FIRST THINGS FIRST

Health and safety representative handbook: A guide for HSRs in the commonwealth jurisdiction
Disclaimer
This guidance provides a basic and general overview of its subject matter only. It is not a substitute for independent legal and/or other professional advice and cannot be relied on as a statement of the law relating to the Work Health and Safety Act 2011 (Cth). Comcare recommends duty holders obtain appropriate independent legal advice relevant to their particular needs and circumstances.

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INTRODUCTION

You are probably wondering what you will do as a health and safety representative (HSR). If you ask others in your workplace you will get a variety of responses.

You are not the person responsible for health and safety in your workplace nor are you expected to be an expert on work health and safety (WHS) issues. Your role is to represent workers in your work group and monitor that the person conducting the business or undertaking (PCBU) is ensuring health and safety standards.

You will find that effective consultation is one of the most important skills you will need in your role. You may find some of the resources listed at the back of this guidance useful in your role.

PURPOSE AND SCOPE

The purpose of this handbook is to provide information about how to exercise your powers as a HSR under the Work Health and Safety Act 2011 (WHS Act) and your role. The handbook is also a valuable resource for other stakeholders who need to understand your role.

This handbook is not a substitute for the legislation and is not intended to override or replace existing agreements between PCBUs, workers and their representatives.

LEGISLATIVE FRAMEWORK

The WHS Act provides the legal framework for regulating the health and safety of workers and workplaces. Its aim is to protect the health and safety of all workers throughout the Commonwealth jurisdiction.

The WHS legislation has changed significantly compared to previous Commonwealth health and safety legislation. Duties are no longer defined by the nature of the employment relationship. What this means for you as a HSR is that your work group may include people not employed by your organisation, such as contractors (refer to the definition of ‘worker’).

Further information about comparisons between the current WHS Act and the previous health and safety legislation is available on Comcare’s website at www.comcare.gov.au.

Other parts of the legislative framework include:

- Commonwealth Work Health and Safety Regulations
- Codes of Practice
- Comcare guidance material.

The relevant legislation can be found at www.comlaw.gov.au

WHERE TO FIND KEY CONCEPTS IN THE LEGISLATION

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INTERPRETATION OF KEY TERMS

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 ensures that the WHS Act coverage extends beyond the traditional employer/employee relationship to include new and evolving work arrangements and risks.

WHAT DOES ‘ARISING OUT OF THE CONDUCT OF THE BUSINESS OR UNDERTAKING’ MEAN?

Under the WHS framework the term ‘conduct of the business or undertaking’ is not defined regarding a PCBU’s actual ‘day-to-day’ activities. However, it generally refers to business activities or work (including services) undertaken in the course of business. As well as the PCBU’s core activities, this would include ancillary activities such as arranging maintenance or supplies. In other words, what does the business do?

WHO IS ‘A PERSON CONDUCTING A BUSINESS OR UNDERTAKING’?

Under the WHS Act, a PCBU is the principal duty holder and replaces the term ‘employer’. PCBUs include the Commonwealth, Commonwealth Authorities, and non-Commonwealth licensees.

WHO 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—to the extent that the business or undertaking involves the management or control of a workplace, either in whole or part. Determining the person with management or control of a workplace will be a question of fact to be assessed on the unique circumstances of each case.
FUNCTION AND POWERS OF HEALTH AND SAFETY REPRESENTATIVES

THE ROLE OF A HSR

Part 5 of the WHS Act provides for workers to be consulted and represented through HSRs and health and safety committees (HSC).

As a HSR you have been elected by members of your work group to represent them in health and safety matters. Your role is not to ‘fix’ health and safety problems in the workplace nor are you expected to be an expert on WHS issues.

Managers, supervisors and team leaders are also workers with the right to have their WHS interests represented. They often also have specific health and safety duties that they are required to carry out in their management role.

