

Worker representation and participation guide

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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 2011* (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. A HSC must be established when a HSR or five or more workers makes a request to the PCBU.

This guide provides information for workers, HSRs and PCBUs on these consultation and representation mechanisms. Further information for PCBUs about how to consult with workers and other duty holders is available in the [Work health and safety consultation, co-operation and co-ordination Code of Practice 2021](#).

This guide has been developed based upon the Safe Work Australia *Worker representation and participation guide*, with changes having been made to reflect Queensland's work health and safety legislative framework.

1.1. How to use this guide

This guide includes references to the legal requirements under the WHS Act and the Work Health and Safety Regulation 2011 (WHS Regulation). These are included for convenience only and should not be relied on in place of the full text of the WHS Act or the WHS Regulation. The words 'must', 'requires' or 'mandatory' indicate a legal requirement exists that must be complied with. The word 'should' is used in this guide to indicate a recommended course of action, while 'may' is used to indicate an optional course of action.

2. 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 sub-contractors and their employees, and employees of a labour hire company assigned to work in the person's business or undertaking.

3. Work groups

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

3.1. 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 (*e.g. 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 complete 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 delegate or official of a relevant union for the worker, or another person the worker authorises to represent or assist them in negotiations. This may include someone with technical expertise, such as an engineer, but cannot be an 'excluded entity' (see section 45B of the WHS Act). A relevant union may also become a party to negotiations (i.e. without being requested by a worker) by notifying the PCBU in writing.

If workers have chosen a person to negotiate on their behalf, the PCBU must negotiate with that person.

If consultation involves a representative, and the parties to the consultation agree the consultation is to be carried out at a workplace where one or more of the workers work, the PCBU must carry out the consultation only at the time and place agreed to by the parties.

Why do HSRs need to be accessible?

When grouping workers in a work group, regard must be had to the need for a 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.

A HSR is readily accessible to a worker in the work group if the:

- HSR works at the same workplace as the worker, or the HSR can attend the worker's workplace within a reasonable time, and
- HSR works the same or a similar pattern of work to the worker (e.g. similar part-time or shift work arrangements).

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 a HSR. The parties agree that separate work groups are needed for each shift, each represented by a single HSR and deputy HSR. Within each shift, the work groups are arranged according to work area, as these are quite distinct both in their location and in the nature of potential health and safety risks involved.

A multi-storey office block has been completed and workers have moved in to start work. The workers and the person conducting the business are negotiating about establishing work groups. The parties consider how best to allow each work group member access to a HSR, taking into account the fact that work is performed across a number of floors. The nature of the work and work environment is consistent across all floors except in the reception area, where delivery of stationery and other heavy items means that there are additional considerations in relation to manual handling. The parties determine that a HSR and deputy HSR will represent a work group for workers on every two floors. In addition, it is agreed that the workers working in the reception area will form a work group of their own due to the unique nature of their work.

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 agreement is not reached on the number and composition of work groups, the number of HSRs and deputy HSRs, the workplace or workplaces to which the work groups will apply, or the businesses or undertakings to which the work groups will apply, within:

- for negotiations to make an agreement—14 days after a request is made
- for negotiations to vary an agreement—14 days after a party to the agreement requests a variation
- for negotiations where the parties have agreed to extend the period to make or vary the agreement—the extended period.

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 assist the parties in reaching an agreement on the:

- number and composition of work groups to be represented by HSRs
- number of HSRs and deputy HSRs (if any) to be elected
- workplace or workplaces to which the work groups will apply, or
- businesses or undertakings to which the work groups will apply.

In the case of a single business or undertaking, if the inspector believes that the parties are unlikely to reach agreement within seven days after appointment, the inspector must make a decision on any matters that have not been determined by the 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 inspector's decision, they can apply to the Queensland Industrial Relations Commission (QIRC) to have the decision reviewed and a final determination made. A decision made by the inspector will stand to ensure workers are appropriately represented until the matter is resolved by the QIRC.

