



Australian Government

Comcare

# HSR HANDBOOK

A guide for Health and Safety Representatives in the Commonwealth work health and safety jurisdiction



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## Contact us

Please direct any enquiries regarding the licence and any use of this document to:

Comcare  
GPO Box 9905  
Canberra ACT 2601

Ph: 1300 366 979

Email: [general.enquiries@comcare.gov.au](mailto:general.enquiries@comcare.gov.au)

Comcare acknowledges the contributions of the HSRs, PCBUs and unions that provided comment and feedback on this guidance and its previous editions.

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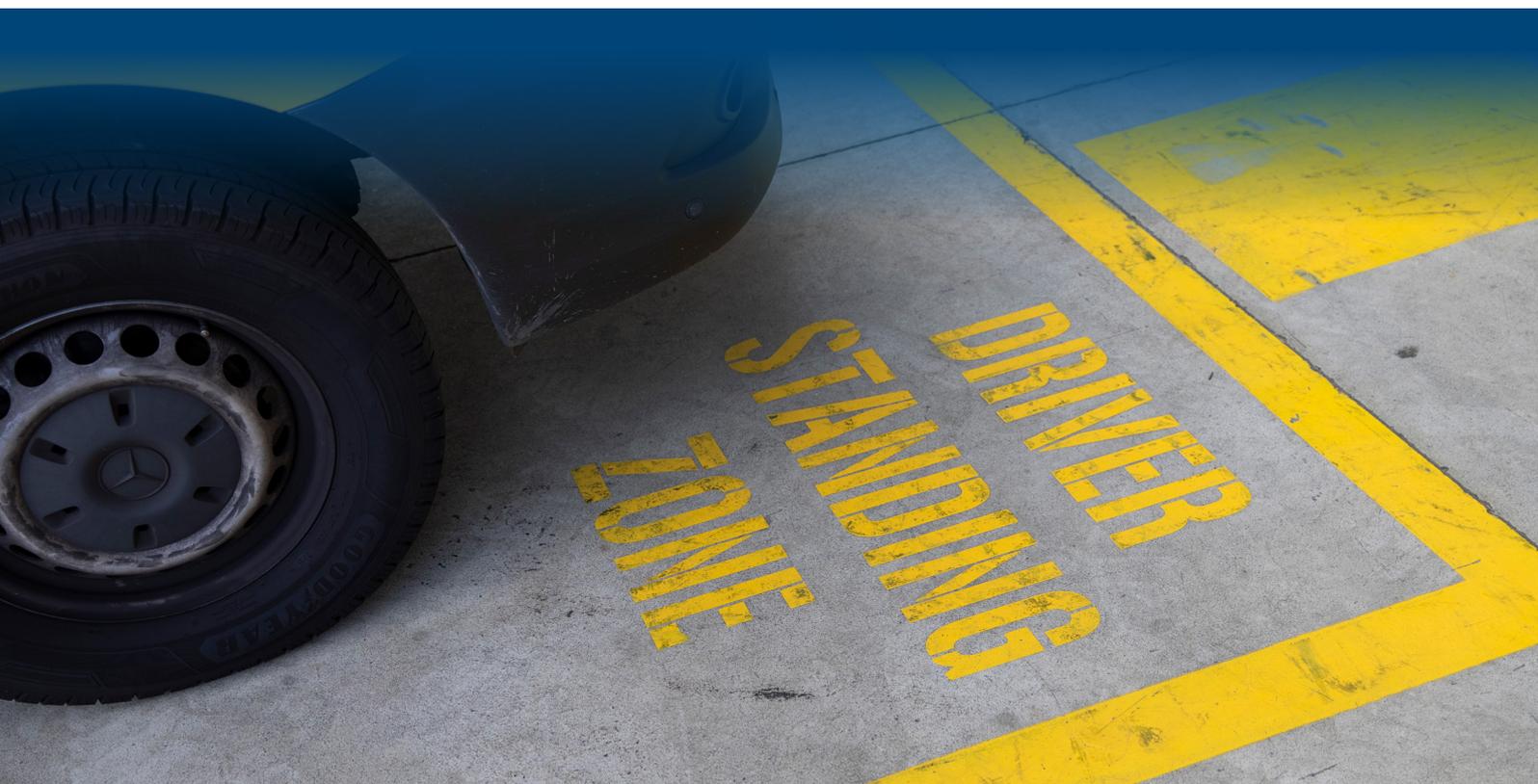
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# INTRODUCTION

As a Health and Safety Representative (HSR) you have powers and functions under the *Work Health and Safety Act 2011* (WHS Act) to:

- > represent the workers in your work group in relation to work health and safety (WHS) matters,
- > monitor compliance with the WHS Act by the person conducting the business or undertaking (PCBU) or their representative (Management),
- > investigate WHS complaints from members of your work group, and
- > inquire into WHS risks to workers in your work group.

**You are not the person responsible for health and safety in your workplace** and are not expected to be an expert on WHS matters. However, as a HSR, you are entitled, and strongly encouraged to attend a Comcare-approved training course in work health and safety of up to five days in length, as well as one day refresher training each year, from the provider of your choice.

Employers, referred to in the WHS Act as 'persons conducting a business or undertaking' (PCBU), have obligations under the WHS Act to support HSRs in their workplaces. You can also request others to assist you with your HSR role and to represent you in discussions with the PCBU if an unresolved WHS matter becomes an issue.

Resources listed in the *Further Information* section at the back of this guidance will be useful in your role. You can also contact Comcare's WHS Help Desk for more information.

## Purpose and scope

The purpose of this handbook is to help you understand how to perform your functions and exercise your powers as a HSR under WHS Act.

This handbook is also a valuable resource for other stakeholders who need to understand your powers and functions and any obligations they may have towards your role. These obligations may include consulting with you, providing you access to workplaces, documents, and information, and providing you with resources, facilities, assistance, and training so that you can perform your role effectively.

Information about the role, functions and powers of HSRs can also be found in Safe Work Australia's [Worker representation and participation guide](#).

This handbook is not a substitute for the WHS legislation and provides information on default processes and procedures. The information in the handbook does not override or replace any procedure developed by your organisation in consultation with workers and in accordance with the WHS Act.

## Legislative framework

The WHS Act provides a legal basis for ensuring the physical and psychological health and safety of workers at work and other persons in workplaces, and for eliminating and minimising risks to health and safety arising from work in the Commonwealth WHS jurisdiction.

The Commonwealth WHS legislative framework comprises:

- > The *Work Health and Safety Act 2011* (Cth)
- > The *Work Health and Safety Regulations 2011* (Cth)
- > Approved Codes of Practice.

The WHS legislation and the approved codes of practice can be found at the [Federal Register of Legislation](#) ([legislation.gov.au](#)). Individual links to relevant legislation and information are included throughout this handbook.

Comcare publishes a range of regulatory guides and other guidance material to assist duty holders and other stakeholders to understand the legislative framework. These are available at [www.comcare.gov.au/regulatory-guides](#).