Although supervisors are the main point of contact for workers to raise WHS issues or concerns, HSRs can represent WHS issues on behalf of workers. ‘Representing workers’ will therefore often require you to actively communicate with the PCBU and engage in consultation with managers on a range of matters directly affecting the work group, such as identified hazards, risk control measures and issue resolution. The types of issues or concerns you may encounter include:

- unsafe work practices
- unguarded machines
- fall hazards
- excessive keyboard use
- temperature issues (hot/cold, usually in office environments)
- odours
- housekeeping
- bullying.

If you identify a health and safety issue and you believe there is non-compliance of the legislation, you need to consult with your PCBU. This will normally be your team leader, supervisor, manager, principal contractor etc. They are obliged to discuss your concerns with you. The legislative process emphasises the resolution of issues through consultation.

Workers benefit from having HSR representation because:

- you are likely to understand their views and concerns
- a HSR who has attended approved training can exercise certain powers and functions outlined in the WHS Act whilst representing your work group
- having a coordinated and formal approach to raising ideas and concerns with the PCBU can have a greater impact.

Being a member of the HSC will complement your role as it will allow you to be involved in the management of WHS across the whole workforce, rather than just your particular work group. If you are the only HSR at a workplace (a workplace may include a number of work locations), you are automatically (if you agree) a member of the relevant HSC where one is in place. If there is more than one HSR at a workplace, the WHS Act allows more than one HSR to be a member of a HSC. It is a responsibility of the HSRs (and not the PCBU) to determine who will fill the available positions. Alternatively, as a HSR you do not have to participate but you may find it beneficial to do so.

It is important to ensure that workers have appropriate and convenient access to you either directly (face-to-face conversations) or indirectly (consultation 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.
POWERS OF A HSR

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

As a HSR your role is to promote the health and safety of the workers in your work group. Powers and functions given to you under the WHS Act enable you to effectively represent the interests of workers and contribute to work health and safety matters. Broadly your powers extend to:

> inspecting the workplace of members of your work group (refer to the ‘Workplace Inspections’ section page 11)
  - if there has been a recent incident or situation involving a serious risk to a person’s health or safety to any person from an immediate or imminent exposure to a hazard
  - after giving the PCBU reasonable notice of the inspection

> accompanying an inspector during an inspection of the workplace

> representing the members of the work group in health and safety consultations with the PCBU

> making a request to the regulator, that an inspector attend a workplace and assist where a work health and safety issue has not been resolved after reasonable efforts (as parties to the issue, a PCBU or worker can also do this)

> initiating emergency stop work procedures for the work group (if trained)

> requesting the establishment of a HSC

> issuing provisional improvement notices (PINs) (if trained).

Although a HSR has the ability to exercise certain powers and functions, you can choose when to exercise them. The WHS Act does not impose mandatory obligations or duties on HSRs to use their powers or carry out the functions of a HSR.

In addition to exercising your powers on behalf of your work group, you may also exercise your powers and functions for another work group if that group’s HSR (and any deputy HSR)—after reasonable inquiry—is unavailable, and also 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 the other work group

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

The amount of time necessary for you to effectively perform your role as a HSR will vary between workplaces. The PCBU must allow you to spend a reasonable amount of time necessary to carry out your HSR functions and powers. You should consult with the PCBU and agree on how much time may be needed to perform any anticipated powers and functions. When agreeing on how much time you will need to fulfil your 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 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

> 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

> the complexity of the WHS management system—make sure you are familiar with the WHS management system in your organisation.

As a HSR you should:

> represent members of your work group in a professional, timely and ethical manner

> use your powers appropriately and only in relation to WHS matters

> ensure any action taken while exercising your powers is not taken with the intention of causing harm to the PCBU or to an undertaking of the PCBU.
WORKPLACE INSPECTIONS

After giving reasonable notice to the PCBU you may, at any time, 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. Where a normal schedule of inspections has been agreed to, you should confirm with the area to be inspected to ensure arrangements are in place for the inspection. However, you may immediately inspect the workplace without providing notice to the PCBU in the event of an immediate and serious risk to health or safety emanating from a hazard in any part of the workplace where members of your 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.

Workplace 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 after 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.