3.2. 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 sub-contractors 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 assist the parties in reaching an agreement. If the inspector reasonably believes the parties are unlikely to reach an agreement within seven days of appointment, the inspector must make a decision on the matter.

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 forklift 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.

4. 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 suitable entity. A suitable entity includes a relevant union for the workers, or another entity authorised to represent the workers (unless the entity is an excluded entity under section 45B of the WHS Act).

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

Is an election always needed to vote for a HSR?

No. If the number of candidates nominated for election equals the number of vacancies in the work group, the candidates are deemed to be 'elected' and no election is needed.

Who is eligible to stand for election to be a HSR?

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

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

Can a manager be a HSR?

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

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

Can more than one HSR represent a work group?

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

Who can vote in an election?

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

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, this may include providing reasonable access to printing resources so election notices can be displayed in the workplace or providing access to a meeting room or to the internet.

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

The PCBU must not hinder, prevent or discourage:

- their workers from making a request to facilitate the conduct of an election for one or more HSRs
- the election of one or more HSRs or deputy HSRs, or
- a person conducting the election from following the election procedures prescribed under section 18 of the WHS Regulation.

On commencement of the business and then every year (if no HSR has been elected or if existing HSRs cease to hold office) the PCBU must notify workers in writing of the following:

- workers can request the election of one or more HSRs
- the process for determining work groups
- who may represent workers in negotiations
- the process for electing HSRs
- the powers and functions of HSRs
- invite workers to facilitate the election of one or more HSRs.

In notifying workers of these matters, a PCBU may wish to direct their workers to the resources and information available on WorkSafe.qld.gov.au and provide a copy of this guide. PCBUs should use whichever method of notification would be most effective for their workplace (i.e. distributing the notice by email, displaying the notice in an area commonly accessed by all workers).

What does a person conducting the election need to do?

<i>Action to be taken by person conducting the election</i>	<i>Tick</i>
1. Inform the PCBU (or PCBUs, if multiple businesses or undertakings are related to the election) of the election date.	<input type="checkbox"/>
2. Invite all relevant work group members to nominate a HSR and vote in the election.	<input type="checkbox"/>
3. Conduct the election in the manner determined by the workers in the work group, and in accordance with the procedures prescribed under section 18 of the WHS Regulation.	<input type="checkbox"/>
4. Advise work group members of the election results.	<input type="checkbox"/>
5. Advise relevant PCBU(s) of the election results.	<input type="checkbox"/>

How long is the term of office for a HSR?

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

However, a person ceases to be a HSR if:

- they resign as a HSR by giving the PCBU written notice
- they no longer work in the work group

- the person is disqualified from acting as a HSR
- the majority of members (half the number plus one) of the work group decide that the person should no longer represent the work group.

How can a HSR be removed from office?

A HSR can be removed from office when the majority of work group members sign a written declaration that the HSR should no longer represent the work group. After signing the declaration, a member of the work group (who is nominated by the members who signed the declaration) must, as soon as practicable:

- inform the HSR and all relevant PCBUs of the removal of the HSR
- take all reasonable steps to inform all members of the work group of the removal.

The removal of the HSR takes effect when the HSR, PCBU and majority of members of the work group have been informed of the decision.

When can a HSR be disqualified?

An application for disqualification can be made to QIRC if a HSR has:

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

For example, a PCBU may apply to the QIRC to disqualify a 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 QIRC has 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 a HSR during the period of disqualification.

Any person can apply to disqualify a HSR if they have been adversely affected by the exercise of a power or performance of a HSR or how the HSR has used or disclosed information they obtained as a HSR. The applicant or HSR may appeal a decision made by the QIRC regarding disqualification under chapter 11, part 6 of the *Industrial Relations Act 2016*.

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

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

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

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

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

- take reasonable care for their own health and safety
- take reasonable care not to adversely affect the health and safety of others
- comply with any reasonable instructions given by the PCBU to allow it to comply with its duties

- co-operate with any reasonable policy or procedure relating to health and safety at the workplace.

