



HEALTH AND SAFETY REPRESENTATIVES

This fact sheet provides a summary of the process, provisions and procedural requirements of electing a health and safety representative (HSR). Part 5 of the *Work Health and Safety Act 2011* (WHS Act) provides for representation of workers by HSRs.

The WHS Act allows for workers within a business or undertaking to be grouped into work groups for the purpose of electing a member of that group to represent them.

The number of work groups and the workers who are to form part of the work group are to be determined by negotiation and agreement between the person conducting the business or undertaking (PCBU) and the workers who are proposed to form the work group or their representatives.

HSRs may also represent workers across multiple businesses or undertakings by agreement between all relevant parties.

HOW IS AN HSR ELECTED?

Step one – Request for an HSR

Any worker or group of workers may ask a PCBU for whom they carry out work to facilitate elections for one or more HSRs.



Step two – A PCBU must commence negotiations for work groups within 14 days

HSRs represent work groups, therefore work groups must be determined before an HSR can be elected.

Within 14 days of receiving a request from a worker, the PCBU must commence negotiations with workers about the number and composition of work groups that should be formed. If a worker requests that their representative, for example a union official, be involved in these negotiations, they must be included in the negotiations.

The negotiations must take into account a number of matters including:

- > the number of workers within the business or undertaking
- > the number and grouping of workers who carry out the same or similar types of work
- > the diversity of workers and their work.

If negotiations fail, including that the PCBU has not commenced negotiations within 14 days of a request from a worker, anyone who is or would be a party to the negotiations may request that an inspector be called in to determine work groups.



Step three – Workers must be notified

As soon as reasonably practicable after the negotiations are completed, the PCBU must advise workers of the outcome of negotiations and of the work groups determined.



Step four – Election of HSRs

The workers within each work group determine the procedure by which an HSR will be elected, but must comply with any requirements set out in the regulations.

The PCBU must provide resources, facilities and assistance that are reasonably necessary to enable the election to be conducted.

The election may be conducted by the work group or, if a majority of members agree, with the assistance of another person or organisation such as a union.

Each work group member is entitled to one vote in the election. However, if the number of candidates is equal to the number of vacancies, each candidate is taken to be elected as an HSR for the work group without an election.

For more information about Election of HSRs see Attachment A.



Step five – Work group notified of election outcome

As soon as reasonably practicable after the election, the person who conducted the election must advise the members of the work group and the PCBU of the results.

WHO CAN BE AN HSR?

Any worker who is a member of a work group is eligible to be elected as an HSR unless they have been disqualified from being an HSR.

HOW LONG IS THE APPOINTMENT OF AN HSR?

An HSR will hold office for three years unless during that period they:

- > resign
- > cease to be a worker in the work group they represent
- > are disqualified as an HSR, or
- > are removed from the position by the majority decision of the work group.

HOW CAN AN HSR BE DISQUALIFIED?

A court or tribunal may disqualify an HSR if satisfied that the HSR exercised a power or performed a function for an improper purpose, or used or disclosed any information acquired by them for an improper purpose.

The regulator or a person adversely affected by the alleged behaviour may make an application for disqualification of an HSR.

CAN AN HSR BE PERSONALLY RESPONSIBLE FOR MISTAKES?

HSRs are not personally liable for anything done or omitted to be done in good faith when exercising a power or performing a function under the WHS Act or for anything done that they reasonably believed was authorised under the WHS Act.

NO OBLIGATION TO PERFORM THE ROLE

There is no legal duty or obligation for an HSR to perform any of the functions, or exercise any of the powers, of an HSR under the WHS Act.

CAN AN HSR REPRESENT WORKERS OUTSIDE THEIR WORK GROUP?

Generally, the powers and functions of an HSR are limited to the work group that they are elected to represent. However, they may represent other work groups within the same business or undertaking if an HSR from that other work group is unavailable and:

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

WHAT ARE THE FUNCTIONS OF AN HSR?

The primary power and function of HSRs is to represent workers in their work group in relation to health and safety matters at work.

In relation to health and safety matters, HSRs may also:

- > monitor the measures taken by the PCBU to comply with the WHS Act in relation to their work group members
- > investigate complaints from work group members about health and safety issues
- > inquire into anything arising from the conduct of the business or undertaking that appears to be a risk to the health or safety of work group members
- > inspect the workplace or any part of the workplace at which work group members work, after giving reasonable notice to the PCBU. An HSR can inspect the workplace without giving notice, in the event of an incident or a situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard
- > accompany an inspector during an inspection of the workplace or part of the workplace at which a work group member works, and
- > after having completed the required training, direct a work group member to cease unsafe work or issue a Provisional Improvement Notice (PIN).

However, before directing a worker to cease work the HSR must consult with the PCBU, unless the risk is so serious and immediate that it is not reasonable to consult with the PCBU before giving the direction and attempting to resolve the issue through consultation. Likewise, an HSR must not issue a PIN before consulting with the person to whom it is issued.

Under the WHS Act, the PCBU has corresponding obligations to ensure that an HSR can exercise their powers and perform their functions.

IS AN HSR A MEMBER OF A HEALTH AND SAFETY COMMITTEE?

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 up to the HSRs (and not the PCBU) to determine who will fill the available positions. Alternatively, as an HSR you do not have to participate but you may find it beneficial to do so.

CAN AN HSR HAVE SOMEBODY ASSIST THEM?

Whenever necessary, an HSR may request any person to assist the HSR in their functions. This may be a person with additional knowledge of work health and safety, either within the workplace (for example, another HSR) or someone who does not work at the business or undertaking (for example, a health and safety consultant or union official). However, a PCBU is not required to pay for any external assistants to help the HSR.