You may choose to conduct inspections on your own or jointly with a management representative. As an elected HSR, you are entitled during any inspection to discuss health and safety issues with the workers in your work group.

Following a workplace inspection you may request the PCBU to review a control measure if you reasonably believe that the PCBU has not adequately reviewed the control measure in response to the following circumstances:

> the control measure is not effective in controlling the risk it was implemented to control
> a change occurs at the workplace that could present a new or different health and safety risk that the existing control measure may not effectively control
> a new relevant hazard or risk is identified
> the results of consultation indicate a review is necessary.

As a HSR you can only request the review if the above circumstances affects or may affect the health and safety of a member of your own work group.

The request should be made in the first instance by consulting the PCBU and discussing the issue with them. You should explain the reasons why you believe a control measure is or may not be effective in the circumstances.

The WHS Regulations include specific circumstances where HSRs can request the review of control measures for lead, asbestos and major hazard facilities.

GETTING ASSISTANCE TO FULFIL YOUR ROLE

As a HSR you have the power to request the assistance of any person in order to fulfil the requirements of your role. This may be a person with additional knowledge of WHS either within the workplace (for example, another HSR, WHS Advisor or Manager) or someone who does not work at the business or undertaking (for example, a health and safety consultant or a union official).

The aim of this power is to enable you to access independent advice if this is required to assist in carrying out your powers and functions. For example, you may require:

> advice on how to perform inspections at the workplace
> technical advice on dealing with a particular hazard or issue
> advice on how to negotiate on WHS issues.

A union official assisting you may also be a WHS entry permit holder. When providing assistance to a HSR under this provision, the person 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.

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

A PCBU can refuse access to a person assisting if they have reasonable grounds to do so. For example, if the person who attends the workplace has previously acted improperly at the workplace by intentionally and unreasonably delaying, hindering or obstructing any person, disrupting work or otherwise acting in an improper manner.
A PCBU may also refuse access to a person providing assistance if they have 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.

If a person providing assistance to you has not been allowed to access the workplace, you may ask 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. However, the inspector is not empowered to make a decision regarding the right of access.

Visitors, including a person assisting a HSR, must comply with any reasonable WHS instructions given by the PCBU.

**ACCESSING INFORMATION**

Under the WHS Act a PCBU must allow you, as a HSR, to access information in relation to your role. The information that you require access to may differ between workplaces, but broadly you may request access to:

- information relating to any incident or occupational disease, including any statistical records—for example, the injury register
- an asbestos register—which a person with management or control must ensure is readily available
- an asbestos management plan—which a person with management or control must ensure is readily available
- 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—dust levels, noise levels or chemical fumes
- reports on WHS matters—including reports prepared by consultants for the PCBU
- minutes of HSC meetings
- any documentation relating to the WHS management system of the organisation including plans, policies, procedures, fact sheets
- information provided by manufacturers for personal protective equipment (PPE)
- information received from manufacturers and suppliers about plant, equipment or substances at the workplace
- health surveillance information that does not contain personal or medical information about a worker.

You may choose to exercise your power to inquire into a work-related risk that could affect the health and safety of 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; this may include copies of the licenses.

It is important to note however that 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
- could not reasonably be expected to lead to the identification of the worker.

**POWERS AND FUNCTIONS OF A DEPUTY HSR**

It will not always be possible for you, as the elected HSR for a particular work group, to be present and available to represent the work group when needed—i.e. 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 effectively becomes the HSR and therefore has the powers and functions of that role.

However, a deputy HSR will not be able to direct a work group member to cease unsafe work and issue a PIN unless they have completed an approved HSR training course.

**PERSONAL LIABILITY**

As a HSR you are not personally liable for anything done or omitted in good faith when exercising a power or performing a function under the WHS Act—or in the reasonable belief that your actions were authorised under the WHS Act.
PROVISIONAL IMPROVEMENT NOTICES

PURPOSE

A provisional improvement notice (PIN) may be issued if you reasonably believe 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.

