of at least half of the

members. There are no specific requirements for how the HSC should run or record meetings.

To meet the requirement in the WHS Act (s 76) for at least half of the members to be workers who are not nominated by the PCBU, it is important to consider the appropriate quorum for a meeting.

Notes: The HSC can agree on the procedures and rules for HSC meetings. You might consider what is best practice for committees. For example, inviting members to nominate items for the agenda, circulating the agenda and any meeting papers at least a week prior to the meeting, circulating minutes promptly after meetings, and sharing minutes with all workers.

### **Sample text –basic**

Meetings will be held every xx months (at least once every 3 months). Special meetings can be called at any reasonable time, if at least half of the members make a request.

A meeting agenda will be circulated at least one week prior to the meeting.

A quorum is considered the Chair plus half of the HSC members. At least half of the members in attendance must be worker representatives.

The draft minutes will be circulated to members for comment as soon as possible after the meeting. The minutes will be amended/accepted by members at the following meeting.

### **Sample text – more detailed**

Meetings will be held every xx months (at least once every 3 months). The meeting length should reflect the agenda but should generally be between xx and xx hours long.

The meetings will be scheduled during working time and accommodate the likely availability of members to attend.

Special meetings can be called at any reasonable time, if at least half of the members make a request.

A meeting agenda will be prepared by the Secretary/Chair with input from all HSC members, and will be circulated at least one week prior to the meeting.

A quorum is considered the Chair plus half of the HSC members. At least half of the members in attendance must be worker representatives.

The Secretary will prepare the draft minutes of the meeting as soon as is practicable after the meeting and circulate them to members for comment and provided to (insert any other positions/committees that minutes should be referred to).

Minutes from the previous meeting shall be ratified or amended at the commencement of the following meeting.

Minutes will be made available to all workers via (insert mechanism e.g. email, intranet etc).

## **7. Responsibilities of the PCBU**

Requirements under the WHS laws: The WHS Act (s 79) sets out the duties of the PCBU in relation to HSCs. These duties are reflected in the sample text below.

Notes: Additional items may be included if decided by the HSC. This may reflect the items needed for the HSC to meet its agreed functions. The more detailed sample text below includes examples of additional items that may be necessary.

### **Sample text –basic**

(Insert PCBU) has the following responsibilities to the HSC:

- provide access to information relating to hazards (and associated risks) at the workplace, and the health and safety of workers at the workplace
- allow each HSC member reasonable time to attend HSC meetings and carry out functions as an HSC member, and
- pay workers what they would be entitled to receive for performing their normal duties during that period.

Any information provided to the HSC should be de-identified to the extent it does not reasonably lead to identification of personal or health information of any worker. Members of the HSC will not be permitted access to personal or medical information of any worker without their expressed consent.

### **Sample text – more detailed**

(Insert PCBU) has the following responsibilities to the HSC:

- provide access to information relating to hazards (and risks) in the workplace including plant, substances and systems of work
- provide access to information relating to the health and safety of workers at the workplace
- allow each HSC member to spend the time that is reasonably necessary to attend HSC meeting or to carry out functions as an HSC member
- pay workers what they would otherwise be entitled to receive for performing their normal duties during that period
- provide the HSC with reasonable facilities and assistance
- consult with the HSC on any proposed changes to the workplace that may affect employee health and safety
- notify the HSC of work-related health and safety incidents as soon as possible
- at the request of an Inspector, enable a committee member to accompany the Inspector on an inspection of the workplace, and
- support the provision of training for HSC members, as training needs are identified.

Any information provided to the HSC should be de-identified to the extent it does not reasonably lead to identification of personal or health information of any worker. Members of the HSC will not be permitted access to personal or medical information of any worker without their expressed consent.

## **8. Review or amendment of Constitution**

Requirements under the WHS laws: There are no requirements in the WHS laws about when a constitution should be reviewed or amended.

Notes: It is good practice to outline the process for amending and reviewing a constitution. The HSC may also decide to consult with workers more broadly on the constitution and potential amendments.

This constitution may be amended by the members of the HSC.

It will be reviewed every by the HSC every (insert number e.g. 3) years. An HSC member may make a request to the Chair that the constitution be reviewed at an earlier time.

## **ATTACHMENT TO CONSTITUTION - ROLES AND RESPONSIBILITIES**

Requirements under the WHS laws: There are no requirements in the WHS laws about the specific roles and responsibilities of HSC committee members.

