

HEALTH AND SAFETY REPRESENTATIVE TRAINING COURSE

5-day Course

Participant Handbook
Version 4.3 November 2024



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Course Overview

Welcome as a participant in the five day approved training course for *Health and Safety Representatives (HSRs)* under Queensland Work Health and Safety (WHS) legislation. The course meets the requirements of the *Work Health and Safety Regulation 2011* (WHS Regulation) for HSRs elected under the *Work Health and Safety 2011* (WHS Act).

The WHS Act commenced on 1 January 2012. The WHS Act and the WHS Regulation provide a national WHS legal framework from which the states, territories and the Commonwealth are required to implement their own WHS legislation.

Course Structure

The course commences on **Day 1** with an overview of the WHS legislative framework; duties of various parties and key terminology. The role of Workplace Health and Safety Queensland (WHSQ) and penalties for non-compliance is also discussed.

Day 2 covers the requirements for consultation in the workplace on work health and safety issues and the mechanisms available. The role of Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs) and other available mechanisms is discussed as well as entitlements and protections.

Day 3 of the course examines the consultative approach that can be used in resolving workplace health and safety issues through negotiation and conflict resolution and the skills HSRs can utilise to achieve successful outcomes. This day's training also aims to provide participants with the skills and knowledge to identify hazards and ways in which they can be eliminated or minimised.

The learning outcomes of Day 3 are reinforced with a practical exercise on **Day 4**. Incident notification is discussed and activities demonstrating how HSRs can contribute to incident investigation are also undertaken.

On **Day 5**, the final day of the course, participants are provided with the information and skills HSRs require regarding the issuing of Provisional Improvement Notices (PINs), the direction of unsafe work to cease where negotiation and issue resolution has been unsuccessful or immediate action is required, and understanding workplace culture and a session on practical consultation.

The course concludes with a summary and review of the course learning outcomes and discussion on sources of information that can assist HSRs in the continuous learning process.

Course Objectives

This course will provide participants with information and skills that will assist HSRs to carry out their role and functions under the WHS legislation including:

- an understanding of the new Work Health and Safety (WHS) legislation
- an understanding of how it applies to their role as elected HSRs and deputy HSRs
- the knowledge and skills necessary to use their additional powers under the WHS legislation to issue PINs and direct that unsafe work cease.

The course is intended to assist HSRs understand their roles and functions as to how the WHS legislation will influence health and safety outcomes in their workplace. The course aims to provide participants with the knowledge and skills necessary to fulfil their role as HSRs.

From the 1st of July 2018, all elected HSRs are required under the WHS Act to attend this training.

Course Target Audience

The target audience for delivery of this course includes all elected HSRs under the WHS Act to gain an understanding of the management of work health and safety under the WHS legislation and their role and entitlements as HSRs.

Course Aims

The aims of this course are to provide HSRs with information and skills relating to:

- WHS Act legislative framework
- The role and functions of WHSQ and their interaction with HSRs
- Duties and responsibilities of (persons conducting a business or undertaking) PCBU, officers, workers and other parties under the legislation
- The nature of the consultation process with workers as required of the primary PCBU by the Act
- The purpose and formation of a workgroup (or workgroups) within the workplace
- Election process for HSRs / Deputy HSRs and disqualification provisions
- Health and Safety Committees (HSCs)
- The entitlements, rights and protections of an elected HSR/Deputy HSR
- Using negotiation, communication and problem solving skills and strategies as a HSR to represent a work group and to resolve work health and safety issues

- Risk management and the use of risk controls, including the duties and responsibilities of various PCBUs under the legislation
- How HSRs can use their functions and powers to contribute to risk management activities in the workplace
- PINs and the right to cease, or direct the cessation of, unsafe work

Pre-requisites and Co-requisites

Persons eligible for the WHSQ HSR Training are HSRs or deputy HSRs elected under the WHS Act.

Recognition of Prior Learning (RPL)

There are no provisions for RPL within the context of this approved training course.

Participants' Needs and Course Numbers

Participants' needs should be established prior to the commencements of training. Facilitators should consider the literacy and numeracy or other learning difficulties of participants, so that training may be customised appropriately. Training must be provided face to face in a learning environment and in a manner that is accessible and suitable to all training participants. If you have any specific needs that will impact on your learning please ensure you inform the Facilitator.

Learning Aims, Outcomes and Assessment Criteria

The learning aims, outcomes and assessment criteria for this course are specified at the commencement of each day.

Course Assessment

This course is non-competency based and has **no formal assessment**. Informal assessment of participant attendance and learner engagement only, has been chosen as the most appropriate option for this course. The facilitator will act as the assessor in this process and should be aware of expected learner applications of all participants as detailed in the learning outcomes.

Assessment Decision

Facilitators will make a decision about the attendance and engagement of participants relevant to the learning outcomes / expected learner applications to determine whether an attendance certificate should be issued to the participant.

Course timing

The normal delivery time allocated for this course is **5 days**. However, given the participatory nature of the course the facilitator may need to allow additional time. Where large groups are to be provided with the training, course activities may need to be modified or re-scheduled to suit but they must retain their original intention.

Materials Required

The participants should have at least the following resources available to them:

- Each participant to be provided with a copy of the Participant Notes and a full copy of the WHS Act
- 4 Copies of a PIN (Provisional Improvement notices)
- As classroom resources:
 - Interpretive Guidelines for:
 - (1) 'the health and safety duty of an officer under section 27'
 - (2) The meaning of reasonably practicable
 - Relevant extracts or access to the *Work Health and Safety Regulation 2011* and
 - *Worker Representation and Participation Guide* available from www.safeworkaustralia.gov.au
 - *A number of Copies or access to Code of Practice: Work Health and safety consultation, cooperation and co-ordination 2011*
 - Copies of or access to relevant approved codes of practice relevant to their industry
 - Copies of or access to the National Compliance and Enforcement Policy

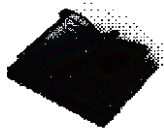
Symbols used throughout this participant's guide



Important note



Activity



Written activity



Group Discussion/brainstorm



Remember



Taken directly from the legislation



Indicative time



Presentation

Day 1

Interpreting the WHS legislative framework and identifying key parties and their legislative obligations and duties

Course Introduction

Welcome to the WHSQ five-day course in work health and safety which has been approved for HSRs under the WHS legislation in Queensland.

As a HSR or deputy HSR for your workgroup, you are entitled under the WHS legislation to receive training which includes a five day initial training course and then refresher training to be undertaken every 12 months (as of 29th July).

This course aims to provide you with important knowledge and skills that will assist you in your representative role.

The WHS Act and WHS Regulation provide a national WHS framework from which the states, territories and the Commonwealth harmonise the WHS legislation in Australia. The WHS legislation commenced in Queensland on 1 January 2012.

Course Objectives

The course will provide relevant information for HSRs relating to:

- interpreting the work health and safety legislative framework and its relationship to the HSR;
- identifying key parties and their legislative obligations and duties
- establishing representation in the workplace
- participating in consultation and issue resolution
- representing their work group members in the WHS risk management process undertaken by the PCBU
- issuing a Provisional Improvement Notice (PIN) and directing the cessation of work.

HSRs' will increase their understanding of how the WHS legislation will influence health and safety outcomes in their workplace, including the principles that apply to health and safety duties. Upon completion of the course, participants will enhance the knowledge and skills necessary to continue to apply the principles of workplace consultation on health and safety matters. Completion of this approved course will meet the requirements for HSRs to access the additional powers provided to trained HSRs under the WHS Act.

Course Aims

Learning outcomes of this five-day course are that participants will have the knowledge and skills to:

- Understand the context of WHS legislation and practice
- Understand the objects and principles of the WHS Act
- Identify various elements of the legislative framework
- Understand the role and functions of WHSQ and their interaction with HSRs
- Understand the safe work approach to work health and safety issues
- Summarise the duties and responsibilities of persons conducting a business or undertaking (PCBUs) under the legislation
- Identify the duties and responsibilities of officers, workers and other parties
- Identify and discuss the range of enforcement options
- Outline the purpose and formation of a workgroup (or workgroups) within the workplace
- Understand the election process for HSRs / Deputy HSRs and disqualification provisions
- Understand the function of a Health and Safety Committee (HSC)
- Understand and explain the entitlements, rights and protections of an elected HSR/Deputy HSR
- Describe the nature of the consultation process with workers as required of the primary PCBU by the Act
- Identify a range of strategies that support the consultation process
- Use negotiation skills and strategies to resolve work health and safety issues

- Represent workers on health and safety issues in a range of circumstances.
- Discuss the benefits of effective representation and constructive consultation between PCBU, other duty holders and workers
- Understand the duties and responsibilities of various PCBUs under the legislation to manage risks to the health and safety of workers and other persons at the workplace
- Understand how HSRs can use their functions and powers to contribute to risk management activities in the workplace
- Understand basic management concepts
- Identify the PCBU's obligations in relation to incident notification
- Identify the type of assistance or support Inspectors and entry permit holders can provide a HSR
- Provide an overview of Provisional Improvement Notices (PINs)
- Understand the features and contents of a PIN
- Identify the range of actions arising once a PIN is issued and identify who would take these actions
- Provide an overview of the right to cease, or direct the cessation of, unsafe work
- Understand how a workplace safety culture can influence and impact an organisation's safety performance
- Understand and identify the key concepts of the 'cooperation model' of negotiation communication
- Use practical consultation, negotiation skills and strategies to resolve work health and safety issues

Course Outline

Introduction

Day 1: Interpreting the WHS legislative framework and identifying key parties and their legislative obligations and duties

Introduction to work health and safety

Evolution of work health and safety and the WHS legislative framework

New terminology, objectives and implications for consultation

Key parties with WHS legislative duties and functions

Role and function of WHSQ and offences and penalties under the WHS Act

Day 2: Establishing representation in the workplace under the WHS Act

Consultation, representation and participation arrangements under the WHS Act;

Election and role of HSRs and deputy HSRs in the workplace

Obligations of a PCBU to HSRs and protections for HSRs from discrimination

Other consultation mechanisms including health and safety committees

Day 3: Effective consultation: Participation in problem solving steps and issue resolution and monitoring risk controls as a HSR

Strategies and skills for HSRs to support effective consultation

Representing workers as a HSR – problem solving steps and issue & DISPUTE resolution

Monitoring PCBUs management of work health and safety risks

Day 4: Monitoring PCBUs management of work health and safety: workplace inspections, recording findings and ‘notifiable incidents’

Workplace inspections and recording findings

Obligations in relation to ‘notifiable incidents’ and resources available to assist HSRs

Day 5: Issuing a Provisional Improvement Notice and directing the cessation of work, practical consultation and negotiation

Understanding workplace culture

Practical consultation

Issuing a Provisional Improvement Notice (PIN)

Direction to cease unsafe work

Course review and evaluation

Day 1

Interpreting the work health and safety legislative framework and identifying key parties and their legislative obligations and duties

Learning aim

The aim of Day 1 is to explain the WHS legislative framework and how it has evolved; duties of various parties, key terminology and penalties for non-compliance.

Learning outcomes

After completing this day of training participants should be able to:

1. Understand the context of WHS legislation and practice
2. Understand the objects and principles of the WHS Act
3. Identify various elements of the legislative framework
4. Understand the role and functions of WHSQ and their interaction with HSRs
5. Understand the safe work approach to work health and safety issues
6. Summarise the duties and responsibilities of PCBU's under the legislation
7. Identify the duties and responsibilities of officers, workers and other parties
8. Identify and discuss the range of enforcement options

Assessment Method

Successful completion of face-to-face learning activities and activities as set out in this session.

Session Duration

The nominal duration of training is 5 days - 9am to 4 pm with breaks.

Learning Outcomes and Expected Learner Applications – Day 1

Learning outcome	Expected Learner Applications
<p>After completing today's training, participants should be able to:</p> <ol style="list-style-type: none"> 1. Understand the context of WHS legislation and practice 2. Understand the objects and principles of the WHS Act 3. Identify various elements of the legislative framework 4. Understand the role and functions of WHSQ and their interaction with HSRs 5. Understand the safe work approach to work health and safety issues 6. Summarise the duties and responsibilities of PCBU's under the legislation 7. Identify the duties and responsibilities of officers, workers and other parties 8. Identify and discuss the range of enforcement options 	<ul style="list-style-type: none"> • Discuss key concepts in the evolution of OHS within Australia including: the careless worker theory; the influence of the Robens Report (UK), relevant (jurisdictional based) legislative reviews and WHS Harmonisation within Australia • Identify some key impacts (social and economic) arising from workplace injury and illness • Identify the key objects and principle/s of the WHS Act and the significance of these to WHS • Explain key concepts underpinning the principles that apply to all duties persons have under the Act • Identify and use key terms contained within the Act, relating to their role and workplace • Draw links between the role of the HSR and the WHS Act objectives • Identify WHS legislation (Act and Regulations); codes of practice, relevant industry / Australian standards, regulator specific guidance materials / interpretive guidelines and explain their legal status, purpose and relation to each other • Explain using the WHS legislation (Act and Regulations) and approved codes and guidance material key sections of relevance for their industry sector / workplace • Provide examples of regulator functions and powers and how these are used to facilitate compliance with WHS legislation • Explain how to access the support services and resources for HSRs provided by the regulator • Outline the role of an inspector and how they can assist HSRs • Using workplace scenario/s, explain why a 'safe work' approach should be taken by a PCBU, rather than focusing on a 'safe person' approach when resolving work health and safety issues. • Identify the range of factors that would contribute to making a workplace a safe environment • Explain and use the term PCBU in the context of their role • Discuss what is meant by 'reasonably practicable' • Compare the duties and responsibilities of an 'officer' and those of the 'PCBU', as these relate to the workplace. • Explain what is meant by 'due diligence' in connection with the duties of an officer

Learning outcome	Expected Learner Applications
	<ul style="list-style-type: none"> • Explain the duties of workers in relation to health and safety at the workplace • Identify officers, workers and other parties within the work group / workplace who would have a duty, as defined under the WHS Act • Describe the range of enforcement options available to the regulator for key duty holders for non-compliance within the WHS legislation • Identify the relevant offences and penalties under the framework

Day 1 - Session 1

Work health and safety legislation framework and duties

Learning aim

This session introducing work health and safety (WHS), its value and the barriers to achieving a safe workplace.

Learning Outcomes

After completing this, session participants should be able to:

1. Understand the context of WHS legislation and practice

Session Duration

The nominal duration of this session is 1 hour.

Learning Outcomes and Expected Learner Applications - Day 1 Session 1

Learning outcome	Expected Learner Applications
<p>After completing today's training, participants should be able to:</p> <ol style="list-style-type: none">1. Understand the context of WHS legislation and practice	<ul style="list-style-type: none">• Identify some key impacts (social and economic) arising from workplace injury and illness• Identify the key objects and principle/s of the WHS Act and the significance of these to WHS• Explain how to access the support services and resources for HSRs provided by the WHSQ.• Identify the range of factors that would contribute to making a workplace a safe environment

Day 1 - Session 1

What do you know about workplace health and safety?



Introduction

In order to understand the need for an integrated and systematic management of health and safety we need to first understand what health and safety is and acknowledge barriers that may exist.

How would you describe an unsafe and unhealthy workplace?

How do these issues affect people in the workplace?

What barriers might exist to having a safe and healthy workplace?

Let's discuss some issues associated with an unsafe workplace:

An unsafe workplace creates an unsafe culture. Managers and supervisors who see health and safety problems as insignificant and not core businesses often blame others instead of managing the work health and safety problems.

Under these conditions, managers often do not spend the time, effort or expense on work health and safety and as a result, employees adapt to unacceptable work health and safety levels.

Workers may cope with initial conflict between expectations and practice by gradually adapting to unsafe workplace practices. These unsafe practices are often communicated to new workers as standard procedure or the 'norm'.

An unsafe workplace may be the result of inadequate consultation between persons conducting a business or undertaking (PCBUs and includes employers) and workers. This is often expressed through low morale, absenteeism, high staff turnover and poor productivity.

The problem with an unsafe workplace is the increased risk of accidents or incidents occurring. The direct costs of work-related injuries and illness are high, not to mention the hidden costs of re-training, loss of skills and experience, hiring replacement staff, absenteeism, lowered morale and lowered productivity.

The HSR and deputy HSR have a pivotal role in information gathering through consultation, observations and research on what the work health and safety issues are for their workgroup and how these might be resolved.

HSRs can work with managers, supervisors and, where they are part of the consultation arrangements, other HSRs and/or the Health and Safety Committee (HSC).

The skills and knowledge gained in this course will help HSRs **identify and remove barriers** and **improve the work safety culture**, for example, by:

- Understanding the needs and safety concerns of individuals in their workgroups
- Working with their workgroups to discuss work health and safety matters and potential solutions
- Observing and understanding how workers of their workgroup undertake work activities
- Working with managers and supervisors to identify and help resolve WHS issues
- Working with the HSC to improve the safety culture.

Sources of data on workplace injuries, illness and incidents relevant to the work group's occupational classification and/or industry sector.

Assistance and support

When performing the HSR role, you may require assistance or more information. There are many sources of information and assistance available which may be of use when representing your work group.

Some of these are:

Within your workplace there is a variety of source of information that can be obtained through discussion or review of documented information – your management team and corporate area may be a valuable source of information about your organisation and relevant hazards.

Information that they may have could range from past incident/injury data, environmental and health monitoring data, information on risks related to your industry and information on any plant, chemicals and hazards in the workplace.

There is a duty under the WHS Act for PCBUs to provide a HSR with certain information relating to health and safety upon request (WHS Act s70) and we will go into this in more detail later in the course.

Unions – also represent worker interests and often have officials who are experienced in WHS and may be able to provide assistance. Unions are also likely to have access to various documents, standards and guidance materials relating to WHS in the relevant industry. The union may be able to assist in your discussions with your PCBU and may also be able to help you contact a WHS entry permit holder if you wish to request their assistance.

Industry bodies – Industry bodies may have valuable information relating to your particular industry. It may be useful to contact your industry body to find out how you may address a hazard which is common or particular to your industry.

Manufacturers and suppliers – these organisations may be able to provide relevant information on particular products within the workplace, or possible safer alternatives to the products you currently have.

Regulators and WHS agencies – e.g. Workplace Health and Safety Queensland.



The following work health and safety regulators and agencies in Australia are a source of data in workplace injuries, illness and incidents.

Workplace Health and Safety Queensland

Department of Natural Resources, Mines and Energy (DNRM – mines regulator in Queensland)

Safework SA

Comcare - the Australian Commonwealth (i.e. Federal) Government agency responsible for workplace safety, rehabilitation and compensation

WorkCover NSW

WorkSafe ACT

WorkSafe Victoria

NT Worksafe

WorkSafe WA

Worksafe Tasmania

Safe Work Australia - is an Australian Government statutory agency established in 2009, with the primary responsibility of improving work health and safety and workers' compensation arrangements across Australia. The agency is jointly funded by the Commonwealth, state and territory governments facilitated through an intergovernmental agreement signed in July 2008.

Legislative and socio-economic links between work health and safety, workers compensation and the rehabilitation of injured workers

The workers' compensation rate of work-related injury, illness and even death are under-reported. The workplace fatality figures for Australia in 2022:

31 Fatalities (QLD)

90, 424 injuries

Approx. \$1,429 million in workers' compensation claims

<https://www.worksafe.qld.gov.au/resources/statistics/reports/workers-compensation-regulator-statistics-reports>

The cost of workplace injuries is obviously not just financial. Organisations and their employees need to consider the extensive impacts associated with:

Human factors

Social and community

Economic

Organisational impacts.

Human

Workplace incidents can have catastrophic effects on the quality of the life of workers. They can also have a devastating effect on their family and friends. When workers are incapacitated, they will generally be given some financial compensation, but their life has been changed forever. Even if an injury is only temporary, the loss of confidence a worker may sustain can permanently affect their ability to work happily and efficiently.

The mental health of a worker after an incident can be seriously affected. Depression after an incident is common, especially where there are lasting health effects. Relationships can be seriously affected, as living with a person who has been permanently injured and is suffering depression is very stressful. In some cases, Post Traumatic Stress Disorder (the term for a severe and ongoing emotional reaction to trauma) is suffered by injured workers. It can also affect colleagues who witnessed or were involved in the accident.

Financial compensation often does not completely compensate for a worker's loss of ability to earn an income for the remainder of their working life. Continued medical costs and home care costs can quickly consume an insurance payout, leaving the injured worker to spend the remainder of their life on a disability pension.

Social

A permanently incapacitated worker has to be supported by the community and in many cases is no longer able to contribute to the community. A worker who has been injured needs a great deal of support. Occupational rehabilitation services are used to rehabilitate workers to assist them in their return to work. Prior to a worker returning to work, the occupational rehabilitation service may need to visit the workplace to ensure the worker will be able to cope physically. Sometimes special ergonomic furniture is required to allow the worker to be comfortable in the work environment. Some injuries cause permanent, chronic pain which means the injured worker will need pain management and counselling services.

Economic

WHSQ estimates that the total economic cost of all work-related injuries and fatalities in Queensland was \$6.2 billion.

Organisational

When a worker is injured and cannot work, the organisation must find a replacement worker and train them in the job. This costs the organisation time as well as money but has a further cost in terms of lost productivity whilst the new worker is trained. Other potential costs to the company include damaged equipment, increased insurance premiums, fines from and damage to the reputation of the company. As well as the obvious financial costs, the organisation may suffer because the injured worker's colleagues are affected, having lost confidence due to concerns over their own safety.

How do we change an unsafe culture to a safe one and what barriers may exist to this change?

Australian Work Health and Safety Strategy 2023-2033

Safe Work Australia have developed the *Australian Work Health and Safety Strategy 2023-2033 (the Strategy)* to continue to drive WHS improvements in Australia in the long term. The Strategy promotes a collaborative approach to WHS between the Commonwealth, state and territory governments, industry and unions and other organisations and has as its vision the goal of achieving healthy, safe and productive working lives. The Strategy builds on the previous *National Occupational Health and Safety Strategy 2002-2012* (National OHS Strategy). <https://www.safeworkaustralia.gov.au/doc/australian-work-health-and-safety-strategy-2023-2033>

The Strategy reflects the principles that:

- All workers have the right to a healthy and safe working environment
- Well-designed, healthy and safe work leads to more productive working lives

The Strategy sets out four outcomes and seven action areas to help achieve the vision by 2022. The outcomes are:

- a reduced incidence of work-related death, injury and illness - *achieved by*
- reduced exposure to hazards and risks - *using*
- improved hazard controls - *supported by*
- an improved national work health and safety infrastructure

The five action areas in which actions are required to support the outcomes are:

- information and awareness
- national coordination
- data and intelligence gathering
- health and safety leadership
- compliance and enforcement

The Strategy sets five targets to measure the progress towards achieving the vision:

- a reduction of at least 30 per cent in the number of worker fatalities due to injury
- a reduction of at least 20 per cent in the incidence rate of claims resulting in one or more weeks off work
- the reduction of the frequency rate of claims resulting in permanent impairment by 15%
- the reduction of the overall incidence of work-related injury or illness among workers to below 3.5%; and
- the reduction of the frequency rate of work related respiratory disease by 20%

The full Strategy can be downloaded from the Safe Work Australia website

www.safeworkaustralia.gov.au

The impact of a safe workplace culture on reducing/minimising the socio-economic outcomes of workplace injuries and illness

In order to lower the overall costs (human costs as well as financial costs), rates of fatality and injury we must ensure that all workplaces are safe workplaces.

The characteristics of a safe and healthy workplace should be the reverse of those we have listed previously in the notebooks.

Breaking down the barriers we identified is vital to the successful management of work health and safety and PCBUs, workers and others such as visitors have a role to play.

Management commitment to work health and safety is the first step.

Due to changing attitudes and the increasing cost of workplace accidents, PCBUs have begun to consider WHS as part of their core function.

This has resulted in a more integrated, systematic approach to work health and safety. The effective management of WHS is dependent on the commitment, ability and motivation of PCBUs, their management and workers.

Preferred approach for resolving workplace health and safety issues

The preferred approach for resolving workplace health and safety issues consists of a two way process between management and workers which includes:

- Demonstrable high level of management commitment
- Effective consultation processes occurring between management and workers
- Application of knowledge gained
- Adequate training and effective supervision
- Allocating adequate resources to the implementation of health and safety in the workplace.

Day 1 - Session 2

Evolution of work health and safety in the workplace and the WHS legislative framework

Learning aim

This topic explains the requirements for effective management of health and safety and its evolution in the workplace and the WHS framework.

Learning Outcomes

After completing this, session participants should be able to:

1. Understand the context of WHS legislation and practice
2. Understand the objects and principles of the WHS Act
3. Identify various elements of the legislative framework
4. Understand the safe work approach to work health and safety issues

Session Duration

The nominal duration of this session is 1 hour 35 minutes.

Learning Outcomes and Expected Learner Applications - Day 1 Session 2

Learning outcome	Expected Learner Applications
<p>After completing today's training, participants should be able to:</p> <ol style="list-style-type: none"> 1. Understand the context of WHS legislation and practice 2. Understand the objects and principles of the WHS Act 3. Identify various elements of the legislative framework 4. Understand the safe work approach to work health and safety issues 	<ul style="list-style-type: none"> • Discuss key concepts in the evolution of OHS within Australia including: the careless worker theory; the influence of the Robens Report (UK), relevant (jurisdictional based) legislative reviews and WHS Harmonisation within Australia • Identify the key objects and principle/s of the WHS Act and the significance of these to WHS • Explain key concepts underpinning the principles that apply to all duties persons have under the Act • Identify WHS legislation (Act and Regulations); codes of practice, relevant industry / Australian standards, regulator specific guidance materials / interpretive guidelines and explain their legal status, purpose and relation to each other • Explain using the WHS legislation (Act and Regulations) and approved codes and guidance material key sections of relevance for their industry sector / workplace • Using workplace scenario/s, explain why a 'safe work' approach should be taken by a PCBU, rather than focusing on a 'safe person' approach when resolving work health and safety issues. •

Day 1 - Session 2

Evolution of work health and safety and the WHS legislative framework.



History of WHS in Australia

The WHS Act is the overriding legislation that covers most Queensland workplaces and describes the general requirements to ensure a healthy and safe workplace. It is designed to reduce the number of injuries and illness in the workplace and is administered by Workplace Health and Safety Queensland (WHSQ).

The WHS Act was introduced following a review of previous existing legislation which had origins back as far as the early 19th century.

Robens review

Work health and safety legislation (previously called occupational health and safety) evolved in the UK in the early 19th Century. The British Factories Act 1833 - 1844 and the Victoria Factories Act 1873 were laws made by parliament and they remained virtually unchanged until the 1970's

In 1970 the British Government set up an inquiry, chaired by Lord Robens, to 'Review the provisions made for the safety and health of persons in the course of their employment'.