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

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

> provide information—verbally or in writing—to the person about the risk to health or safety to be fixed, identifying the alleged contravention or activities causing the contravention. At this point you do not need to specify which part of the WHS Act or Regulation the issue relates to (though you can do so if you wish)
> allow the person adequate time to identify how best to address the contravention, 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.

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 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
> A PCBU refusing to consult, where it is reasonably practicable to do so, on an apparent work health and safety risk.

A PIN is a notice that is issued by a HSR to a person requiring them to address a health or safety contravention in the workplace. The ‘person’ doesn’t necessarily have to be at the HSRs workplace, as they may be a designer, a manufacturer, or a supplier of plant, substances or structures. A PCBU may be a body corporate, an unincorporated association, a partnership, or an individual.

It is important that the PIN is issued to the duty holder who has responsibility for the contravention specified in the PIN.

Because you mainly deal with PCBUs as the primary duty holder, PINs are often issued to the corporation and physically given to the management representative that you have consulted with at the workplace.

A PIN may be issued requiring 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 an inspector has already issued or made a decision not to issue an improvement notice or prohibition notice in relation to the same matter.

Consultation can still be said to have occurred even if:

> the person does not respond to you in a reasonable time or at all
> there is no agreement between you 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 may be given to a person by:

> delivering it personally to the recipient or sending it by post, facsimile or electronic transmission to the person’s usual or last known home or business
> leaving it for the person at the person’s usual or last known home or business with a person who appears over 16 years old and who appears to work or reside there
> 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.
WHAT INFORMATION SHOULD BE INCLUDED?

A PIN must contain information about the contravention, but it also may contain directions about measures to be taken to address the risk. 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.

1. A PIN must identify the person who the HSR believes
   > is contravening a provision in the WHS Act
   > 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 in the WHS Act the HSR believes is being, or has been, contravened.

3. A PIN must contain a brief outline of how the provision in the WHS Act is being, or has been contravened.

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

5. A PIN may include
   > a description of the matters or activities that are causing the contravention or likely contravention
   > directions concerning the measures to be taken to remedy the contravention or likely contravention.

6. A PIN may include directions that refer to a Code of Practice and offer a choice of ways that the contravention can be remedied. Directions should be reasonable and appropriate to the circumstances of the case. Directions should be targeted towards addressing the particular contravention. Impractical directions are more likely to result in the person requesting a review of the PIN from Comcare. A recipient of a PIN should implement the directions in the PIN to the extent they are reasonable in the particular case. However, a recipient of a PIN does not have to follow the HSR direction stated in the PIN where they can implement other measures that result in the same, or better, safety outcome as would have been achieved if the recipient had followed HSR direction in the PIN.
If there is more than one contravention a separate PIN must be written for each one. As soon as 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, where work that is affected by the notice is being carried out. The location needs to be prominent, easily accessible and noticeable 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 displayed must not be intentionally removed, destroyed, damaged or defaced during the period that the notice is in force.

Even after a PIN has been issued, HSRs should continue to consult with recipients of PINS to resolve the issue.

What must be included in a PIN and what is optional.

Examples:

> You are the HSR and some members of your work group have commented that they have experienced an itching sensation on the underside of their forearms and hands, while others have complained of similar sensations on the face and neck as well. The problem seems to be intermittent but then more pronounced on specific days of the week. You have reported it to the person with control of the workplace e.g. supervisor/manager etc., however, the likely source of the discomfort remained unresolved until a few weeks ago. When working back late, you noticed the cleaners were using a spray to wipe down tables in the adjoining conference room. You later observed that the spray, decanted into a bottle but without markings, was also used in the kitchen area. You informed your building management group the next day and over the last few weeks have tried unsuccessfully to view the Safety Data Sheet (SDS) of the substance used. Today you witnessed a work group member with rash like symptoms and you are fairly certain the spray used by the cleaners is the cause. Since the problem appears to be escalating and building management continues to ignore your repeated requests to see the SDS of the spray used you issue a PIN to the PCBU, in this case, the manager of the building management team.