Deputy HSRs

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

Deputy HSRs are elected in the same way as HSRs. The same provisions regarding election, term of office, grounds for disqualification, immunity from prosecution, and entitlement to training apply equally to deputy HSRs as they do to HSRs.

When can a deputy HSR exercise the powers of a HSR?

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

A deputy HSR can only issue a PIN or a cease work if they have completed the initial five-day HSR training course prescribed under the WHS Regulation, previously completed that training when acting as a HSR of another work group or completed training equivalent to that training under a corresponding work health and safety law.

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

5. 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 an important role to play in representing members of their work group and bringing issues to the attention of the PCBU.

What are the powers and functions of a HSR?

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

Although a HSR has the 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 a HSR.

The powers and functions of HSRs are to:

- represent the workers in their work group in relation to work health and safety matters
- monitor the measures taken by the PCBU to comply with the WHS Act in relation to their work group members
- investigate complaints from work group members about work health and safety 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 a work health and safety entry permit holder (EPH) if the EPH enters a workplace where their work group works (and the reason for entry relates to the work group or part of the workplace where the work group works)
- accompany an inspector during an inspection of the workplace (or 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. A HSR can only attend interviews with the consent of the worker and the interview must be about work health and safety matters
- request the establishment of a HSC
- request and receive information concerning the work health and safety of workers in the work group
- whenever necessary, request the assistance of a suitable entity. A suitable entity includes a relevant union for the workers, or another entity authorised to represent the workers or HSR (unless the entity is an excluded entity under section 45B of the WHS Act)
- 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 Regulation.

Can a HSR inspect any part of the workplace where their work group members work at any time?

Yes, after giving reasonable notice to the PCBU. What is 'reasonable notice' will depend on the circumstances in any given case, and on what the PCBU and HSR jointly consider is reasonable.

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

How can a HSR carry out workplace inspections?

Inspections can take various forms, including:

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

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

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

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

When can a HSR ask for a control measure to be reviewed?

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

- the control measure does not control the risk it was implemented to control so far as reasonably practicable
- a change has or will occur at the workplace that could present a new or different health and safety risk that the control measure may not effectively control
- a new relevant hazard or risk is identified
- the results of consultation indicate a review is necessary.

A HSR can only request the review if these circumstances affect or may affect the health and safety of a member of the work group they represent.

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 Regulation includes specific circumstances where a HSR can request the review of control measures for lead, asbestos and major hazard facilities.

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

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

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 (or their representative). The worker may wish to consult with the HSR before and/or after an interview.

Who can assist a HSR?

A HSR can request the assistance of a suitable entity. A suitable entity includes a relevant union for the workers, or another entity authorised to represent the workers or HSR (unless the entity is an excluded entity under section 45B of the WHS Act). This may be an entity with technical expertise (for example an engineer or physiotherapist), or an entity with additional knowledge of work health and safety, either within the workplace (for example, another HSR) or someone who does not work at the business or undertaking (for example, a health and safety consultant or an official from a relevant union). Entities that are excluded from assisting HSRs include associations of employees or independent contractors that are not a union, or a union that is not a relevant union for the worker.

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

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

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

Does a union official need a work health and safety entry permit when entering a workplace to assist a HSR?

No. A union official does not require a work health and safety entry permit (WHS entry permit) to enter a workplace when requested to provide assistance to a HSR. A PCBU must allow a relevant union assisting a HSR for the work group to have access to the workplace if that is necessary to enable the assistance to be provided.

However, some union officials may hold a WHS entry permit. If these union officials seek to enter a workplace to provide assistance to a HSR, then there are certain things to be aware of. These are explained below.

Entry to assist a HSR does not permit exercise of WHS entry permit rights

If a relevant union official who holds a WHS entry permit enters a workplace on the basis of assisting a HSR, the union official cannot exercise any of their WHS entry permit holder's rights once in the workplace. If a union official wishes to exercise any of their WHS entry permit holder's rights, they must ensure that they comply with all requirements for that entry.