## Where to find the key concepts in the legislation

Key concepts	WHS Act	WHS Regulations
Consultation, cooperation and coordination between duty holders	Part 5, Division 1	Reg 193, Reg 294
Consultation with workers	Part 5, Division 2	Reg 575
Election of health and safety representatives	Part 5, Division 3, Subdivision 4	Chapter 2, Part 2.1, Division 2
Health and safety committees	Part 5, Division 4	
Health and safety representatives	Part 5, Division 3	Chapter 2, Part 2.1, Division 2
Issue resolution	Part 5, Division 5	Chapter 2, Part 2.2
Obligations of person conducting a business or undertaking to health and safety representatives	Part 5, Division 3, Subdivision 6	Reg 19
Person conducting a business or undertaking	Section 5	
Persons with management or control of a workplace	Section 20	
Provisional improvement notices	Part 5, Division 7	
Powers and functions of health and safety representatives	Part 5, Division 3, Subdivision 5	
Reasonably practicable	Section 18	
Definition of worker	Section 7	
Work groups	Part 5, Division 3, Subdivisions 2 and 3	Chapter 2, Part 2.1, Division 1
Definition of representative	Section 7	

# INTERPRETATION OF KEY TERMS

## 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. This includes employees, outworkers, apprentices, trainees, students gaining work experience, volunteers, contractors or subcontractors and their employees.

This definition ensures that the WHS Act coverage extends beyond the traditional employer/employee relationship to include new and evolving work arrangements and risks. For example, individuals working in labour hire arrangements and the gig economy (e.g. Uber, AirTasker, food delivery).

## What is 'a person conducting a business or undertaking'?

In the WHS Act, the term 'person conducting a business or undertaking' (PCBU) is used instead of the term 'employer'. Such a 'person' can include a body corporate (e.g. a company), unincorporated body or association or a partnership. The word person as used in this context, is not in reference to a 'natural person' but rather the legal entity.

The WHS Act does not define a 'business' or an 'undertaking'. However, a business can be taken to mean an enterprise which is usually conducted with a view to making a profit and has a degree of organisation, systems, and continuity. An undertaking may have elements of organisation, systems, and possibly continuity, but are usually not profit-making or commercial in nature.

PCBUs under the WHS Act generally include the Commonwealth (e.g. departments and agencies of the Commonwealth government), Commonwealth Authorities, and a limited number of corporations that are licensed for workers' compensation self-insurance under the *Safety Rehabilitation and Compensation Act 1988* (SRC Act). A [list of current and former self-insured licensees](#) is maintained on the Safety, Rehabilitation and Compensation Commission website ([srcc.gov.au](http://srcc.gov.au)).

The term PCBU also extends to other duty holders under the WHS Act including contractors, designers, manufacturers, importers, suppliers and installers of plant, substances or structures used in the workplace, and imposes particular duties on these types of PCBUs.

When assessing whether an accident or incident arises out of the conduct of a business or undertaking, consideration should be given to the broad range of activities or work, including services, that are undertaken by or can be attributed to the business or undertaking.

## What is 'a person with management or control of a workplace'?

Under the WHS Act, a PCBU will be a 'person with management or control of a workplace' (PWMC) if their business or undertaking has management or control of a workplace, either in whole or part. Where there is more than one PCBU at a workplace, determining which PCBU has management or control of the workplace will depend on the circumstances of each case.

The PWMC has specific duties under the WHS Act. These include a duty to ensure, so far as is reasonably practicable, that the means of entering and exiting a workplace and anything arising from the workplace are without risks to the physical and psychological health and safety of any person. The PWMC must also preserve the site of any WHS incident that is notifiable to Comcare, until an inspector arrives or gives directions.

# FUNCTION AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

## The role of a HSR

The WHS Act requires PCBUs to consult, so far as is reasonably practicable, with workers who are, or are likely to be, directly affected by a WHS matter. Where the workers are represented by a HSR the consultation must include the HSR. Consultation and representing workers in your work group are key roles for HSRs.

HSRs are workers elected by a work group to represent them on health and safety matters. A work group is created through negotiation and agreement between a PCBU and relevant workers (and where they choose, their representatives) under section 52 of the WHS Act. Managers and supervisors often have specific WHS tasks that they are required to carry out in their management role on behalf of the PCBU. However, they are also workers who are entitled to be represented by a HSR.

Although managers and supervisors are usually the main point of contact for workers to raise WHS matters or concerns, workers can also do so with their HSR so that the HSR can then raise, and attempt to resolve, matters with managers.

'Representing workers' will generally require you to communicate with the PCBU by actively engaging in consultation with managers on a range of WHS matters that directly affect the workers in your work group. This includes by identifying hazards, considering risk control measures and engaging in issue resolution with managers if WHS matters are not resolved.

The types of WHS matters you may encounter and be consulted on can include, but are not limited to:

- > asbestos
- > bullying and harassment
- > electrical safety
- > fatigue
- > hazardous chemicals
- > hazardous manual tasks (lifting, pushing and pulling)
- > noise and vibrations
- > plant and equipment
- > psychosocial hazards
- > slips, trips and falls
- > working at heights
- > working in heat and other environmental conditions.

It is important to ensure that workers have appropriate and convenient access to you either directly (face-to-face) or indirectly (via email or telephone) and that the communication process is an open one. You should encourage members of your work group to ask questions about health and safety, raise concerns, report problems, and be part of the problem-solving process.

If you identify or are informed of a WHS matter and you believe there is non-compliance with the WHS legislation, you will need to investigate the matter then consult with your PCBU about the matter. This will normally be with your team leader, supervisor or manager, or may be with a principal contractor. As representatives of the PCBU, leaders and managers are required to discuss your concerns with you. The WHS Act emphasises that WHS matters should be resolved through consultation where reasonably practicable.

Workers benefit from having HSR representation because:

- > a HSR is likely to understand their views and concerns
- > a HSR who has attended an approved training course can exercise certain powers and functions outlined in the WHS Act
- > having a coordinated and formal approach to raising ideas and concerns with the PCBU about work health and safety can have a greater impact.

As a HSR you should:

- > represent members of your work group in a professional and timely manner
- > use your powers appropriately, in good faith, and only in relation to WHS matters
- > ensure any action you take while exercising your powers or functions is not taken with the intention of causing harm to the PCBU or to the business or undertaking of the PCBU.

## Being a member of a health and safety committee (HSC)

Being a member of the health and safety committee (HSC) should complement your role as a HSR as it will often allow you to be involved in consultation about work health and safety matters across the wider workforce, rather than just within your work group.

If you are a HSR at a workplace that includes your work group (a workplace may include a number of work locations and work groups) and the workplace has an HSC, you will be a member of the HSC if you agree. All HSRs within a workplace are entitled to be on the relevant HSC for that workplace. However, if there are more HSRs than there are worker positions on the HSC, it is up to the HSRs to decide between themselves (not the PCBU) who will fill the available worker positions.

As a HSR you do not have to be a member of an HSC, but you and your work group may find it beneficial. A PCBU is required by law to establish an HSC within two months of a request to do so.

Where an HSC has been established it is required to have an agreed constitution to be in place. This agreement should be between the PCBU and all workers covered by the scope of the HSC. If there is no constitution or record of an agreement, this should be resolved before the HSC meets.

## Powers of a HSR

The primary responsibility for providing a healthy and safe workplace rests with the PCBU. As a HSR, you have a role in representing members of your work group and bringing WHS matters to the attention of the PCBU.

Powers and functions given to you under the WHS Act enable you to effectively represent the interests of workers in your work group and to contribute to WHS matters. Broadly, your powers and functions extend to:

- > Inspecting the workplace or any part of the workplace where a worker in your work group works:
  - a) at any time after giving the PCBU reasonable notice of the inspection, and
  - b) at any time, without notice to the PCBU, if there has been an incident or situation involving a serious risk to the physical or psychological health or safety to any person arising from an immediate or imminent exposure to a hazard. (Refer to the 'Workplace Inspections' section in this handbook)
- > Accompanying an inspector during an inspection of any workplace where a worker in your work group works.