In 1972, the Robens Report proposed changes to the OHS regulatory model in the United Kingdom, which ultimately were also adopted in Australia (and throughout many countries).

These changes were proposed in response to the following criticisms of the traditional model:

- It had resulted in too many detailed and technical rules which were difficult to understand and keep up to date, and ad hoc standard-setting that resulted in uneven coverage across workplaces;
- It did not encourage locally innovative solutions to OHS problems; and
- There was insufficient involvement by workers or unions.

The report proposed legislation that created broad 'general duties' for employers, the self-employed, occupiers, manufacturers, suppliers, and designers of plant and substances and employees, complemented with standards in regulations and codes of practice. A unified

OHS inspectorate was to have new administrative sanctions (i.e. improvement and prohibition notices) to supplement prosecution. Prosecutions were to be brought against corporate officers, as well as the corporate employer.

The Robens Report proposed a system that was less prescriptive and 'more effectively self-regulating. Cooperation between employers and employees was identified as crucial to success. Specifically:

'There should be a statutory duty on every employer to consult with ... employees or their representatives at the workplace on measures for promoting safety and health at work, and to provide for the participation of employees in the development of such measures.' (Robens 1972, para. 70).

The Robens model also envisaged that:

- Health and safety representatives would be consulted by employers;
- Employees would be represented on health and safety committees;
- There would be greater co-operation between the OHS inspectorate and employee representatives;
- Employers would be obliged to develop OHS policies and rules; and
- There would be a requirement for Boards of Directors to lodge prescribed OHS information with corporate regulators.

Each of the Australian jurisdictions enacted legislation consistent with this framework, although there were significant differences between jurisdictions in the exact content and expression of the law. Jurisdictional differences in Australia have been identified as problematic and the Productivity Commission has said that it is essential that uniform national legislation and regulations should be adopted and enforced (Productivity Commission 2004, p. xxviii).

Traditional approach – pre Robens report

The traditional response to workplace hazards was to adapt worker behavior to the workplace and shift the responsibility of safety to employees. Employees were traditionally not consulted about or involved in work health and safety. This lack of consultation led to general apathy amongst workers regarding work health and safety, and the pursuit of allowances for bad working conditions and environments. The government traditionally approached health and safety problems in the workplace by passing legislation after major events, imposing duties and penalties and policed by an inspectorate.

Modern approach – post Robens report

There is a focus on safe place rather than safe worker. Employers must take reasonably practical steps to make the workplace safe and not place the onus on workers to work safely in hazardous environment. A safe system approach developed where it was recognised that accidents/incidents are a result of a series of events or contributing factors, rather than a one-off event or an employee not behaving safely.

Prevention activities are consequently focused on preventing system errors rather than training employees to perform safely. Similarly, accident/incident investigation is focused on identifying the 'root causes' of an incident and there is a focus on identifying all the contributing factors that brought about a sequence of events that led to the final incident.

There is still a role for strategies to influence worker behaviour where 'safe place' is not reasonably achievable or practical for the employer to achieve. This is particularly relevant where the employer doesn't have control of the workplace such as in relation to emergency service workers.

Harmonisation process

In July 2008, the Council of Australia Governments (COAG) formally committed to the harmonisation of work health and safety laws by signing an Intergovernmental Agreement for Regulatory and Operational Reform in OHS (IGA).

The IGA outlines the commitment of all states and territories and the Commonwealth to work together to develop and implement model work health and safety laws as the most effective way to achieve harmonisation in Australia.

The IGA also provided for the establishment of an independent body (Safe Work Australia) to drive the development and implementation of the model work health and safety laws.

An independent panel reviewed work health and safety laws in each state, territory and the Commonwealth and advised the Workplace Relations Ministerial Council (WRMC) on the optimal structure and content of a Model Work Health and Safety Act that could be adopted in all jurisdictions.

The National Occupational Health and Safety Review panel provided two reports making recommendations on the optimal structure and content of a model Work Health and Safety Act.

WRMC made decisions in relation to the National Occupational Health and Safety Review recommendations and provided Safe Work Australia with directions on the scope and content of the model Work Health and Safety Act. These reports are available on the Safe Work Australia website.

WRMC endorsed the model WHS Act, WHS Regulations, codes of practice and the National Compliance and Enforcement policy.

Each jurisdiction was required to enact the laws by the end of 2011 to commence on 1 January 2012. This occurred in Queensland and the WHS Act and WHS Regulation commenced on January 1, 2012.

Harmonisation of work health and safety legislation has been introduced 'to provide for a **balanced** and **nationally consistent framework** to secure the health safety and welfare of workers and workplaces.

Benefits of these arrangements will include:

consistency in regulatory and compliance requirements for businesses operating in multiple jurisdictions in Australia,

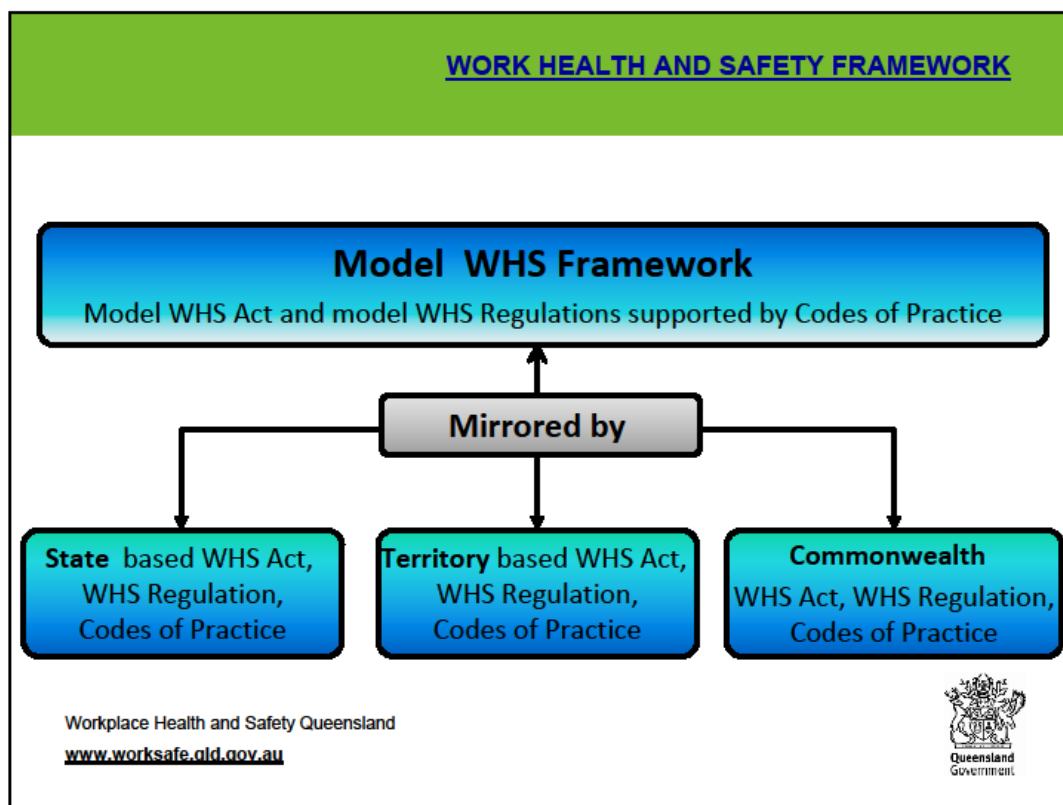
less red tape,

lowering compliance costs of businesses that operate across borders, and

help to promote national economic growth.

See Safe Work Australia and Additional Reference material at the back of these notes for further information.

The Model Work Health and Safety Regulatory Framework



What is Work Health and Safety law and why have it?

Law is a system of rules and guidelines which are enforced through regulators and such to govern behaviour, where possible. The legal system makes a clear distinction between criminal and civil law.

Criminal law punishes people by imposing sanctions for acts such as homicide; non-fatal offences against the person, such as assault; sexual offences, property offences and so on. Criminal law is the basic set of laws which allows people in society to live in a safe and secure environment, free from physical harm, theft or harassment.

Criminal law has developed out of both common law (that is, cases) and out of statutes enacted by the government, such as the *Crime and Misconduct Act 2001* (QLD). In Australia, it is mostly an area of law controlled by the states, although there is an increasing amount of criminal law being made by the Commonwealth government, such as the *Anti-Terrorism Act (No. 2) 2005 (Cth)*.

Criminal law exists to impose sanctions (penalties such as fines or imprisonment), on citizens whose conduct is considered unacceptable enough to deserve punishment by the state. An example of legislation we are all familiar with includes traffic infringements.

In '**common law**' systems like the Australian system, the area of law involving relations between private individuals in society is known as **civil law**. Basically, this area covers all types of law and legal situations outside the category of criminal law.

WHS law falls under criminal law as it is prescriptive and imposes sanctions for breaches of duties imposed under these laws. Society's expectations are for people to work in an environment that is as safe and healthy as possible and that the work activities will not cause harm to anyone exposed to those activities. WHS legislation has evolved to meet these expectations and where they are not met, sanctions are imposed.

Work Health and Safety Legal Framework and Legislation

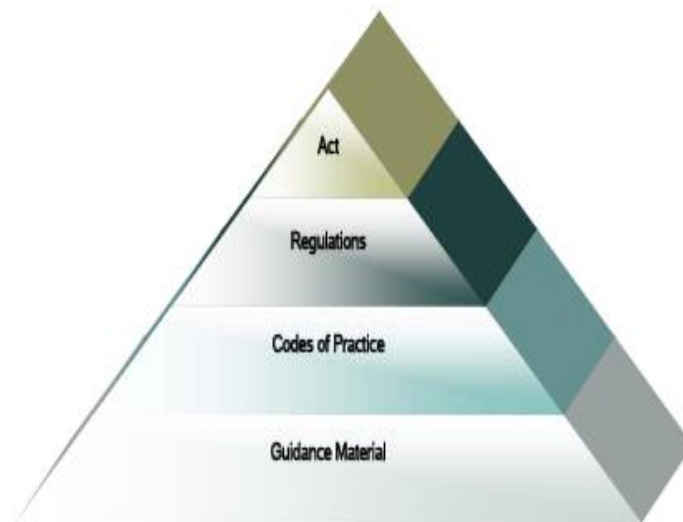
Understanding the legislative framework

An Act is essentially a legal rule that lays down what ought to be the conduct of parties to which the law applies. The Acts usually establish broad principles of the object of the law while subordinate legislation will contain the necessary details to ensure that the Act will operate to achieve its stated objective.

Subordinate legislation such as regulation is made by the executive branch of government with the authorisation of Parliament. The executive branch of government is headed by Cabinet Ministers and their respective government agency. Legislation consists of Acts and

subordinate legislation made by Parliament and there are penalty provisions associated with breach of the Act and Regulation.

Industry codes of practice are usually developed through consultation with industry, employers and workers representatives. The codes of practice provide practical guidance on how to achieve a standard required to comply with the law. Codes of practice must be approved by the Minister published in the Gazette.



The Work Health and Safety Act 2011 (WHS Act)

The WHS Act sets out the intended purpose of the law (the objects) made by Parliament and also specifies broad principles on how the law is to operate. It states the health and safety duties of duty holders with the capacity to influence or direct the manner in which work is done at the workplace. The Act also contains enforcement and compliance provisions including the role and functions of the regulator, WHSQ.

The Work Health and Safety Regulation 2011 (WHS Regulation)

The WHS Regulation provides details on the standard of health and safety management of specific health and safety matters that duty holders are required to meet. Some of the health and safety matters are as risk management, construction, hazardous work, high risk work, hazardous chemicals, asbestos management and major hazard facilities.

Approved Codes of Practice

Codes of Practice are legislative instruments which:

assist duty holders to comply with the provisions of the WHS Act and WHS Regulations; and are admissible in evidence as an example of what reasonable practicable measures could have been adopted to avoid a specific risk under 26A in the Work Health and Safety Act 2011.

Under Queensland legislation, from 01 July, 2018 became compulsory to follow.

Codes of Practice are developed nationally by Safe Work Australia to provide practical guidance on how to comply with the requirements of the WHS Act. They can provide evidence as to whether the duties of the WHS legislation were complied with.

However, duty holders do not have to comply with a code of practice if they can achieve the same or equal standard of safety in a different way.

Codes of Practice have an expiry date of five years after they are approved to allow for timely review and to ensure they are kept up to date.

Guidance

Guidance material does not have any legal status under the WHS regulatory framework. Guidance can be developed by regulators or Safe Work Australia. The information provided is designed to assist duty holders to meet the requirements as set out in the WHS Act and WHS Regulation. There are a variety of booklets, fact sheets and web pages produced by regulators to assist duty holders on health and safety matters.

Other guidance material

Other guidance material may also assist duty holders to meet their obligations for example guides fact sheets and Australian Standards (AS). If the Australian Standard is referred in the WHS Regulation, then, duty holders must comply with the safety management standards specified in the particular Australian Standard. However, national and industry standards do not replace the general duties and specific obligations imposed by the WHS Act and WHS Regulation.

Objectives of the WHS Act



The WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or minimising workplace risks;
- ensure fair effective representation, consultation and cooperation in relation to health and safety issues in the workplace;
- encourage unions and employer organisations to take a constructive role in improving health and safety practices;
- provide advice and promote information, education and training on health and safety;
- provide effective compliance and enforcement measures;
- deliver continuous improvement and progressively higher standards of health and safety.



Throughout the WHS Act, the meaning of health includes psychosocial health as well as physical health.

Key features of the WHS Act:

- Definitions, e.g. who is a worker;
- Who has health and safety duties;
- Requirements for all duty holders to consult with others;
- Consultation mechanisms including HSRs, HSCs, WHS entry permit holders and Workplace Health and Safety Officers (from 1 July 2018), respectively with different roles and functions;
- A positive duty for 'officers' (such as directors of a company) e.g. proactive safety activities;
- The focus of the WHS legislation is to eliminate risk and where this is not possible to minimize the risk as far as reasonably practicable.
- Removal of the 'reverse onus of proof' in WHS prosecutions.
 - Queensland's former WHS legislation operated under a reverse onus of proof. What this meant was, when the prosecutor alleged a breach of the legislation, the prosecutor would set out the elements of the breach. At this point, the onus shifted to the defendant who

had to prove that the breach did not actually occur. The defendant did this by raising a defense (for example, a code of practice existed that stated a way to manage exposure to the risk in question, and the defendant had adopted and followed the way stated in that code to prevent the contravention).

- Under the WHS Act 2011, the onus of proving each element of the offence lies with the prosecutor. This means that when alleging a breach, the regulator must prove each element of the offence; i.e. that the PCBU had a duty of care, that there were reasonably practicable actions the PCBU should have taken to prevent the injury/breach, and that the PCBU did not (in fact) take these reasonably practicable actions.

Enforcement measures are available to ensure compliance and rectification where a breach of the WHS legislation has occurred; and

Unions continue to be able to prosecute breaches, under certain circumstances

The Queensland Industrial Relations Commission (QIRC) can hear and determine disputes relating to work health and safety issues, cease work matters, requests for assistance by Health and Safety Representatives, and the provision of information to Health and Safety Representatives.

An independent statutory office created for Work Health and Safety prosecutions.

Activity: The WHS Act – Locating sections and how to use them



Purpose: To become familiar with the layout and content of the WHS Act.



Indicative time –20 minutes

1. The group will be broken into pairs / small groups to perform this activity.
2. Participants are to practice locating different sections /clauses of the WHS Act.
3. The activity will look at those topics relevant to the group's requirements in terms of hazard profile but include locating definitions of generic terms such as: workplace, health, substance, plant and worker.
4. Participants are to start by looking up sections of the WHS Act, and then move on to find particular regulations as requested by the facilitator.
5. Participants are to record the location of some key areas related to their workplace, noting the section of the WHS Act for future reference.

Area of interest	Section / chapter
Meaning of a worker	
Primary duty of care	
Reasonably practicable	
Category 1 offence	
Notifiable incident	
Powers and functions of health and safety representatives	
Duty to consult workers	
Definition of Volunteer	

The WHS Regulation



The WHS Regulation also imposes mandatory requirements for duty holders to comply with in managing work health and safety.

The WHS Regulation provides more detailed information about managing particular hazards, as well as procedural requirements associated with the WHS Act.

The WHS Regulation is based on content as follows:

- **Chapter 1, 2:** Preliminary, representation and participation
- **Chapter 3:** General Risk and workplace management
- **Chapters 4, 5 and 6:** Hazardous work; plant and structures and construction work
- **Chapter 7 and 8:** Hazardous chemicals and Asbestos
- **Chapter 9, 10 and 11:** Major hazard facilities and general matters including review of decisions and exemptions
- **Chapter 12, 13 and 14:** Public health and safety, transitional provisions and amendment of other regulations.
- **Schedules 1 to 18:** Specific requirements (e.g. schedule of fees, high risk work licence classes)

Most chapters of the WHS Regulation follow a structure where chapters describe specific information and requirements that may include:

- definitions and new terminology
- obligations - duties of various parties
- control of risks - when elimination is not possible
- specific hierarchy of controls where applicable
- review requirements
- emergency plans
- training, instruction and information and
- record keeping requirements.

The WHS Regulation covers specific requirements for particular hazards and risks such as:

- noise
- hazardous manual tasks
- confined space
- high risk work
- electricity
- diving
- plant
- construction
- hazardous chemicals
- lead
- asbestos
- major hazard facilities

Some of the key features of the WHS Regulation include:

Managing risks being referenced both within a separate section and within chapters, with the focus on the outcome more than the process.

- Licensing of asbestos assessors.
- Definitions and terminology e.g. confined spaces, falls, major incident at major hazards facility, safety data sheets.
- Removal of licensing for some classes of equipment
- High risk work licenses and classes
- Changes in requirements for demolition work
- Expanded provisions for remote and isolated workers
- Changes in record keeping requirements
- Significant role of Codes of Practice in providing information to help determine what would be considered 'reasonably practicable' in eliminating or controlling hazards.
- Risk management is focused more on the outcome than the process.
- Authorised representatives become **WHS entry permit holders** with increased functions;
- **A positive duty** for 'officers' e.g. proactive safety activities;
- **Enforcement measures** are available to ensure compliance and rectification where a breach of the WHS legislation has occurred;
- The removal of the reverse onus of proof.

Activity: The WHS Regulation – Locating sections and how to use them



Purpose: To become familiar with the layout and content of the WHS Regulation.



Indicative time –20 minutes

1. The group will be broken into pairs / small groups to perform this activity.
2. Participants are to practice locating different sections /clauses of the WHS Regulations.
3. The activity will look at those topics relevant to the group's requirements in terms of hazard profile but include locating definitions of generic terms such as: workplace, health, substance, plant and worker.
4. Participants are to start by looking up sections of the WHS Regulations and then move on to find particular regulations as requested by the facilitator.
5. Participants are to record the location of some key areas related to their workplace, noting the section of the WHS Regulations for future reference.

Area of interest	Section / chapter
Provision to workers and use of personal protective equipment	
Procedures for election of health and safety representative	
Provision for information, training and instruction	
Duty to provide first aid	
Hierarchy of control	
Managing risk of hearing loss from noise	
License required to carry out high risk work	
Hazardous chemicals register	

Day 1 - Session 3

Terminology under WHS framework and key concepts

Learning Aim

This topic provides knowledge and understanding of key terminology used throughout the WHS legislation.

Learning Outcomes

After completing this, session participants should be able to:

- 1. Identify and use key terms contained within the Act, relating to their role and workplace

Session Duration

The nominal duration of this session is 35 minutes

Learning Outcomes and Expected Learner Applications - Day 1 Session 3

Learning outcome	Expected Learner Applications
After completing today’s training, participants should be able to: 1. Understand the context WHS legislation and practice	<ul style="list-style-type: none">• Identify and use key terms contained within the Act, relating to their role and workplace

Terminology under the WHS framework and key concepts underpinning the principles that apply to all duties of persons

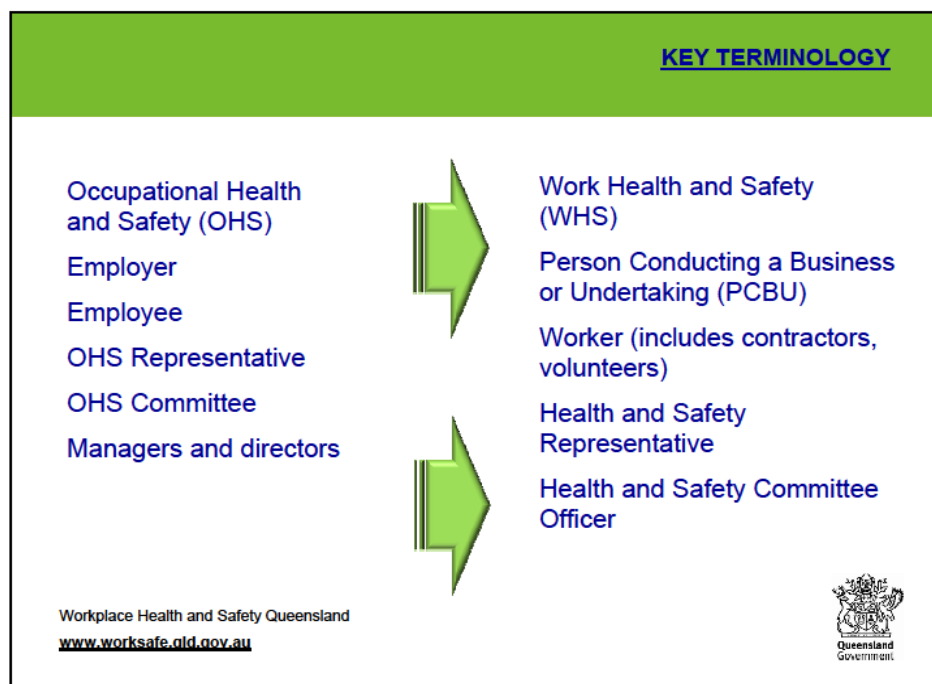


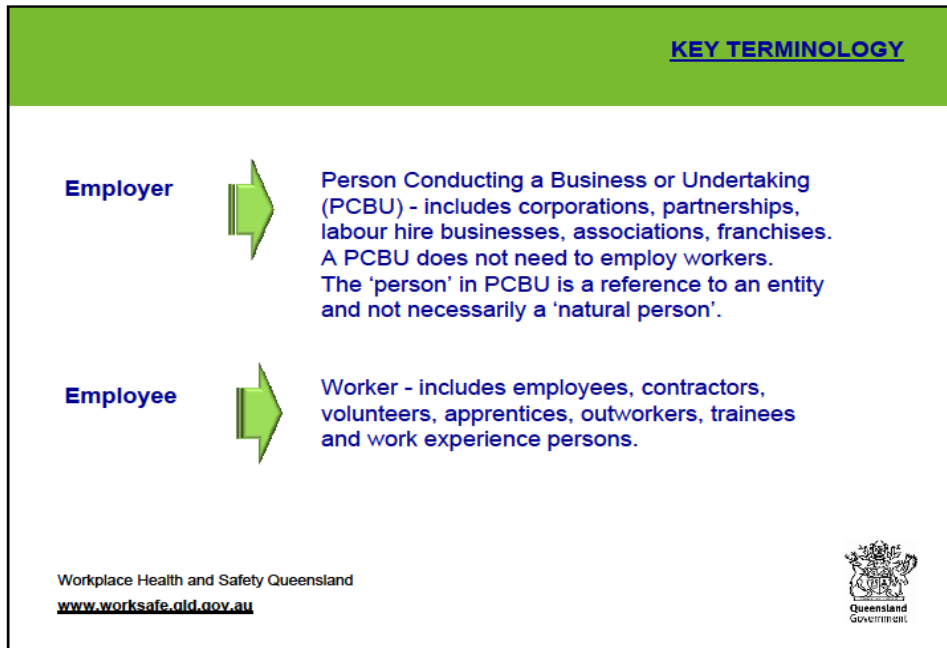
Work Health and Safety Terminology

Under the WHS legislation a number of key terms and definitions changed from what we had previously been using. Before we discuss duties of various stakeholders under the WHS legislation let's look at some key terminology and then we can apply them to those persons with duties.

One of the key changes in the WHS legislation has been broadening of the employer/employee relationship to the much wider definition of a Person Conducting a Business or Undertaking (PCBU) and a worker.

- Who do you think PCBUs might be?
- Who might be workers in a workplace?





Person conducting a business or undertaking (PCBU)

The reference to a person in 'person conducting a business or undertaking' is a reference to an entity and not necessarily a reference to a 'natural' person.

PCBUs include those:

who conducts a business or undertaking whether alone or with others, or for profit or gain and/or is conducted as a partnership of unincorporated association

with management or control of workplaces;

with management or control of fixtures and fittings or plant at workplaces;

who design, manufacturer, supply or import plant, structures or substances; and

who install, construct or commission plant or structures.

Worker

A worker defined in section 7 of the WHS Act is anyone carrying out work, in any capacity, for a PCBU. This includes:

Employees

Contractors and subcontractors, and their employees

Labour hire employees engaged to work in the business or undertaking

Outworkers

Apprentices, trainees and students on work experience

Volunteers.

Officer of a PCBU

An officer is a person within the PCBU that makes or participates in making decisions that affect the whole or a significant part of the organisation. Examples include a director or secretary of a company.

The full definition of an 'officer' can be found in section 9 of the Corporations Act 2001 except that a partner in a partnership is specifically excluded as they are a PCBU.

People within the Crown or a public authority who make decisions that affect the whole or a significant part of the Crown or public authority are also considered officers.

As mentioned, the PCBU may not be an actual person. For example, check your pay slip for the PCBU i.e. ABC Pty Ltd. An officer may be a senior representative of the PCBU.

The interpretive Guideline on 'the health and safety duty of an officer under section 27' provides further clarifications on who is considered an officer and the duties owed by officers.

Others

Are people who are not workers for the PCBU and can include members of the public or external couriers for example.

Workgroup

A work group is a grouping of workers that has been determined through consultation (between the PCBU/s and those workers or their representative) for the purpose of enabling those workers' health and safety interests to be represented by an elected HSR. As examples, this could be a specific department, shift (e.g. day/night), location or type of worker.

Section 17 of the WHS Regulation requires matters such as the number, diversity, type of engagement (contractors, labour hire) and variation of the work force, the nature, place and type of work and their associated risks and hazards together with the time and work patterns to be taken into consideration

Workplace

A workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. The definition includes a vehicle, vessel, aircraft or mobile structure, and any water and installation on land, floating on any waters or bed of waters.

Structure

Structure means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and any component or part of a structure. Section 290 of the WHS Regulation provides further examples and clarification on the meaning of structure.

Plant

Plant includes:

- any machinery, equipment, appliance, container, implement and tool; and
- any component of any of those things; and
- anything fitted or connected to any of those things

Chapter 5 of the WHS Regulation states that the meaning of plant in Part 5.2 & Part 5.3, includes a structure.

