



Health and Safety Representatives

1 What are HSRs?

Under the WHS Act a PCBU must, so far as is reasonably practicable, consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health and safety.

One of the mechanisms through which consultation with workers can occur is through health and safety representatives (**HSRs**).

HSRs are elected representatives whose role is to represent workers in matters relating to WHS. HSRs are elected to represent a particular workgroup and their powers and functions are usually limited to matters that affect or may affect that workgroup. This limitation does not apply if there is a serious risk of immediate or imminent exposure to a hazard affecting another workgroup or a member of another workgroup asks for the HSR's assistance and the HSR for the other workgroup (or any deputy HSR) is unavailable.

HSRs are elected for a term of 3 years but may be disqualified (by order of the Industrial Relations Commission of NSW) if they use their functions/powers for an improper purpose or use or disclose information obtained as a HSR for an ulterior purpose.

OHS Representatives

Occupational health and safety representatives (**OHS Representatives**) under previous legislation will be deemed HSRs under the WHS Act provided they were elected no earlier than 2 years before 1 January 2012. The term of an OHS Representative that is deemed a HSR can only be 3 years after the date of the person's election as an OHS Representative.

An OHS Representative is only deemed a HSR for the workgroup of which the worker was a member immediately before 1 January 2012.

Note: OHS Representatives deemed as HSRs will need to undergo the HSR training before they can exercise HSR powers to issue provisional improvement notices or issue directions regarding the cessation of unsafe work.

2 How are HSRs elected?

A worker may ask a PCBU to facilitate the conduct of an election for one or more HSRs to represent workers who carry out work for the business or undertaking.

When such a request is made, it is necessary to determine the workgroups that will be represented by the HSR(s). There are provisions in the WHS Act and WHS Regulation dealing with the determination and negotiation of workgroups. It is also possible for workgroups to include workers from 2 or more PCBUs (i.e. workgroups with workers from 2 or more businesses) and there are specific provisions in the WHS Act dealing with this.

Once the workgroup(s) has been determined, the workers within each group can then determine how the election will take place. If the majority of workers in a workgroup agree, the election can be conducted with the assistance of a union or another person.

The person conducting the election must take reasonable steps to ensure the election process complies with the WHS Regulations. Namely:

- that each PCBU is informed of the date on which the election is to be held as soon as practicable after the date is determined
- that all workers in the workgroup are given an opportunity to:
 - nominate for the position of HSR
 - vote in the election
- that all workers in the workgroup and all relevant PCBUs are informed of the outcome of the election.

A person is only eligible to be a HSR if they are a member of the relevant workgroup. Only members of the relevant workgroup are eligible to vote in the election.

Deputy HSRs may also be elected. A Deputy HSR will only have the same functions and powers of a HSR if the HSR ceases to hold office or is unable to exercise his or her functions and powers.

3 Training

A PCBU must, if requested by a HSR for a workgroup for that business or undertaking, allow the HSR to attend a course of training in WHS that is approved by the regulator, which the HSR is entitled to attend (under the WHS Regulations) and selected in consultation with the PCBU.

The PCBU must:

- as soon as practicable within the period of 3 months after the request is made, allow the HSR time off work to attend the course of training
- pay the course fees and any other reasonable costs associated with the HSR's attendance at the course of training.

Any time that a HSR is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

4 Powers of HSRs

The WHS Act and WHS Regulation contain numerous provisions dealing with the roles, functions and powers of HSRs. Some of the main functions and powers are set out below.

General Functions and Powers

The powers and functions of a HSR for a workgroup are:

- to represent the workers in the workgroup in matters relating to WHS
- to monitor the measures taken by the PCBU or that person's representative in compliance with the WHS Act (in relation to workers in the workgroup)
- to investigate complaints from members of the workgroup relating to WHS
- to inquire into anything that appears to be a risk to the WHS of the workgroup arising from the conduct of the business or undertaking.

In exercising a power or performing a function, the HSR may:

- inspect the workplace or any part of the workplace at which a worker in the workgroup works:
 - at any time after giving reasonable notice to the PCBU at that workplace, and
 - at any time, without notice, in the event of an incident, or any situation involving a serious risk to the WHS of a person emanating from an **immediate** or **imminent exposure** to a hazard
- accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the workgroup works
- with the consent of a worker that the HSR represents, be present at an interview concerning WHS between the worker and:
 - an inspector, or
 - the PCBU at that workplace or the person's representative
- with the consent of one or more workers that the HSR represents, be present at an interview concerning WHS between a group of workers, which includes the workers who gave the consent, and:
 - an inspector, or
 - the PCBU at that workplace or the person's representative
- request the establishment of a WHS Committee

- receive information concerning the WHS of workers in the workgroup
- whenever necessary, request the assistance of any person.

HSRs may also be party to the issues resolution process set out in the WHS Act and WHS Regulation.

Note: A HSR is not entitled to access personal or medical information about a worker unless the worker consents. The HSR may access such information if it does not identify, or would not reasonably be expected to identify the worker.