- > Representing the members of your work group in WHS consultation and WHS issue resolution with the PCBU.
- > Requesting Comcare to appoint an inspector to attend the workplace to assist in resolving a WHS issue if the issue has not been resolved after reasonable efforts been made by you, the PCBU or your representatives.
- > Requesting the establishment of an HSC.
- > Requesting the assistance of any person including a trade union official.

After completing a Comcare-approved HSR training course you also have the power to:

- > issue a provisional improvement notice (PIN), and
- > direct a work group member to cease work.

You can choose whether and when you will exercise your HSR powers and functions. The WHS Act does not impose any mandatory obligations or duties on HSRs to use their powers or to carry out the functions of a HSR.

## Sufficient time to perform your role

The amount of time necessary for a HSR to effectively perform their role will vary between workplaces. The PCBU must allow you to spend such time as is reasonably necessary to exercise your powers and perform your functions under the WHS Act.

You should consult with the PCBU and agree on how much time may be needed to undertake your HSR role. When agreeing on how much time you may need, you and the PCBU should consider:

- > the type of work or proposed work in the workplace
- > the level of risk involved in the work
- > the effectiveness of the risk controls
- > the individual needs of workers in your 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 providing assistance to you
- > the size and complexity of your work group
- > the size and complexity of the workplace
- > the number of HSRs in the workplace and in your work group
- > the complexity of the PCBU's WHS management system,
- > the immediacy of the risk or issue.

## Representing other work groups

In addition to exercising HSR powers and functions in relation to matters that affect your work group, you may also exercise your powers and functions for another work group, but only if that group doesn't have an elected HSR or the group's HSR (and any deputy HSR) is found, after reasonable inquiry, to be unavailable and:

- > 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 the other work group, or
- > a member of the other work group asks for your assistance.

## Confidentiality obligations

Confidentiality provisions in the WHS Act require that if you obtain information or gain access to a document in exercising your powers or functions as a HSR you must not disclose the information or give access to the document (or any information in the document) to anyone else, or use the information or document for any purpose, unless the disclosure, access, or use:

- > is necessary for the exercise of your powers and functions as a HSR, or
- > is about a person with the person's consent, or
- > is required by any court or tribunal, or
- > is under some other lawful authority that requires you to produce documents or answer questions.

## Workplace inspections

After giving reasonable notice to the PCBU, you may inspect any part of the workplace where members of your work group work. What is 'reasonable notice' will depend on the circumstances in any given case, and on what the PCBU and HSR jointly consider to be reasonable. In many cases, notice should be provided 24 hours prior to an inspection.

Where a schedule of HSR workplace inspections has been agreed with the PCBU, you should confirm with the person in charge of the area to be inspected that arrangements are in place for your inspections.

You may immediately inspect the workplace without providing notice in the event of any incident or situation that involves:

- > a serious risk to health or safety of any person
- > because of an immediate or imminent exposure to a hazard
- > in any part of a workplace where members of your work group work.

As part of a PCBU's duty to ensure health and safety it must provide and maintain a safe working environment, safe plant and structures, and safe systems of work. To do this the PCBU needs to conduct regular workplace inspections and testing of plant and equipment by assigning this responsibility to a supervisor, manager, or other competent person in the workplace. It is not your role or responsibility as a HSR to undertake workplace inspections on behalf of the PCBU.

However, there may be circumstances where a HSR's position in the organisation (e.g. as a supervisor or manager) has that responsibility, in which case the PCBU's inspection would be done under that position, not as a HSR.

You may choose to conduct inspections as a HSR on your own or in company with a management representative.

You may also request the assistance of another person, for example a representative from your union.

Workplace inspections by a HSR can take various forms, including:

- > regular inspections of the workplace
- > regular inspections of plant, structures, substances, activities or processes
- > specific inspections arising from complaints or concerns about matters that affect workers in your work group
- > inspections before and after a substantial change to the workplace—for example changes to plant or work processes
- > inspections after an incident or injury.

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

During your inspections, you are entitled as a HSR to discuss health and safety matters with anyone involved in anything that appears to be a risk to the physical or psychological health and safety of workers in your work group that arises from the conduct of the business or undertaking.

Immediately after an incident which is notifiable to Comcare under the WHS Act, the PWMC must ensure that the site where the incident occurred is not disturbed until an inspector arrives at the site or any time earlier that an inspector directs. This may restrict any inspection you would like to undertake at the incident site. An incident site which must be preserved by the PWMC can include any plant, substance, structure, or thing associated with the notifiable incident.

As soon as practicable after entering a workplace, inspectors must take reasonable steps to notify the relevant PCBU as well as any HSRs of the entry and its purpose. As the HSR, you may accompany the inspector during an inspection of any part of the workplace where your work group works.

## Requesting the PCBU to review control measures

You can request the PCBU to review a control measure at any time if you reasonably believe that they have not adequately reviewed a control measure and members in your work group are, or may be, affected by:

- > a control measure that does not, so far as is reasonably practicable, control the risk it was implemented to control
- > a change at the workplace that is likely to occur which is likely to create a new or different risk to health and safety that the control measure may not effectively control
- > a new relevant hazard or risk that has been identified.

You can also request the PCBU to review a control measure at any time if you reasonably believe that the results of consultation by the PCBU indicate that a review is necessary.

Your request for a review should be made by consulting the PCBU and discussing the matter with them. You should explain the reasons why you reasonably believe a control measure is not effective in the circumstances.

The WHS Regulations also includes specific circumstances where a HSR can request the review of control measures for work involving lead, work involving asbestos and for major hazard facilities.

## Accessing information

The PCBU must allow you to have access to information that the PCBU has relating to hazards and risks affecting the physical and psychological health and safety of the workers in the work group and information about the health and safety of the work group workers. The information a HSR may require access to may differ between workplaces, but broadly, you may request access to any relevant information, which may include:

- > 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 is readily available
- > 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 workplace occupational hygiene measurements, such as for dust levels, noise levels or chemical fumes

- > reports on WHS matters, including reports prepared by consultants for the PCBU
- > information contained in or components of an inspection report that is relevant to your working group
- > 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.

You may choose to exercise your power to obtain documents in order to inquire into a matter that appears to be a risk to the physical or psychological health and safety of workers in your work group. For example, you may inspect the PCBU's systems which should be in place to ensure that only licensed forklift drivers are permitted to operate forklifts in the workplace. However, the PCBU may not be required to provide you with copies of individual forklift licenses.

You are not allowed access to 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.

In the WHS Act 'personal information' has the same meaning as it has in the *Privacy Act 1988*. It means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not.

For example, a copy of a worker's forklift license identifies the worker and would contain personal information concerning the worker. Unless the PCBU has the worker's consent, they should not provide a copy of a worker's forklift license to a HSR. However, a PCBU can provide you with de-identified information confirming that all workers undertaking this work are appropriately licensed, and how many workers hold the relevant licence.

## Powers and functions of a deputy HSR

It will not always be possible for you, as the HSR for a particular work group, to be present and available to represent the work group when needed. For example, you may be away from work through illness, on leave, working an irregular shift, temporarily out of the office or at a meeting. In your absence, a deputy HSR effectively becomes the HSR and therefore has the powers and functions of that role.

In line with the requirements for HSRs, a deputy HSR would not be able to issue a PIN or direct a work group member to cease unsafe work unless they have completed an approved HSR training course.