Substance

Substance means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

Chapter 7 of the WHS Regulation provides further clarification on the meaning of substance in Part 7.1.

Notifiable incident

Notifiable incident as described under the WHS Act means:

- (a) the death of a person; or
- (b) a serious injury or illness of a person; or
- (c) a dangerous incident.

Further notes in slide and covered in more detail later in the course.

Serious injury or illness of a person means an injury or illness requiring the person to have:

- immediate treatment as an in-patient in a hospital; **or** immediate treatment for:
 - the amputation of any part of his or her body; or
 - a serious head injury, eye injury, burn; or
 - the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
 - a spinal injury, loss of a bodily function; or serious lacerations; or
 - medical treatment within 48 hours of exposure to a substance, and any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind

A dangerous incident includes:

- an uncontrolled escape, spillage or leakage of a substance, gas or steam or a pressurised substance or an uncontrolled implosion, explosion or fire; or
- electric shock; or
- the fall or release from a height of any plant, substance or thing; or
- the collapse, overturning, failure or malfunction of, or damage to, any plant that is requiring authorisation for use; or collapse or partial collapse of a structure
- the collapse or failure of an excavation or of any shoring supporting an excavation; or
- the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
- the interruption of the main system of ventilation in an underground excavation or tunnel; or any other event prescribed by the regulations but does not include an incident of a prescribed kind.

Enforceable undertaking

An enforceable (WHS) undertaking is a legally binding agreement given by a person in relation to a contravention (or alleged contravention) of the WHS Act and has been accepted by WHSQ.

WHS undertaking may be accepted where a breach of the WHS Act has occurred that is not a Category 1 offence. If the WHS undertaking has not been complied with, a court order may be obtained to enforce the compliance. The maximum penalty for failure to comply with the WHS undertaking is 500 penalty units.

The purpose of the undertaking is to allow businesses to implement effective initiatives and commitment to ongoing improvement to the work health and management systems to deliver tangible health and safety benefits to the workplace, industry and the community.

An enforceable undertaking is prohibited from being accepted for contraventions, or alleged contraventions of the WHS Act that involve a fatality.

The court may also accept an enforceable undertaking.

Provisional Improvement Notice (PIN)

A Provisional Improvement Notice (PIN) is a written notice from a Health and Safety Representative to a PCBU, advising after consultation that there has been a breach of the Act that is likely to be repeated, or there is a current breach of the Act. The PIN is issued to require the PCBU to remedy the contravention or prevent a re-occurrence

Activity: Key terminology of the WHS Act



Purpose: To familiarise yourself with key terminology of the WHS Act and WHS Regulation.

Match the terms (numbers and letters) with the correct description using their course information if required.

WHS Act Terminology						
WHS Term		Description				
1. Person conducting a business or undertaking (PCBU)		A. Described under the WHS Act means: (a) the death of a person; or (b) a serious injury or illness of a person; or (c) a dangerous incident.				
2. Enforceable undertaking		B. A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking.				
3. Worker		C. A legally binding agreement given by a person in relation to a contravention (or alleged contravention) of the WHS Act and has been accepted by WHSQ.				
4. Notifiable incident		D. A written notice from a Health and Safety Representative to a person or the PCBU, advising where they reasonably believe there either has been a breach of the WHS Act that is likely to be repeated, or there is a current breach of the WHS Act.				
5. Health and Safety Representative (HSR)		E. A person that conducts the business or undertaking alone or with others whether or not the business or undertaking is conducted for profit or gain.				
6. Provisional Improvement Notice (PIN)		F. Anyone carrying out work, in any capacity, for a PCBU including direct employees; contractors and subcontractors, and their employees; labour hire employees engaged to work in the business or undertaking; outworkers; apprentices, trainees and students on work experience; and volunteers.				
7. Officer		G. The person elected by members of a work group within the PCBU, or across a number of businesses (e.g. multiple workplaces) to represent that work group during consultation on work health and safety issues.				
Participants answers:						
1 -	2 -	3 -	4 -	5 -	6 -	7 -

Day 1 - Session 4

Key parties with WHS legislative duties or functions

Learning Aim

This session aims to assist HSRs in identifying key parties with duties that may apply to members of their workgroup and parties who have functions that are relevant to them in their role as a HSR.

Learning Outcomes

After completing this, session participants should be able to:

Summarise the duties and responsibilities of PCBUs in the legislation

Identify the duties and responsibilities of officers, workers and other parties

Session Duration

The nominal duration of this session is 55 minutes

Learning Outcomes and Expected Learner Applications - Day 1 Session 4

Learning outcome	Expected Learner Applications
<p>After completing today's training, participants should be able to:</p> <ol style="list-style-type: none"> 1. Summarise the duties and responsibilities of PCBUs under the legislation 2. Identify the duties and responsibilities of officers, workers and other parties 	<ul style="list-style-type: none"> • Explain key concepts underpinning the principles that apply to all duties persons have under the WHS Act • Explain and use the term PCBU in the context of their role • Discuss what is meant by 'reasonably practicable' • Compare the duties and responsibilities of an 'officer' and those of the 'PCBU', as these relate to the workplace. • Explain what is meant by 'due diligence' in connection with the duties of an officer • Explain the duties of workers in relation to health and safety at the workplace • Identify officers, workers and other parties within the work group / workplace who would have a duty, as defined under the WHS Act

Day 1 - Session 4

Identifying key parties' legislative duties and functions

Duty Holders and their duties



The WHS legislation aims to protect workers and others at a workplace against harm to their health and safety by eliminating risks to health and safety, so far as is reasonably practical. As a duty holder, the person conducting business and undertaking has a primary duty under the WHS Act.

Primary Duty (WHS Act s. 19)

A person conducting a business or undertaking (PCBU) has **the primary duty** to ensure the health and safety of workers while they are at work in the business or undertaking.

This duty extends to all workers engaged or caused to be engaged by the person or workers whose activities they influence or direct.

A PCBU is also responsible for ensuring work activities carried out do not pose any risks to the health and safety of others.

Duties of Persons Conducting a Business or Undertaking (PCBU)

The WHS Act sets out further specific duties which a PCBU must comply with as part of their primary duty. These include so far as is reasonably practicable:

- **providing and maintaining a working environment** that is without risks to health and safety, including the entering and exiting of the workplace
- **providing and maintaining plant, structure and systems of work** that do not present risks to health and safety (e.g. providing effective guards on machines and monitoring the pace and frequency of work to prevent excessive workplace stress and 'burn out')
- **ensuring the safe use, handling, storage and transport** of plant, structure and substances (e.g. toxic chemicals, dusts and fibres)

- **providing adequate facilities** for the welfare of workers at workplaces under their management and control (e.g. washrooms, lockers and dining areas)
- **providing workers with information, instruction, training or supervision** needed for them to work safely and without risks to their health
- **monitoring the health of their workers** and the **conditions of the workplace** under their management and control to prevent injury or illness
- **maintaining any accommodation owned or under their management** and control to ensure the health and safety of workers occupying the premises.

In addition there are other PCBUs with duties and those duties are described below:

Duties of a PCBU - involved in the management of or control of workplaces (WHS Act s. 20)

A PCBU with management or control of a workplace must ensure, so far as is reasonably practical that the workplace, the means of entering and exiting the workplace and anything arising from the workplace do not pose a risk to the health and safety of any person.

Duties of PCBU – involved in the management of or control of fixtures, fittings or plant at a workplace (WHS Act s. 21)

Similarly, **a PCBU with management or control of fixtures, fittings or plant at a workplace** must ensure, so far as is reasonably practical, that the fixtures, fittings and plant do not pose a risk to the health and safety of any person.

Duty to consult (WHS Act s. 46 – s. 49)

A PCBU has a duty to consult with workers and HSRs about matters that directly affect them. This extends to consulting with contractors and their workers, employees of labour hire companies, students on work experience, apprentices and trainees as well as with the PCBU's own employees and volunteer workers.

There may be a number of different duty holders involved in work (e.g. suppliers, contractors and building owners). If more than one person in the workplace has a health and safety duty they must consult, coordinate and cooperate with all other people with the same or overlapping duties. Each duty holder must share information and cooperate in a timely manner to meet health and safety responsibilities.

WHS duties and reasonably practicable

While the main object of the WHS Act is to provide a balanced and nationally consistent framework to secure the health and safety of workers, the WHS Act also states the principles that apply to the duties of the WHS Act are:

- A person can have more than one WHS duty
- More than one person can have the same duty concurrently
- Duties are not transferable to another person
- Duty to ensure health and safety requires the duty holder to eliminate the risks to health and safety so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to health and safety, then the duty holder is required to minimise the health and safety risks so far as is reasonably practicable.

Determining what is reasonably practicable

What is reasonably practicable in ensuring health and safety is defined in section 18 of the WHS Act to mean there is a requirement to weigh up all relevant matters including:

- the likelihood of a hazard or risk occurring (i.e. the probability of a person being exposed to harm)
- the degree of harm that might result if the hazard or risk occurred (i.e. the potential seriousness of injury or harm)
- what the person concerned knows, or ought reasonably to know, about the hazard or risk and ways of eliminating or minimising it
- the availability and suitability of ways to eliminate or minimise the hazard or risk
- after assessing all of the above, the cost of eliminating or minimising the hazard or risk.

Ordinarily, cost will not be the key factor in determining what it is reasonable for a duty holder to do unless it can be shown to be 'grossly disproportionate' to the risk. If the risk is particularly severe, a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively to eliminate or minimise the hazard or risk to health and safety.

Duty of Officer (of a PCBU) (WHS Act s. 27)

Where a PCBU has a health and safety duty, an officer of the PCBU **e.g. director of a company** is required to exercise '**due diligence**' to ensure the PCBU meets that duty.

Due Diligence

Officers have a duty to exercise 'due diligence' to ensure the PCBU complies with its duties under the WHS Act. They are expected to take reasonable steps to:

- gain and update **knowledge** of work health and safety
- gain an **understanding** the operations and the general hazards/risks of the business or undertaking
- ensure appropriate **resources are available for use** to eliminate/minimise risks
- ensure the management of **information** about incidents, hazards and risks in a timely manner
- ensure implemented **processes** comply with duties (e.g. reporting notifiable incidents, consultation, provision of training)
- **verify** that resources and processes have been provided, and their use.

Duties of Workers (WHS Act s. 28)

Under the WHS Act workers have a duty to:

- Take reasonable care for their own safety
- Take reasonable care to ensure their acts or omissions do not adversely affect the health and safety of others
- Comply with reasonable instructions from the PCBU to assist them in complying with the WHS Act
- Co-operate with policies or procedures relating to health and safety that the workers have been notified of.

Duties of Self-Employed Persons (WHS Act s. 19 (5))

Self-employed persons must ensure their own health and safety (as far as reasonably practicable) while at work. It should be noted that a self-employed person is also a PCBU and therefore also has the primary duty of Section 19.

Duties of Others (WHS Act s. 29)

Others at a workplace e.g. visitors also have duties under the WHS Act that include they:

- Take reasonable care for their own safety;
- Take reasonable care to ensure their acts or omissions do not adversely affect the health and safety of other persons; and
- Comply with any reasonable instructions from a PCBU.

Health and safety duties - key concepts

A duty holder under the WHS Act cannot transfer those responsibilities. For example, a PCBU cannot transfer their duty to ensure safe work activities are being conducted to a supervisor but they can demonstrate their compliance by providing support to a supervisor in undertaking activities related to those duties.

A PCBU cannot engage a contractor to undertake work in the belief that in so doing they have transferred their duties. The PCBU retains responsibility for those matters over which they have control and must meet these duties. Provision has been put in place for consultation between duty holders to assist in this process.

Duties may apply to a person acting in a variety of roles e.g. as controller of work premises, as the employer of persons and as a manufacturer.

At any given workplace, several people may have a primary duty to ensure work health and safety, for example, the building owner, contractors, PCBU etc.

Each duty holder must comply even if another duty holder has the same duties.

Where more than one person has a duty for the same matter each person:

retains responsibility of that matter; and

must fulfil that duty to the extent that has the ability to influence and control the matter except where it has been agreed otherwise.

Activity: Health and Safety Duties



As a group consider the following scenario and issues. Responses can be recorded on flip chart paper



Indicative time – 15 minutes

Consider a commercial building in the city with tenants such as legal firms, advertising agencies, financial agents and brokers some of whom use labour hire and who have clients regularly visiting the building. A sports association also has an office which volunteers visit. The property manager engages a variety of contractors, such as cleaners, tradesmen and security to maintain the building.

Under WHS legislation in this scenario:

Who has duties and to whom?

Who are workers, what are their duties and to whom do they owe them?

Who are 'others' in the workplace? What are their duties?

Introduction to the role of HSRs and WHS entry permit holders.

Role of the Health and Safety Representatives



A Health and Safety Representative (HSR) is the person elected by members of a work group, or across a number of businesses (e.g. multiple PCBUs) to represent that work group during consultation on work health and safety issues.

The functions of HSRs and deputy HSRs are to:

- **Represent** workers in their work group in matters relating to WH&S
- **Monitor** safety measures taken by the PCBU in relation to workers
- **Investigate** complaints relating to WH&S within their work group
- **Inquire into risks** to the health or safety of workers within their work group
- **Inspect** the workplace at which a worker in the work group works—
 - Any time after giving reasonable notice to the PCBU
 - Any time, without notice, in the event of an incident, or 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 within their workgroup
- **With the consent of a worker**, HSR can be present at an interview concerning WH&S between the worker and an inspector/PCBU
- **Request** the **establishment of a health and safety committee** (HSC)
- **Receive information** concerning the WH&S of workers in their work group
- **Request the assistance** of any person

- **HSR is not entitled to have access to any personal or medical information without the worker's consent unless the information:**
 - does not identify the worker or could not reasonably be expected to lead to the identification of the worker
- **Nothing in this Act imposes a duty on a HSR in this capacity.**

An HSR may request information from a PCBU regarding the work health and safety of workers in the work group, and be informed of and accompany an Entry Permit Holder at the workplace (as of 29th July 2024).

Additional powers and functions after meeting the required training:

Directing unsafe work to cease under certain circumstances

Issuing of provisional improvement notices under certain circumstances (as described later in this course).

Completion of this approved five-day course will meet the training requirements.

Provisional Improvement Notices (PINs)

A PIN can be issued by a HSR where they **reasonably believe** that a contravention of the WHS Act is occurring; or has occurred and it is reasonably assumed that the breach is likely to be continued or repeated.

In a situation where an inspector has already reviewed the issue and has either decided to: issue an improvement or prohibition notice or proceed to another form of enforcement available under the WHS Act

has decided to take no further action the HSR cannot issue a PIN for the same matter.

Where a PIN has been issued and the regulator decides that an inspector is not required to attend the workplace, the person issued the PIN **must comply** with the notice within the timeframe specified. A person may request a review of the PIN.

HSR Direction to Cease Work

A direction may be issued by a HSR if they believe unsafe work is being carried out where: they have a reasonable concern that doing the work would expose workers to a **serious risk** to their health and safety from **immediate or imminent exposure** to a hazard

only after attempting to consult and resolve the matter with the PCBU, unless there is a serious risk to a worker's health and safety emanating from an immediate or imminent exposure to a hazard (in which case consultation must occur as soon as practicable after the unsafe work has ceased).

The HSR must inform the PCBU of any direction to cease unsafe work.



WHS Entry Permit Holder (WHS Act s. 116 – s. 137 and s. 149)

A WHS entry permit holder is an official of a relevant union of the workers who has satisfactorily completed the prescribed training and holds an entry permit under the *Fair Work Act 2009* or *Industrial Relations Act 2016* and has been issued with a WHS entry permit.

A WHS entry permit holder must give notice of the proposed entry and suspected contravention to the relevant person conducting a business or undertaking and the person with management or control of the workplace at least 24 hours, but not more than 14 days, before entry. The notice must be given during the usual working hours at the workplace.

However, if a WHS entry permit holder reasonably believes that a relevant worker is exposed to a serious risk to their health and safety, emanating from an immediate or imminent exposure to a hazard, then notice may be given as soon as reasonably practicable after entering the workplace.

As a WHS entry permit holder, the union representative is entitled to:

Enter a workplace to inquire into suspected contraventions of the WHS Act or *Electrical Safety Act 2002* and remain at the workplace, during its normal working hours, for the time necessary to achieve the purpose of entry.

Inspect any work, plant, substances, structure or relevant thing at the workplace in relation to the suspected contravention

Inspect and copy any document directly related to the suspected contravention

Consult and advise with relevant workers in relation to the suspected contravention

Consult with the PCBU about the suspected contravention

Warn any person who may be exposed to a serious and immediate health and safety risk.

Information obtained when inquiring into a suspected contravention may be used or disclosed if a person reasonably believes it is necessary to lessen or prevent a serious threat to public health or safety.

Prior to entering a workplace, a WHS entry permit holder must show their identification if they are requested to do so by a PCBU.

If they are entering the workplace to consult with or provide advice to workers on WHS matters, they must give the PCBU a minimum of 24 hours' notice, but not more than 14 calendar days.

When entering the workplace to inquire into a suspected contravention of the WHS legislation, a WHS entry permit holder must advise the PCBU or person with management or control of the workplace of their entry as soon as reasonably possible.



This notice is not required where advising a PCBU or the person with control of the workplace would defeat the purpose of the entry or cause unreasonable delay in an urgent case.

Reason for entry	Pre-requisites addl to permit	Notice	Right on entry
To inquire into suspected contravention	Reasonable suspicion of contravention relating to relevant worker	24+ hours (but less than 14 days), or As soon as reasonably practicable if worker exposed to serious risk to health and safety, emanating from immediate or imminent exposure to hazard	<ul style="list-style-type: none">• Inspect anything relevant to contravention• Consult relevant workers and PCBU• Inspect or copy any avail document directly relevant• Warn any person of risk
To inspect documents not kept at workplace by PCBU (WHS Act s.120)	Reasonable suspicion of contravention relating to relevant worker	24+ hours (but less than 14 days)	Inspect or copy any employee record or document held by 3 rd party that is directly relevant to suspected contravention.
To consult or advise workers (WHS Act s.121)	N/A	24+ hours (but less than 14 days)	<ul style="list-style-type: none">• Consult with or advise 1+ workers who wish to participate in discussions• Warn any person of risk

Union representatives of workers may also assist:

in negotiations for agreements of work groups with the PCBU and for multiple businesses, including negotiating a variation of an agreement if a worker requests it.

They may also request the assistance of an inspector where these negotiations fail:

- in HSR elections if the majority of workers so decide
- the HSR in their role when requested by the HSR

Day 1 - Session 5

The role and function of the Regulator – Workplace Health and Safety Queensland (WHSQ), offences and penalties under the WHS Act

Learning Aim

This topic provides knowledge and understanding of the role of WHSQ as the WHS regulator and offences and penalties.

Learning Outcomes

After completing this, session participants should be able to:

1. Understand the role and functions of WHSQ and their interaction with HSRs
2. Identify and discuss the range of enforcement options
- 3.

Session Duration

The nominal duration of this session is 1 hour and 5 minutes.

Learning Outcomes and Expected Learner Applications - Day 1 Session 5

Learning outcome	Expected Learner Applications
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<p>After completing today's training, participants should be able to:</p> <ol style="list-style-type: none"> 1. Understand the role and functions of WHSQ and their interaction with HSRs 2. Identify and discuss the range of enforcement options 	<ul style="list-style-type: none"> • Provide examples of regulator functions and powers and how these are used to facilitate compliance with WHS legislation • Outline the role of an inspector and how they can assist HSRs • Describe the range of enforcement options available to the regulator for key duty holders for non-compliance within the WHS legislation • Identify the relevant offences and penalties under the framework
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Role and function of WHSQ and support services (WHS Act s. 152)



WHSQ has several functions under the WHS Act. Some of these duties include:

Providing advice and information about work health and safety, both to duty-holders under the WHS Act and the community generally

Promoting and supporting training and education on work health and safety

Fostering cooperation and consultation on work health and safety issues between duty holders and the persons to whom they owe those duties and their representatives (e.g. union representatives)

Collecting, analysing and publishing statistics on work health and safety

Promoting and coordinating the sharing of information to achieve the objectives of the WHS legislation including information from corresponding regulators

Monitoring and enforcing compliance, including conducting and defending prosecutions.

HSR Direct line – **1300 633 419**

The WHSQ website provides information, regular updates on WHS laws and guidance material. They can be accessed at www.worksafe.qld.gov.au

Functions and Powers of Inspectors (WHS Act s. 160 – s. 190)



Under the WHS Act, Inspectors may:

provide information and advice about compliance with the WHS Act;

Assist in establishing consultation arrangements, resolving work health and safety issues and those relating to access and entry rights at a workplace

Investigate breaches of the WHS Act, issue notices to require compliance and assist in prosecutions

Review Provisional Improvement Notices (PINs) issued by HSRs in the event of a dispute.

To help Inspectors perform these functions, they are given powers to:

Enter a workplace, or somewhere suspected to be a workplace, at any time, with or without the consent of the manager or controller of the workplace.

Once at a workplace, Inspectors are entitled to:

- Inspect and examine the workplace and any item or document at the workplace
- Bring to, and use equipment or other materials at the workplace
- Take measurements and samples, conduct tests, and make recordings or sketches (including photos, video and audio recordings)
- Require any person at the workplace to assist them to carry out their enquiries.

Inspectors may require a person at a workplace to answer questions, produce documents or provide other information. The person is required to comply with the request, even if this means the person will incriminate themselves or expose them to a penalty. (Documents protected by 'legal privilege' are exempt from this requirement).

Compliance Tools Available

The tools that are available to the WHSQ Inspectors include:

- giving advice on compliance and seeking voluntary compliance
- resolving or assisting parties resolve certain work health and safety disputes
- seeking an injunction
- entering into an enforceable undertaking
- commencing a criminal prosecution
- publicising enforcement actions and outcomes

Enforcement measures

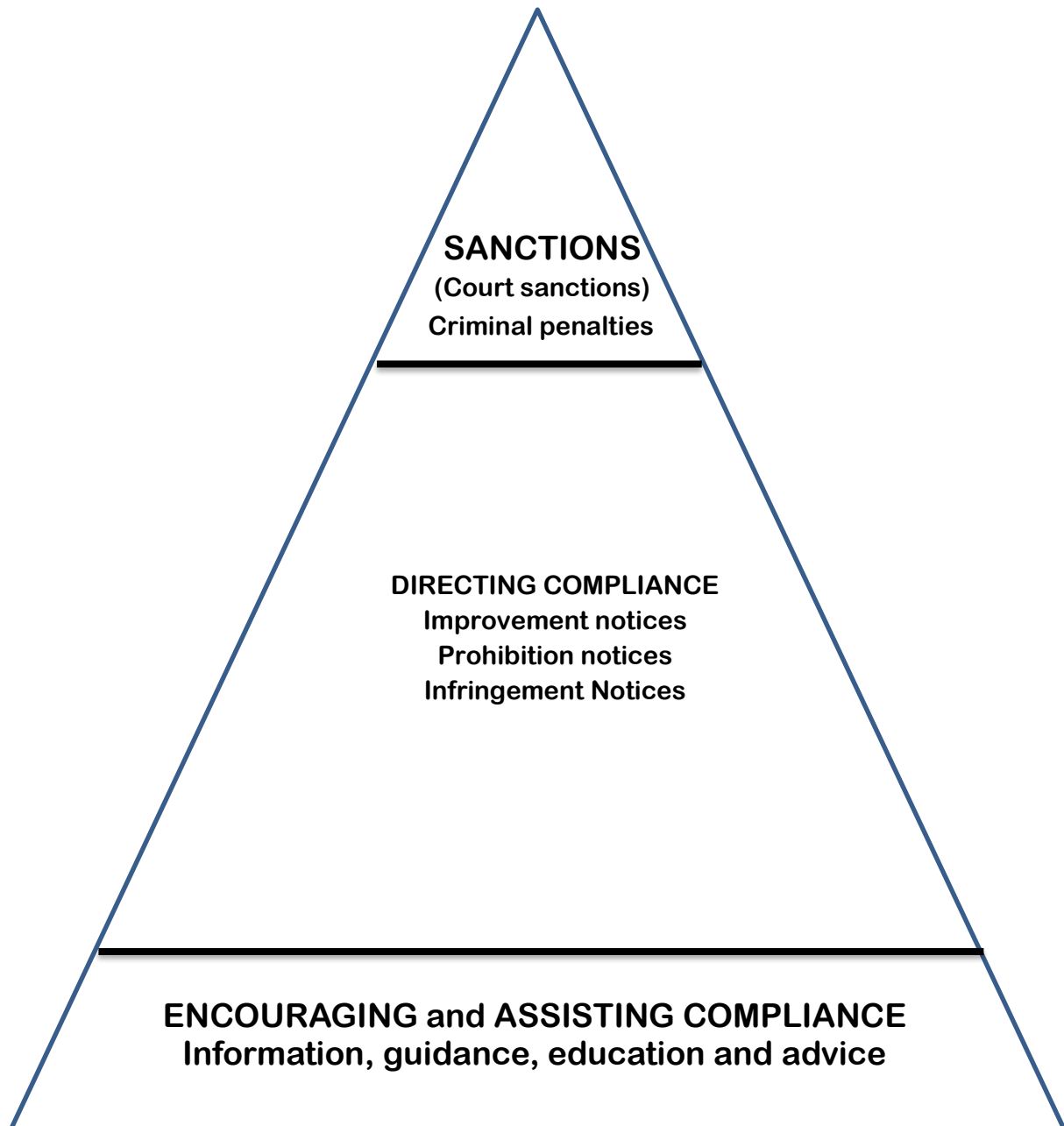
The WHS Act sets out a range of enforcement options. These are aimed at ensuring duty holders comply with their obligations, while avoiding prosecution, which is considered a last resort in most cases. **A system of escalating enforcement measures** is available under the WHS Act to achieve the best outcome for work health and safety at the earliest opportunity.

The pyramid diagram below represents the escalating approach that regulators and their inspectors may adopt in relation to a work health and safety issue.

The lowest level of the pyramid involves an approach which is employed most frequently by regulators and their inspectors, often in combination with other tools, to assist duty holders achieve compliance. Sanctions (such as criminal penalties) are at the top of the pyramid and are applied less frequently.

This does not mean that regulators will always commence with provision of information and advice, and only use other tools in an escalated manner.

WHSQ inspectors will use the tools that are most appropriate in the particular circumstances. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.



Where early intervention measures either fail or are not appropriate (e.g. Category 1 offences) **prosecutions** may result in **various types of orders** being imposed and/or fines and/or **imprisonment**.