Notes: It is good practice to outline the roles and responsibilities of the various positions on the HSC. However, not all HSCs will have all these positions.

Refer to sections 3 and 4 for information on HSC membership and the appointment process.

### **Chair**

The Chair is responsible for making sure that each meeting is planned effectively, conducted according to the constitution and that matters are dealt with in an orderly, efficient manner.

Before each meeting, the Chair will:

- review the draft minutes of the previous meeting
- work with (insert PCBU) representatives to ensure that tasks / action items from the previous meetings are completed or on track for completion, and
- settle the agenda for each meeting, in consultation with (insert PCBU) representatives and Secretary, after calling for agenda items from HSC members.

At the meeting, the Chair will:

- open the meeting
- check whether there is a quorum
- note the apologies
- invite members to comment on any corrections to the minutes (previously circulated) and, once agreed by the meeting, endorse them as the final version of the minutes
- conduct the business of the meeting in order of the agenda paper, unless it is altered with the consent of the meeting
- confine discussion to the current agenda item, ensuring it is dealt with before passing on to the next item, and
- close the meeting when all matters are attended to.

In the Chair's absence, the Deputy Chair will assume the responsibilities of the Chair. In the absence of both, the meeting will choose a member to act as Chair for that meeting.

### **Secretariat**

Before each meeting, the Secretariat will:

- ensure that all arrangements are made for the HSC meetings (book meeting rooms, set up teleconference and videoconference facilities for the meetings, etc.)
- provide the (insert PCBU) representative and Chair, with any reports or other papers to be issued for review before distributing to the HSC members
- at least one week before the meeting (and after the agenda is settled), distribute to all HSC members a copy of:
  - a) the agenda for the meeting
  - b) any reports or papers to be considered at the meeting, and
  - c) the list of corrections requested to the draft minutes of the previous meeting.
- ensure appropriate records management of all meeting papers, and
- ensure a copy of all papers requested for the meeting are available and accessible at the meeting.



At the Committee meeting, the Secretariat will:

- record the names of all apologies and those present
- check with the Chair that a quorum is present before any business is done
- note any amendments to the draft Minutes of the previous meeting and the meeting's agreement of the Minutes
- take notes of the business of the meeting (discussion, decisions, action items) for the minutes
- assist the Chair with any information required, and
- record any action items and the dates they are due to be completed.

After the meeting, the Secretariat will:

- draft the Minutes and provide them to the Chair and (insert PCBU) representative(s) for review, prior to distribution, within one week of the meeting
- circulate the draft Minutes to HSC members seeking comments on proposed corrections, within two weeks of the meeting, and
- ensure that (insert PCBU) distributes the draft Minutes to the workplace (intranet/notice boards etc) noting their 'Draft' status, within two weeks of the meeting.

### **All members**

Members will:

- respect the views of others and will encourage other members to participate in discussions
- ensure that a speaker has a chance to complete what they want to say without interruption, and
- provide advance notice, wherever possible, of matters to be raised at the meeting by placing them on the agenda. This will ensure time allowed is adequate to discuss all items on the agenda.

**[insert PCBU name]**

## Health and Safety Committee - Agenda

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**Meeting number:** [#number]

**Meeting to be held:** [date] in [location]

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Attendees: [list attendees](#)

Apologies: [list known apologies](#)

1. Welcome to Country or Acknowledgement of Country  
[Refer to advice provided by the National Indigenous Australians Agency](#)
2. Attendees and apologies
3. Conflicts of interest
4. Agree minutes of previous meeting  
[Circulated for comment prior to meeting](#)
5. Progress updates from:
  - [Management update, PCBU representative\(s\)](#)
  - [Worker representative\(s\) / health and safety representative\(s\)](#)
6. Items for discussion  
[Items should be aligned to the agreed functions of the HSC.](#)

### Examples

- [Review WHS injury/incident statistics and data](#)
  - [New or ongoing hazards or risks for discussion](#)
  - [Emerging WHS issues, trends or reports](#)
  - [Findings of workplace inspections](#)
  - [Monitoring and reviewing the effectiveness of controls](#)
  - [Requests or issues to be considered by workers and management](#)
  - [Progress on any internal or external reviews of policies, processes and procedures](#)
  - [WHS training needs of workers](#)
  - [Draft WHS procedures for the workplace](#)
  - [Updates to legislation, codes of practice, guidance materials](#)
7. Outstanding issues from previous meetings
    - [Refer to action items still to be completed](#)
  8. Other business
    - [Members to raise any other matters](#)
  9. Meeting close and confirm date of next meeting