## What if there are multiple HSRs in a work group and they do not agree?

Where agreement about a WHS matter or issue cannot be reached by multiple HSRs in a single work group, consultation needs to take place between the HSRs and the workers in the work group. Where a majority of the work group indicates preference for a particular course of action, the HSRs should collectively adopt and advocate for that course of action. Regardless of the number of HSRs this reflects good practice, as at all times a HSR is there to represent the workers in the workgroup. During this process any HSR may call on assistance of any person, including a union official to assist the HSRs to arrive at a position.

## Can a HSR be removed or disqualified?

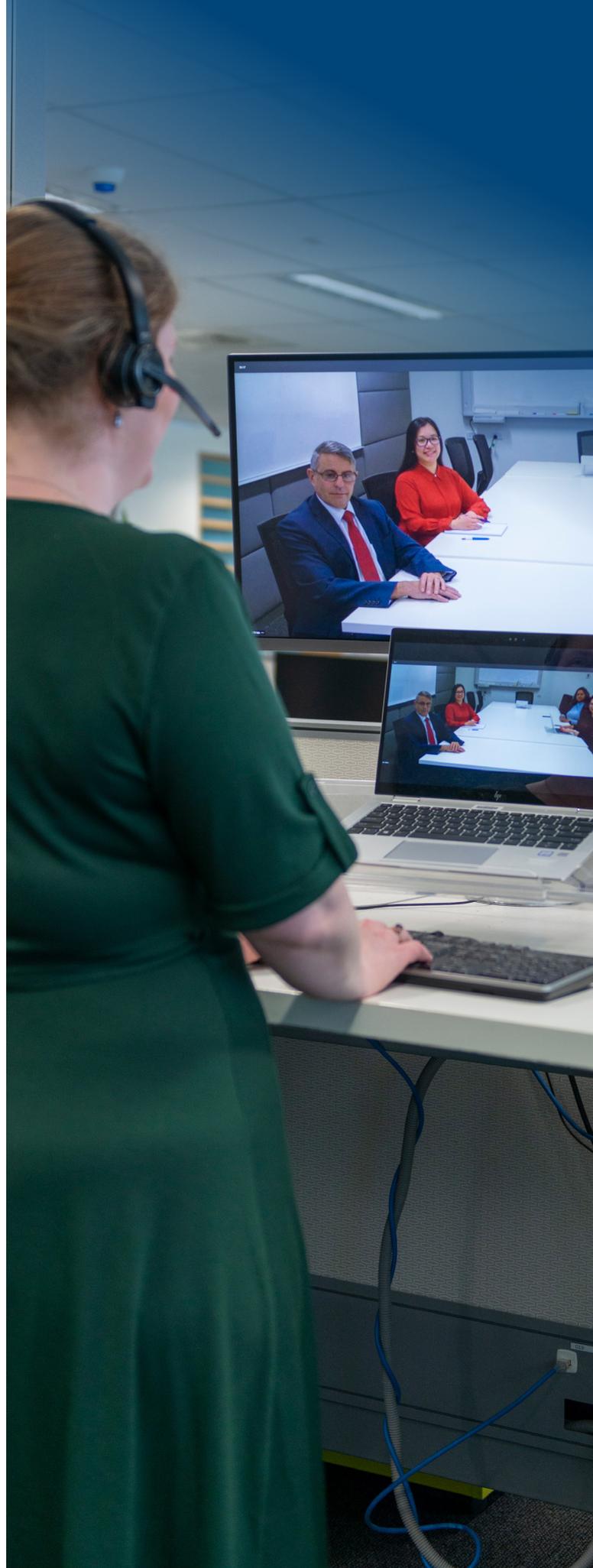
You can be removed from your HSR role if the majority of the members of your work group sign a written declaration that you should no longer represent the work group.

You can also be disqualified from being a HSR by a court if you have exercised a power or performed a function as a HSR for an improper purpose or if you misused information acquired as a HSR for a purpose that was not in connection with your HSR role.

## Personal liability

As a HSR you are not 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 of a HSR under the WHS Act, or in the reasonable belief that your actions were authorised under the WHS Act.

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



# GETTING ASSISTANCE TO HELP YOU IN YOUR ROLE

## A HSR's assistant

When exercising a power or function as a HSR, you may request the assistance of any person whenever necessary. This may include a person with knowledge of work health and safety from within the workplace (e.g. another HSR, a WHS adviser or a manager) or someone who does not work in the business or undertaking (e.g. a health and safety consultant or a union official). This enables you to access advice, including independent advice, if necessary to assist you in undertaking your role. For example, you may require:

- > advice on how to perform inspections at the workplace
- > technical advice on managing or controlling a particular hazard or issue
- > advice on how to consult and resolve WHS issues
- > assistance with writing and issuing a PIN.

The PCBU must allow any person you nominate to assist you to have access to the workplace if access is necessary to enable the assistance to be provided.

Any person assisting a HSR must comply with any reasonable instructions given by the PCBU about WHS matters at the workplace. For example, they must undergo visitor safety inductions and wear any required personal protective equipment.

A PCBU is not required to give a HSR financial assistance for the purpose of obtaining assistance and is not required to pay a HSR's assistant.

## Union official assisting a HSR

You may request a union official assist you in exercising your powers and functions as a HSR. Some union officials may hold a WHS entry permit (issued by either the Fair Work Commission or a relevant state or territory authority under a corresponding WHS law) and/or a Fair Work entry permit (issued by the Fair Work Commission under the *Fair Work Act 2009* (Cth)).

A union official is not required to hold a WHS entry permit or a Fair Work entry permit to enter a workplace when requested to provide assistance to a HSR. However, even if the union official does hold a WHS or Fair Work entry permit, they cannot exercise any of their WHS entry permit holder rights while at the workplace in those circumstances.

If a union official wishes to exercise any of their WHS entry permit holder rights, they must re-enter the workplace as a WHS entry permit holder and in accordance with the requirements for entry under the WHS Act, including by providing notice of their entry unless an exception applies. This means that if a union official (who is not assisting a HSR) wants to enter a workplace under the WHS Act, for example, to inquire into a suspected WHS contravention or to consult and advise workers on work health and safety matters, the union official is required to hold a current Fair Work entry permit and a WHS entry permit to exercise those rights.

Further information about the *Fair Work Act 2009* (Cth) requirements for union officials exercising rights of entry can be obtained from the Fair Work Commission at [fwc.gov.au](http://fwc.gov.au) and the Fair Work Ombudsman at [www.fairwork.gov.au](http://www.fairwork.gov.au).

## Notifying the PCBU about a HSR's assistant

The WHS Act does not require a HSR to notify the PCBU in writing that they have requested a person to assist them in carrying out their functions or exercising their powers as a HSR, nor does the WHS Act require a HSR or HSR's assistant to notify the PCBU about any need for the assistant to access the workplace.

**Note:** *Under the Model Work Health and Safety Act a person assisting a HSR must notify the PCBU and the PWMC in writing if they propose to access the workplace to provide assistance and must do so at least 24 hours before entry. This requirement is referred to in Safe Work Australia's Worker representation and participation guide. However, this requirement was not adopted in the Commonwealth WHS Act.*

## HSR assistant refused access to workplace

A PCBU cannot refuse workplace access to a person assisting a HSR unless they have reasonable grounds to do so. For example, if the assistant:

- > 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, or
- > refuses to participate in a normal visitor induction, or
- > refuses to wear the required personal protective equipment (PPE), or
- > does not hold an adequate security clearance (where required) for the workplace to which access is being sought, or
- > does not comply with security protocols at the workplace, or
- > fails to comply, so far as the person is reasonably able, with any reasonable instruction that is given with regards to work health and safety.