> You notice that work systems in relation to manual handling in your workplace constitute a risk to health and safety. The handling of heavy and awkward cases containing equipment for field work is causing back strains. You have made several formal requests to the person with control of the workplace to undertake a risk assessment and implement permanent control measures. Interim safety measures have been put in place but are inadequate (i.e administrative control that requires two people to lift and carry the cases). As consultation appears to be having little impact on reducing the risk to workers you issue a PIN.

What must be included in a PIN and what is optional.

Contravention of a specified provision of the WHS Act or Regulations

> The HSR must reasonably believe that the recipient of the PIN is contravening a provision of the WHS Act or Regulations; OR
> The HSR must reasonably believe that the recipient of the PIN has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated (see s90(1) of the WHS Act)

> The PIN must include brief reasons why the HSR believes the specified provision of the WHS Act or Regulations is being or has been contravened (see s92(c) of the WHS Act)

Deadline for remedy

> The PIN must state the date by which the recipient of the PIN is required to remedy the contravention or likely contravention identified (see s92(d) of the WHS Act)
> The nominated date must be at least eight days after the PIN is issued

The HSR may also (but does not have to) include directions under s93 of the WHS Act concerning the measures to be taken to remedy the contravention or likely contravention.
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 (for example, the wrong duty holder is identified)
> where the PIN requires a higher level of compliance than the legislation (for example, requiring more than is ‘reasonably practicable’)
> where the information in the PIN is very unclear (for example, insufficiently identifying the factual circumstances or the risk to be addressed).

If 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 (i.e. Wednesday 8 February 2011) is different to the date the contravention is required to be remedied in the PIN (i.e. Thursday 8 February 2011).

The more accurate you are with your information on the PIN, the less likely delays may 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.

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 temporarily 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 under section 101 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 the person it was issued to. 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 will either:

> confirm the PIN
> confirm the PIN with changes
> 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 the issuing HSR. 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, or a PCBU whose interests are affected by the decision may request that Comcare review the inspector’s 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.

For further information about PINs refer to the General information page contained in Appendix A.
CEASING UNSAFE WORK

WHAT DOES ‘CEASING UNSAFE WORK’ MEAN?

As a HSR you have the power to direct a worker who is in your work group to cease work if you have reasonable concern that to carry out the work would expose the worker to a serious health and safety risk, emanating from an immediate or imminent exposure to a hazard.

You can only direct that work cease once you have completed an approved HSR training course.

Before issuing a direction to cease work you must attempt to resolve the matter by consulting the PCBU that the workers are working for—unless the risk is so serious and immediate or imminent there is no time to consult before giving the direction. In these situations you must carry out the consultation as soon as practicable after giving the direction to cease work.

If the risk is not serious, immediate or imminent, you must consult with the PCBU as well as attempting to resolve the matter by following an agreed issue resolution procedure or, if there is no agreed procedure, the default procedure in the WHS Regulations.

The HSR, rather than the worker, must inform the PCBU of any direction given to cease unsafe work.

You, the PCBU or a worker involved with the issue can ask Comcare to appoint an inspector to assist in resolving the issue at the workplace where normal dispute resolution processes fail.
DUTIES OF A PERSON CONDUCTING A BUSINESS OR UNDERTAKING

GENERAL DUTIES

Part 5 of the WHS Act outlines the general obligations that PCBUs have to HSRs, they are to:

> consult, so far as is reasonably practicable, with HSRs on work health and safety matters at the workplace—refer to Code of Practices on WHS consultation, cooperation and coordination for more information on how to consult

> confer with a HSR, whenever reasonably requested by the representative, to ensure the health and safety of the work group workers

> 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

> allow a HSR access to information relating to the health and safety of the work group workers

> allow HSRs to attend interviews concerning work health and safety between one or more workers (with their consent) and an inspector or the person conducting the business or undertaking at the workplace (or their representative)—the HSR should be informed of any such interview and the HSR and worker may wish to consult before and/or after the interview

> provide their HSRs with resources, facilities and assistance that are reasonably necessary to enable the HSR to exercise their powers and perform their functions under the WHS Act

> allow a person assisting a HSR to have access to the workplace if it is necessary to enable the assistance to be provided

> permit the HSRs to accompany an inspector during an inspection of any part of the workplace where a member of the HSR’s work group works

> provide any assistance to the HSR required by the WHS Regulations

> allow the HSR as much time as is reasonably necessary to perform their powers and functions under the WHS Act

> pay HSRs performing their role the same amount they are entitled to receive when performing their normal duties.