Next meeting: [\[Insert time, date and location\]](#)

[insert PCBU name]

## Health and Safety Committee - Minutes

**Meeting number:** [#number]

**Meeting held on:** [date] in [location]

### Attendees:

- List all members in attendance and position titles
- List any non-member observers and guests

### Apologies:

- List apologies

### Key discussion points and outcomes:

- For each agenda item, provide a summary of the main points of discussion and outcomes

### Action items:

Date	Agenda item	Action to be taken	Person responsible for action	Priority level	Timeframe	Date action completed

Minutes circulated to all workers and other relevant stakeholders.

- Notice board
- Lunchroom
- Toolbox talks
- Board meetings
- Emails
- Other \_\_\_\_\_

# Appendix C – Examples of an issue resolution process

## Example 1

### Overview

A large building company (the Person Conducting a Business or Undertaking – PCBU), which operates across Australia, decides to introduce a new uniform policy for its workers. The policy is applied nationally and includes the introduction of a requirement for workers to wear a broad-brimmed hat, sunglasses, and long-sleeved shirt at all times when working outdoors. Workers are issued with new long-sleeved shirts as part of the changes, and these are made from a heavy material.

### WHS issue

Some workers, based in Queensland, are upset as they do not feel they were consulted properly prior to the introduction of the new policy, and are concerned the new shirts could increase their risk of experiencing heat stress during summer. The workers raise their concerns with their health and safety representative (HSR), who then informs the PCBU.

The PCBU responds that they believe their consultation processes were adequate. They explain the new shirts were chosen because they offered better protection against solar ultraviolet radiation (UVR) exposure for outdoor workers.

After further discussion, the HSR and affected workers are unable to come to an agreement with the PCBU about how to address the matter. The HSR requests assistance from the relevant union, and one of the union officials agrees to attend the workplace to hear the concerns of the workers directly. At this meeting, the union representative suggests the issue resolution process would be the appropriate next step.

### Issue resolution process

As the matter remains unresolved, the HSR, on behalf of the workers, notifies the PCBU (via email) that they wish to commence the formal issue resolution procedure and outlines the nature and scope of the issue they wish to discuss. The HSR also notifies the PCBU that they have asked a representative from the relevant union to participate in the process, to provide advice to the workers and assist discussions with the other parties.

The PCBU notifies the HSR they will be represented by the Queensland regional manager who supervises the workers who have raised the issue, as well as a senior manager from the Head Office in Sydney. The Senior Manager has been chosen because she has the authority to make decisions on behalf of the PCBU, as well as a sufficient understanding of WHS laws and duties.

The PCBU has an agreed issues resolution process in place, so that is followed. All parties agree that the nature of the issue means it would be appropriate for the discussion(s) to take place through teleconference.

Following discussion between the parties, amendments to the uniform policy are agreed that allow for differences in the climate and conditions of the worker's location. This resolves the issue to the satisfaction of all parties. The parties undertake to review the agreed consultation procedures to ensure they support effective consultation with workers.

The HSR requests that the details of the issue and the resolution are set out in writing, and a copy is given to all parties involved, including the union representative.

## Example 2

### Overview

A small but busy restaurant in the heart of the city is housed in a former industrial building, and the owner, Jason (the PCBU), has designed its interior to embrace the 'warehouse' feel with unpainted walls, hard surfaces and exposed beams and pipes.

### WHS issue

Carmen, a young worker from a non-English speaking background, has been employed as a waitress by the PCBU for close to 12 months. She is increasingly concerned about the long-term impact the noisy restaurant environment is having on her hearing. At the end of one of her shifts, she mentions her concerns to Jason, who says 'you get used to it after a while, it's really just part of the job'.

A few weeks later, during a staff meeting at which Jason is present, Carmen again voices her concerns about the noise level in the restaurant. Jason agrees it is a noisy venue, but explains it is part of the overall 'vibe' of the restaurant, and he doesn't think much can be done about it. He suggests she wear ear plugs during her shift to dampen the noise.

Carmen tries using ear plugs during a few shifts, but finds they are impractical as it makes it more difficult to take orders from customers.