If a HSR's assistant is a person who is not a worker at the workplace, it may be reasonable for the PCBU to require the assistant to be escorted and depending on any security concerns of the workplace, monitored at all times while on site. However, it's important that PCBUs do not place any unreasonable restrictions on you and your assistant that may hinder your ability to exercise your functions and powers.

A PCBU may also refuse workplace access to a person assisting a HSR if they have had a WHS entry permit revoked, if their WHS entry permit is suspended or if they are disqualified from holding a WHS entry permit, even though their entry is not related to the use of a WHS entry permit.

If a person assisting you has not been allowed to access the workplace, you may request Comcare to appoint an inspector to assist with 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.

Alternatively, following consultation with the PCBU you may issue a PIN where you have a reasonable belief that the PCBU does not have reasonable grounds to refuse access and a contravention has occurred and is likely to occur again, or, you may request Comcare to appoint an inspector to investigate a possible contravention of the WHS Act.



# PROVISIONAL IMPROVEMENT NOTICES

## Purpose

A provisional improvement notice (PIN) can be issued by a HSR to a person requiring them to address a health or safety contravention in the workplace. A 'person' may be a body corporate, an unincorporated association, a partnership, or an individual. The person doesn't necessarily have to be present at the HSR's workplace. For example, they may be a designer, a manufacturer, or a supplier of plant, substances, or structures.

You may issue a PIN if you reasonably believe that a person is contravening the WHS Act or has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated. Your reasonable belief must be supported by sufficient facts or evidence.

PINs can only be issued by HSRs who have completed an approved HSR training course.

Before issuing a PIN, you must consult with the person you believe is contravening the WHS Act or WHS Regulations. This means that, as part of consultation, you should:

- > provide information verbally or in writing to the person about the alleged contravention or the activities causing the contravention. This may include identifying a risk to health or safety that has not been eliminated or is not being minimised so far as is reasonably practicable
- > allow the person adequate time to express their views, identify how best to address the matter, and to remedy the contravention
- > consider the views of the person before issuing the PIN.

Consultation can be said to have occurred even if:

- > the person does not respond to you in a reasonable time or at all
- > the person does not agree with you. For example, 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.

Examples of contraventions that could be likely to continue or likely to be repeated may include:

- > an ongoing requirement to manually lift heavy objects
- > machinery used in the workplace that has been found to exceed safe noise levels and no safe alternative has been arranged
- > regular exposure to hazardous chemicals that are used in the workplace
- > unguarded machines

- > poor organisational change management.
- > a PCBU not consulting on a WHS matter when it is reasonably practicable to do so.

It is important that a PIN is issued to the duty holder who has responsibility for the contravention specified in the PIN. The duty holder should be clearly identified in the PIN so that there can be no confusion about who the PIN is addressed to and who is expected to comply with its requirements.

HSRs mainly deal with PCBUs as the primary duty holder. Therefore, PINs are often addressed to a corporate entity (e.g. a government agency or a company) and physically given to the management representative that the HSR has consulted with at the workplace.

A PIN may require a person to:

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

A PIN cannot be issued for a matter where a Comcare inspector has already issued, or decided not to issue, an improvement notice or prohibition notice in relation to the same matter.

A PIN may be given to a person by:

- > delivering it personally to the person or sending it by post, facsimile or electronic transmission (e.g. email) to the person's usual or last known home or place of business
- > leaving it for the person at the person's usual or last known home or place of 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 PMCW.

For a PIN addressed to a PCBU, personally handing the PIN to a management representative at the workplace to which the PIN relates should satisfy these requirements. You should check with your organisation's People Team or WHS unit to determine the point of contact or email address for issuing the PIN.

Even after a PIN has been issued, HSRs should continue to consult with the person to whom the PIN was issued (e.g. a relevant manager) to attempt to resolve the issue.

## What information should be included in a PIN?

It is not compulsory to use a specific form to issue a PIN. However, the use of a form may assist you to follow the necessary steps to issue a PIN. A sample form is included at Appendix A and is downloadable from our website at [www.comcare.gov.au/hsr#pin](http://www.comcare.gov.au/hsr#pin).

A PIN must contain information about the contravention, and may also contain directions about measures to be taken by the person to remedy the contravention or prevent the likely contravention to which the notice relates.

1. A PIN **must** identify the person who the HSR believes:
  - > 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.
2. A PIN **must** state the provision of the WHS Act or WHS Regulations the HSR believes is being, or has been, contravened. (Tip: Only the relevant section or regulation is required.)
3. A PIN **must** contain a brief outline of how the provision is being, or has been, contravened. (Tip: Specify what should be in place and what is missing.)
4. A PIN **must** state the date, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention. (Tip: Compliance timeframes should be achievable. Be mindful if third parties are also required to assist.)
5. A PIN **may** include directions by the HSR concerning the measures to be taken to remedy the contravention or prevent a likely contravention. (Tip: Don't forget referencing any relevant WHS Regulations.)
6. A direction in a PIN **may** refer to an approved code of practice and offer a choice of ways that the contravention can be remedied.

Directions in PINs should be reasonable and appropriate to the circumstances of the case and targeted towards addressing the contravention. Impractical directions are more likely to result in the person requesting Comcare to review the PIN.

A recipient of a PIN does not have to follow the HSR's direction where they can take other steps or implement other reasonably practicable measures to ensure compliance with the WHS Act or WHS Regulations.

You must issue a separate PIN for each contravention or likely contravention, rather than including multiple contraventions in the one PIN.

## Display of the PIN

As soon as practicable after receiving the PIN, the person to whom the notice was issued must display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace, where work that is affected by the notice is being carried out. This is a location which is easily accessible where workers or other persons affected by the PIN will come across it in the normal course of events and be alerted to the issue.

A PIN which is displayed must not be intentionally removed, destroyed, damaged defaced during the period that the notice is in force.

## Making changes to a PIN

Once you have issued a PIN, you have the power to make minor changes to it for any of the following reasons:

- > to clarify content such as simplifying language or removing jargon
- > to correct errors or references
- > to reflect changes of address or other circumstances.

It is not necessary to make changes to a PIN in order to correct mistakes where the meaning is clear, such as a minor spelling mistake. A PIN is not automatically invalid because 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 has been contravened
- > the wrong duty holder is identified
- > the PIN requires a higher level of compliance than the legislation (for example, requiring more than what is 'reasonably practicable')
- > the information in the PIN is very unclear (for example, insufficiently identifying the factual circumstances or the risk to be addressed)
- > the PIN refers to a matter that is not related to a potential or likely health and safety contravention.

It may be necessary to make minor amendments if there is confusion surrounding the date the contravention must be remedied—for example, where the calendar date (e.g. Wednesday 1 February 2024) is different to the date the contravention is required to be remedied in the PIN (e.g. Thursday 1 February 2024).

The more accurate you are with your information on the PIN, the less likely delays will be experienced when clarifying or making changes to a PIN. If you become aware that you have issued a PIN that might be invalid, it should be cancelled and a new PIN re-issued.

You may also cancel a PIN at any time by providing a written notice to the person the PIN was issued to. Once compliance has been met by the person, a valid PIN does not need to be cancelled or revoked.