Provisional Improvement Notices (PIN)	A notice issued by a trained HSR to address a contravention of a provision of the WHS Act. The notice may be reviewed by an inspector and can be applied, altered or removed.
Direct a Worker to Cease Work	A direction from a trained HSR for a worker to cease unsafe work.
Improvement Notices	A notice issued by an inspector to address a contravention of a provision of the WHS Act.
Prohibition Notices	A direction from an inspector prohibiting the person in control from carrying on an activity until the risk is remedied.
Infringement Notice	An on the spot infringement notice may be issued by an inspector if they believe, on reasonable grounds, that a person is committing or has committed an infringement notice offence under the legislation.

Improvement Notices

Are issued by an Inspector and require the person to remedy the breach by fixing the things or operations causing the breach or prevent a likely breach from happening.

Will include details of the breach and the date this needs to be remedied by and may also include directions on what measures the person needs to take to correct the breach. A maximum penalty of 500 penalty units can be imposed for failing to comply with an improvement notice in the time specified.

Prohibition Notices

Are issued by an inspector if they believe an activity is either happening or will happen at a workplace that will involve a serious risk to the health and safety of a person from exposure to risks to health and safety.

A prohibition notice may specify the workplace (or part of) where the activity is not to be carried out; any item not to be used (e.g. machinery); and/or any procedure that is not to be followed, and may also include directions on what measures are to be taken to eliminate or minimise the risk to health and safety.

Infringement Notices

Infringement notices (on the spot fines) are issued under the State Penalties Enforcement Act 1999 and may be issued by an inspector if they believe, on reasonable grounds, that a person is committing or has committed an infringement notice offence under the legislation. Infringement notices may be issued to an organisation, individual or both.

An on-the-spot fine is an alternative to prosecuting alleged offenders directly through the court. It is also called an infringement notice.

Non-disturbance Notices

A notice issued by an inspector to the manager or person in control of a workplace to facilitate the exercising of the inspector's compliance powers.

A direction may be given to the person with management or control of a workplace requiring them to preserve the site where a notifiable incident has taken place, or to prevent any disturbance of a particular site. This includes preventing plant from operating. These can be issued for a maximum of seven days, although subsequent notices can be issued if required.

Non-disturbance notices do not prevent assisting an injured person, removing a deceased person or making the site safe and preventing further incidents.

Enforceable Undertaking

An enforceable undertaking (EU) operates as an alternative to a court imposed sanction for an alleged contravention of the Work Health and Safety Act and Work Health and Safety Regulations.

EU's take the form of a written, legally-binding commitment to implement effective health and safety initiatives. These initiatives are designed to deliver tangible benefits for workers, industry, and the community as a whole.

An EU cannot be accepted for an alleged contravention that is a category 1 offence, a category 2 offence if the person's failure to comply with a health and safety duty results in the death of an individual, or offence of industrial manslaughter.

Potential outcomes of legal proceedings

Court ordered WHS undertakings and Injunctions are the subject of different enforcement measures.

Court ordered WHS undertaking provides an opportunity for an offender to comply over a maximum two-year period and, conditions specified must be adhered to.

Injunction is a court order requiring a person to carry out or cease carrying out particular action(s) and breach of the requirements set out under the injunction may result in severe penalties.

The regulator may accept an enforceable undertaking in relation to an offence or alleged offence. If a matter proceeds to court the person may be found guilty and face a significant fine. There are a range of possible outcomes from proceedings that are set out below.

Industrial Manslaughter

On 23 October 2017, industrial manslaughter provisions in the Work Health and Safety Act 2011 commenced.

Sections 34(A-D) of the WHS Act makes it an offence for a person conducting a business or undertaking (PCBU), or a senior officer, to negligently cause the death of a worker. In particular, the offence applies if:

- a worker dies, or is injured and later dies, in the course of carrying out work for the business or undertaking (including during a work break); and
- the PCBU's, or senior officer's, conduct cause the death of the worker (i.e. the action or inaction of the PCBU, or senior officer, substantially contributes to the death); and
- the PCBU, or senior officer, is negligent about causing the death of the worker (i.e. the person's action or inaction departs so far from the standard of care required).

Where a PCBU, or senior officer, commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or \$10M for a body corporate, applies.

Offences and penalties

The WHS Act sets out three categories of offences against the health and safety duties. The categories of offences from Category 1 to Category 3 are as follows:

Category 1 - Reckless conduct

A person commits a Category 1 offence if they:

- have a health and safety duty; and
- without reasonable excuse, the conduct exposes a person to whom they owe a duty to a risk of death, serious injury or illness; and
- are reckless as to the risk of the individual of death or serious injury or illness.

Category 2 - Failure to comply with health and safety duty

A person commits a Category 2 offence if:

the person has a duty, fails to comply with the duty and the failure led to exposing a person to a risk of death or serious injury or illness.

Category 3 - Failure to comply with health and safety duty

A person commits a Category 3 offence if:

the person has a health and safety duty and they fail to comply with that duty.

Other penalties

A health and safety duty is a duty imposed under Part 2: Division 2 (Primary duty of care), Division 3 (Further duties of PCBUs) or Division 4 (Duties of officers, workers and other persons) of the WHS Act. The failure to comply with health and safety duties includes the duty of workers and it therefore follows that workers can be fined accordingly.

In addition to these categories of offence, certain other duties contain prescribed penalty amounts e.g.

Failure to consult with other duty holders:

Maximum penalty: 200 penalty units

Failure to consult workers:

Maximum penalty: 200 penalty units

Failure to notify of a notifiable incident:

Maximum penalty: 100 penalty units

Failure to comply with Health and Safety duty	Individual	Individual as a PCBU or Officer of a PCBU	Body Corporate
Category 1	3,000 penalty units (\$300,000) <u>or</u> 5 years imprisonment	6,000 penalty units (\$600,000) <u>or</u> 5 years imprisonment	30,000 penalty units (\$3,000,000)
Category 2	1,500 penalty units (\$150,000)	3,000 penalty units (\$300,000)	15,000 penalty units (\$1,000,000)
Category 3	500 penalty units (\$50,000)	1,000 penalty units (\$100,000)	5,000 penalty units (\$500,000)

Activity: Match a range of persons/parties in their workplace with hypothetical examples of non-compliance with work health and safety legislation



Indicative time –15 minutes



Purpose: To gain an understanding of the range of penalties and their possible applications under the WHS Act

Review the scenarios

Find sections of the legislation that may be relevant for each scenario

Discuss your findings

Example 1: A PCBU doesn't consult with workers or their HSR about a change that will require additional training in safety measures before introducing the change.

Example 2: A supervisor knows that the reversing sensors on truck are not working and the PCBU has failed to implement a program of regular inspection of vehicle checks. A person is fatally injured in the loading dock when they are crushed by a reversing truck.

Example 3: A Labour hire employee fails to clean up after a spill at the host company work premises and fails to report the matter as required under the host employer procedures.

Summary: Day 1



We will review the topics that we have covered today. Record key information below that you can use back in your workplace or wish to investigate further. Don't forget to ask questions of anything that you are not sure about.

Session 1: Work health and safety legislation framework and duties

Session 2: Evolution of work health and safety and the WHS legislative framework

Session 3: New terminology under WHS framework and key concepts

Session 4: Key parties with WHS legislative duties or functions

Session 5: The role and function of WHSQ and offences and penalties



Day 2

Establishing Representation in the Workplace under the WHS Act

Day 2

Establishing representation in the workplace under the WHS Act

Learning Aim

Day 2 covers the requirements for consultation in the workplace on work health and safety issues and the consultation mechanisms that are available under the WHS legislation. The roles of HSRs and Health and Safety Committees (HSCs) are discussed as well as entitlements and protections for persons who are HSRs.

Learning Outcomes

After completing this training day, participants should be able to:

1. Describe the nature of the consultation process with workers as required of the primary PCBU by the WHS Act
2. Outline the purpose and formation of a workgroup (or workgroups) within the workplace
3. Summarise the election process for Health and Safety Representatives (HSRs) Deputy HSRs and disqualification provisions
4. Understand the function of a Health and Safety Committee (HSC) and other mechanisms for representation
5. Explain the entitlements, rights and protections of an elected HSR and deputy HSR.

Assessment Method

Successful completion of face to face learning activities and exercises set out in this session.

Session Duration

The nominal duration is for today's training is 9am – 4pm with breaks.

Learning Outcomes and Expected Learner Applications - Day 2

Learning outcome	Expected Learner Applications
<p>After completing this session participants should be able to:</p> <ol style="list-style-type: none"> 1. Describe the nature of the consultation process with workers as required of the primary PCBU by the Act 2. Outline the purpose and formation of a workgroup (or workgroups) within the workplace 3. Summarise the election process for HSRs, Deputy HSRs and disqualification provisions 4. Understand the function of a HSC and other mechanisms for representation 5. Explain the entitlements, rights and protections of an elected HSR and deputy 	<ul style="list-style-type: none"> • Describe what effective consultation between PCBUs and workers means in relation to work health and safety and why it is important in fostering cooperative and consultative relationships • Identify when the PCBU is required to consult with workers and elected HSRs • Identify the various forms / ways information (in general) can be shared to enable effective consultation between PCBUs and workers • Draw links between the role of the HSR and the WHS Act objectives • Provide examples to illustrate reasonable opportunities for workers (including those with special needs) to express their views had been provided • Define what is a workgroup and describe its purpose • Identify the responsibilities of the PCBU in relation to the formation of work groups • Identify the matters that need to be taken into account when workgroups are formed • Identify and explain the circumstances under which existing work groups could change, resulting in fresh negotiations to form new work groups in the workplace • Identify the range of options available to the parties involved, if negotiations regarding the establishment of a work group fail • Explain issues with the establishment of multiple work group, possible impacts on the negotiation of work groups (if relevant) • Explain the election processes and roles/obligations of relevant parties in the process • Identify the term of office for a HSR or Deputy HSR • Explain the HSR powers and functions as defined by the legislation • Explain how an elected HSR is a key link between the work group and management in matters relating to WHS

Learning outcome	Expected Learner Applications
	<ul style="list-style-type: none"> • Identify circumstances that would result in a HSR no longer being able to represent their work group or hold office • Describe the disqualification provisions including conditions, processes and which body responsible for determining disqualifications of HSRs in your jurisdiction • Explain, using examples, the PCBU's obligations towards HSRs • Explain the reasons why the PCBU is obliged to display and maintain lists of HSRs in their places of work/ business/ undertakings • State the entitlements to training of an elected HSR • Explain the legislative protections for HSRs, including protection against discrimination for prohibited reasons • Explain in the legislation the exceptions to the PCBU's obligations towards an elected HSR, and give reasons for why these exceptions would exist • Explain when a HSR can have decisions made by a WHS Inspector reviewed and the process the HSR would follow • Outline the legislative basis for establishing a HSC • Describe the role, composition and functions of a HSC • Describe the obligations and duties of the PCBU to the committee • Describe the role of the HSC and how this relates to the role of the HSR • Explain how a HSC can offer support to a HSR who is not a member of the committee • Outline other mechanisms for representation

Day 2 – Session 1

Consultation, representation and participation arrangements under the WHS Act

Learning Aim

This session provides an outline of consultation under the WHS legislation and explains the formation of work groups where a request for HSR/s is made.

Learning Outcomes

After completing this session participants should be able to:

1. Describe the nature of the consultation process with workers as required of the primary PCBU by the WHS Act.
2. Outline the purpose and formation of a workgroup (or workgroups) within the workplace

Session Duration

The nominal duration is 1 hour 15 minutes.

Learning Outcomes and Expected Learner Applications Day 2 - Session 1

Learning outcome	Expected Learner Applications
After completing this session participants should be able to: <ol style="list-style-type: none">1. Describe the nature of the consultation process with workers as required of the primary PCBU by the Act	<ul style="list-style-type: none">• Describe what effective consultation between PCBUs and workers means in relation to work health and safety and why it is important in fostering cooperative and consultative relationships• Identify when the PCBU is required to consult with workers and elected HSRs• Identify the various forms / ways information (in general) can be shared

Learning outcome	Expected Learner Applications
<p>2. Outline the purpose and formation of a workgroup (or workgroups) within the workplace</p>	<p>to enable effective consultation between PCBUs and workers</p> <ul style="list-style-type: none"> • Draw links between the role of the HSR and the WHS Act objectives • Provide examples to illustrate reasonable opportunities for workers (including those with special needs) to express their views had been provided • Define what is a workgroup and describe its purpose • Identify the responsibilities of the PCBU in relation to the formation of work groups • Identify the matters that need to be taken into account when workgroups are formed • Identify and explain the circumstances under which existing work groups could change, resulting in fresh negotiations to form new work groups in the workplace • Identify the range of options available to the parties involved, if negotiations regarding the establishment of a work group fail • Explain issues with the establishment of multiple work group, possible impacts on the negotiation of work groups (if relevant) • Identify PCBUs of relevance to the HSR's work group and workplace

Day 2 - Session 1

Consultation process with workers as required of the primary PCBU by the WHS Act

As identified earlier on day one of training, one of the objectives of the Act is 'to foster a cooperative, consultative relationship between PCBUs and workers on the health, safety and welfare of persons at work'.

Activity: Consultation and representation



Discuss what is meant by the term 'consultation' and how representation and consultation could contribute to the management of health and safety risks in the workplace.

Relate the ideas raised back to the objectives of the legislation and the Consultation, Co-operation and Co-ordination Code of Practice 2011.



Indicative time – 20 minutes

Consultation process with workers as required of the primary PCBU by the WHS Act



One of the major components of the WHS Act is the need for PCBUs to consult with workers on health and safety issues.

PCBUs have a duty to consult (WHS Act s. 47)

PCBUs must, so far as is reasonably practicable, consult with workers who:

- carry out work for the business or undertaking; or
- are, or are likely to be, directly affected by a matter relating to work health and safety.



The WHS Act requires that the views of workers and Health and Safety Representatives must be taken into account before making a decision on a health and safety issue.

The WHS legislation changed the focus from the employer-employee relationship to that between PCBU and workers (both terms having much broader definitions). This requires wide consultation to occur, helping prevent gaps in the management of work health and safety.

What is effective consultation and requirements for a PCBU to consult with workers and elected HSRs?

Consultation is a key component in any effective WHS management system (WHSMS) and is defined in Part 5 of the WHS Act. It aims to achieve agreement between the PCBU and workers on the procedures that should be followed to eliminate or minimise worker-related injury and illness and to promote health and well-being.

A consultative approach ensures that a safe and healthy work environment, work practices, programs and procedures are created and maintained by the people who must work within these systems and be guided by them. During this session we will look at the need for establishing appropriate consultative arrangements to meet the duty to consult outlined in the WHS Act.

Consultation is a two-way process between the PCBU and workers where both parties:

- *talk* to each other about health and safety matters
- *listen* to each other's concerns
- *seek and share* views and information, and
- *consider* what the other party says before making decisions.

Consultation requires that the PCBU:

- shares relevant work health and safety information with workers
- gives workers a reasonable opportunity to express their views and to raise health or safety issues
- gives workers a reasonable opportunity to contribute to the decision-making process relating to the health and safety matter
- takes the views of workers into account, and
- advises workers of the outcome of any consultation in a timely manner.

Consultation does not mean the PCBU telling workers about a health and safety decision or action after it has been taken. PCBUs should encourage workers to:

- ask questions about health and safety
- raise concerns and report problems
- make safety recommendations, and
- be part of the problem-solving process.

As of 29th July 2024 – a PCBU must consult with a worker’s representative if requested by one or more workers. Consultation involving a workers representative must be carried out at time and place agreed by the parties.

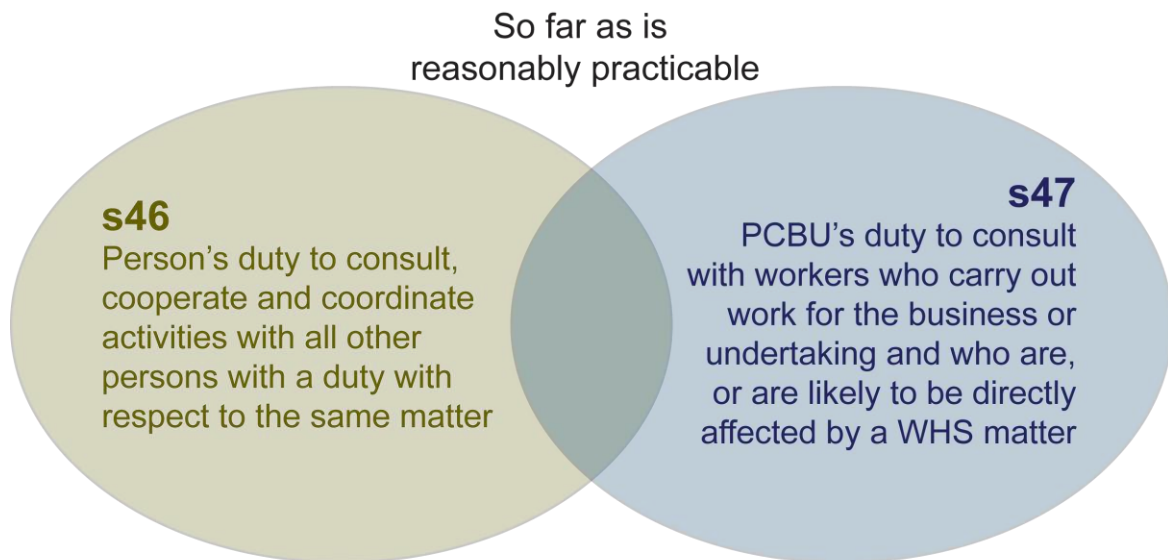
Consultation is required when:

- identifying and assessing risks to health and safety
- deciding ways to eliminate or minimise those risks
- deciding on the adequacy of facilities for worker welfare
- proposing changes that may affect the health and safety of workers e.g. consultation to be included in purchasing procedures
- when deciding on procedures for:
 - consulting with workers
 - resolving work health and safety issues
 - monitoring workers’ health
 - monitoring conditions at any workplace under the management or control of the PCBU
 - providing information or training for workers
 - other activities as described under the regulations.

While consultation may not result in agreement, that should be the objective as it will make it more likely that decisions are effective and will be actively supported.

Duty to consult with other duty holders (WHS Act s. 46 – s. 47)

(Refer to the class resource - *Consultation, Co-Operation, Co-Ordination and Co-Ordination Code of Practice 2011*)



If more than one person has a duty under the WHS Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

All duty holders that may impact on work health and safety are required to consult with each other in a cooperative and coordinated manner so that consultation in the workplace occurs where multiple businesses operate e.g. building managers, business owners, contractors negotiate and agree to standards, rules and procedures relating to health and safety.

Duty holders are required to exchange information in an open manner to ensure that all areas of health and safety are addressed in a workplace.

As shown in the diagram, each PCBU is required to consult with their workers and each other in matters affecting work standards, rules and procedures that affects the health and safety of workers.

HSRs can be shared between PCBUs, for example a labour hire company and the host employer in a way that effectively enables the health and safety of workers to be taken into consideration. PCBUs are required to consult with their workers and those workers who are or likely to be affected by a work health and safety matter. In our example, the labour hire company and the host employer are required to consult with the HSR on work health and safety issues that may impact on workers in the work group and that the views of the workers are taken into account when making decisions on ways to eliminate or minimise risks to health and safety.

Consultation involves **sharing of relevant information** about hazards of the work environment and work activities such as plant movements, work arrangements, substances used and how the associated risks are to be eliminated and if it is not reasonably practicable, the risks minimised.

Cooperation and coordination could involve the planning and coordination of activities to minimise the risks associated with planned and unplanned interactions. It could, for example, be a planned and coordinated approach to managing emergency situations or standards, rules and procedures to carry out the work safely.

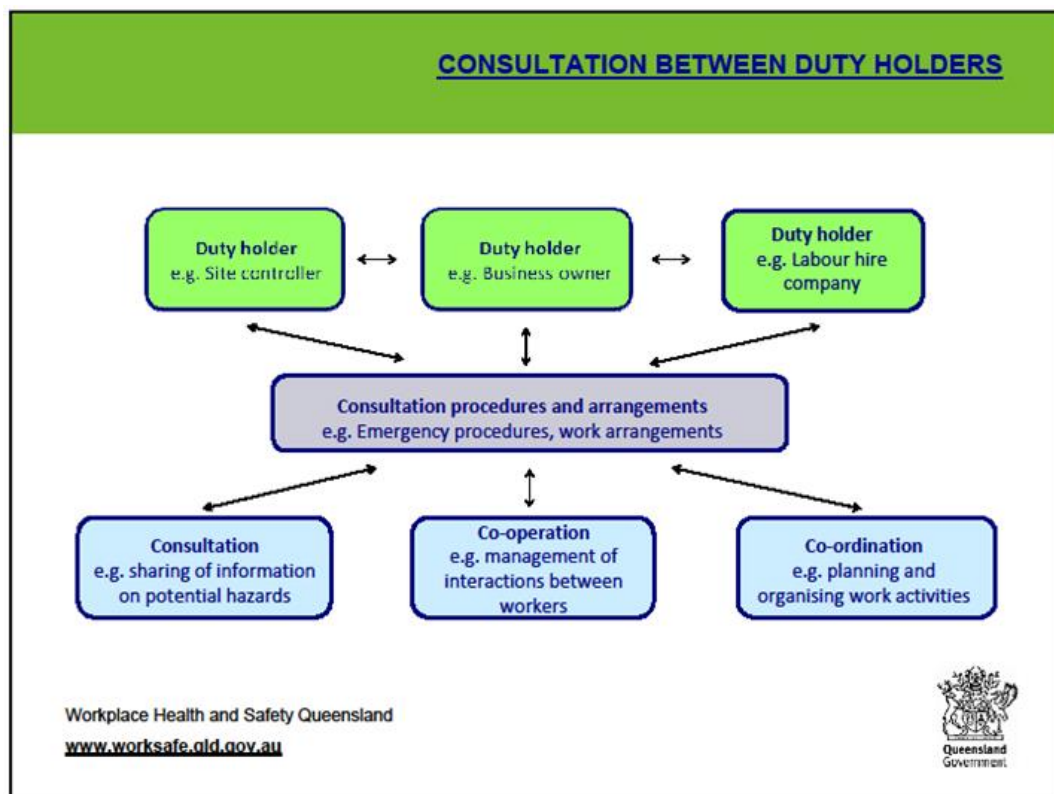
PCBUs are not expected to do the impossible but are required to take a proactive and sensible approach to consultation. For example, an urgent response to an immediate risk may necessarily limit the extent of consultation in some circumstances.

It may also not be reasonably practicable to consult with workers who are on extended leave. However, it would be appropriate to ensure that these workers are kept informed about any matters that may affect their health and safety when they return to work.

Factors which will affect how consultation is undertaken could include:

nature of the decision or action, including the urgency to make a decision or take action;
availability of the relevant workers and any health and safety representatives;
work arrangements, such as shift work and remote work; and
characteristics of the workers, including languages spoken and literacy levels.

Below is an example as to how consultation may occur between duty holders that are present or have workers present at a particular workplace.



Discussion: When may it be considered not 'reasonably practicable' to consult?



Some situations may arise where it is not reasonably practicable to consult, examples below:

where a hazard imposes an immediate and serious risk, and the PCBU may be required to take immediate action eg: replacing equipment

workers away on long services leave when worker activities are going to be changed that may directly impact on their health and safety on their return.

Consultation Arrangements

Under the *Work Health and Safety Act 2011* (the WHS Act), the functions of health and safety representatives and committee are differentiated.

Health and Safety Representatives (HSRs) and Deputy HSRs

The main provisions of the WHS Act on consultation are for a HSR to represent the workers on health and safety matters by monitoring the health and safety measures implemented, investigating health and safety complaints and to inquire into anything that may pose a risk to the health and safety of workers in the work group. Deputy HSRs also have the same entitlements to training as HSRs.

A HSR can represent a workgroup across a number of PCBUs e.g. a labour hire and the host employer. Both PCBUs have the respective duties to work with the HSR on any work health and safety issues that may affect the labour hire workers. The PCBUs must consult cooperate and coordinate with each other in relation to their respective duties.

Health and Safety Committees (HSCs) – Under the WHS Act, the functions of the HSC is different from that of the HSRs. HSC members are not required to monitor the health and safety measures implemented in the workplace, to investigate health and safety complaints or to inquire into anything that may pose a risk to the health and safety of workers in the workgroup.

The role and functions of the HSC under the WHS Act are to facilitate co-operation, to assist in developing standards, rules and procedures designed to ensure the workers' health and safety and functions prescribed by the regulation or agreed between the PCBU and the committee. HSCs can be established at the request of a HSR or 5 or more workers and where workers and the PCBU agree. The PCBU can also choose to establish a HSC. HSCs must include HSRs if they agree.

The HSC could also be an effective mechanism to facilitate consultation, co-operation and co-ordination of activities between multiple PCBUs to develop a coordinated systematic management of health and safety of workers.

Other arrangements

PCBUs continue to have responsibilities to consult with workers when there are other agreed arrangements in place for consultation. If the PCBU and the workers have agreed to procedures for consultation, these procedures must be consistent with the provisions of section 48. This will require that:

- (a) relevant information about the health and safety matter is shared with workers
- (b) workers are given a reasonable opportunity to express their views, raise health and safety issues, contribute to the decision-making process, have their views considered by the PCBU and be informed of the outcome of the consultation in a timely manner.

Section 48(2) also states that if workers are represented by an HSR, the consultation must involve the HSR.

PCBUs continue to have responsibilities to:

- consult with the workers on how consultation will occur and explain the various mechanisms that are available
- agreeing on how consultation will take place.
- setting up consultation procedures and ensuring they are discussed and reinforced regularly. A small workplace may choose informal agreed procedures, whereas a large workplace would require documented procedures.
- regularly monitoring and reviewing the consultation procedures to ensure they are the most effective form of consultation.

WHS entry permit holders can assist in establishing consultation arrangements and consult with members/eligible members on health and safety issues. A detailed explanation of WHS entry permit holders will be provided later in the course.

Consultation in the workplace is to enable the PCBU to harness workers' knowledge and skills associated with the tasks carried out at work to inform decision-making on health and safety matters.

Discussion: Labour hire firm



A labour hire firm has its workers placed at a host PCBU.

Under the WHS Act, are Labour hire workers considered 'workers' of the Labour hire firm or the host PCBU or both?

Who has a duty to consult with the workers on work health and safety issues?

What consultation arrangements can be implemented under the WHS Act?

Work groups and multiple business workgroup – negotiations and establishment (WHS Act s. 50 – s. 59)

Work groups (WHS Act s. 50 – s. 57)



A work group is a group of workers formed through consultation, negotiation, and agreement **for the purpose of facilitating the representation of workers health and safety by a HSR**. Once the work group is established, election for a HSR will enable the consultation of workers' work health and safety matters to take place. Any worker or group of workers can ask the PCBU for whom they are carrying out work to set up a work group at one or more workplaces by requesting the election of an HSR.

Under the WHS Act, a HSRs powers are limited to the workgroup they represent. If agreed, workers from multiple businesses can be part of the same work group which might include contractors, Labour hire staff, outworkers and apprentices.