Can a PCBU refuse a suitable entity assisting a HSR from accessing the workplace?

Yes, a PCBU can refuse access to a suitable entity assisting a HSR if they have reasonable grounds to do so, for example if the suitable entity who proposes to attend 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.

If a suitable entity assisting a 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. Any party to a dispute also has the option of lodging the dispute with the QIRC for a decision without involving of the inspectorate at all (see Section 8 of this guide, Issue and dispute resolution).

Visitors to the workplace, including a suitable entity assisting a HSR, must comply with a reasonable instruction given by the PCBU about work health and safety matters.

Can a HSR exercise their powers outside their work group?

Generally, a HSR may only exercise powers and functions in relation to matters that affect, or may affect, workers in their work group.

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

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

Can a HSR access workplace information?

Yes, a PCBU must allow a HSR to request and access information that the person has relating to:

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

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

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

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

Can a HSR have access to a worker's personal and medical information?

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

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

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

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

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

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

5.1. Provisional Improvement Notices

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

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

The HSR may issue a PIN requiring the person to:

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

When can a HSR issue a PIN?

A HSR can issue a PIN only if the HSR has completed the initial five-day HSR training course prescribed under the WHS Regulation, previously completed that training when acting as a HSR of another work group or completed training equivalent to that training under a corresponding work health and safety law.

A PIN can only 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 Regulation. 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 Regulation 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 the WHS Act or Regulation. 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 primary duty of care under the WHS Act), 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 19 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 a HSR in understanding their requirements in issuing a PIN, and the content that must be included in the notice. A form that may be used is available at WorkSafe.qld.gov.au.

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

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.

<i>PIN information</i>	<i>Tick</i>
1. A PIN <i>must</i> identify the person (can be an organisation or individual) who the HSR believes: <ul style="list-style-type: none">• is contravening a provision in the WHS Act, or• has contravened a provision of the WHS Act and it is likely that the contravention will continue or be repeated.	<input type="checkbox"/>
2. A PIN <i>must</i> state the provision the HSR believes is being, or has been, contravened.	<input type="checkbox"/>
3. A PIN <i>must</i> contain a brief outline of how the provision is being, or has been, contravened.	<input type="checkbox"/>

4. A PIN *must* state the date by which the contravention or likely contravention is required to be remedied. This date must be at least four days after the PIN is issued.

5. A PIN *may* include directions about the:
- measures to be taken to remedy the contravention
 - measures to be taken to prevent the likely contravention, or
 - matters or activities that are causing the contravention or likely contravention.

6. A PIN *may* refer to a code of practice and offer a choice of ways the contravention can be remedied.

Can a HSR make changes to a PIN?

Yes, a HSR can make 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 person
- sending it by post, facsimile or electronic transmission to the person's usual or last known residence or business
- leaving it for the person at the person's usual or last known residence or business with a person who appears over 16 years old and who appears to reside or work there
- 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
- refers to a matter that is not related to the health and safety contravention.

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

Can a HSR cancel a PIN?

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

Can a HSR change the required compliance date in a PIN?

Yes, a HSR may change the day by which the person who received the PIN is required to remedy the contravention or likely contravention. This change can only be made by agreement with:

- the person to whom the notice was issued, or
- if that person to whom the notice was issued is a worker, the PCBU of the workplace at which the worker carries out work.

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.

Does a copy of a PIN need to be given to the regulator?

If a PIN is issued to a PCBU, the PCBU must as soon as practicable give the regulator a copy of the notice. However, if a PIN is issued to a person who is not a PCBU (such as a worker), the recipient does **not** need to give the regulator a copy of the notice.

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 four days of it being issued, unless the date has been changed by agreement.

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 three days of the PIN being 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 with the PIN ceases to apply until the inspector makes a decision (and no offence would be committed in failing to comply with the PIN).