## Reviewing a PIN

The person issued with a PIN—or if they are a worker, their PCBU—can ask Comcare to appoint an inspector to review the PIN. However, this request must be made within seven days after the PIN has been issued. Comcare must ensure that an inspector attends the workplace as soon as practicable after a request has been made.

If a request for an inspector to review a PIN is made, the PIN is suspended until the inspector determines the matter.

The inspector must review the PIN following such a request and inquire into the circumstances surrounding the issue. An inspector can review a PIN even if the compliance period has expired. An inspector cannot review a PIN if there has not been a request for review by the recipient of the PIN. However, an inspector can choose to investigate the subject matter of the PIN at any time.

When reviewing a PIN an inspector will seek information from you, as the HSR who issued the PIN, and from the person the PIN was issued to. The review will 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 will either:

- > confirm the PIN, or
- > confirm the PIN with changes, or
- > cancel the PIN.

Confirming the PIN, with or without changes, is taken to be an improvement notice issued by the inspector under the WHS Act. An improvement notice still requires a person to remedy a contravention, but it is issued directly by 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 to the issuing HSR. If unsatisfied with the inspector's decision, the following persons may request that Comcare review the inspector's decision:

- > the person issued with the PIN
- > the HSR who issued the PIN
- > a worker whose interests are affected by the decision
- > another HSR who represents a worker whose interests are affected by the decision
- > a PCBU whose interests are affected by the decision.

Where an inspector has not been requested to undertake a review, the person to whom you have issued a PIN may face court proceedings if they do not comply with the requirements of the PIN within the time specified in the notice.

For further information about PINs refer to 'General information about PINs' in Appendix A.

## Inspector cancelling a PIN

An 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:

- > you had not completed the required approved training
- > you did not consult with the relevant person before issuing the PIN
- > the PIN does not state how the WHS Act or Regulations is being or has been contravened
- > there is insufficient evidence to support a reasonable belief that a person is contravening a provision of the WHS Act or Regulations, or has contravened a provision where 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 invalid if there is a formal defect or irregularity, unless the defect or irregularity 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 to do if the WHS issue remains unresolved

There may be options available if a PIN has been cancelled by the inspector following a review and you (or others) consider that the WHS issue that was the subject of the PIN remains unresolved.

A request may be made for Comcare to review the inspector's decision to cancel the PIN. This request can be made by the person issued with the PIN, you as the HSR who issued the PIN, an affected worker or another affected HSR or 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 may encourage this to occur if they have been asked to review the PIN and a WHS issue is unresolved. If the inspector gives reasons for their decision to cancel the PIN, the HSR should take this into account in deciding whether a new and revised PIN may be validly issued.

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.

## An inspector's use of compliance powers to resolve the issue

The cancellation of a PIN by an inspector does not mean that the WHS issue or concern is dismissed. If the matter remains unresolved, the inspector can work with you and any other relevant parties to resolve the issue or take other enforcement action. You are encouraged to ask inspectors to do so if you are still concerned about the WHS issue after the 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 the issue could be remedied
- > investigate possible contraventions of the WHS Act or Regulations
- > issue an improvement notice or prohibition notice.

If the inspector does not issue a notice, they will still want to ensure that WHS risks to workers and others are eliminated or reduced so far as is reasonably practicable.

Contact Comcare for assistance if you consider that the person to whom you validly issued the PIN is not complying with the directions in the PIN.

# CEASING UNSAFE WORK

## Directing workers to cease work

As a HSR you have the power to direct workers who are in your work group to cease work if you have reasonable concern that carrying out the work is exposing them, or would expose them, to a serious health and safety risk, due to an immediate or imminent exposure to a hazard.

However, you can only direct workers to cease work if you have completed an approved HSR training course.

You must not give a worker a direction to cease work unless the matter is not resolved after:

- a) you have consulted with the relevant PCBU about the matter, and
- b) you have attempted to resolve the matter using the agreed issue resolution procedure, or if there is no agreed procedure, the default issue resolution procedures in the WHS Regulations.

However, if the matter is so serious and immediate or imminent that it is not reasonable to consult the PCBU before giving a cease work direction, you may give the direction without consulting the PCBU or engaging in issue resolution procedures, and then consult with the PCBU as soon as practicable.

You must inform the PCBU of any direction you have given to cease unsafe work.

After a cease work direction, a PCBU can direct affected workers to carry out suitable alternative work until they can resume normal duties. The alternative work must be safe and appropriate for the workers 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 appropriately licensed to carry out that work.

You, the PCBU or an affected worker may ask Comcare to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work. An agreed WHS issue resolution procedure, or the default issue resolution procedure set out in the WHS Regulations (see Regs 22 and 23), can also be used to resolve the issue.



# DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

## General obligations

The WHS Act includes general obligations PCBUs have to HSRs, which are to:

- > consult, so far as is reasonably practicable, with a HSR on WHS matters at the workplace (refer to the Code of Practice on Work Health and Safety Consultation, cooperation and coordination for more information on how to consult)
- > confer with a HSR, whenever reasonably requested by the representative, to ensure the physical or psychological health and safety of the workers in the work group
- > allow a HSR access to information that the PCBU has relating to:
  - hazards and risks affecting the physical or psychological health and safety of the workers in the work group, and
  - the physical or psychological health and safety of the work group workers.
- > with the consent of relevant workers, allow a HSR to be present at any interview concerning work health and safety between a worker or a group of workers and:
  - an inspector
  - the PCBU or their representative.
- > provide a HSR with the resources, facilities and assistance that are reasonably necessary, or prescribed by the WHS Regulations, to enable the HSR to exercise their powers and perform their functions under the WHS Act
- > allow a person assisting a HSR to have access to the workplace if it 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 worker in the HSR's work group works
- > allow a HSR to spend as much time as is reasonably necessary to exercise their powers and perform their functions under the WHS Act
- > pay a HSR the same amount they would be entitled to receive for performing their normal duties during any time they spend exercising their powers or performing their functions under the WHS Act.

## Resources, facilities and assistance

A PCBU must provide any resources, facilities and assistance that are reasonably necessary to enable you to carry out your functions and exercise powers as a HSR.

What is reasonable in the particular circumstances will depend on a range of factors, including the nature of the work and the working environment, the workplace hazards and the composition of the work group. Resources, facilities and assistance may include:

- > access to a private room, desk and chairs for discussions or interviews
- > facilities for filing, including a lockable filing cabinet and shelves
- > access to a telephone, internet and email
- > access to photocopying facilities
- > access to a room for work group meetings
- > the use of notice boards
- > if required, transport or travel expenses to commute between workplaces.

As a HSR you should not be disadvantaged for taking on this important health and safety role. When you are exercising your powers or performing any of the functions the WHS Act sets out, the PCBU must ensure that you are paid the same amount that you would be entitled to receive for performing your normal duties. Payment should include any allowances to which you are otherwise entitled such as shift work, overtime, higher duties allowance or penalty rates.

This requirement also includes paid time off to attend HSR training. Training is part of normal work-related activity and as such you are entitled to receive your normal/expected earnings during course attendance.

## Training for HSRs

Training for the role of HSR is not mandatory. However, you are encouraged to take up this training entitlement to provide you with the skills and knowledge to perform your role effectively. Unless you are trained you are not able to issue PINs or to direct unsafe work to cease in your work group.

Employers must pay the course fees and any other reasonable costs associated with the training, regardless of any pre-existing procurement arrangements at the organisation.

HSRs, including deputy HSRs, are entitled to attend an initial training course of five days and then a one-day refresher training each year after that initial training.