Unsure what to do next, Carmen takes a look at the online guidance provided by the WHS regulator in her State. She reads a fact sheet on issue resolution and decides she would like to start such a process to try and resolve the matter.

### Issue resolution process

Carmen calls Jason to let him know she would like to have further discussions about the noise level and would like to commence an issue resolution process. Jason agrees to come to the restaurant at the end of her next shift so they can discuss the issue.

A day before their meeting, Carmen is a bit nervous about the discussion and decides she would like her sister to accompany her. While Carmen's English-language skills are good, she finds she sometimes has trouble understanding more technical language, especially when she is feeling nervous. Her sister, who has been in Australia longer, will be able to help translate and provide general support. Carmen calls Jason to let him know her sister will be participating in the discussion.

As the PCBU does not have a written, agreed procedure for issue resolution, the parties follow the default procedure set out in the WHS Regulations.

At the meeting, Jason agrees to look into whether they could add some sort of treatment to several hard surfaces in the restaurant to dampen the noise. A few days later, Jason calls Carmen to let her know he has arranged for a company who specialise in acoustics to come and inspect the restaurant. They will be installing some acoustic panels the following week.

Jason undertakes to let the rest of the staff know what is happening at the next staff meeting so that they have an opportunity to provide feedback and ask questions too. Once the work is complete, Carmen and the other staff notice a significant difference in the noise level. When Carmen sees Jason during her next shift, she lets him know she is happy with the outcome and considers the issue resolved.

## Example 3

### Overview

Roy has recently taken ownership of a fruit and vegetable shop, which is located within a small shopping complex. The shop is located next to a health food store, owned and managed by Katrina. Staff from both businesses regularly access a shared service area that includes staff amenities, storage and rubbish bins. The service area is accessed via a wide walkway that runs at the back of both stores.

### WHS issue

Over time, Roy notes the shared walkway is being used to store an increasing number of boxes and other supplies. He can tell from the contents of the boxes that they belong to the health food store next door. Roy is concerned about the hazard an obstructed walkway could pose to himself, his workers and others who use it. Satisfied the boxes are not posing an immediate risk to health and safety, Roy decides to speak with Katrina about his concerns.

The next day, Roy calls into the health food store to speak with Katrina. He shares his concerns about the storage of boxes in the walkway, and suggests they be moved to the storage cages allocated to the health food store as part of their tenancy agreement. Katrina says she thinks the walkway is wide enough to be used safely and notes she has stored boxes there without issue for the past 12 months. She tells Roy she has no choice as she has used all her available storage.

Roy speaks to Katrina again the following day, but they fail to resolve the matter.

### Issue resolution process

Roy decides it would be appropriate to commence an issue resolution process at this point. He knows that to do this he must inform Katrina there is an issue to be resolved; he decides the best way to do this is to send her an email explaining what the issue is, and outlining his concerns. He suggests they meet 'on site' where they can view the walkway and storage boxes. He also informs Katrina he has asked the building owner to attend the meeting.

Katrina responds to Roy's email, agreeing to meet at the time he has suggested. They use the default issue resolution process set out in the WHS Regulations.

During the meeting, Roy is able to clearly demonstrate the hazard posed by having boxes stored in the walkway. Angela, the building owner, circulates copies of the shopping complex's WHS policy, which includes the requirement for access areas like walkways and stairs to be clear of obstructions at all times.

By the end of the discussion, Katrina accepts she must store the boxes elsewhere, and Angela agrees to look into whether additional storage can be provided for her to use. Roy wants a record of their discussion, so he summarises it in an email to Katrina and Angela, noting Katrina's agreement to clear the walkway. Both respond to Roy's email, acknowledging its accuracy.

Despite this, within a few months, Katrina and her staff start storing boxes in the walkway again. Roy is frustrated by this, as well as Angela's failure to ensure compliance with the requirement to keep the walkway clear of obstruction. Believing he has made reasonable efforts to resolve the issue, Roy decides to contact the WHS regulator and request the assistance of an inspector.

# LIST OF AMENDMENTS

The Worker Representation and Participation Guide has been amended since its publication in 2012, including:

- amendments agreed to in 2016 as part of a technical and usability review,
- minor amendments agreed to in 2018 as part of a legal review, and
- amendments agreed to in February 2022, to address recommendations agreed by WHS ministers (20 May 2021) following the 2018 Review of the model WHS laws.

The current version, dated April 2022, incorporates all of those amendments.