The inspector must review the PIN and inquire into the circumstances that are the subject of the PIN. 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 an affected 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 Regulation 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 a 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 can be issued.

A HSR cannot issue a PIN in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

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 Regulation using their broad powers (e.g. to make inquiries, inspect and examine anything)
- 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

A HSR, worker, or other affected 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 a 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 must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the agreed issue resolution procedure, or if there is no agreed procedure, the default procedure prescribed under the WHS Regulation.

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 of the WHS Act. Alternatively, any party can refer the matter to the QIRC for a decision at any time. For more information about this process, see Section 8 of this guide, Issue and dispute resolution.

5.2. 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 (on their own initiative) 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 a HSR direct a worker to cease work?

If there is a work health and safety risk that 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 Regulation (see Section 8 of this guide, Issue and dispute resolution)
- issuing a PIN

- contacting the regulator.

A HSR may, by giving a written notice to the PCBU, direct the PCBU to direct a worker to cease work if:

- the HSR has a reasonable concern that carrying out the work would expose the worker to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard
- the worker is in a work group represented by the HSR.

If a PCBU receives a cease work notice from the HSR, the PCBU must, as soon as possible, direct the worker or workers to cease work (or not start work, as the case may be) to the extent it relates to the matter. As soon as practicable after the PCBU gives the direction, the HSR must display, in a prominent way in an area used by the workers who are in the work group, a copy of the cease work notice.

A HSR can direct a worker to cease work *without* consulting or notifying the PCBU if the risk is so serious and immediate or imminent that PCBU consultation would not be reasonable. As soon as possible after giving a cease work direction to a worker, the HSR must:

- give the PCBU a cease work notice to inform the PCBU of the direction given to the worker(s)
- display a copy of the cease work notice, in a prominent way, in an area used by the workers who are in the work group
- consult with the PCBU to attempt to resolve the matter.

It is not compulsory to use a specific form in giving a cease work notice, but it may assist a HSR in understanding their requirements in issuing a notice, and the content that must be included. A form that may be used is available at WorkSafe.qld.gov.au.

A HSR direction to cease work is effective until withdrawn in writing by the HSR, the issue is resolved with inspector assistance, the inspector issues a prohibition notice, or QIRC makes a decision where a dispute is lodged with the Commission.

A HSR can only direct that work cease if the HSR has completed the initial five-day HSR training course prescribed under the WHS Regulation, previously completed that training when acting as a HSR of another work group, or completed training equivalent to that training under a corresponding WHS law.

What must be included in a cease work notice?

Under section 85A of the WHS Act, a cease work notice must contain certain information, including:

- a brief description of the
 - HSR's concern and the basis for that concern, including information on the risk to the worker's health or safety
 - work that, if carried out, will expose the worker to a serious risk to the worker's health or safety
- whether the direction is given under section 85(1) or (3) of the WHS Act
- a description of the work group, or the name of the worker, subject to the direction
- the day and time that
 - the notice is given to the PCBU, and
 - if the direction is given under section 85(3) of the WHS Act—the direction was given to the worker
- if the direction is given under section 85(1) of the WHS Act, confirmation the HSR has
 - consulted about the matter with the PCBU
 - attempted to resolve the matter as an issue under division 5 of part 5 of the WHS Act, and

- the name of the HSR.

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.

6. Duties of a person conducting a business or undertaking

6.1. General duties

A PCBU has the following obligations to HSRs:

- to consult, so far as is reasonably practicable, with HSRs on work health and safety matters at the workplace
- to confer with a HSR, whenever reasonably requested by the representative, to ensure the health and safety of the work group workers
- to allow a HSR access to information that the PCBU has relating to hazards and risks affecting the health and safety of the workers in the work group, including any information requested by a HSR about the health and safety of workers in their work group
- to allow a HSR access to information relating to hazards (including associated risks) at the workplace affecting the workers in the work group, and the health and safety the work group workers
- to inform the HSR if they become aware of a notice of entry by a WHS entry permit holder relating to the workplace (but not yet received) and give the HSR a copy of the notice as soon as reasonably practicable (once the notice is received)
- to inform the HSR, as soon as possible, if a WHS entry permit holder or inspector enters a workplace where a worker in the work group works, and the reason for their entry
- to allow the HSR to accompany the WHS entry permit holder if they are exercising a right of entry that is relevant to the HSR's workgroup, or an inspector when they are inspecting any part of a workplace where a worker in the work group works
- to inform HSRs if they become aware that a notice has been issued by an inspector (but have not yet received) under Part 10 of the WHS Act. Then to give HSRs copies of any notices issued that are relevant to the HSRs workgroup, as soon as reasonably practicably after being given the notice
- if a notifiable incident arises out of the conduct of the business or undertaking that affects a work group, give the HSR for that work group a copy of the
 - written notice given to the regulator under section 38 of the WHS Act, as soon as practicable after it is given
 - information received by the PCBU from the regulator under section 38(6) of the WHS Act, as soon as practicable after it is received
- to allow HSRs to attend interviews concerning work health and safety between one or more workers (with the consent of the worker(s)) and an inspector or another PCBU at the workplace (or the PCBU's 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 the resources, facilities and assistance prescribed under the WHS Regulation
- to allow a suitable entity assisting a HSR to have access to the workplace if it is necessary to enable the assistance to be provided
- 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

- can refuse to provide the HSR with information if that information is confidential commercial information
- 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
 - assistant has had their WHS entry permit revoked, or is currently suspended or disqualified from holding a WHS entry permit.

If access is refused to a person assisting a HSR, the HSR may ask the regulator to appoint an inspector to assist in resolving the matter.

Does a PCBU need to inform workers of their right to elect a HSR?

Yes. On commencement of the business and then at least once every year (if no HSR has been elected or if existing HSRs cease to hold office) the PCBU must notify workers in writing of the following:

- workers can request the election of one or more HSRs
- the process for determining work groups
- who may represent workers in negotiations
- the process for electing HSRs
- the powers and functions of HSRs, and
- invite workers to facilitate the election of one or more HSRs.

In notifying workers of these matters, a PCBU may wish to direct their workers to the resources and information available on WorkSafe.qld.gov.au and provide a copy of this guide. PCBUs should use whichever method of notification would be most effective for their workplace (i.e. distributing the notice by email, displaying the notice in an area commonly accessed by all workers).

What resources, facilities and assistance does a HSR need?

A PCBU must provide the resources, facilities and assistance that are prescribed under the WHS Regulation to enable the HSR to exercise their powers and carry out their functions. A PCBU must provide each of the following resources, facilities and assistance to a HSR for a work group:

- a means for the HSR to communicate with workers in the work group or the PCBU (e.g. access to a phone, access to an electronic device with internet access, a means of transport between workplaces)
- a means for the HSR to hold face-to-face or online meetings with workers in the work group (e.g. access to a room or area)
- a means for the HSR to send and receive health and safety information
- a means for the HSR to monitor measures taken by the PCBU under the Act in relation to workers in the work group (e.g. a noise meter)
- a means for the HSR to print or display relevant health and safety information or notices.

Should HSRs be paid as normal when they perform their functions and powers?

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

6.2. Health and safety representative training

All HSRs must undertake a five-day training course approved by the regulator within 28 days of their election (or, if an initial five-day course is not reasonably available within 28 days, as soon as practicable thereafter). If a HSR chooses not to undertake the training within the time period, they will no longer be eligible to fulfill the role of HSR and will need to be replaced.

A HSR is also entitled to attend a one-day refresher training course at least once per year (with the one-year period commencing from the date the initial five-day training course was completed). Attendance at the one-day refresher training course is an *entitlement* and HSRs are not required to attend the course to perform their role.

The PCBU must ensure, as far as reasonably practicable, that a HSR for a work group for that business or undertaking has completed the training prescribed by regulation. HSRs can issue PINs and direct work to cease only if they have completed the five-day training course. Untrained HSRs can perform all other functions.