You are entitled to choose a HSR training course approved by Comcare. You may choose to consult with the PCBU (e.g. seek their views on suitability of courses) or seek advice (e.g. from worker representatives) when choosing the course of training. While the choice of training course remains with you as the HSR, you will need to consult and reach agreement with the PCBU on the timing for attendance and reasonable costs of attending the training course.

When choosing an approved training course, issues that may be considered include:

- > timing of attendance—the sooner you attend training after being elected, the more effective you will be in performing your HSR 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 courses will determine what is reasonable)
- > the relevance of any hazard-specific or industry-based course to the work group
- > the total number of workers requiring training.

If you or a deputy HSR is re-elected in the same work group and have already participated in initial HSR training, then you do not have an entitlement to take time off work with pay to attend the five-day training course again. However, you are entitled to one day's refresher training each year following the completion of initial training. Although you are not entitled to receive further initial training, the PCBU may agree for you to attend or receive further training as relevant to your role (e.g. attending a conference on work health and safety).

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

If you or the PCBU cannot come to a timely agreement about time off for you to attend HSR training or the payment of fees and other reasonable attendance costs, then either party may ask Comcare to appoint an inspector to decide the matter.

If you or the PCBU do not agree with the inspector's decision, either party can request Comcare to review the decision.

## Keeping a list of HSRs

A PCBU must keep a list of current HSRs. Keeping a list of HSRs enables workers to find out who can represent them when a WHS matter arises. The PCBU must display the list in a place that is accessible to all workers in the relevant work group. The list should be displayed in a central location, such as a notice board or on a workplace intranet.

A PCBU must ensure that:

- > a list of each HSR and deputy HSR (if any) is prepared and kept up-to-date
- > a current copy of the list is displayed at a principal place of business and at any other workplace that is appropriate to the constitution of the relevant work group(s).

The PCBU must also ensure that the up-to-date list is provided to Comcare as soon as practicable after the list is prepared.

## Discrimination

The WHS Act prohibits a PCBU from discriminating against a worker, for example by dismissing a worker or treating a worker less favourably because the worker is, has been or will be a HSR, a deputy HSR or a member of an HSC.

Examples of discriminatory conduct could include:

- > firing a worker
- > terminating a contract for services with a worker
- > changing a worker's position to their detriment, e.g. by decreasing their salary or by demotion
- > treating a worker differently from others
- > not hiring someone
- > offering a prospective worker less favourable terms and conditions
- > terminating a commercial arrangement, e.g. a contract to supply materials to a workplace, or a sub-contracting arrangement.

Organising, or threatening to organise or take, any of the above action is also discriminatory conduct. In addition, a person must not request, instruct, induce, encourage, authorise or assist someone else to engage in discriminatory conduct.

Not all discriminatory conduct is unlawful. To be unlawful, discriminatory conduct must be engaged in for a prohibited reason. Prohibited reasons include:

- > exercising or not exercising your powers of performing functions under the WHS Act, or exercising these powers in a particular way
- > assisting or giving information to a person exercising or performing a function under the WHS Act or
- > raising an issue or concern about WHS with persons such as a PCBU, an inspector, another HSR, a member of a HSC, another worker or any other duty holder or person exercising a power or performing a function under the WHS Act.

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

Both criminal and civil penalties can be brought against a person who engages in discriminatory conduct in relation to WHS matters.

If you feel you are being discriminated against in your role as a HSR, you should contact Comcare for advice and assistance.





# ISSUE RESOLUTION

## Who is involved in resolving WHS issues?

If a WHS matter affects workers in the work group which you represent, then the PCBU is required to consult with you regarding resolution of the WHS matter. A health and safety matter could include a difference in opinion on a health and safety policy or procedure, whether something is a potential risk to physical or psychological health and safety or whether a particular control measure is adequate. Other issues may involve how workers are consulted or participate in health and safety decisions.

A WHS issue is any concern about a health and safety matter at the workplace that remains unresolved after appropriate consultation is undertaken by the PCBU with workers who are, or are likely to be, directly affected by the matter and with any relevant HSR.

## What is the process for resolving WHS issues?

The issue resolution provisions in the WHS Act aim to resolve issues as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue. The intention is that WHS issues should be resolved 'once and for all' to the extent that is possible in the circumstances.

The WHS Act encourages PCBUs to agree on issue resolution procedures with their workers.

When a WHS issue arises, the parties to the issue must make reasonable efforts to achieve a timely, final and effective resolution of the issue according to the relevant agreed procedure or, if there is no agreed procedure, the default procedure set out in the WHS Regulations. The default procedure includes the minimum requirements for any agreed procedures.

For information on issue resolution procedures under the WHS Act see Comcare's [Regulatory guide - Inspector assistance: health and safety issues](#) and [Safe Work Australia's Worker representation and participation guide](#).

## Can a representative enter the workplace for issue resolution?

A HSR's representative is a 'party to an issue' and is entitled to enter the workplace for the purpose of attending discussions with a view to resolving the issue. A representative can be any person nominated by the HSR, whether or not they are a worker at that workplace. The Closing Loopholes Act 2023 amends the *Fair Work Act 2009* meaning officials of registered organisations, who do not hold a Fair Work entry permit, may enter workplaces to assist HSRs.

When representing a HSR in issue resolution, a union official is not seeking access to the workplace as a WHS entry permit holder and cannot exercise any of the WHS entry permit holder's rights. If they seek to do so, they must arrange to re-enter the workplace as a WHS entry permit holder and follow the entry requirements for WHS entry permit holders, unless to do so would delay an urgent case.

A PCBU may refuse access to a workplace by a person representing a HSR in issue resolution if that person has been disqualified from holding a WHS entry permit or their WHS entry permit is currently suspended, even though their entry is not related to the use of a WHS entry permit.

A PCBU can also refuse workplace access to a representative if they have reasonable grounds to do so. For example, if the representative:

- > refuses to participate in a normal visitor induction, or
- > refuses to wear the required PPE, or
- > does not hold an adequate security clearance for the workplace where this is legally required to which access is being sought, or
- > does not comply with security protocols at the workplace, or
- > fails to comply, so far as the person is reasonably able, with any reasonable instruction that is given with regards to work health and safety, or
- > 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 representative is a person who is not a worker at the workplace, it may be reasonable for the PCBU to require the representative to be escorted and depending on security concerns or protocols in the workplace, monitored at all times while on site where this is normal practice for visitors.

If your representative has not been allowed to access the workplace, you may request Comcare to appoint an inspector to assist with resolving the matter in the first instance. 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.

Failing that, if you have a reasonable belief the Act has been contravened and the PCBU does not have a reasonable excuse, following consultation you could issue a PIN or request the regulator to appoint an inspector to conduct an investigation of an alleged contravention.

## What happens if an issue has been resolved?

If a WHS issue has been 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 health and safety committee at the workplace. (Tip: Always request the agreed outcome to be provided in writing.)

At any stage in the issue resolution process, a worker can still bring a WHS issue to your attention as their HSR.

## What if the issue is unresolved?

If reasonable efforts have been made to resolve an issue and it remains unresolved, the WHS Act provides that any party to the issue can ask Comcare to appoint an inspector to assist in resolving the issue. There does not have to be agreement about whether reasonable efforts have been made to resolve the issue for an inspector's assistance to be requested. As long as one party to the issue considers that reasonable efforts have been made an inspector can be requested.

If all workers affected by a WHS issue are in work groups, the parties to the issue are the relevant PCBUs and HSRs or their representatives.