Responsibilities of the PCBU in relation to the formation of work groups

Negotiations for agreement for work groups (WHS Act s. 52)



If a request is made for the election of an HSR, a PCBU must complete negotiations within 14 days. Consultation and negotiations between a PCBU and workers will determine the:

- number and composition of the work group(s)
- number of HSRs and deputy HSRs
- workplace(s) to which the work group(s) apply
- the businesses or undertakings to which the work groups will apply.

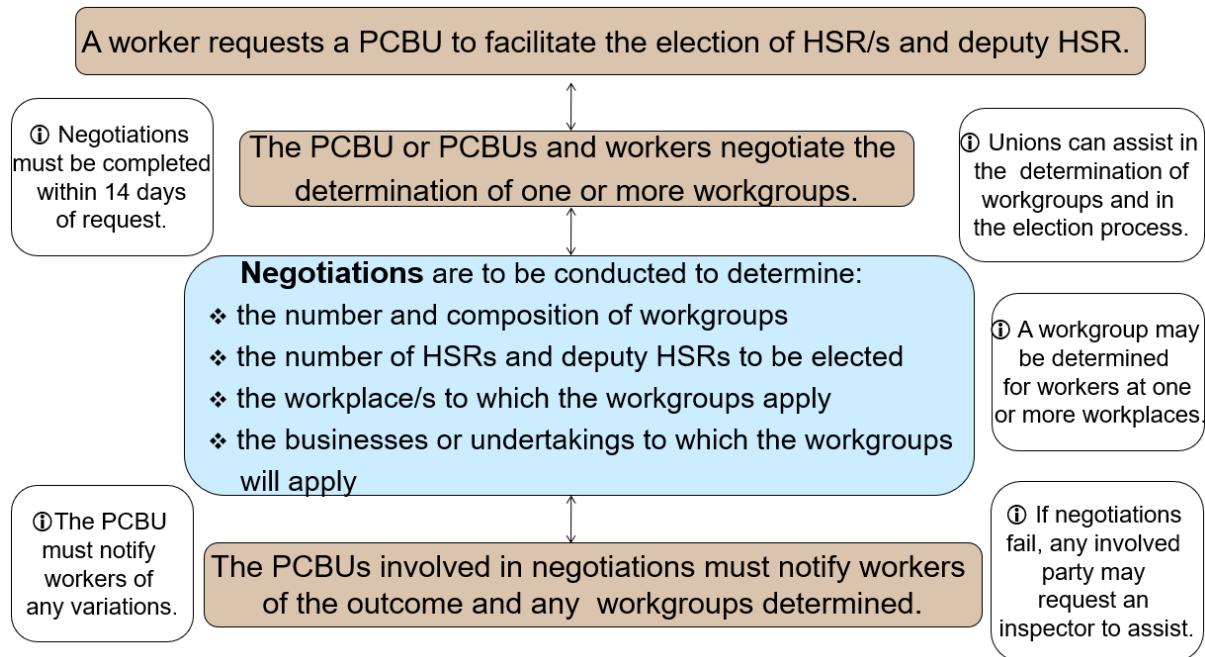
The PCBU must also notify workers as soon as practicable of the outcome of the negotiations.

The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.

From 29th July 2024, the PCBU, worker(s) or their representatives and a relevant union (where a PCBU is notified in writing) are party to work group negotiations.

The PCBU must, if asked by a worker, negotiate with the worker's representative in negotiations for a work group (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Determination of Workgroups



Work health and safety matters that need to be taken into account when establishing work groups and the circumstances under which work groups can be formed.

During the process of consultation to seek information to determine work groups and variations of workgroups, consideration has to be given to the:

- most effective and convenient grouping that enables the interests of the health and safety of workers to be represented; and
- need for a HSR for the work group to be readily accessible to each worker in the workgroup is considered.

Section 17 of the WHS Regulation specifies the following must be taken into consideration when seeking information from workers to determine work groups:

- the number of workers;
- the views of workers in relation to the determination and variation of work groups;
- the nature of each type of work carried out by the workers;
- the number and grouping of workers who carry out the same or similar types of work;
- the areas or places where each type of work is carried out;
- the extent to which any worker must move from place to place while at work;
- the diversity of workers (.g. physical characteristics, language literacy ,culture)and their work;
- the nature of any hazards at the workplace or workplaces;
- the nature of any risks to health and safety at the workplace or workplaces;
- the nature of the engagement of each worker, for example, as an employee or as a contractor;
- the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term;
- the times at which work is carried out;
- any arrangements at the workplace or workplaces relating to overtime or shift work.

Workgroups are to be established so that they are inclusive of all workers in the workplace.

Some workplaces may need a mix of HSRs, HSCs, Workplace health and safety Officers, and / or other agreed consultation arrangements tailored to suit the workers and the work environment.

It may be more effective and meaningful to have an alternative arrangement for consultation if workers travel frequently or the business is small.

Effective representation involves some basic principles:

- Recognising the workers in the work group and their specific concerns on health and safety and,
 - Consulting with workers to ascertain their concerns and bringing health and safety issues to the attention of workers and reporting back on matters of concern.
- Workgroups must therefore be representative of the various groups within the workplace.

Fresh negotiations for new work groups may be needed if any of the above factors should change and it is identified that persons are no longer adequately represented in the workplace

A person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement (WHS Act s 57).

Multiple business workgroups

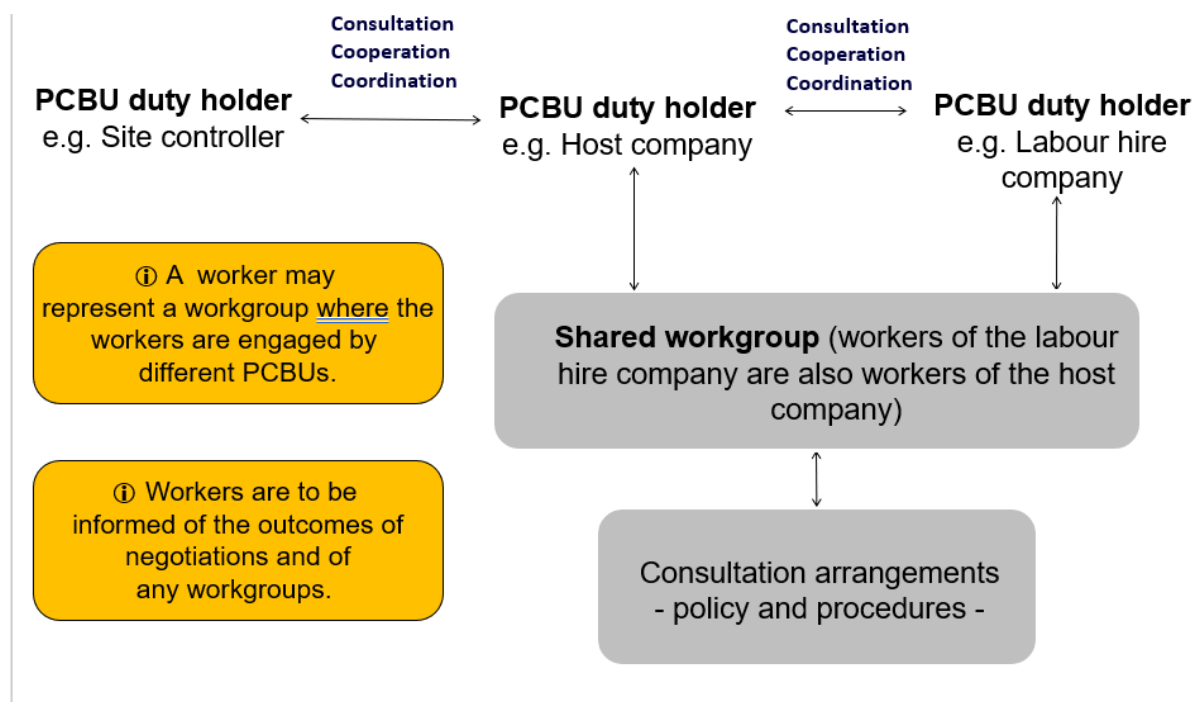
All duty holders that may impact on work health and safety are required to consult with each other in a cooperative and coordinated manner. The WHS Act ensures consultation in the workplace can occur where multiple businesses operate e.g. building managers, business owners, contractors if negotiated and agreed to by relevant parties.

Duty holders are required to exchange information in an open manner to ensure that all areas of health and safety are addressed in a workplace.

Each PCBU is required to consult with their workers.

In situations where more than one person has a duty, each person is required to consult to ensure that they meet those duties.

Multiple Business Workgroups



If agreed, workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers and apprentices.

Examples of multiple business work groups may include:

a principal contractor and numerous sub-contractors working together on a construction site

Labour hire staff and the employees at a manufacturing site

joint venture businesses

principal operator engaging workers from PCBUs such as airports, entertainment venues and hospitals.

The work group arrangement must be agreed to by the workers. The aim is to identify the most workable arrangement for the workplace/s.

Determination of work groups of multiple businesses

The determination of work groups is to be negotiated between each of the PCBUs and between PCBUs and the workers.

- These arrangements don't affect any work groups already determined by the PCBU for their workers.
- A PCBU needs to identify all workplaces where their workers are likely to interact with workers of another PCBU and where workers are working at different workplaces.
- Workers of the PCBU could potentially become part of a workgroup working under a different PCBU and may have additional representation.
- In situations where there are multiple duty holders, PCBUs need to negotiate suitable arrangements for consultation. These arrangements don't need to affect existing consultation arrangements.

Variations to any agreement can be negotiated as required

Negotiations for agreement of work groups where there are multiple business arrangements (WHS Act s56):



As for single business work group negotiations, the negotiations for multiple business work groups will determine:

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

A person conducting a business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.



A party who is involved with negotiation for an agreement, or to an agreement, concerning a work group, may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.

If a party withdraws from an agreement concerning a work group:

- the other parties must negotiate a variation to the agreement
- the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

Range of options available if negotiations regarding the establishment of a work group fail

Inspectors are appointed by WHSQ to provide advice to duty holders under the WHS Act, assist in resolving work health and safety issues and to monitor compliance.

Inspectors may assist in advising and supporting workplaces in meeting the requirements of the WHS Act. They can be involved in:

- **helping establish consultation arrangements** where negotiations fail; and
- **helping resolve** work health and safety issues.

Failure of negotiations (WHS Act s. 54)



If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector for review.

There is a failure of negotiations if:

The person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not been completed within 14 days after:

- a request is made under legislation
- a party to the agreement requests the variation of the agreement, or
- agreement cannot be reached on a matter relating to the determination of a work group (or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.

As of 29th July 2024, if negotiations to make or vary an agreement fail, any person who is a party to the negotiations may ask the regulator to appoint an inspector to assist the parties in reaching an agreement.

Day 2 – Session 2

Election and role of HSRs and deputy HSRs in the workplace

Learning Aim

This session aims to provide information on the role of the HSR, including deputy HSRs, starting with the election process and then working through the powers and functions of HSRs, their limitations and the provisions relating to removal and disqualification of HSRs.

Learning Outcomes

After completing this session participants should be able to:

1. Summarise the election process for Health and Safety Representatives (HSRs) Deputy HSRs and disqualification provisions
2. Explain the HSR powers and functions as defined by the WHS legislation including the limitations of those powers

Session Duration

The nominal duration is 1 hours 25 minutes.

Learning Outcomes and Expected Learner Applications Day 2 – Session 2

Learning outcome	Expected Learner Applications
<p>After completing this session participants should be able to:</p> <ol style="list-style-type: none"> 1. Summarise the election process for HSRs / Deputy HSRs and disqualification provisions 2. Explain the HSR powers and functions as defined by the WHS legislation including the limitations of those powers 	<ul style="list-style-type: none"> • Explain the election processes and roles/obligations of relevant parties in the process • Identify the term of office for a HSR or Deputy HSR • Explain how an elected HSR is a key link between the work group and management in matters relating to WHS • Identify circumstances that would result in a HSR no longer being able to represent their work group or hold office • Describe the disqualification provisions including conditions, processes and which body responsible for determining disqualifications of HSRs in your jurisdiction

Day 2 - Session 2

Election of HSRs and deputy HSRs



The WHS Act provides that any worker who is a member of the work group is eligible to be elected as the HSR. Parties should consider carefully whether managers, supervisors and team leaders would be appropriate candidates for the role of HSR for their work group because although managers and supervisors are workers with the right to have their work health and safety interests represented, they often have specific health and safety duties that they are required to carry out in their position. It is important to understand that the HSR role is to represent workers in relation to health and safety matters rather than to advise a PCBU how to comply with their health and safety duties.

Election Procedure

HSRs are to be elected from the work group they are to represent. Workers may determine how the election is to be conducted but reasonably practical steps are required to ensure:

- all workers have the opportunity to nominate for the role and vote in the election;
- PCBU is advised of the date of election as soon as possible after the date is determined;
- All workers and the PCBU are to be advised of the outcome of the election;
- PCBUs provide any resources, facilities and assistance reasonably necessary for the election (or as prescribed under regulation);
- A PCBU does not unreasonably delay the election process;
- Elections are not required if the number of nominations is less than or equal to the number of vacancies;
- If the majority of workers in a work group agree, the election may be conducted with the assistance of a 'suitable entity' to assist in conducting an HSR election. A suitable entity for representing, or assisting a worker or the HSR, means a relevant union for the worker, or another entity authorised by the worker or representative to represent or assist them. Workers could choose from a range of election methods eg.: A formal election voting process including the use of ballot papers; and
- Informal election at a work group meeting with a verbal agreement being made and recorded formally accordingly.

As of 29 July 2024, PCBU's must not:

- hinder, prevent or discourage the election of an HSR (or deputy HSR) or the person conducting the election from following procedures relating to the election
- hinder a worker from making a request to facilitate the conduct of an election for one or more HSRs. PCBU to, at certain times, provide written notification to workers about capacity to request election of HSR, process for determining work groups/elections, who may represent the workers, and functions and powers of HSRs; or

HSRs term of office

The expected term of office for a HSR or deputy HSR is **three (3) years**.

- HSRs are **not personally liable** for anything either done or omitted in their role as a HSR if done in 'good faith' (immunity) when undertaking their functions or powers or where they reasonably believe they are undertaking powers and functions under the legislation
- HSRs are eligible for re-election and must receive training within three months of being elected (effective from 1 July 2018). Prior to this, a HSR must be trained - certain functions cannot be performed unless trained i.e. issuing of Provisional Improvement Notices (PINs) and directing unsafe work to cease.

Deputy Health and Safety Representatives

Deputy HSRs can fulfil the role when the HSR is unable due to absence or any other reason to fulfil their role.

Provisions relating to election, term of office, training, immunity, disqualification and ceasing to be a HSR all apply to deputy HSRs.

The Role of HSRs and DHSRs in assisting their workgroup with health and safety issues in the workplace



Powers and functions of a HSR (WHS Act s68 and s69)

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



important

Although a HSR has the ability to exercise certain powers and functions, HSRs can choose not to exercise them. The WHS Act does not impose a duty on HSRs to carry out the powers and functions of a HSR. However, the PCBU must take steps to meet the requirements of the duties to consult with workers s70 of the WHS Act by making sure that HSRs are able to carry out their functions effectively to represent the workers on health and safety matters.

The powers and functions of HSRs include:

- representing the workers in their work group for work health and safety matters
- monitoring health and safety measures taken to ensure compliance with the WHS Act in relation to their work group members
- investigating complaints from work group members about work health and safety matters
- inquiring into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the business or undertaking
- after giving reasonable notice to the PCBU, inspecting the workplace where their work group works
- inspecting the workplace (where their work group works) at any time and without notice in the event of an incident or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard
- accompanying an inspector during a workplace inspection where their work group works
- attending interviews with one or more work group workers and an inspector or the PCBU. For example, interviews may be required after an incident has occurred, for return-to-work purposes or as part of issue resolution processes. A HSR can only attend interviews with the consent of the worker and the interview must be about work health and safety matters
- in certain circumstances, directing a work group member to cease unsafe work and issue a Provisional Improvement Notice (PIN).

HSRs can also:

Request the establishment of a HSC.

Receive information on the health and safety of workers **except personal or medical information** (without the consent of the worker) unless the information cannot be used to identify the worker

Request the assistance of a suitable entity for the HSR e.g. union representative or WHSQ Inspector.

From 29 July 2024

- empower HSRs to request and receive information concerning the work health and safety of workers in their work group
- allow HSRs to be informed of and accompany an entry permit holder (EPH) at the workplace where the EPH's reason for entry relates to the HSR's work group
- enable an HSR to request assistance from a suitable entity for the HSR

Powers of Health & Safety Representatives

	Power / function / right	Restrictions
s68(1)	<ul style="list-style-type: none"> • Represent workers • Monitor compliance • Investigate complaints • Inquire into risks 	WHS matters relating to workers in relevant workgroup (unless other HSR not available)
s68(2)	<ul style="list-style-type: none"> • Inspect workplace • Accompany inspector • Attend worker interview • Request HSC • Receive information re WHS of workers in workgroup • Request assistance 	Of work group & after notice In workplace of workgroup With consent of worker(s) Other than personal or medical information where identity apparent Whenever necessary
s81(2)	• Commence issue resolution	Meet the requirements Clause 23 "Default procedure"
s85	Direct worker to cease work	Reasonable concern of serious risk HSR must be trained after consulting PCBU
s90	Issue PIN	SR must be trained and after consulting with PCBU

Limitations of HSRs' Powers

The HSR's powers are limited to matters and issues that affect/may affect workers they represent except:

- where there is a serious and immediate/imminent risk to the health and safety of members of another workgroup
- a member of another workgroup asks for assistance and the HSR for that workgroup (upon reasonable inquiry) is not available.



Discuss situations where a HSR might become aware of another worker being exposed to a serious and imminent threat to health and safety.



Discussion: Powers and functions of a Health and Safety Representative

Indicative time –15 minutes

How might a HSR monitor a PCBU's compliance with the WHS Act in relation to the following:

- Safe work environments,
- Safe systems of work
- Safe plant and structures
- Safe substances
- Provision of facilities
- Provision of information, instruction, training and supervision
- Monitoring of workers' health and workplace conditions
- Provision of workers' accommodation (an additional requirement) where provided/required for work.
-

Circumstances that would result in a HSR no longer being able to represent their work group or hold office



important

A HSR ceases to hold office if:

- they leave the work group;
- they are disqualified from being a HSR. Any person adversely affected by a decision or action of an HSR can apply to the regulator to have them disqualified;
- they resign as a HSR. The HSR must advise the PCBU in writing if they resign; or
- the majority of members of the group agree the person should no longer represent them. A HSR is removed from office when the majority of work group members sign a written declaration and when the HSR, the majority of work group members and any relevant PCBU have been informed of the decision.

Process for removal of the HSR

The HSR is removed from the position of representation when:

a majority of the workers in the work group they represent sign a written declaration that the HSR should no longer represent them

The HSR ceases to be a HSR when the PCBU and the HSR have been advised of the removal by a **member of the work group who must also inform the members of the work group.**



The HSR is eligible for future re-election

Disqualification of health and safety representatives (WHS Act s. 65)

Disqualification Process - Subdivision 4A , Section 67(a-f)



An application may be made to the Industrial Relations Commission to disqualify a HSR on the grounds that the representative has:

Exercised a power or function for an improper use

Used or disclosed information acquired through their role as a HSR for another purpose other than their HSR role

A designated court or tribunal may disqualify the HSR

Any person adversely affected by the HSR's actions (as above) can apply to the IRC to have a HSR disqualified

WHSQ can also apply to the IRC to have a HSR disqualified

Determining disqualifications of a HSR (WHS Act s. 65 (2))

If the Industrial Relations Commission is satisfied that the circumstances set out in legislation have been complied with, the Commission may disqualify the HSR for a specified period or indefinitely.

Activity: Role of HSRs



In small groups discuss the following scenario and then report back to the larger group.

Indicative time –30 minutes

You are one of the HSRs for your organisation, a distribution warehouse. There have been several incidents in the loading area resulting in a minor back injury and sprains to members of your workgroup. There has also been similar incidents reported by contract drivers working in the area and they have asked for assistance.

What activities would you undertake in your role as the HSR?

Day 2 – Session 3

Obligations of a PCBU to HSRs and protections for HSRs and reviews of decision

Learning Aim

This session aims to provide information on the obligations that a PCBU has to its HSRs and the provisions relating to protections for HSRs from discrimination, coercion and misleading conduct.

Learning Outcomes

After completing this session participants should be able to:

1. Understand and explain the entitlements, rights and protections of an elected HSR / deputy HSR

Session Duration

The nominal duration is 1 hour 15 minutes

Learning Outcomes and Expected Learner Applications Day 2 – Session 3

Learning outcome	Expected Learner Applications
<p>After completing this session participants should be able to:</p> <p>1. Understand and explain the entitlements, rights and protections of an elected HSR / deputy HSR</p>	<ul style="list-style-type: none"> • Explain, using examples, the PCBU's obligations towards HSRs • Explain the reasons why the PCBU is obliged to display and maintain lists of HSRs in their places of work/ business/ undertakings, including providing a list to Workplace Health and Safety. • State the entitlements to training of an elected HSR • Explain the legislative protections for HSRs, including protection against discrimination for prohibited reasons • Explain in the legislation the exceptions to the PCBU's obligations towards an elected HSR, and give reasons for why these exceptions would exist • Explain when a HSR can have decisions made by a WHS Inspector reviewed and the process the HSR would follow

Day 2 – Session 3

The role of the PCBU in workplace consultation

Options for consultation must be negotiated between PCBUs and workers. As already discussed, HSRs may be elected to consult workers on health and safety matters. They may agree to establish a HSC made up of workers and management. HSR and deputy HSRs can form part of this Committee if they consent to do so. The establishment of a HSC can be requested by a HSR or 5 or more workers. The PCBU can also choose to set up a HSC.

A PCBU can ensure that the best decision is made by taking the views of workers into consideration as part of the process.

PCBU obligations in consultation (WHS Act s. 47 – s. 49)

The PCBU is now required to advise workers of the outcome of a decision within a relevant timeframe – this timeframe will be dependent on such things as the level of expertise required in making a decision, the level of risk associated with the matter etc.



important

The relevant HSR must be involved in consultation – this should occur through the agreed consultation procedures.

PCBUs are required to consult when (WHS Act s49):

Identifying hazards and assessing WHS risks

Making decisions about controlling risks

Making decisions about adequate facilities for workers

Proposing changes which may affect health and safety

Making decisions about procedures for:

- Consulting with workers
- Resolving health and safety issues
- Monitoring health of workers
- Monitoring conditions of the workplace
- Providing information / training for workers

PCBU must consult with workers who are likely to be affected by a matter relating to work health and safety.

PCBU and workers can agree on procedures for consultation, which must be consistent with section 48 of the WHS Act.

Consultation procedures are to be used:

- where they have been agreed to by a PCBU and the workers; and
- they are consistent with the required 'nature' of consultation.

A PCBU has the following obligations (WHS Act s. 70) to HSRs, that is, to:

- consult, so far as is reasonably practicable, with HSRs on work health and safety matters at the workplace.
- 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 person has relating to work place hazards (including associated risks) affecting the health and safety of the workers in the work group;
- allow a HSR access to information that the person has relating to the health and safety of the work group workers, except for personal and medical information concerning a worker;
- allow HSRs to attend interviews concerning work health and safety between one or more consenting workers and an inspector or another PCBU 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 (or prescribed under regulation)
- allow a suitable entity to assist a HSR to have access to the workplace if it is necessary to enable the assistance to be provided; (unless an exception in s. 71 applies).
- 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 Regulation;
- allow the HSR as much time that is reasonably necessary to perform their powers and functions under the WHS Act; and
- pay HSRs performing their powers and duties as a HSR the same amount they are entitled to receive when performing their normal duties.

As of 29th July 2024, PCBU obligations to HSRs regarding provision of information, copies of notices, copies of information given to the regulator about notifiable incidents, permitting HSR to accompany entry permit holder, informing HSR an inspector is at the workplace, and ensuring HSR's are paid their usual remuneration while attending training.

When the assistance of another has been requested by the HSR, the PCBU is not required to:

- Give financial assistance for this person;
- Allow access when the person's entry permit has been revoked, suspended or if disqualified; and/or
Allow access when there are reasonable grounds for refusal (the HSR may request the assistance of an inspector to resolve the matter).
- The assistance may be provided through a union representative or a WHS entry permit holder.

What resources, facilities and assistance does a HSR need?

A PCBU must provide necessary resources, facilities and assistance that is reasonably necessary to enable the HSR to carry out functions and exercise their powers, or as prescribed under regulation.

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 chair 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
- access to relevant technical equipment, for example, a noise meter
- the use of noticeboards, and
- if required, transport or travel expenses to commute between workplaces.

Training (WHS Act s. 72)

The WHS Act provides training entitlements for elected HSRs and deputy HSRs.

- HSR training must be provided to the HSR. The PCBU must ensure HSR's are paid their usual remuneration while attending training that is approved by WHSQ and that is a course the HSR is entitled to attend under the WHS Regulation within three months of election. The PCBU has the responsibility of selecting the training provider.
- HSR's can choose their own training provider for the HSR training courses that have been approved by the regulator (from 29th July 2024)
- the PCBU must allow the HSR to attend the training and ensure HSRs receive their usual pay (including overtime, penalties, and allowances) they would get if they were performing their normal duties
- HSRs who are part time and work extra hours to attend training must be paid their regular wage for those additional hours
- if a PCBU and HSR cannot reach agreement about these matters, either party may ask the regulator to appoint an inspector to assist in resolving the matter.

The WHS Regulation provides that for the purpose of section 72(1) of the WHS Act, a HSR is entitled to attend the following courses of training in work health and safety:

- An initial course of training of 5 days
- Refresher training at every 12 months (From 29th July 2024)

HSR lists (WHS Act s 74)

A PCBU must keep a current list of all HSRs and deputy HSRs and display a copy at the workplace. **This list must also be forwarded to Workplace Health and Safety for each Workgroup.**

Protections for HSRs

With the powers and functions of various persons under the WHS Act, provisions have been made to protect anyone acting in good faith for the purpose of ensuring health and safety in the workplace.

The conduct that is protected from discriminatory behaviour under the WHS Act includes the activities of persons who are undertaking their role under the WHS Act e.g. a HSR directing unsafe work to cease or a person who cooperates or assists with this direction; a worker providing information to a person who is undertaking activities permitted under their role.

Persons that are protected under the WHS Act (s104-115) include persons who are, have, or will:

- Act, perform/or not perform their functions or exercise their powers (where applicable) as HSRs, deputy HSR, HSC members, WHS entry permit holders or any other role in accordance with the WHS Act.
- Assist or give information to persons using a power or performing a function under the WHS Act
- Raise an issue or concern about work health and safety with PCBU/s, other workers, persons with roles and function or an inspector.
- Be involved in resolving a work health and safety issue.
- Take action to seek compliance with WHS duties and obligations

Activity: discuss examples of each of the actions covered that may be particular to your workplace



Provisions are also in place to ensure that persons with powers do not abuse them (WHS Act s. 104 – s. 115).