Are HSRs and deputy HSRs entitled to choose their health and safety training?

HSRs are entitled to choose a course of training in work health and safety approved by the regulator without consulting with the PCBU. The HSR may choose to seek the views of the PCBU on the 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.

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 five-day training course again. A 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?

For HSR training, a PCBU must:

- allow a HSR to choose the training and training provider
- allow a HSR to attend the training
- pay the training 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)

- pay the HSR their usual pay (including overtime, penalties and allowances) they would receive if they were performing their normal duties.

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

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

There are circumstances in which HSRs may need to attend a course that is being conducted outside their normal working hours. For example, this might apply when a 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 a HSR (including casual employees) must be treated by the PCBU as time at work. The PCBU are required to pay a HSR attending training in the following way:

- if on a day the HSR attends training they usually work a night shift but they attend the training during normal business hours, they are to be paid their usual pay including any overtime, penalties or allowances as if they had worked the night shift.
- if the HSR usually works for the person on a weekend day but attends training on a week day, they must be paid their usual pay including any overtime, penalties or allowances that they would have been entitled to if they had worked the weekend day.
- if on a day the HSR attends training they normally work only four hours but attends training for eight hours they must be paid as if they performed their normal duties for the additional four hours. However, the person is not required to pay them overtime, penalties and allowances for the additional four hours.

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

Who pays if a HSR represents workers from more than one business or undertaking?

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

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

What happens if the HSR and PCBU cannot agree on HSR training?

Where there is a disagreement relating to a HSR training matter, including costs, any party to the issue may request that the regulator appoint an inspector to assist in resolving the matter.

Alternatively, the matter can be referred directly to the QIRC for resolution.

6.3. Keeping a list of health and safety representatives

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
- as soon as practicable after the list is prepared or amended, a copy is given to the regulator
- a current copy of the list is displayed in a way that is readily accessible to workers in each work group at the principal place of business, and at any other workplace that is appropriate (taking into account the constitution of the relevant work group(s)).

6.4. Discrimination

The WHS Act prohibits a PCBU from engaging in discriminatory conduct against a person for a prohibited reason, for example by dismissing a worker or treating a worker less favourably because that worker is, has been, or proposes to be a HSR, or a member of a HSC.

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

7. Health and safety committees

A 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.

7.1. Establishing a health and safety committee

A PCBU must establish a HSC as soon as practicable, but no later than 28 days, after receiving a request by a HSR or five or more workers at the workplace. However, a PCBU can also decide on their own initiative to establish a HSC for their workplace.

Who should be on a HSC?

The membership of a HSC may be agreed between a PCBU and the workers at the workplace. At least half of the members of the HSC must be workers who have not been nominated by the PCBU.

If there is a HSR at the workplace, the membership of the HSC must include the HSR (if the HSR consents to being a member). If there is more than one HSR at the workplace, the HSRs may choose among themselves as to who will be on the HSC. The HSRs may agree to have more than one HSR be a member of the HSC.

Representatives of the PCBU should generally 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 seniority, decision making, knowledge and expertise regarding company policy, production needs and technical matters concerning premises, processes, plant, machinery and equipment, and systems of work.

If there is a work health and safety officer (WHSO) at the workplace, the membership of the HSC must include the WHSO.

If the HSC membership does not include any specialist health and safety personnel, the HSC may consider involving such persons in the HSC in an advisory capacity, as appropriate.

What happens if the PCBU and workers can't agree to establish a HSC?

If a party involved in negotiating the establishment of a HSC considers that agreement is unlikely to be reached, they may ask the regulator to appoint an inspector to assist the parties to reach agreement about the constitution of the HSC.

If the inspector reasonably believes the parties are unlikely to reach agreement within seven days after appointment, the inspector must either decide:

- the constitution of the HSC, or
- that the HSC should not be established.