Provisional Improvement Notices

HSRs have the power to issue a person (including a PCBU) with provisional improvement notices (PINs) if:

- the HSR reasonably believes the person is contravening the WHS Act, or
- the HSR reasonably believes the person has contravened the WHS Act in circumstances that make it likely the contravention will continue or be repeated.

The PIN can require the person to:

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

The PIN must be in writing and comply with the content requirements of the WHS Act. The PIN may include directions concerning measures to be taken to address the contravention and may refer to a Code of Practice or multiple ways to address the contravention.

Before issuing a PIN, the HSR must:

- have completed the prescribed HSR training, and
- consulted with the person against whom the PIN is to be issued.

Once issued, a PIN must be displayed, as soon as practicable in a prominent place at or near the workplace. A person must comply with the PIN.

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 that matter.

The WHS Act contains a process for PINs to be reviewed by an inspector.

Directions to Cease Unsafe Work

HSRs also have the power to direct workers (in the HSR's workgroups) to cease work if the HSR has **reasonable concern** that to carry out the work would expose the workers to a serious risk to their health or safety, emanating from an **immediate** or **imminent exposure** to a hazard.

However, the HSR must not give such direction without first:

- consulting with the PCBU about the matter
- attempting to resolve the matter under the issues resolution provisions in the WHS Act
- completing the prescribed HSR training.

The requirement to consult with the PCBU or attempt to resolve the matter is not applicable if the risk is so **serious** and **immediate/imminent**, that it is not reasonable to consult before giving the direction.

The HSR must inform the PCBU of any direction given to workers to cease work. If a worker ceases work under the direction of a HSR, the PCBU may direct the worker to carry out suitable alternative work (at the same or another workplace) if that work is safe and appropriate.

5 Obligations of PCBUs and HSRs

PCBU Obligations

PCBU's have certain obligations to enable HSRs to perform their functions under the WHS Act. A PCBU must:

- consult, so far as is reasonably practicable, on WHS matters with a HSR representing its workers
- confer with a HSR for a workgroup, whenever reasonably requested by the HSR, for the purpose of ensuring the WHS of the workers
- allow any HSR for the workgroup to have access to information that the person has relating to:
 - hazards (including associated risks) affecting workers in the workgroup
 - the WHS of the workers in the workgroup
- with the consent of a worker that the HSR represents, allow the HSR to be present at an interview concerning WHS between the worker and:
 - an inspector, or
 - the PCBU at that workplace or the PCBU's representative

- with the consent of one or more workers that the HSR represents, allow the HSR to be present at an interview concerning WHS between that group of workers, and:
 - an inspector, or
 - the PCBU at that workplace or the PCBU's representative
- provide any resources, facilities and assistance (not including financial assistance) to a HSR for the workgroup that are reasonably necessary or prescribed by the WHS Regulation to enable the HSR to exercise his or her functions and powers under the WHS Act
- allow a person assisting a HSR to have access to the workplace if that is necessary to enable the assistance to be provided,
- permit a HSR to accompany an inspector during an inspection of any part of the workplace where a workers represented by the HSR
- provide any other assistance to the HSR for the workgroup that may be required by the WHS Regulation.

The PCBU also must allow a HSR to spend such time as is reasonably necessary to exercise his or her powers and perform his or her functions. Any time that a HSR spends for the purposes of exercising powers/functions under the WHS Act must be paid (at the rate the HSR would be entitled to receive for performing his or her normal duties during that period).

A PCBU must ensure that:

- a list of each HSR and Deputy HSR (if any) for each workgroup is prepared and kept up to date
- a copy of the up-to-date list is displayed:
 - at the principal place of business of the business or undertaking, and
 - at any other workplace that is appropriate taking into account the constitution of the relevant workgroup or workgroups
- in a manner that is readily accessible to workers in the relevant workgroup(s).

There are also prohibitions in the WHS Act against discriminatory, coercive and misleading conduct. This means PCBUs need to be careful they do not discriminate against workers because of their role as HSRs or engage in coercive conduct in relation to the exercise of HSR functions/powers under the WHS Act.

Multiple PCBUs

If a HSR or Deputy HSR (if any), represents a workgroup of workers carrying out work for 2 or more PCBUs the costs of the HSR exercising their functions/powers under the WHS Act and costs associated with training must be shared by the PCBUs.

Obligations of HSRs

HSRs should not exercise their functions/powers for an improper purpose or use or disclose information obtained as a HSR for an ulterior purpose. To do so, may render the HSR liable to be disqualified as a HSR (by order of the Industrial Relations Commission of NSW).

HSRs are also workers and should comply with their obligations as workers under the WHS Act.

The purpose of the document is to provide guidance on relevant provisions of the *Work Health and Safety Act 2011* (NSW) (WHS Act) and *Work Health and Safety Regulation 2011* (NSW) (WHS Regulation). This document should be read in conjunction with those laws. It does not constitute nor should it be relied on for the purposes of legal advice.