What type of behaviour may be considered as (record your examples)?

Discriminatory?

Coercive?

Misleading?

A person only commits an offence under the WHS Act if the dominant reason for the discriminatory behaviour is conduct by a person in relation to health and safety activities.

Discriminatory conduct is considered to be if a person does, organises or threatens to:

Regarding a worker:

- dismiss or terminate a contract for services with a worker; or alter the position of a worker to the worker's detriment;
- treating a worker less favourably than other workers; or

Regarding a prospective worker:

- refuse or fail to offer to engage a prospective worker; or
- treat a prospective worker less favorably than another prospective worker would be treated in offering terms of engagement; or
- terminates, refuses or fails to enter into a commercial arrangement with another person.

The WHS Act also makes it clear that it is illegal for a person to request, instruct, induce, encourage, authorise or assist a person in discriminatory behaviour.

Coercion or inducement

A person must also not:

organise or threaten to take actions against another person with the intent of coercing or inducing them in relation to:

- performing (or not performing) their role;
- exercising or not their powers; or
- taking or continuing in a role under the WHS Act e.g. a person attempting to persuade individuals not to take a role as a HSR or to cease unsafe work.

Misrepresentation:

To support the prohibition of coercion or inducement under the WHS Act, a person can be fined for knowingly or recklessly making false or misleading representation to another person about the other person's:

- rights or responsibilities; or
- ability to initiate or participate in a process or proceedings e.g. request the election of a HSR or the establishment of a HSC, cease unsafe work; and/or
- ability to make a complaint or inquiry to a person or other body e.g. WHSQ, that has the power to seek compliance with the WHS Act.

Discussion: Does a HSR have duties under the WHS Act?



Discuss the answers to questions below and respond in your handbook.



Indicative time –15 minutes

Is the HSR a duty holder under the WHS Act?

Can a HSR be personally responsible for mistakes?

What can I do if I feel my manager is discriminating against me because I'm a HSR?

Activity: PCBU obligations towards HSRs



In small groups or pairs research a PCBU obligation in respect of HSRs.



Indicative time 20 minutes

Research and report back to the group:

the relevant section of the legislation

the duty of a PCBU towards the HSR

a practical example of how that duty may be met; and

any dispute/appeal processes.

Exceptions from obligations of the PCBU to HSRs (WHS Act s. 71)

In certain circumstances, there are exceptions to the PCBU's obligations to HSRs. The PCBU:

- should prevent access to any personal or medical information concerning a worker where the worker has not given consent unless the information is in a form that does not identify the worker and could not reasonably be expected to lead to the identification of the worker.
- is not required to give financial assistance to a HSR to pay for the assistance of another person
- is not required to allow access to an assistant to the HSR if the assistant has had his or her WHS entry permit revoked or during any period that the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a WHS entry permit.



important

The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group. If access is refused to a person assisting a health and safety representative the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

Review of decisions made by a WHSQ Inspector



HSRs can seek to have decisions made by a WHSQ inspector reviewed when workers' interests are affected by the decision in the following circumstances:

When decisions are made:

- following failure to commence negotiations or in relation to the training of HSRs
- in relation to a HSC
- or on review of provisional improvement notices.



Relevant sections of the WHS Act relate to an inspector's investigation

Review of decisions by other persons

An application for a review of decision can be made by the following persons:

- The person to whom the notice was issued
- The person with management or control of the workplace
- A PCBU whose interests are affected by the decision
- Workers whose interests are affected by the decision

Process for the review of a decision (WHS Act s. 224 – s. 228)



Internal Review

Decisions made by Inspectors can be reviewed by WHSQ, being an internal review.

An eligible person can apply to WHSQ for an internal review of an Inspector's decision:

- Within the prescribed time after the day on which the decision first came to the eligible person's notice, or such longer period as the regulator allows.
- The application must be made in the manner and form required by the regulator.

For the purposes of this section, the prescribed time is:

- in the case of a decision to issue an improvement notice the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser, and
- in any other case, 14 days.

External Review of a decision (WHS Act s. 229)

An eligible person may apply to an external review body for a review of:

- decisions of the internal reviewer
- the original decision of the regulator.

From the day the applicant received or became aware of the original decision, an application for an external review must be made within:

- 30 calendar days to the Queensland Industrial Relations Commission (QIRC), or
- 28 calendar days to the Queensland Administrative Tribunal (QCAT).



important

QCAT and QIRC may delay the operation of a decision that is the subject of an external review pending a decision on the review.

QCAT and QIRC may, on an external review, confirm, vary or revoke the decision concerned.

Day 2 - Session 4

Other consultative mechanisms including health and safety committees (HSCs)

Learning Aim

This session will provide information on HSCs and other arrangements for consultation.

Learning Outcomes

After completing this session participants should be able to:

1. Understand the function of a HSC
2. Understand how consultation with workers can be achieved via arrangements other than HSRs and HSCs

Session Duration

The nominal duration is 50 minutes.

Learning Outcomes and Expected Learner Applications Day 2 – Session 4

Learning outcome	Expected Learner Applications
<p>After completing this session participants should be able to:</p> <ol style="list-style-type: none">1. Understand the function of a HSC2. Understand how consultation with workers can be achieved via arrangements other than HSRs and HSCs	<ul style="list-style-type: none">• Outline the legislative basis for establishing a HSC• Describe the role, composition and functions of a HSC• Describe the obligations and duties of the PCBU to the committee• Describe the role of the HSC and how this relates to the role of the HSR• Explain how a HSC can offer support to a HSR who is not a member of the committee• Outline other mechanisms for representation

Day 2 - Session 4

The Role of the HSC



HSCs (WHS Act s. 75)

The PCBU at a workplace must establish a HSC for the business or undertaking or part of the business or undertaking as soon as practicable (but no later than 28 days) after being requested to do so by:

- a HSR for a work group of workers carrying out work at that workplace, or
- 5 or more workers at that workplace, or
- if required by the regulations to do so, within the time prescribed by the regulations.

A PCBU may establish a health and safety committee for the workplace or part of the workplace on the person's own initiative.



Note. If a health and safety committee is not required to be established, other consultation procedures can be established for a workplace as outlined in legislation.

A HSC may be established to run long term as part of consultation arrangements. In other circumstances, for example with the introduction of new working systems, a HSC may be set up to assist in consultation and the development of applicable standards and procedures. The HSC may then be dissolved after the health and safety matters have been addressed and the workplace continue with its original consultation arrangements.

Constitution of committee (WHS Act s. 76)

The constitution of a health and safety committee may be agreed between the person conducting the business or undertaking and the workers at the workplace.

If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.

If there are 2 or more health and safety representatives at a workplace, those representatives may choose one or more of their number (who consent) to be members of the committee.

At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.

If agreement is not reached under this section within a reasonable time, any party may ask WHSQ to assist the parties to reach an agreement, including the appointment of an inspector to decide the matter (from 29th July 2024).

An inspector appointed on a request may decide the constitution of the health and safety committee or that the committee should not be established.

If the inspector reasonably believes the parties are unlikely to reach an agreement within seven days of being appointed to assist, the inspector must make a decision about the HSC (from 29th July 2024).

A decision of an inspector under the WHS Act is taken to be an agreement in relation to this matter between the parties.

Role and functions of a HSC (WHS Act s. 77)

The functions of a health and safety committee are:

to facilitate co-operation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work, and

to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace, and

any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

A HSC under the WHS Act can:

be a consultation mechanism; and

assist and support the HSR in their role and represent all workers at the workplace not just the workgroup the HSR represents

assist in work health and safety issues associated with specific issues.

Meetings of committee (WHS Act s78)

A health and safety committee must meet:

at least once every 3 months

at any reasonable time at the request of at least half of the members of the committee.

Obligations and duties of the Person Conducting a Business or Undertaking (WHS Act s79)

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

Any time that a member of a HSC spends carrying out their duties on the committee the PCBU must with pay them the same entitlements as for performing his or her normal duties during that period.

The person conducting a business or undertaking must allow the HSC for a workplace to have access to information that the person has relating to:

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



important

The PCBU must not allow the HSC to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that does not identify the worker, and could not reasonably be expected to lead to the identification of the worker.

The PCBU may also establish a HSC **on their own initiative** to assist in managing work health and safety risks at the workplace.



important

Representatives of the PCBU on the HSC should be persons involved at senior management levels in the organisation who are able to make or participate in making decisions about health and safety.

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

Clarify and compare the roles of a HSR and a HSC

The role of the HSR and the HSC are different but are designed to complement each other. In order to make a distinction between them you will need to understand that a HSR should concentrate on addressing specific issues regarding the health and safety of the employees within their workgroup. A HSC will tend to focus on the health and safety issues across the entire organisation.

In some organisations HSR's will be the members of the HSC, whilst in others they may not be. So it is important to communicate with the committee if HSRs are not a member.

HSRs are members of the HSC in the workplace unless they don't consent to be.

A HSR may also need to consult and communicate with people outside of the workgroup. External consultants, WHSQ inspectors, manufacturers and suppliers are some of the people the HSR may come into contact with whilst performing the role.

In order to represent the workgroup effectively, HSR should be:

- Actively participating in workplace arrangements
- Able to provide information to employees regarding management decisions on health and safety
- Able to source required information
- Able to show commitment and passion to the improvement of health and safety
- A leader and a safety role model
- An effective communicator.

Effective representation on matters concerning health and safety is an important function for workers. As the voice of this representation, HSRs must ensure that they are accurately representing the views of the members of the workgroup. It is important that they do not use the position of HSR to promote their own interests. Promotion of health and safety issues and improved safety performance should be the only position taken.



HSCs are there to facilitate cooperation between management and workers. Some of the activities they can undertake to fulfil their role, where agreed to, are:

- Consultation in the workplace
- Workplace inspections
- Involvement in investigations if required or agreed
- Analysis of statistics
- Conducting meetings
- Review of policies and procedures

While the HSR will identify work health and safety issues that relate specifically to their workgroup as well as possible solutions to those issues, the information and knowledge they gain can be passed on to the HSC to facilitate its role in consultation.

The HSR can also provide information such as the effectiveness of controls implemented to minimise risks with feedback provided by workers.

Likewise, the information, knowledge and skills that HSC members gain in performing their functions can be utilised in supporting the HSR in their role. The HSC members representing management of the PCBU can provide insight into other factors that may potentially impact on health and safety such as changes in business direction etc. that the HSR can utilise in consulting with their workgroup.

The HSC members may also be able to assist HSRs in determining information that should be contained in the issuing of a PIN or in writing a PIN.

Other HSRs and/or representatives of workers that are members of the HSC can provide a different perspective on work health and safety issues that may be impacting in different ways across the organisation.

Alternatives to HSRs and HSCs

Some workplaces such as smaller workplaces, construction sites etc. may choose not to have a HSR/s or HSCs. Alternatives may include:

- Team meeting with regular discussion between workers and managers or supervisors
- Toolbox talks e.g. held at the start of each day or each new job
- One off meeting e.g. for particular issues requiring urgent attention; and/or
- Discussion via electronic means e.g. emails, teleconferencing
- Workplace Health and Safety Officer.

Activity: Identifying particular groups of workers in the HSR's workplace and examples of various mechanisms for their representational needs to be met by the PCBU



In small groups discuss the following scenarios and then report back to the larger group.

Discuss and determine the most effective consultative arrangements, including possible workgroups, for the following. Your answers should reflect the reasons for your decisions and give reference to the sections of the WHS Act and Regulation where appropriate.

1. You are a small organisation with around 25 direct employees. You occasionally engage temporary staff and use subcontractors, such as electricians. You currently have a small HSC.
2. A large manufacturing organisation has plants operating in the city and two large regional cities. Administration and sales staff are located in the city. Sales reps travel throughout the country. Plant operators (from diverse cultural backgrounds with English as a second language) work shift work and in some areas undertake hazardous work.
3. A community organisation runs a variety of facilities generally in rented premises. Employees of the PCBU travel between sites to provide supervision to contract workers and volunteers. Some workers have overnight stays and occasionally are required to work overtime.
4. A large warehouse distribution centre is currently undergoing major renovations (likely to take 12 months) and has engaged a principal contractor. Contract transport drivers constantly access the site and part of the renovations involves the loading and entrance area.

Summary - Day 2

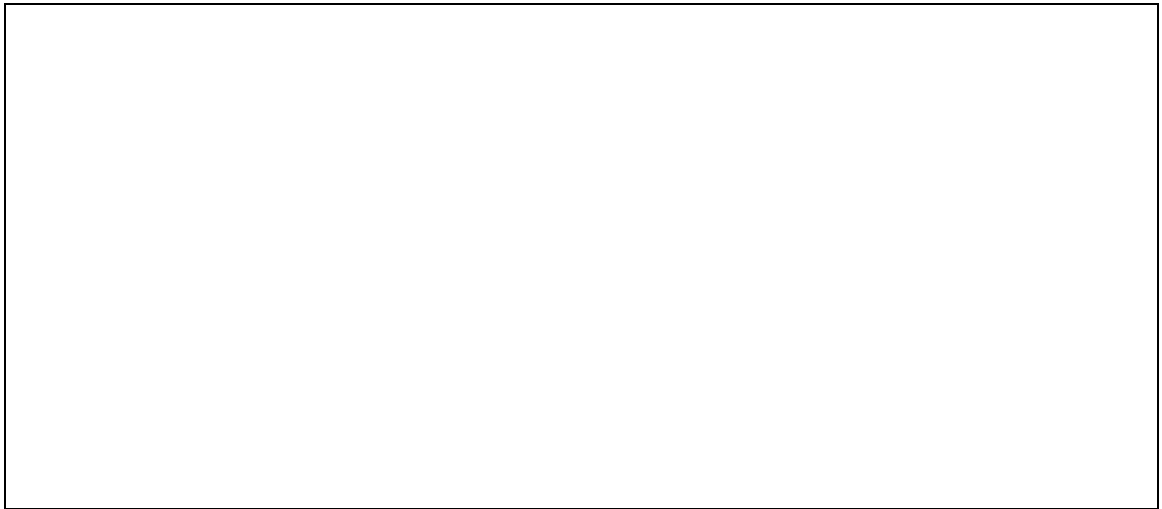


We will review the topics that we have covered today. Record key information below that you can use back in your workplace or wish to investigate further. Don't forget to ask questions of anything that you are not sure about.

Session 1: Consultation, Representation and Participation arrangements under the WHS Act

Session 2: Election and role of HSRs and deputy HSRs

Session 3: Obligations of the PCBU to HSRs and protections for HSRs from discrimination



Session 4: HSCs and other mechanisms for consultation



Day 3

Effective consultation:
Participation in issue
resolution and
monitoring risk controls as
a HSR

Day 3

Effective consultation and participation in issue resolution and monitoring risk controls as a HSR

Learning Aim

Day 3 of training provides HSRs with the knowledge and skills to represent their work group by participating in consultation and negotiation processes for the resolution of WHS issues. The HSR will understand the duties and responsibilities of their PCBU and the ways in which they can monitor the measures taken by the PCBU to control risks in the workplace.

Learning Outcomes

After completing this training day, participants should be able to:

1. Identify a range of strategies that support the consultation process.
2. Discuss the benefits of effective representation and constructive consultation between PCBU, other duty holders and workers
3. Represent workers on health and safety issues in a range of circumstances
4. Use negotiation skills and strategies to resolve work health and safety issues
5. Explain the benefits of effective representation and constructive consultation between PCBUs, other duty holders and workers.
6. Summarise the duties and responsibilities of various PCBUs under the WHS legislation to manage risks to the health and safety of workers and others at the workplace.

Assessment Method

Successful completion of face to face learning activities and exercises set out in this session.

Session Duration

The nominal duration of training is 9am – 4pm with breaks.

Learning Outcomes and Expected Learner Applications Day 3

Learning outcome	Expected Learner Applications
<p>After completing this training day, participants should be able to:</p> <ol style="list-style-type: none"> 1. Identify a range of strategies that support the consultation process. 2. Discuss the benefits of effective representation and constructive consultation between PCBU, other duty holders and workers 3. Represent workers on health and safety issues in a range of circumstances 4. Use negotiation skills and strategies to resolve work health and safety issues 5. Explain the benefits of effective representation and constructive consultation between PCBUs, other duty holders and workers. 	<ul style="list-style-type: none"> • Identify any confidentiality requirements pertaining to information collected from, or provided to HSRs, and have a basic understanding of the importance of record keeping • Discuss why a HSR might keep copies of records relating to their workplace's work health and safety matters • Identify key duty holders that a HSR may consult with regarding WHS in the workplace • Describe the benefits of building and maintaining constructive relationships with management, HSCs, members of work group and others • Identify and use effective communication skills as a HSR • Demonstrate, using communication skills how a HSR could represent a relevant party or stakeholder, based on an appropriate case study or scenario • Discuss the general benefits of effective consultation between HSRs and PCBUs and other duty holders, and the positive outcomes of engaging together in a consultative and participatory manner to identify and solve WHS issues in their workplaces • Understand the requirements and explore examples of consultation, co-operation and co-ordination between PCBUs and other duty holders • Describe that basic principles of negotiation • Explain the issue resolution process • Suggest various strategies/tools a HSR could use during the negotiation process, to help resolve identified WHS issues • Identify and source resources available to a HSR when negotiating and resolving WHS issues • Demonstrate, using negotiation skills how a HSR could represent a relevant party or stakeholder, based on an appropriate case study or scenario • Describe how to refer an unresolved issue to the regulator for resolution by a WHS inspector • List the functions and powers of WHS inspectors in resolving WHS issues

Learning outcome	Expected Learner Applications
<p>6. Summarise the duties and responsibilities of various PCBU's under the WHS legislation to manage risks to the health and safety of workers and others at the workplace.</p> <p>7. Understand how HSR can use their functions and powers to contribute to risk management activities in the workplace</p> <p>8. Understand basic risk management concepts</p>	<ul style="list-style-type: none"> • Identify the ways a HSR could exercise their powers in relation to complaints concerning work health and safety • Identify ways a HSR can represent, monitor, investigate and inquire into issues raised by their work group to ensure those concerns are addressed • Identify key risk management terms and definitions • Explain why and when risk control measures should be revised and reviewed and when the HSR can request that this be done • Identify a duty holder's responsibility to eliminate or control risks 'so far as is reasonably practicable' under WHS legislation • Identify a range of hazards found within various workplaces and their impact on workers • Discuss what is meant by 'risk management' using examples to explore measures in the hierarchy of control • Explain basic risk assessment procedure • Identify different methods a PCBU may use to identify WHS hazards and ways the HSR could contribute to that process • Use a risk assessment process to demonstrate basic risk assessment principles and the use of simple risk assessment tools • Describe the concepts of safe place rather than safe person, and the hierarchy of control • Explain the entitlements of a HSR to participate in the review of risk control measures affecting members of their work group • Identify in legislation or guidance material control measures for the identified risk or hazard • Explain how HSRs can contribute to the selection of control measures

Day 3 - Session 1

Strategies and skills for HSRs to support effective consultation

Learning Aim

This session provides an outline of effective communication, behaviours and strategies that HSRs can use in their role representing their work group.

Learning Outcomes

After completing this session participants should be able to:

1. Identify a range of strategies that support the consultation process
2. Explain the benefits of effective representation and constructive consultation between PCBU, other duty holder and workers.

Assessment Method

Successful completion of face to face learning activities and exercises set out in this session.

Session Duration

The nominal duration is 1 hour 25 minutes

Learning Outcomes and Expected Learner Applications

Day 3 – Session 1

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Identify a range of strategies that support the consultation process 2. Explain the benefits of effective representation and constructive consultation between PCBUs, other duty holders and workers. 	<p>Identify any confidentiality requirements pertaining to information collected from, or provided to HSRs, and have a basic understanding of the importance of record keeping</p> <p>Discuss why a HSR might keep copies of records relating to their workplace's work health and safety matters</p> <p>Identify key duty holders that a HSR may consult with regarding WHS in the workplace</p> <p>Describe the benefits of building and maintaining constructive relationships with management, health and safety committees, members of work group and others</p> <p>Identify and use effective communication skills as a HSR</p> <p>Demonstrate, using communication skills how a HSR could represent a relevant party or stakeholder, based on an appropriate case study or scenario</p> <p>Discuss the general benefits of effective consultation between HSRs and PCBUs and other duty holders, and the positive outcomes of engaging together in a consultative and participatory manner to identify and solve WHS issues in their workplaces</p> <p>Understand the requirements and explore examples of consultation, co-operation and co-ordination between PCBUs and other duty holders</p>

The consultation process with workers as required by the WHS Act



The WHS Act specifies legislative requirements for work health and safety consultation. The WHS Act establishes the PCBU's duty to consult and the WHS Regulation goes into more detail about what the consultative process is and what this involves, including the responsibilities of the PCBU, workers, HSRs, HSCs, and persons involved in other agreed arrangements. Effective consultation requires good communication and the open sharing of information amongst parties.

Communication is the transmission from one person to another of a message which is understood by the receiver as the sender intended

Communication process

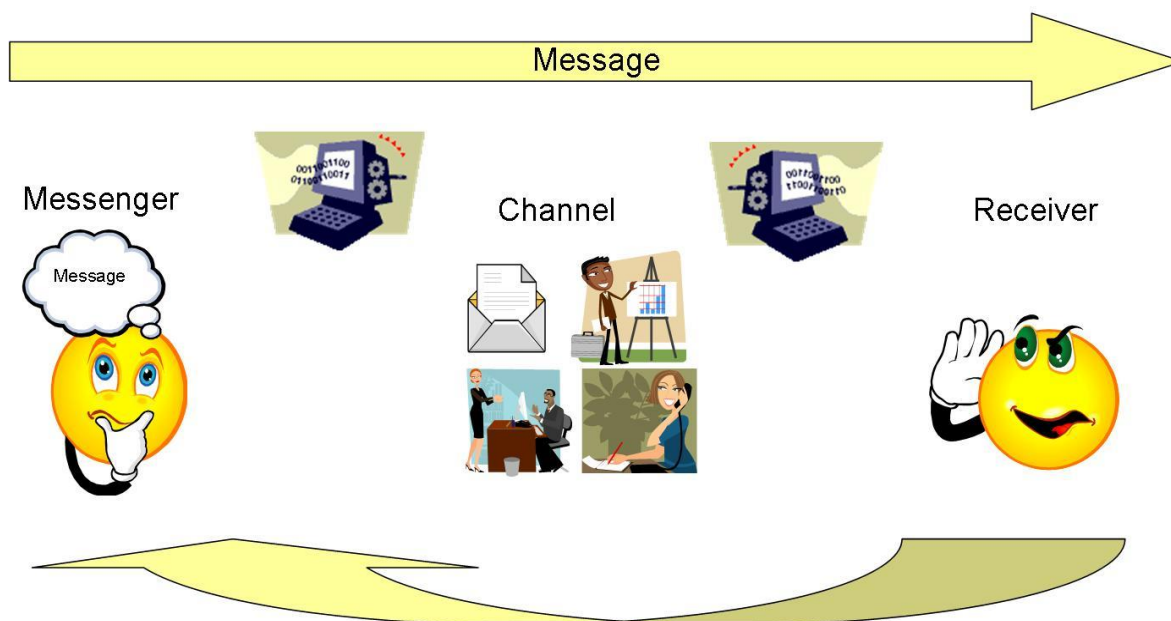
If there is no recipient, then communication cannot occur. i.e. if a class is not listening, then the teacher is not teaching.

Usually we share messages rather than send them, as in a conversation. Messages travel backwards and forwards with the sender and recipient constantly swapping roles.

Perception

It is a myth that the message you send is identical to that which is received. Every message sent must travel a path through the recipient's sensory organs before being sifted and sorted by the brain.

COMMUNICATION MODEL



Perception is the mental process by which we make sense of the stimuli we receive through our senses.

When perceptual problems occur, it is inevitable that communication will break down. The effectiveness of the workplace is determined largely by its members' communication skills. As a HSR that is dealing with identifying hazards, workplace inspections, helping implement safety controls, or negotiating for safer working conditions, the level of success will depend on the HSRs ability to communicate, and therefore their ability to identify different perceptions.

A skillful communication style is necessary to promote to the individuals within the workplace the benefits of the HSRs position, or to inform and persuade the workgroup (or PCBU) of safety issues. A good deal of our communication style derives from our culture and upbringing. We live and work in a multicultural world and increasingly in our workplaces there are people with special needs. Therefore, we need to gain an understanding of individual needs and behaviours in order for us to communicate our safety issues/topics effectively.

Principles of effective communication

A major responsibility of being a HSR is to communicate with a variety of stakeholders such as:

- Workers in a workgroup
- PCBU/s
- Other HSRs
- HSC members
- Workplace Health and Safety Officers (WHSO) (From 1 July 2018)
- External consultants
- WHSQ inspectors

It is important to understand the principles of effective communication. Communication is the foundation of consultation and this allows for the objects of the WHS Act to be addressed within the workplace.

Effective communication principles are as follows:

1. Two-way flow

Success in communication is closely linked to a person's relationships with others. If you like people, you will be more likely to agree with their opinions and if you do not like someone you are more likely not to agree with their opinions. To develop effective relationships, you must learn to listen empathetically to what others say, and to be able to relate to their concerns and enthusiasms.

If you want to have an influence on people, then they must feel that they have the same influence over you. If you want people to take a specific course of action in the workplace, then you will increase your chances of success by involving them in the development of the course of action and thereby creating a two way flow of information. HSRs need to allow for a two-way flow of information and not allow personal feelings or positions to limit the number and variety of other opinions or issues they take into consideration.

2. Defensiveness creates major barriers to communication

When we show defensiveness in front of other people, we create barriers to effective communication which will certainly create problems in any workplace. If we know what behaviour causes defensiveness, we will know how to avoid it in our communication with others.

Behaviour that fosters defensiveness

Attitude that indicates you are evaluating the receiver

Any attempt to control the other person

Acting falsely, hiding motivations or information, or anything that is perceived to be suspicious

No concern for the welfare of the other person. A detached, impersonal manner is often feared or resented

Conveying an attitude of superiority. Any behaviour that reinforces feelings of inadequacies in the recipient is a source of disturbance. Brushing aside questions, excluding certain people from conversations or activities all have this effect

Being dogmatic – even if you know something for sure, you need to ask yourself whether anyone wants to hear from you.

HSRs are often faced with defensive behaviour both from management and members of their workgroup and safety issues often are brought to the attention of the HSR with a lot of emotion.

3. Understanding others

Most of our fundamental values and attitudes on which our opinions and actions are based are learnt from the people we mix with. Our family and other significant people in our early lives shape our basic values. Later in life, social and professional associations of secondary groups help shape our less fundamental attitudes and opinions.