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 will not have the power to issue PINs and direct unsafe work to cease in your work group.

If you make a request for HSR training then the PCBU must allow you to attend an approved training course in work health and safety within three months of your request. HSRs are entitled to attend an initial training course of five days then a one day refresher training each year, with the first refresher training commencing one year after the initial training.

The course of training for a HSR must:

> be approved by Comcare
> be chosen by you in consultation with the PCBU—consultation means that you must
  - inform the PCBU of the proposed course
  - give the PCBU the opportunity to present views about the suitability of the proposed course and suggest alternatives
  - take those views and suggested alternatives into account when deciding which course to attend.

If you or the PCBU cannot agree about which HSR training course to attend then either party may ask Comcare to appoint an inspector to decide the matter.

If you or a deputy HSR is re-elected in the same work group and has 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. You are however entitled to one day’s refresher training each year following the completion of initial training.

Although you are not entitled to receive further 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.

DISCRIMINATION

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

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

CAN A HSR BE DISQUALIFIED?

Yes—As a HSR you can be disqualified if you have exercised your power as a HSR for an improper purpose or misused information acquired as a HSR for a purpose unconnected with your HSR role. You can also be removed from the position if the majority of the work group elects to have you (the HSR) removed.
ISSUE RESOLUTION

WHO IS INVOLVED IN RESOLVING WHS ISSUES?

An ‘issue’ is any concern about health and safety at the workplace that remains unresolved after consultation with the affected workers, HSRs 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.

If the issue involves workers of a particular work group which you represent, then the PCBU is required to consult with you regarding resolution of the issue.

WHAT IS THE PROCESS FOR RESOLVING ISSUES?

If a WHS matter remains unresolved after discussion between the relevant parties then it becomes an issue subject to the PCBU’s internal issue resolution process.

The intention is that issues should be resolved as soon as possible to avoid further dispute or a recurrence of the issue or a similar issue. That is, an issue should be resolved ‘once and for all’ to the extent that is possible in the circumstances.

Each party’s representative is entitled to enter the workplace for the purpose of attending discussions with a view to resolving the issue.

The HSR decision flowchart at Appendix B may be useful in deciding what action to take when.

WHAT IF THE ISSUE IS UNRESOLVED?

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

The inspector’s role is to assist in resolving the issue. On attending a workplace, an inspector may exercise any of their compliance powers under the WHS Act, including providing advice, investigating contraventions or issuing an improvement notice.

A request to appoint an inspector does not prevent a worker or HSR from exercising their right to cease unsafe work, and does not prevent a HSR from issuing a PIN.

WHAT IF THERE ARE MULTIPLE HSRS IN A WORK GROUP AND THEY DO NOT AGREE?

Where agreement 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. During this process any HSR may call on assistance of any person including a union official to assist the work group to arrive at a position.
FURTHER INFORMATION

The following relevant Commonwealth legislation is available from Comlaw (www.comlaw.gov.au):

> Work Health and Safety Act 2011 (Cth)
> Work Health and Safety Regulations 2011 (Cth)

Further guidance and fact sheets are available from Safe Work Australia (https://www.safeworkaustralia.gov.au):

> Code of Practice: Work health and safety consultation, cooperation and coordination
> Publication: Worker representation and participation guide
> Fact sheet: Role of inspectors in compliance and enforcement