A decision by the inspector regarding the constitution of the HSC is taken to be an agreement by the parties. However, if any party (including a relevant union or representative for an affected worker) does not agree with the inspector's decision, they can refer the matter to the QIRC for a decision.

7.2. Functions of health and safety committees

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 ensure the health and safety of workers
- assisting in developing health and safety standards, rules and procedures relating to health and safety that will be followed or complied with at the workplace
- other functions prescribed under a regulation or agreed by the PCBU and the HSC.

For example, a HSC can be involved with:

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

How often must a HSC meet?

HSCs must meet at least once every three months and at any reasonable time if:

- at least half of the HSC members request that the committee meet, or
- a WHSO requests that the committee meet.

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:

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

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

Should a PCBU allow HSC members to attend HSC meetings and carry out their functions?

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

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

Should HSC members be paid as normal when they perform their functions?

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

What information can a HSC member access?

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

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

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

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

Can a HSC determine its own procedures?

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

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

HSC members should receive 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 sub-committees 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. Arrangements should be made to ensure that senior management is kept informed generally of the work of the committee. Copies of the notes or minutes should be displayed or made available by other means for the information of workers.

Does membership of a HSC impose legal duties on worker members?

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

How large should a HSC be?

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

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

Should small workplaces have a HSC?

Although there is nothing to prevent a small business from establishing a HSC, such committees are more common in 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 a HSC should nevertheless involve staff in developing policies and procedures and in periodically reviewing their effectiveness in line with the PCBU's duty to consult with workers on health and safety matters. In workplaces with HSRs, this must involve the HSR.

Should a HSC be used for resolving health and safety disputes?

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, see Section 8 of this guide, Issue and dispute resolution.

How can managers effectively support HSCs?

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

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

8. Issue and dispute resolution

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

The WHS Act requires parties to an issue (such as the PCBU, affected workers and a relevant union for the affected workers) to make reasonable efforts to achieve a timely, final and effective resolution of the issue. The intention is that issues should be resolved 'once and for all' to the extent that is possible in the circumstances. Issue resolution must be conducted in accordance with the agreed procedure, or, if there is no agreed procedure, the default procedure prescribed under the WHS Regulation.

The default procedure under the WHS Regulation 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 representative(s)) who is involved in the issue
- if the worker/s affected by the issue are not in a work group, the worker(s) or their representative
- if the worker/s affected by the issue are in a work group which has elected a HSR, the HSR or a suitable entity representing the HSR
- if the worker/s affected by the issue are in a work group which has not elected a HSR, the worker(s) or a suitable entity representing the worker(s)
- a relevant union for a worker affected by the issue, if the union notifies the PCBU in writing that they wish to be a party to the issue.

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'). A 'representative' in relation to a worker means the worker's HSR or a 'suitable entity'. A suitable entity includes a relevant union for the worker, or another entity authorised to represent the workers or HSR (unless the entity is an excluded entity under section 45B of the WHS Act).

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 relevant union or employer organisation) may, if requested by the party, enter the workplace to attend discussions with a view to resolving the issue.

PCBU representatives

If a PCBU nominates a representative, they must ensure that person is not a 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 or a 'suitable entity'. A suitable entity includes a relevant union for the worker, or another entity authorised to represent the workers or HSR (unless the entity is an excluded entity under section 45B of the WHS Act).

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 might 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
- 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 Regulation.

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 Regulation. 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 should 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 a 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 Regulation sets 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 affected by the issue
- 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.

A party may, in resolving the issue, be assisted or represented by a person nominated by the party.

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 attend the workplace to assist in resolving the issue.

There does not have to be agreement about whether reasonable efforts have been made to resolve the issue in order for the assistance of an inspector to be requested. As long as one party considers that reasonable efforts have been made, an inspector's attendance can be requested. However, details of the 'reasonable efforts' that have been made to resolve the matter will be required when making a request that an inspector be appointed.

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.

Alternatively, instead of contacting the regulator to an inspector, any party may refer the issue to the QIRC for resolution.

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



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