People value their life experience, their family, friends, the big events that have helped shape their lives, and their opinions. If you belittle this life, or deny the value of their experience or the opinions based on it, you are attacking the worth of the individual. People also learn by building on their past experience. To give meaning to new information, they relate it to what they already know.

Problems in communication often stem from the perceptions people have derived from their own background and experience. We all filter messages based through our own experiences and interpret them in a different way than what the sender intended. Therefore, when exploring new concepts (especially important safety issues), start with what people already know and build on it.

Adults readily learn through discussions with their peers. Willingness to change is strongly influenced by the opinions held by their social group. However, feelings and attitudes take a long time to develop and therefore change very slowly. They are rarely changed by telling, urging or teaching. Experiencing events, seeing new methods, mixing with others who have different opinions and being involved in incidents will gradually convince people of the advantages of adopting new ways. It is important that HSRs listen and try to understand where people are coming from, and take that information to where it needs to go.

4. Physical Environment

If you are sending a message, choose the right time and place. People must be in a receptive frame of mind if you want to communicate effectively. For example, a manager preoccupied with production may not be in the right frame of mind to discuss trialling a new self-levelling pallet carousel designed to reduce hazardous manual task issues.

5. Body Language

The way we carry ourselves, the tone of our voice, fixed expressions and bodily movements all convey something about us to others. For a message to carry its full impact, both the verbal and the non-verbal communication should be in tune with each other.

Remember that body language has changed over recent years and previous acceptable behaviour, stands and movements may not be acceptable now. Multicultural environments and people will change the perceptions of body language.

6. Feelings are sometimes more important than fact

Safety is an emotional issue and sometimes it is best to acknowledge and deal with the feelings associated with specific issues first, and then concentrate on the main issue. This is especially important in the aftermath of serious incidents in the workplace.

7. You cannot win an argument

'A man convinced against his will is of the same opinion still.' Arguments bring out defensiveness and hostility and it is rare for one side to convince the other. It is generally best to back off from arguments and try to convince or educate people in other ways.

Group Discussion: Barriers of communication

- What are the barriers to communication in your workplace?
- How could you overcome these barriers?

- Why it is necessary to have a code of practice on WHS consultation, cooperation and coordination?
- How is the role of the HSR perceived
 - by management?
 - by workers?
 - What do you think makes effective and meaningful consultation?

Effective consultation



Workers involvement in decision making processes is integral to the success of a work health and safety management system

The importance of consultation has been part of work health and safety philosophy and practice for many years. However, the previous WHS Act officially established the requirement to consult as a legal obligation.

Making consultation a legal requirement means that consultation must be considered a priority in all workplaces, and not 'just a good idea'.

We already know that under the WHS Act PCBU's must conduct consultation that involves 'sharing relevant information' and that PCBU's must give workers the opportunity to express their views' and contribute in a timely fashion to the resolution of work health and safety issues'. The workers are to be consulted of the outcome of the consultation in a timely manner.

The Code of practice describes the type of consultation that should take place as that which is effective and meaningful'. It provides the much-needed practical guidance that organisation should use to develop and review their workplace consultation arrangements.



Effective representation and constructive consultation between PCBU, other duty holders and workers

Communicating is what we do all day, every day. No matter whether we are in the workplace, at a social event or at home, we are communicating in some way, shape or form. Communication is the major part of a HSR's role, as representing the interests of the workgroup it would be difficult if you could not communicate. This session will introduce you to principles of communication and consultative forums and will help you to identify how you may be able to improve communication skills and provide you with some information on how to best represent the workgroup.

Information sharing processes in the workplace

One of the objectives of the Act is to foster a cooperative consultative relationship between PCBUs and workers. The HSR plays an important role in helping achieve this objective. Representing the workgroup through participating in consultative forums is the major part of the role as a HSR and therefore, they will need to understand how to present themselves at communication forums.

Representing the work health and safety concerns of members of the workgroup to supervisors is generally done through consultative forums including:

Formal Forums

- HSC meetings
- Meeting with workgroup members

Informal Forums

- 'Water cooler' discussions
- Discussions with workgroup members

Whilst the WHS Act allows for the formal avenues of representation through the powers of a HSR, written and prescribed processes within the workplace may also be required. Informal one-on-one or group discussions around the 'water cooler' or lunchroom, will not require written procedures, however it must be noted that if a HSR intends to take action on these informal discussions (such as investigating a complaint), formal processes will be required (i.e. hazard notifications).

Individual factors and considerations for the needs of workers



important

Sometimes we need to consider individual needs when communicating and working with and for others. Special needs groups are increasing across the workplace and understanding their needs and abilities is an important factor in effective communication.

Groups that may require additional consideration include:

- Young workers
- Pre-existing medical conditions
- Physical disabilities
- Mental disabilities
- Workers with literacy issues

HSR resources, records, and documentation



important

As discussed in Day 2, a PCBU must provide a HSR with necessary resources, facilities and assistance in order for them to reasonably carry out their functions and exercise their powers (or as prescribed under regulation).

In undertaking the role of HSR, a representative is likely to receive information that relates to WHS in their workplace e.g. information about risk control measures, access to risk assessments, inspections, and perhaps information provided (with consent) by members of their work group. In addition, HSRs will have documents that record actions they have taken in representing their work group members that may be useful in the future.

Whilst there is no requirement for a HSR to maintain records, it is good practice and provides the HSR with the benefit of having evidence of consultation that has occurred and decisions that were reached.

You will recall that a PCBU has an obligation to provide a HSR with reasonable resources and facilities to perform their role, and this could include access to facilities for secure filing, which may become necessary so that the HSR is able maintain records of the consultation processes they have engaged in.

The type of records that may be useful include:

- Diary notes containing dates of meetings or interviews or inspections
- Email records
- Handwritten notes
- Meeting minutes
- Workplace inspection reports
- PINs
- Workplace investigation reports
- Risk assessments.

Maintaining records will provide HSRs with valuable information on the specific issues that have been raised by the workers in their work group, dates and the outcomes that have been agreed to with the PCBU and or officers.

Confidentiality requirements pertaining to information collected from or pertaining to HSRs, HSCs, PCBUs or any other relevant persons

As we have discussed earlier on day one, the WHS Act s68, states that HSRs are not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:

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

The PCBU must not also allow a health and safety representative to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that:

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

Activity: Outline of consultation processes currently being used in the workplace



Indicative time – 20 minutes

This exercise is designed to develop an understanding of the various mechanisms for consultation already taking place. Read and answer the questions below.

1. What types of WHS concerns may need investigating in your workplace?
2. What types of consultative forums are used in your workplace?

3. How do workers participate in these forums?
4. What authority do you have as the HSR to participate?
5. Are there groups with special needs in your workplace who require representation?

Strategies that support the consultation process and issue resolution/negotiation processes

Identifying appropriate management personnel

When a PCBU is determining how they should meet their duty to consult, they need to consider:

the type of decisions that may affect their employees' health and safety

who is responsible for making these decisions?

when these decisions are made

the effectiveness of the existing consultation process.

Aiming to meet the objectives of the WHS Act through developing effective consulting processes with HSRs and worker representatives and fostering a cooperative approach will ensure that PCBUs are fulfilling their responsibilities. PCBUs give authority and responsibilities to 'manage' their responsibilities to the different levels of management representatives within the workforce.

A PCBU needs to identify the management representative/s with authority to make decisions in the organisation and the HSR/s should have access to the person/s in order to perform their role.

The representatives, such as line supervisors and department managers, are in the front line of safety performance and have the responsibility and authority for ensuring compliance with the WHS legislation. Their actions, motivations and commitments will have a direct effect on the PCBU's ability to fulfil their responsibilities under the WHS Act. The PCBU representatives also need to ensure the responsibilities of the PCBU towards HSRs and workers are being fulfilled.

Strategies to build and maintain constructive relationships with management, HSRs, HSCs, member of workgroups and others

As we have discovered on day two, consultation is a two-way process between the PCBU and workers and their representatives, where the PCBU:

talks to workers about health and safety matters

listens to their concerns and raise management's concerns

seek and share views and information, and

consider what workers say before the PCBU make decisions.



Management commitment is important in achieving effective consultation.

Workers are more likely to engage in consultation when their concerns about health and safety are taken seriously.

Consultation does not mean telling workers about a health and safety decision or action after it has been taken. PCBUs should ensure that workers are:

made aware of health and safety matters as soon as possible

encouraged to ask questions about health and safety

encouraged to raise concerns and report problems

encouraged to make work health and safety suggestions

involved in the problem-solving process, and

promptly informed of the outcome of the consultation and decisions.

Consultation with other parties

PCBUs must consult on health and safety matters so far as is reasonably practicable with workers who carry out work for them and who are (or are likely to be) directly affected. This includes consulting with independent contractors and their workers about health and safety decisions that directly affect them and which the PCBU influences or controls.

Remember: 'Reasonably practicable' means that a PCBU must consult to the extent that is reasonable in the particular circumstances. There are often situations where more than one business or undertaking operates at a workplace and where people share responsibility for work health and safety to varying degrees, for example shopping centres, construction projects, labour hire, multi-tenanted office buildings.

The WHS Act requires that where more than one person has a duty for the same matter, each person retains responsibility for their duty in relation to the matter and must discharge the duty to the extent to which the person can influence and control the matters.

In these situations, the WHS Act requires that each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a work health or safety duty in relation to the same matter/s.

Since the PCBU cannot transfer their responsibilities to another person, the requirement to consult, co-operate and co-ordinate activities with other duty holders will help PCBUs meet their primary duty to ensure, so far as is reasonably practicable, that workers and other persons are not put at risk from work carried out as part of the business or undertaking

The duty requires persons conducting businesses and undertakings to work together in a proactive and reciprocal way, so that all risks associated with the activity that they are involved in are eliminated or minimised as far as is reasonably practicable.

To assist them to meet their duties, your PCBU should be considering:

1. What are the work activities and the health and safety duties they have?
2. Who else has influence and control in that work activity?
3. How does each person with influence and control, affect work health and safety in relation to that activity?
4. Where does the PCBUs work activities interact with those of the other duty holders, and what impact do they have?
5. What information should the PCBU share?
6. What does the PCBU need to know to effectively comply with their duty?
7. What action does the PCBU need to take to communicate and work together with the other duty holders?

Guidelines for following established consultation procedures



If the PCBU and their workers have agreed to procedures for consultation, the WHS Act requires consultation to be conducted in accordance with those procedures. They must also be consistent with the requirements of the WHS Act and be documented.

Agreed consultation procedures should include:

the matters that require consultation and who will be consulted

the ways consultation will occur, for example, through regular meetings, tool box talks or health and safety representatives

how information will be shared with workers and health and safety representatives

what opportunities will be provided for workers and health and safety representatives to give their views on proposed matters

how feedback will be given to workers and health and safety representatives

how consultation will occur with any workers who have special language and literacy needs, and timeframes for reviewing the procedures.

The procedures may also include the provision of practical assistance for affected workers and health and safety representatives to facilitate the consultation process. For example, opportunities may be made available for affected workers and their health and safety representatives to come together to consider the information that has been provided, to discuss the issues and form their views.

HSR consultation with their work group

HSRs need to consider the ways in which:

members of their workgroup can **consult directly with their PCBU** e.g. through their direct supervisor

the HSR **consults with all members** of their workgroup

the HSR will **consult with the PCBU** either on matters raised by their workgroup or on their own initiative

the HSR consults with the workgroup on **matters raised by management**

the HSR **manages disagreements** within their workgroup on how to address an issue.

As we have discussed for the PCBU, as a HSR you will also need to talk, listen, seek and share information and consider many different viewpoints as you undertake your representative role. You have likely been elected to the role of HSR because you already have some or all of these skills and as you participate more in WHS consultation in your workplace you will further enhance your effective communication and consultation abilities which will benefit you into the future.

Examples of effective consultation

Scenario 1: Consultation in a small workplace – with no health and safety representatives

Overview

This is a small business crane hire business. It employs 7 workers, 5 of whom are crane operators. When the operators return to the yard after a job, they report any defects or problems with the crane. This has been an informal process and many times there have been failures to report mainly small problems. The owner has decided to introduce a checklist to be filled out by the operator when returning the crane.

When to Consult

Consultation was required for:

- the identification and assessment of hazards and risks, and
- making decisions about risk controls.

Before introducing the checklist, the owner wanted to discuss its merits with the crane operators.

Who to consult

As there are no health and safety representatives in the workplace, the company consulted will all workers directly.

How to consult

The agreed consultation mechanism for the workplace is the regular weekly meeting with workers where work health and safety is always an item on the agenda.

The owner circulated the checklist to the workers a week before the meeting. In discussions at the meeting, there was support for using the checklist with a few more items added to it. It was agreed that workers would trial the new checklist for three months as some operators were concerned that it would be a waste of time if no action was taken on any problems notified in using the checklist.

The business kept records of significant work health and safety issues that were discussed, actions to be taken and timelines for taking action. The records were displayed on the noticeboard in the workplace and were sent via email to workers as well.

Scenario 2: Consultation in a large transport company with health and safety representatives

Overview

This company operates around the clock and has over 500 workers. Work groups have been established covering all workers working across three shifts, each of which is represented by a health and safety representative. A health and safety committee has been established and is made up of all health and safety representatives and some management representatives who hold senior positions in the organisation.

When the company identified the need to move to new premises, it recognised this had the potential to affect all workers. The committee played a major role in obtaining worker and health and safety representative input about warehouse layout, ergonomics, selection of new equipment and machinery, traffic management, access/egress and emergency procedures. The committee members were also encouraged to undertake regular visits to the new premises to view progress and provide advice.

When to consult

Consultation was required for:

- the identification and assessment of hazards and risks
- making decisions about risk controls
- proposing changes to the workplace, and
- making decisions about the adequacy of welfare facilities.

The design and fit-out of the new premises included consideration of layout, equipment selection, new work systems, lighting installation, design and commissioning of a sorting table and warehouse airflow.

Who to consult

The relocation affected all workers and they were all consulted via their respective health and safety representatives. The committee acted as a centralised conduit for information flow in this process.

How to consult

The organisation consulted via health and safety representatives and the committee.

Health and safety representatives

Health and safety representatives acted as a communication channel between management and workers. Health and safety representatives chaired the health and safety sections of weekly toolbox meetings, using these as an open forum to the HSC.

Health and safety committee

Consultation procedures were developed and agreed and the membership of the committee was determined via extensive consultation between health and safety representatives and all workers. The committee takes ongoing responsibility for ensuring that all relevant health and safety information is posted on worker noticeboards, e.g. meeting agendas, minutes, alerts and newsletters. The committee also sets timelines and frameworks for evaluating systems and processes, e.g. warehouse airflow to be assessed by external consultant every 3 months.

Day 3 - Session 2

Representing workers as an HSR – problem solving steps and issue resolution

Learning Aim

This session will provide practical examples of how HSRs can represent workers using negotiation skills and strategies to resolve work health and safety issues.

Learning Outcomes

After completing this session participants should be able to:

1. Use negotiation skills and strategies to resolve work health and safety issues
2. Represent workers on work health and safety issues in a range of circumstances

Session Duration

The nominal duration is 2 hours 20 minutes

Learning Outcomes and Expected Learner Applications Day 3 – Session 2

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Use negotiation skills and strategies to resolve work health and safety issues 2. Represent workers on health and safety issues in a range of circumstances 	<p>Describe that basic principles of negotiation</p> <p>Explain the issue resolution process</p> <p>Suggest various strategies/tools a HSR could use during the negotiation process, to help resolve identified WHS issues</p> <p>Identify and source resources available to a HSR when negotiating and resolving WHS issues</p> <p>Demonstrate, using negotiation skills how a HSR could represent a relevant party or stakeholder, based on an appropriate case study or scenario</p> <p>Describe how to refer an unresolved issue to the regulator for resolution by a WHS inspector</p> <p>List the functions and powers of WHS inspectors in resolving WHS issues</p> <p>Identify the ways a HSR could exercise their powers in relation to complaints concerning work health and safety</p> <p>Identify ways a HSR can represent, monitor, investigate and inquire into issues raised by their work group to ensure those concerns are addressed</p>

Day 3 - Session 2

Benefits of HSR involvement



The HSR has broad powers for the purposes of promoting or ensuring the health and safety at work of the workers in their work group, including the investigation of WHS concerns or complaints.

Benefits of HSR involvement include:

- Identification of potential/actual hazards
- Improve work environment
- Improve morale
- Increased consultation
- Identification of training needs
- Revision of outdated methods
- Encouraging involvement in safety performance
- Improving the safety culture

Assessment Process

Informal Approach

The HSR will need to speak with the person who raised the complaint directly and then consult on the issue with the PCBU.

If the issue cannot be resolved a formal process will need to be commenced.

Formal Approach

The formal approach needs to be planned outlining the objectives of the investigation. The HSR will need to speak with all persons concerned on the issue and document all findings. A workplace inspection may need to be undertaken.

WHSQ assessment procedure

- **Understand** the complaint
 - Talking with workgroup members
- **Research** the complaint- sources of information may include:
 - Regulator (Workplace Health and Safety Queensland)
 - Unions
 - Industry bodies
 - SafeWork Australia
 - Manufacturers and suppliers
- **Analyse** the information collected
- **Develop a strategy** to move forward with complaint/issue

Who can assist?



Some of these are:

The PCBU and workplace – the management team and corporate area may be a valuable source of information about your organisation and relevant hazards. Information that they may have could range from past incident/injury data, environmental and health monitoring data, information on risks related to your industry and information on any plant, chemicals etc. in the workplace.



Remember that the PCBU has an obligation to provide certain information relating to health and safety to the HSR upon request (WHS Act s. 70).

WHSQ – WHSQ is a valuable source of information for HSRs. The WHSQ website is where you could find the legislation for Queensland, guidance material and contact WHSQ on **1300 633 419** to speak to a representative of the regulator about any issues you have. WHSQ may also run seminars or conferences where HSRs could learn more about WHS and meet contacts who could provide a support mechanism.

Unions – also represent worker interests and often have officials who are experienced in WHS and may be able to provide assistance. Trade unions are also likely to have access to various documents, standards and guidance materials relating to WHS in the relevant industry. The union may be able to assist in your discussions with your PCBU. They are also a way to access a WHS entry permit holder.

Industry bodies – Industry bodies may have valuable information relating to your particular industry. It may be useful to contact your industry body to find out how you may address a hazard which is common or particular to your industry.

Manufacturers and suppliers – these organisations may be able to provide relevant information on particular products within the workplace, or possible safer alternatives to the products you currently have.

Process for enquiring into WHS concerns

In order to obtain information in relation to a work health and safety issue or incident, the HSR may need to enquire with members of their workgroup. They may also be part of a larger investigation team and be asked to enquire other people outside their workgroup. Key practices to successfully enquiring include:

- Put person at ease
- Interview in safe and secure neutral location at a suitable time
- Actively listen
- Explain Organisational consultation procedure
- Be open and honest
- Ask open questions
- Record your findings

Documenting findings

After investigating a WHS concern or complaint, the HSR may complete an investigation report. There is no obligation to do so however, as mentioned earlier it is good practice for a HSR to keep records and similarly, if the HSR has undertaken an investigation a report provides the HSR with a formal record of their investigation and the outcomes that can be shared with the key stakeholders.

The report gives information to management on the effectiveness of health and safety systems in operation in the workplace. It can also provide management with specific information on problems in the workplace, the extent of the problem and, where possible, the HSR's view on what should be done about it.

The report should include the following details:

- Why the investigation was undertaken
- Identifying where and when the investigation took place
- Identifying who was involved in the conduct of the investigation
- Identifying the hazards and hazardous situations encountered
- Making an assessment of the significance of each of the hazards identified
- Making recommendations as how best to control the hazards.

The order of writing and reviewing is important and should be as follows:

Pre-write

Draft the main body and appendixes

Review the main body and appendixes

Draft the conclusion, recommendations, introduction and summary

Check and amend the report

Issue the report.

Problem Solving

Through the consultative process, and whilst exercising their powers, it is inevitable that HSRs will encounter problems and be forced to deal with conflict. As you represent other people in the workplace, you may encounter a wide range of problems that you are not familiar with, and you will need to research the issues in order to 'understand' the problem and effectively represent the members of the workgroup who have that problem.

It is no surprise that some people think about problem solving when they think about work, especially if they work in a demanding environment, which most of us do. However, problem solving is not just used at work by employees. It is used by **everyone, every day**.

One of the issues we encounter when attempting to understand problems is people's emotions. If we look at solving problems in a logical and systematic manner we will overcome many of the emotional issues.

Problems can be large or small. Larger problems take more time and work to understand. There are some problems we may be able to investigate on our own, and there are some problems that may require assistance from another person (supervisor, manager, union representative), or from a group of people (workgroup, HSC).

There are also some problems that we cannot understand or deal with, even after trying our best, because these problems may be hard to understand, or just too big and out of our control. When facing a problem like this, it is important that you seek help and advice (union, WHSQ).

Problem solving steps

1. Identify the problem
2. Identify issues and investigate those issue
3. Develop a plan
4. Take action
5. Monitor and evaluate



Adapted for a HSR

1. Identify the WHS issue
2. Identify specific issues and investigate those issues
3. Develop a plan
4. Recommend solutions for actions to be taken
5. Monitor and evaluate

Problem solving steps



Problem solving is not the responsibility of the HSR; however, you may be involved in the process as part of consultative forums or at the request of management or HSC if you are a member. Sometimes solving problems is easy; sometimes it can be a challenge that needs some thinking and determination. Whatever the problem, these steps are a good way of tackling them.

These are the steps we talked about briefly earlier.

Step 1 – Identify the problem

You need to work out exactly what the problem is before we can start to solve it, so ask yourself, 'What's the problem?' Ensuring that everyone understands what the problem is will ensure that the focus is on solving the problem rather than any side issues. Investigating the issue will help identify the problem.

Identifying the problem may involve talking to the people involved, researching external information (such as hazard information on exposure), calling in technical or specialist help, or comparing internal information such as injury data or processes.

Step 2 – Identify feelings and investigate the problem

There is a good chance that someone will have 'distressed' type feelings when you are dealing with a large problem. It is important that you identify these feelings and take them into account when dealing with the problem. Were there any contributing factors? Why is there a problem at all? This step will involve consultation with all parties. We will then need to look into the problem. What are the issues? What and who is involved in the issue?

Once we have identified the problem and the emotions, it is important that it is investigated completely and the information analysed in a manner that will allow us to see all the possible interventions.

Step 3 – Develop a plan

Think of different solutions to solve the problem. Will it make the problem bigger or smaller? It is important when generating solutions to consider all possibilities. Consider involving others during this step. Ensure that we have evaluated each solution that we are considering. Look at the advantages and disadvantages of each one.

While we are developing our plan, we will need to include the person or people that are involved in the issue, as it will be their opinions and feelings that will allow any agreed plan to work in the given situation.

Step 4 – Take action

Put our plan to work. Ensure that the solution will be effective. If it involves information, training or a change to procedures, make sure that all involved parties are aware of these factors (workers, PCBU, supervisor, union).

As a HSR you will not have the authority to implement any solution to problems, but through consultation methods you may be a part of any solution.

Step 5 – Monitor and evaluate

We must monitor and evaluate to ensure that our solution meets our objective. If the problem does not improve, do not give up, try another solution. HSRs play an important role in monitoring and evaluating safety performance within the workplace. Exercising powers, such as conducting workplace inspections, will allow HSRs to participate in the ongoing evaluation of any solutions implemented.



important

It is important that HSRs can identify and be able to represent problems to management correctly. HSRs need to ensure that within the workplace there is an effective method of safety communication, as this is how they will be able to fulfil their role of representing their workgroup.

Activity: Problem Solving Steps



Discuss the following scenario. Responses can be recorded in notebooks



Indicative time - 15 minutes

This exercise is designed to provide you with an understanding of the problem-solving steps. You may be able to apply these steps to their own workplace situations.

You are the HSR of the warehousing staff. You have been hearing rumours that the cleaners are complaining of headaches when using the new chemical floor cleaner that was recently introduced. You have also been talking with the manager of the floor and he has suggested that there is some information regarding the product in the file.

Discuss the WHS issues and work through the problem, identifying the steps of problem solving and noting what authority HSRs have to take action (if any).

If you make assumptions regarding the workplace or the floor cleaner, identify those assumptions up front

Issue and Dispute Resolution

Requirements under the WHS Act and WHS Regulation



Issue resolution WHS Act s. 80 – s. 82 and WHS Regulations s.22



An 'issue' is any concern about health and safety at the workplace that remains unresolved after consultation between the worker or the HSR and the PCBU or their representative. An issue may arise when there is a difference in opinion on whether something is a risk to health and safety, or whether a particular control measure is adequate.

If there is an issue resolution procedure in your workplace, the WHS Regulation states it must be:

- Set out in writing
- Communicated to all workers

The HSR is required to follow the issue resolution process if there are any unresolved issues.

The role of various parties including HSRs, PCBUs and WHSQ Inspectors

Under the WHS Act 'parties' involved in relation to an issue include:

- A PCBU or their representative;
- Where more than one business or undertaking is involved, the PCBU for each or their representative;
- Where workers of a workgroup are affected, their HSR or their representative;
- A suitable entity representing HSRs; or
- When no HSR has been elected, a suitable entity representing the workers can be a party to the unresolved issue.
- From 29th July 2024, a relevant union for a worker affected by an issue can be a party to the issue (with the relevant union notifying the PCBU in writing).