A PCBU is required to allow access to the workplace to the HSR's assistant unless that assistant has had a work health and safety entry permit suspended or revoked or there are other reasonable grounds for refusing entry.

IS AN HSR PAID FOR CARRYING OUT THEIR ROLE?

HSRs are entitled to spend as much paid work time as is reasonably necessary to exercise their powers and perform their functions under the WHS Act.

CAN AN HSR ATTEND TRAINING?

If requested by an HSR, the PCBU must allow the representative to attend training that is:

- > approved by the regulator
- > which the HSR is entitled, under the regulations, to attend, and
- > chosen by the HSR.

Within three months of the HSR making the request, the PCBU must allow the HSR time off work to attend the course.

The PCBU must pay the course fees and other reasonable costs associated with the HSR's attendance at that training. The PCBU must also pay the HSR what they would be entitled to if they performed their normal duties during that period.

If the HSR and PCBU cannot agree on the timing of attendance of the approved course or payment of course fees and any other reasonable attendance costs within three months of the HSR's request, either party may request that an inspector be called to determine the matter.

WHAT IS THE ROLE OF A DEPUTY HSR?

Deputy HSRs may also be elected if that is the outcome of negotiations. Deputy HSRs are elected in the same way as HSRs and there may be more than one deputy HSR for a work group.

Provisions of the WHS Act that provide for the term of office, disqualification and immunity of HSRs will also apply to deputy HSRs and a deputy HSR is entitled to the same training as an HSR.

However, a deputy HSR may only represent the workers when the elected HSR is unavailable.

DISCLAIMER

The information in this fact sheet is provided by Comcare for the purpose of providing Comcare-approved training providers, registered training facilitators and participants with relevant information on the role of the HSR in the workplace under the WHS Act.

Comcare recommends that users exercise their own skill and care with respect to use of information in this fact sheet. This fact sheet is not a substitute for independent professional advice and users should obtain appropriate professional advice relevant to their particular needs and circumstances.

ACKNOWLEDGEMENT

This fact sheet has been updated based on information in the Safe Work Australia *Worker representation and Participation Guide* (April 2022).

ATTACHMENT A – ADDITIONAL INFORMATION FOR STEP FOUR – ELECTION OF HSRs

What do I need to know?

Every worker is eligible to be elected as a health and safety representative (HSR) for their work group and every member of the work group is entitled to vote. This includes contractors and any other worker in that work group. The members of the work group determine how the election is to be conducted.

Options for the election process range from comparatively informal processes such as meetings of the work group members at which a vote is taken, to formal processes using returning officers and ballot papers. Ballot papers can be either paper or electronic.

If the majority of workers in a work group agree, the election may be conducted with the assistance of a union or other organisation or person.

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

Where the number of candidates for the HSR position equals the number of vacancies, an election need not be held – each candidate will be taken to be elected. More than one HSR can be elected to a work group depending on the number of HSR positions required for that work group and the same procedures are used to elect a deputy HSR. A nominee must be eligible and not currently disqualified from being an HSR. An HSR/deputy HSR is elected for a term of three years.

While the members of the work group determine how an election is conducted, the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2011* prescribe minimum requirements. The person conducting the business or undertaking (PCBU) cannot simply appoint an HSR and must:

- > provide any resources, facilities and assistance that may be necessary to conduct the elections
- > not unreasonably delay the election
- > with multiple PCBUs, arrange alternative election arrangements in consultation with all workers
- > inform all workers in the work group and all relevant persons conducting a business or undertaking of the outcome of the election
- > keep a current list of all HSRs in the workplace, so that the workers are aware of their representative
- > provide a current list of the organisation's HSRs to Comcare (or relevant regulator).

What do I need to do?

The type of election process and means of communication chosen may be influenced by a wide range of factors such as:

- > whether or not a process has been prescribed in the organisation's policies, procedures or work health and safety management system (WHSMS)
- > the number of work groups in the organisation
- > the geographic location of work group members
- > type of work, for example office-based or hybrid work arrangements
- > whether or not all staff have ready access to email
- > preference expressed by members of the work group (where the process is not prescribed in policies, procedures or the WHSMS)
- > the likelihood of receiving more than one nomination.

More often a formal election process using an electronic ballot is preferred where work group members might receive all notices and voting access via email. Alternatively the PCBU may seek to outsource the election process to organisations capable of undertaking the role.

Key elements of formal election processes using ballots

Whether the PCBU undertakes the ballot directly or indirectly they will need to consider:

- > the appointment and responsibilities of a returning officer
- > the resources required to conduct the ballot; infrastructure, information, communication and timeframes
- > notifying the work group of the poll and the call for nominations
- > allowing sufficient time for responses
- > determining eligibility of nominees and processes to receive nominations
- > facilitate the means by which nominees may communicate their intention and credentials for the position to the work group
- > establish a process to deal with nomination withdrawals
- > procedures for the conduct of the ballot, counting, verification and the determination of positions
- > procedures for the resolving of disputed ballots
- > process for the communication of outcomes to all relevant parties
 - a PCBU must inform all workers in the work group and all relevant persons conducting a business or undertaking of the outcome of the election – the PCBU should not unreasonably delay this advice to parties
- > access/display/provision of the HSR List
 - the PCBU must ensure that a list of its current HSRs and deputy HSRs is prepared and kept up-to-date and 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)
 - a PCBU must provide to Comcare an up-to-date list of its HSRs and any deputy HSRs as soon as practicable after it is prepared.