The inspector's role is to assist the parties to resolve the issue. On attending a workplace, an inspector may, if necessary, exercise any of their compliance powers under the WHS Act, including investigating contraventions, issuing a prohibition notice, or issuing an improvement notice.

A request to appoint an inspector does not prevent a worker exercising their right to cease unsafe work and does not prevent a HSR from directing work to cease or issuing a PIN (unless an inspector has issued an improvement notice for the same issue or has decided not to).

Note: Even following an inspector's intervention there may be issues which fail to be resolved under the issue resolution procedure.

Practical examples of how the issue resolution process works are included in Safe Work Australia's [Worker representation and participation guide](#).

## Issue resolution process after cancelling of PIN

As the HSR, you may choose to commence the issue resolution process set out in the WHS Act if you consider that the WHS issue remains unresolved after the inspector has cancelled the PIN and the inspector has not taken any compliance actions.

The aim of the issue resolution process is for parties to an issue to make reasonable efforts to resolve the issue. While the issue resolution process may have occurred before you issued the PIN, it can also be used after the review and cancellation of the PIN.

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

If an agreement cannot be reached through this process, any party to the issue can ask Comcare to appoint an inspector to assist with resolving the issue.

'Parties to an issue' for issue resolution are:

- > the relevant PCBU or their representative
- > any other PCBU involved in the issue, or their representative
- > where at least one worker in a work group is affected by the issue, the relevant HSR, or the HSRs representative
- > any worker who is not in a work group and is affected by the issue, or their representative.

## Further information

The following relevant Commonwealth legislation is available from the Federal Register of Legislation ([legislation.gov.au](#))

- > [Work Health and Safety Act 2011 \(Cth\)](#)
- > [Work Health and Safety Regulations 2011 \(Cth\)](#)
- > Approved Codes of Practice

Further guidance and fact sheets are available from Safe Work Australia ([safeworkaustralia.gov.au](#)):

- > [Publication: Worker representation and participation guide](#)
- > [Regulator and inspector powers to gather information](#)
- > [What powers do inspectors have to enter workplaces](#)
- > [What powers do regulators and inspectors have to gather information](#)

You can contact Comcare on **1300 366 979** or via email at [WHS.help@comcare.gov.au](mailto:WHS.help@comcare.gov.au)

You can also access information on our website including a list of approved HSR training courses. Visit [comcare.gov.au](#).

Other organisations that may provide useful information include:

- > Fair Work Commission ([fwc.gov.au](#))
- > Australian Human Rights Commission ([humanrights.gov.au](#))
- > Unions or other worker representatives



*WORK HEALTH AND SAFETY ACT 2011 (CTH)*  
**Provisional Improvement Notice (PIN)**

**GENERAL INFORMATION ABOUT PINS:**

1. A health and safety representative (HSR) may issue a PIN if they reasonably believe that a provision of the Commonwealth WHS Act or the WHS Regulations:
  - > is being contravened; or
  - > has been contravened in circumstances that make it likely that the contravention will continue or be repeated.
2. A PIN is issued to the relevant duty holder to remedy a contravention of the Commonwealth WHS Act or WHS Regulations. The duty holder may be an individual natural person or an organisation such as a company or public authority (including a PCBU as defined in section 5 of the WHS Act). The duty holder doesn't necessarily have to be in the workplace where the HSR works—for example, they could be a designer of plant, buildings and structures; or a manufacturer or supplier of plant or substances. Generally, a PIN may only be issued by a HSR in respect of matters that affect, or may affect, workers in the work group the HSR belongs to (Note: if a HSR issues a PIN that deals with a matter not affecting the workers in their work group, the PIN may be invalid).
3. A HSR can issue a PIN to the relevant duty holder by one of the methods listed in section 209 of the WHS Act. For example:
  - > delivering it personally to the duty holder, or
  - > leaving it for the duty holder at the workplace to which the PIN relates with a person who is in management or control of that workplace (for example, leaving it with the area manager).

*If the above methods of delivery are not possible the HSR can:*

  - > send it by post, fax or electronic transmission to the home or business address of the duty holder or leave it for the duty holder at their home or business with a person over 16 years who lives or works there.
4. The HSR must consult with the duty holder about remedying the contravention prior to issuing the PIN (see section s90(3) of the WHS Act).
5. A HSR cannot issue a PIN unless the HSR has completed a Comcare approved initial HSR training course or; completed that training when acting as a HSR for another workgroup or; completed training equivalent to HSR training under other corresponding WHS laws (see section 90(4) of the WHS Act).
6. A HSR cannot issue a PIN in relation to a matter where an inspector has already issued an improvement or prohibition notice, or has decided not to issue a notice (see section 90(5) of the WHS Act).
7. The duty holder to whom the PIN is issued is responsible for fixing the identified contravention by the date written in 'Date compliance with this PIN is required'. It is an offence under section 99 of the WHS Act for the person not to comply with the PIN by the 'Date compliance with the PIN is required'—penalties apply.
8. If the duty-holder on whom the PIN has been issued wishes to dispute the PIN, they can contact Comcare and request an inspector to review the PIN—this must be done within seven calendar days of the 'Date of issue' of the PIN. The inspector will review and inquire into the circumstances that are the subject of the PIN and can do this even after the compliance date for the PIN has expired. An inspector can confirm; confirm with changes or; cancel the PIN. A copy the inspector's decision must be given to the applicant for the PIN review and the HSR who issued the PIN. If the PIN is confirmed (with or without changes), the PIN is taken to be an improvement notice issued by the inspector.
9. For urgent issues that are an immediate threat to the health and safety of any person, a PIN may not be an appropriate means to address the situation. Refer to section 85 of the WHS Act regarding the right of a HSR to direct that unsafe work cease.
10. If there is more than one contravention, a separate PIN for each contravention should only be written where the action needed to remedy each contravention is unrelated, or needs to be actioned at a different time or place.
11. If the PIN contains formal irregularities, defects or fails to use the correct name of the person to whom the PIN is issued, the PIN may still be valid. The PIN will not be valid, however, if the formal irregularity or defect causes, or is likely to cause, substantial injustice to the duty-holder on whom the PIN is issued, or if the PIN fails to sufficiently identify the duty-holder on whom it is issued (see section 98 of the WHS Act.)
12. A reasonable time should be allowed between the 'Date of issue' and the 'Date compliance with PIN required', to enable compliance to be achieved. However, the date for compliance must be at least eight days after the date of issue.
13. HSRs should retain a copy of the completed PIN for their records.
14. If the issue has not been remedied by the 'Date compliance with PIN required' and an inspector has not already attended, the regulator should be contacted. If the HSR is a union member, the HSR can also advise their union.
15. The duty-holder on whom a PIN is issued must as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace that is affected by the PIN.
16. A person must not intentionally remove, destroy, damage or deface a PIN that is displayed during the period the PIN is in force (see section 97(2) of the WHS Act for penalties regarding non-compliance).
17. A failure to do any of the things referred to in points 15 and 16 is a contravention of the WHS Act and penalties apply (see section 97 of the WHS Act).
18. If the person to whom the PIN is issued disagrees with the PIN or believes they will have difficulty complying with it, they should discuss this with the HSR who issued the PIN. They may also request a Comcare inspector to attend (see point 8 above).

For queries about PINs or other health and safety matters, contact Comcare  
on 1300 366 979 or email [WHS.help@comcare.gov.au](mailto:WHS.help@comcare.gov.au)  
website: [www.comcare.gov.au](http://www.comcare.gov.au)

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