CONTACT DETAILS

You can contact Comcare on 1300 366 979 or via email WHS.help@comcare.gov.au

You can also access information on our website www.comcare.gov.au including requesting the assistance of a Comcare inspector, accessing a list of approved HSR training courses etc.
PROVISIONAL IMPROVEMENT NOTICE (PIN)—*Work Health and Safety Act* 2011 (Cth)

This PIN is issued under section 90 of the *Work Health and Safety Act* 2011 (Cth) (*the WHS Act*). This PIN requires the duty holder to whom it is issued to remedy a contravention, prevent a likely contravention from occurring or remedy the things or operations causing the contravention or likely contravention of the *WHS Act* or the *Work Health and Safety Regulations* 2011 (Cth) (*the WHS Regulations*). Depending on the particular contravention, the duty holder may be an individual natural person or an organisation such as a company or public authority (including a ‘person conducting a business or undertaking’ as defined in section 5). Section 97 requires that the person to whom a PIN is issued must, as soon as possible, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace at which work is being carried out that is affected by the PIN. There are a number of things that must be done or taken into account before a PIN is issued by a HSR—see reverse side of this form for relevant information.

1. **HEALTH AND SAFETY REPRESENTATIVE (HSR)**
   - First name:
   - Last name:
   - Contact number:
   - Name and location(s) of work group:

2. **PIN ISSUED TO**
   - Name of duty holder:
   - Address:
   - Postcode:

3. **PIN GIVEN TO (If the PIN is given to someone on behalf of the duty holder)**
   - First name:
   - Last name:
   - Position:

4. **DETAILS OF CONTRAVENTION**
   - Site location: ____________________________
   - I, ___________________________________________ reasonably believe on ______________________________ at ________________________________ that you ☐ are contravening a provision or ☐ have contravened a provision in circumstances that make it likely that the contravention will continue or be repeated of the:
     - ☐ *Work Health and Safety Act* 2011, section __________________
     - ☐ *Work Health and Safety Regulation* 2011, regulation __________________
   - Brief description of how the provision is being or has been contravened:

5. **COMPLIANCE**

<table>
<thead>
<tr>
<th>Date PIN issued</th>
<th>Date compliance with PIN required</th>
<th>Signature of HSR</th>
</tr>
</thead>
<tbody>
<tr>
<td>/ /20</td>
<td>/ /20</td>
<td></td>
</tr>
</tbody>
</table>

(WHS-046 January 2012)
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 90(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. HSRs should retain a copy of the completed PIN for their records.

13. 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.

14. 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).

15. 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).

16. 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 OHS.help@comcare.gov.au

website: www.comcare.gov.au

WHS-046 January 2012
HEALTH AND SAFETY ISSUE RESOLUTION PROCESS FOR HSRs

This flowchart has been designed to help HSRs with the resolution of serious workplace issues that cannot be addressed on the spot. It is designed to make it easier to determine what actions/consultation you must undertake and, if an issue is not resolved, whether you have undertaken all the relevant actions prior to issuing a PIN.

NOTE: Prepared by Comcare for HSRs who are appointed under the Work Health & Safety Act 2011 (Cth) and have undertaken five day accredited HSR training course. Without this training HSRs cannot issue a Provisional Improvement Notice (PIN) or instruct workers to cease work over a safety issue.

START

WHS issue identified

HSR consults with PCBU delegate (PWMC) and attempts resolution through the issue resolution process (reg 23)

The issue is not resolved or no time to consult because of imminent danger

The HSR may instruct workers to cease work where there is an immediate or imminent risk to health and safety (section 85)

START

WHS issue causing immediate or imminent exposure to a hazard

If time permits HSR consults with PCBU delegate (PWMC) and attempts resolution through the issue resolution process (reg 23)

The issue is not resolved and recorded (reg 23(6))

The HSR can issue a PIN as consultation could not resolve the issue (section 90)

START

HSR reasonably believes that a person is contravening or likely to continue to contravene WHS Act

PCBU: Person conducting a business or undertaking (s 5 WHS Act)
PWMC: Person with management or control of a workplace (s 20 WHS Act)

Flowchart provided by Stewart Nicolson HSR and adapted by Comcare.