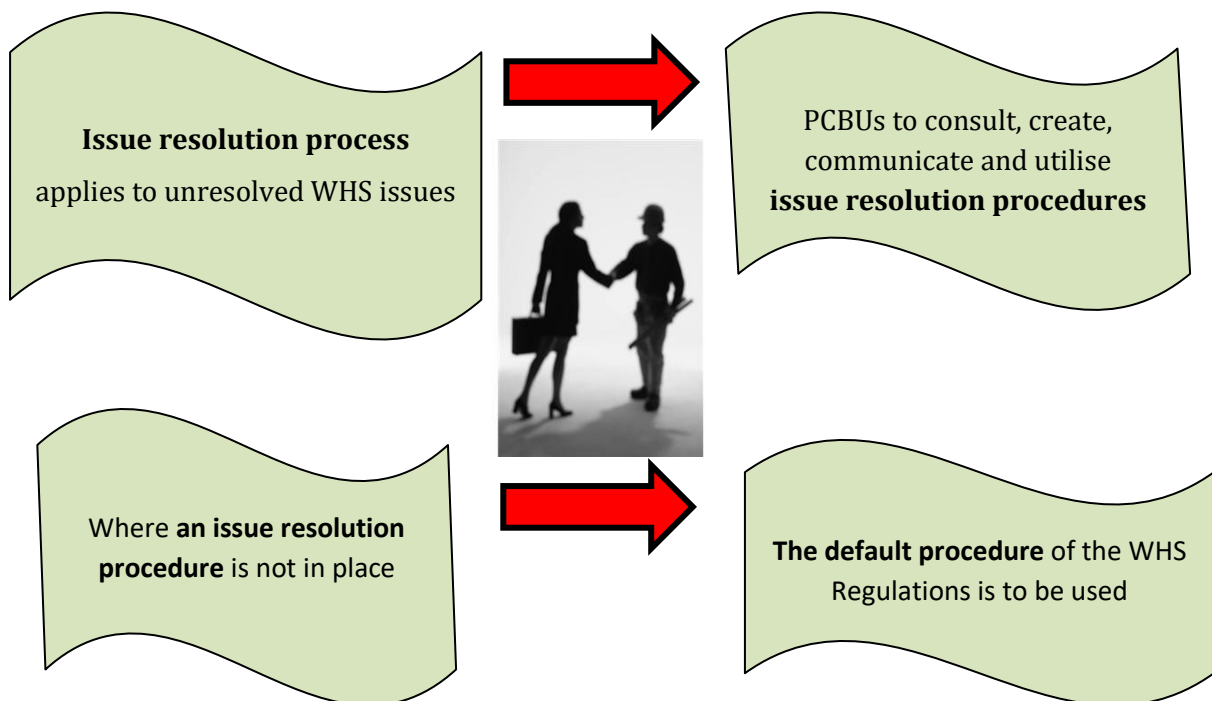
The person representing the PCBU must:

- Have a level of seniority and competency to act as the PCBUs' representative
- Not be a HSR
- WHS Act s. 81(3) requires the PCBU to allow all parties to the unresolved issue to enter and remain at the workplace for attending discussions to resolve the issue.



Ideally, PCBUs and workers/HSRs should be able to reach a resolution through consultation, but failing that, there are provisions for dispute resolution in the WHS Act if a resolution cannot be reached. The legislation requires the people involved in an issue to make a reasonable effort to resolve the issue.

Workers and the PCBU can agree on their own dispute resolutions procedure, provided that it includes the minimum requirements for dispute resolution as specified in the WHS Regulation (Chapter 2, Part 2.2).



The PCBU or their representative, workers, HSRs and a representative of the worker if the worker requests that someone represent them, can be involved in the dispute resolution process.

Any person involved in an issue can begin the issue resolution procedure by informing the other people involved in that issue that there is an issue to be resolved and what the nature and scope of the issue is. Everyone involved must then work with each other to try and resolve the issue.

When working to resolve the issue, people must have regard to:

- the severity and immediacy of the risk;
- the number and location of workers and other persons affected by the issue;
- the control measures (both short and long term) that are required to address the issue; and
- Who will be responsible for implementing the control measures?

Default Procedure for Issue Resolution (WHS Regulation Chapter 2, Part 2.2)

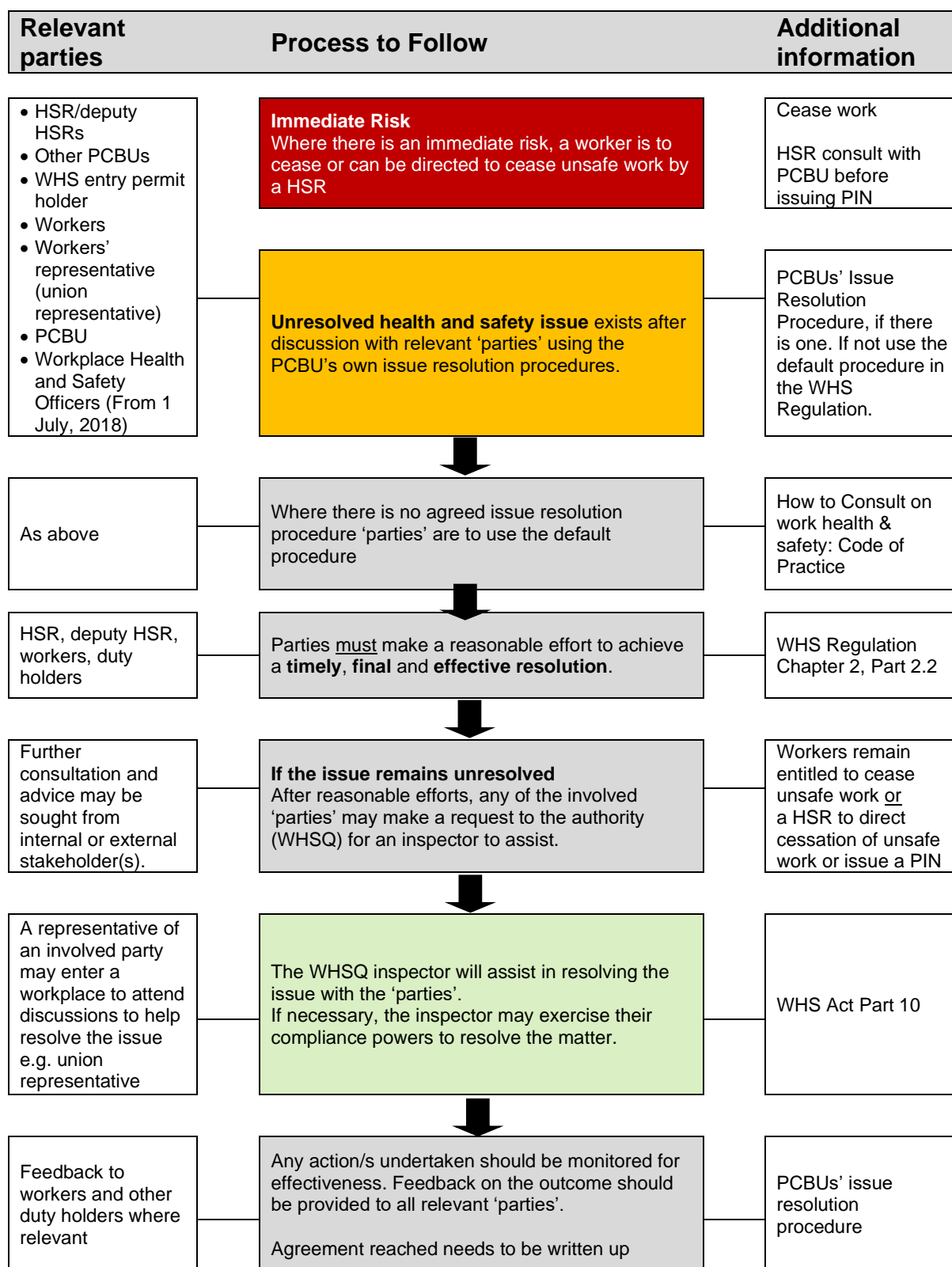
If there are no agreed procedures, the default procedure for issue resolution under the WHS Regulation must be followed. Elements of the default procedure will also apply to a PCBU's own procedure if it is missing an element.

The default procedure requires:

1. **All parties** to be informed there is an issue to be resolved and the nature and scope of the issue;
2. **The involved parties must** meet or communicate to resolve the issue;
3. **Certain matters** to be taken into account;
4. **Any party involved** in the issue to be **represented or assisted by a nominated person** if they choose to do so;
5. **The details** of the issue and **its resolution** to be **put in writing** to the satisfaction of all parties involved in the issue where requested;
6. **A copy of the written agreement** to be provided to:

parties to the issue (e.g. unions, employer organisations); and
if requested, the **workplace's health and safety committee**.

Process to follow in issue resolution



Functions of the regulator Workplace Health and Safety Queensland (WHSQ)

Note: whilst the functions of WHSQ and the role of inspectors has been covered earlier (in Day 1) it may be beneficial to remind participants of the regulators' and inspector's roles where WHS issues are unable to be resolved.

If reasonable efforts have been made to resolve an issue and it remains unresolved, any person involved in the issue, including the HSR, can ask the regulator to appoint an Inspector to assist at the workplace. An Inspector can be requested regardless of whether there has been a reasonable effort made by all persons who are involved in resolving the issue.

A HSR who wishes to request assistance can contact WHSQ on **1300 633 419 (option 3)**, and **identify themselves as a HSR** seeking to have an inspector appointed to assist in the resolution of a WHS issue.

If a request is made, this does not affect the right of a worker to cease work that they believe to be unsafe, or a HSR from issuing a provisional improvement notice or a direction to cease work.

The Inspector's role is to assist in resolving the issue and they are able to exercise any of their powers available under the WHS Act to reach a resolution. This could include issuing notices, providing advice, inspecting the workplace, investigating breaches of the legislation.

The functions of the Queensland regulators i.e. WHSQ are to:

- Provide advice to and share information with duty holders and the Minister on work health and safety
- Collect, analyse and publish statistics on work health and safety
- Foster cooperation and consultation between duty holders and persons owed a duty under the WHS legislation
- Promote and support education and training on work health and safety
- Monitor and enforce compliance, including conducting and defending proceedings

WHSQ Inspectors have a greater role under the WHS Act in advising and supporting workplaces and can:

- Provide information and advice to PCBUs, workers and HSRs.
- Assist in the negotiation of consultation arrangements;
- Assist in resolving work health and safety issues and relevant access/right of entry issues including anonymous complaints;
- Require compliance with the WHS Act through issuing notices;
- Review Provisional Improvement Notices (PINs); and
- Investigate breaches of the law and assist in prosecutions.

Pathways for dispute resolution (as of 29th July 2024)

HSR's can resolve issues or disputes through two pathways.

1. where an inspector is required to first make a decision before the matter can be referred to the QIRC. These matters relate to work group determinations, work group variations and the constitution of health and safety committees.
2. for matters where parties to an issue can either request an inspector to be appointed to assist with resolving the matter (and then refer the matter to the QIRC) or directly take a dispute to the QIRC.

These matters include disputes about:

- health and safety representative (HSR) access to information or copies of particular notices
- access to a workplace by a person assisting an HSR
- HSR training
- HSR issuing a cease work direction
- WHS matters where the issue dispute resolution applies.

ACTIVITY: HSR representing workers



Work in small groups and discuss with the group the following scenario. The groups will then report back to the larger group.



Indicative time –20 minutes

Read and discuss the role of the HSR, and the communication required, for the following scenario.

Groups will be presenting their communication and consultation plan of action to the other groups (who will be acting as Management).

Scenario

You are the HSR in a warehouse. The people in your workgroup have to pick stock from racking. One of the items they need to pick is a large speaker for shipping to bulk electrical stores. This item is in a box approx. 50 cm square and is approximately 150 cm high. The box weighs 48 kgs and the boxes are stacked two high on a pallet (four on the bottom and four on top). The pallets are on the ground and the workers have to reach up to get the second level boxes off the pallet.

The organisation has completed a number of Hazardous Manual Task Risk Assessments throughout the warehouse, and this particular item was included in the assessments as there had been 3 workers injured getting these boxes down (one of which is on long term sick leave). The risk assessments were carried out by the WHS Coordinator and you know that they have been carried out, as the register of hazardous manual task risks was tabled at the health and safety meeting.

The recommended controls were that two people should be used to get the boxes down (however it is rare that two people are available to do the job). What tends to happen is the strongest person on the floor gets the job of getting the box down. As a result of the Hazardous Manual Task Risk Assessments, all of the workers underwent hazardous manual task training.

One of the young fit workers approaches you and says, 'I have just had to get one of those large speakers down from the pallet. I think that I have pulled a muscle in my back. I think that it will be OK. My back's a bit sore but it will be alright if I do not have to lift another one of those today. Is there anything you can do to help us?'

You approach the immediate supervisor and inform him of the incident. He says to you, 'We have done an assessment on that task. We have made it a two man lift and have given everybody training. I don't see that we can do anymore'

What is the HSR's role in this situation?

Does the HSR have authority to act in this situation?

If so, what action would you take as the HSR?

Day 3 - Session 3

HSR monitoring of work health and safety risk management

Learning Aim

This session provides an outline of the process to observe, analyse, monitor and inquire into the effectiveness of the mechanisms implemented by the PCBU to ensure their work health and safety issues have been appropriately addressed

Learning Outcomes

After completing this training day, participants should be able to:

1. Summarise the duties and responsibilities of various PCBUs under the legislation to manage risks to the health and safety of workers and others at the workplace.
2. Understand how HSR can use their functions and powers to contribute to risk management activities in the workplace
3. Understand basic risk management concepts

Session Duration

The nominal duration is 2 hours 30 minutes

Learning Outcomes and Expected Learner Applications

Day 3 - Session 3

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Summarise the duties and responsibilities of various PCBUs under the legislation to manage risks to the health and safety of workers and others at the workplace. 2. Understand how HSR can use their functions and powers to contribute to risk management activities in the workplace 3. Understand basic risk management concepts 	<ul style="list-style-type: none"> • Identify key risk management terms and definitions • Explain why and when risk control measures should be revised and reviewed and when the HSR can request that this be done • Identify a duty holder's responsibility to eliminate or control risks 'so far as is reasonably practicable' under WHS legislation • Identify a range of hazards found within various workplaces and their impact on workers • Discuss what is meant by 'risk management' using examples to explore measures in the hierarchy of control • Explain basic risk assessment procedure • Identify different methods a PCBU may use to identify WHS hazards and ways the HSR could contribute to that process • Use a risk assessment process to demonstrate basic risk assessment principles and the use of simple risk assessment tools • Describe the concepts of safe place rather than safe person, and the hierarchy of control • Explain the entitlements of a HSR to participate in the review of risk control measures affecting members of their work group • Identify in legislation or guidance material control measures for the identified risk or hazard • Explain how HSRs can contribute to the selection of control measures

Key requirements of managing risks to health and safety in the workplace and the duties of parties in managing risks



Managing risk is a critical process in ensuring that every workplace is as safe as reasonably practicable.

Under the WHS Act, a person who holds a duty under the WHS law must ensure the health and safety of workers, so far as reasonably practicable. The management of risks to health and safety requires the person:

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

The emphasis is on the elimination of risks to health and safety if it is reasonably practicable and to minimise risks to health and safety if it is not reasonably practicable to ensure the health and safety of workers. The WHS Regulation provides more details on managing the risks to health and safety (Part 3.1 Managing risks to health and safety).

Under the WHS Regulation, a duty holder with an obligation must identify hazards and manage risks to health and safety. If it is not reasonably practicable to eliminate the risks to health and safety then the 'hierarchy of controls' and a combination of control measures should be applied. The duty holder needs to ensure that the control measures are maintained, reviewed and revised to maintain a work environment that is without risks to health and safety.

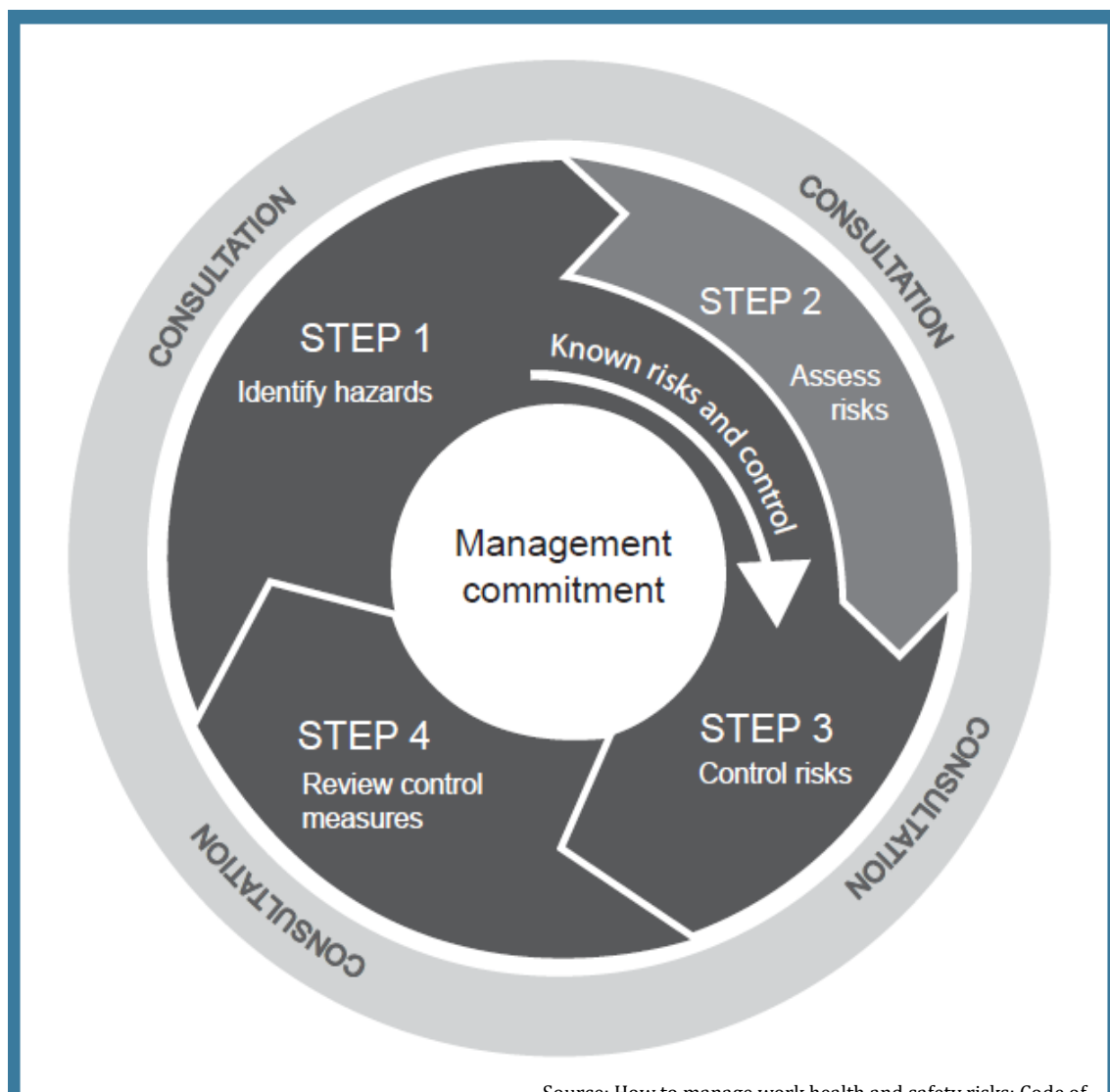
The Risk Management Process

Risk management is a proactive process that helps a PCBU respond to change and facilitate continuous improvement in work health and safety. It should be planned, systematic and cover all reasonably foreseeable hazards and associated risks.

Note the ongoing need for consultation shown in the risk management process.

Participants should have access to the Code of Practice: *How to manage work health and safety risks 2011*

Diagram 1: The Process of managing risk to health and safety



PCBU consultation

PCBUs must consult with employees, and/or their HSRs when:

- identifying hazards;
- assessing the risks;
- determining and implementing control measures;
- developing policy and procedures;
- deciding on the training requirements; and
- monitoring the risk control measures.

While the risk management process may vary from organisation to organisation, the HSR's role and functions to represent the workers in their workgroup and monitor the measures taken by the PCBU results in a work environment that does not pose risks to the workers' health and safety remain the same.

Eliminating and Managing Risks

Managing risks is a systematic process consisting of well-defined steps which, when taken in sequence, support better decision making by contributing to a greater insight into risks and their impacts. It is as much about identifying opportunities as it is about avoiding losses. By adopting effective techniques to eliminate or manage risks to health and safety in the workplace safety can be improved as well as the quality of outputs and performance of the business as a whole.

Whilst it is not the role of a HSR to implement and adopt a risk management process in the workplace, they are the person to whom workers will raise WHS issues or concerns, and will therefore play an important role in the day-to-day operation of an organisation's risk management procedure. Having a good understanding of how risk management is conducted will assist the HSR in performing their role.

The HSR can play a part in each of the steps of the risk management procedure. Workplace inspections and hazard prompt lists are excellent tools for identifying hazards. As part of consultation the HSR can be involved in the assessment and recommendation of control options, as well as playing a role in the ongoing monitoring of controls in the workplace.

The HSR's role in managing risk to health and safety may vary from organisation to organisation. However, it is important to understand that the HSR's functions provided in s. 68 and s69 stays the same and will enable HSRs to monitor and review risk control measures.

Activity: Review Work Health and Safety Act 2011 (s. 68 – s. 69 and WHS Regs s. 38(4))



One important source of health and safety information in the workplace comes from direct observation, what is actually going on. HSRs need their own source of information about what is happening in the workplace. As we have seen in previous sessions, the WHS Act gives HSRs powers to promote or ensure the health and safety of members of their workgroup.

Benefits of introducing a program to manage risks in the workplace

Organisations that adopt an effective program to eliminate or manage risks in the workplace understand that these processes and programs can lead to better practice and continuous improvement in WHS performance. There are many other benefits in implementing programs to eliminate and minimise risks including:

- More effective strategic planning
- Better cost control
- Enhancing shareholder value by minimising losses and maximising opportunities
- Increased knowledge and understanding of exposure to risk
- A systematic, well informed and thorough method of decision making
- Increased preparedness for outside review
- Minimised disruptions
- Better utilisation of resources
- Opportunity for open consultation with employees
- Strengthening culture for continued improvement.

The following information may help you to understand the principles of eliminating and managing risks, and to help identify hazards and the controls required to eliminate or minimise risks in the workplace.

The process of identification and assessment of WHS hazards within the workplace

Hazard Identification

The first step in risk management is to describe how to identify hazards in the workplace and what the difference is between hazards and risks. The definitions used to define the difference between hazards and risks, are:

Hazard - means a thing that has the potential to harm a person.

Hazards at work may include noisy machinery, a moving forklift, chemicals, electricity, working at heights, a repetitive job, bullying and violence at the workplace.

Risk - is the possibility that harm (death, injury or illness) might occur when exposed to a hazard.

Classification of Hazards

In order to identify hazards in an organised way, they can be grouped into common classifications:

- Manual tasks
- Gravity
- Electricity
- Machinery and equipment
- Hazardous chemicals
- Extreme temperatures
- Noise
- Radiation
- Biological
- Psychosocial hazards

As a HSR the important thing to remember is that in order to control hazards we need to identify them. It will not matter if hazards are put into categories or not.

Manual tasks – Overexertion or repetitive movement can cause muscular strain. Hazards that arise from the movements made in undertaking work activities such bending, holding pulling, pushing etc. that can result in body sprains and strain etc.

Gravity - Hazards in this classification will have a direct physical effect on the body and will include falling objects, floors, stairs, work platforms, steps, ladders, and slippery surfaces. Can cause fractures, bruises, lacerations, dislocations, concussion, permanent injuries or death.

Electricity - Hazards include potential ignition source, exposure to live electrical wires causing shock, burns or death from electrocution.

Machinery and equipment - Hazards in this category are generally caused by equipment or vehicles. Hazards in this classification will have a direct physical effect on the body and will include (but is not limited to): electricity associated with plant, machinery, equipment, pressure vessels, dangerous goods, forklifts, cranes, hoists and vibration.

Hazardous chemicals - The effects of chemicals on the body can result in acute or chronic symptoms. Examples in this category include chemical substances, cleaning agents, dusts, and fumes from various processes such as welding; acids or poisons as well as those chemicals that could lead to fire or explosion. This category could also include hazards caused from radiation.

Extreme temperatures – Hazards in this category can cause potential harm by: heat causing burns, heat stroke or fatigue. Cold can cause hypothermia or frost bite.

Noise – Exposure to loud noise can cause permanent hearing damage.

Radiation - Hazards in this category include, but are not limited to; ultraviolet radiation, welding arc flashes, microwaves and lasers which can cause burns, cancer or blindness.

Biological Hazards - Such hazards will affect the body though acute and, more likely, chronic symptoms. Illnesses or infection may come from the following sources: bacteria, viruses, mould, mildew, insects, vermin and animals.

Psychosocial Hazards - Hazards in this classification, such as work-related stress, bullying, violence and work-related fatigue can result in stress affecting people in a variety of ways, and may result in:

- Illness
- Distraction
- Absenteeism
- Sick leave
- Lack of attention

Psychosocial hazards usually occur as a result of pressures of work targets, working environment, personality clashes, boring/repetitive tasks, noise, aggression, harassment, discrimination, trauma, low self-esteem, social concerns, financial concerns, and marital problems. It is important to understand that unlike physical hazards, psychosocial hazards may or may not be present when you have these conditions.

Psychosocial hazards are considered as individual hazards and while one person may be affected, others in the workplace may not be. This makes it very difficult to assess and control these hazards. However, it is important that time and resources are still directed into controlling the situations mentioned above, as these have been identified by on-going research as significant contributing factors to psychosocial hazards.

ACTIVITY: ‘Hazard Identification’



In the table on the following page, list two (2) examples of hazards from your workplace. You will also need to list the means by which such a hazard could cause harm i.e. injury or illness or property damage.



Indicative time - 10 minutes

Category	Hazard	How the hazard can cause harm
Gravity		
Manual tasks		
Machinery & equipment		
Sources of Energy		
Hazardous chemicals and biological		
Psychosocial Hazard		

Risk Management processes that PCBU's may undertake

Methods of Identification

Hazard identification is a critical stage in managing risk to work health and safety and may involve **incidental or systematic approaches**, generally a combination of both. Most organisations will rely on information coming into the workplace, or from the workforce, for the incidental identification of hazards including:

- Complaints from:
 - Workers
 - HSRs
 - Visitors
 - Public
- Direct observation from:
 - Workers
 - HSRs
 - Visitors
 - Public

Organisations that are effective in managing WHS will have systemic approaches to hazard identification. They may have a Quality Management System to ensure that regular identification tools are used within the workplace. Some of these systematic methods are:

- Workplace inspections
 - Walkthroughs by HSRs
 - New equipment inspections
- Audits
 - Internal or external experts
- Investigations of incidents or near misses
- Injury reports
- Job Safety Analysis (JSAs)
- Review of records
- Hazard and operability studies

Some other useful methods of hazard identification that can be used within the workplace include:

- Staying informed on trends and developments in workplace health and safety. For example, via the internet or WHS publications
- Reviewing the potential impact of new work practices or equipment introduced into the workplace in line with legislative requirements
- Considering WHS implications when analysing work processes
- Obtaining feedback from workers can often provide valuable information about hazards, because they have hands-on experience in their work area
- Consulting with workers, HSRs and HSC members
- Benchmarking against or liaising with similar workplaces.

When identifying hazards in the workplace HSRs can:



important

- Use research and trends to identify hazards
- Review new work practices or equipment introduced in their workplace
- Consult with internal and external parties
- Use benchmarking standards from within or external to industry

Assessing the risk

Once hazards have been identified, the next step is to assess their significance. The significance of a hazard is the combination of the probability or likelihood of injury or illness from exposure to the hazard and the severity of the injury or illness that results. It is the responsibility of the duty holder to assess a risk in relation to whether elimination or the level of minimisation is 'reasonably practicable'.

Under the WHS Regulation the PCBU is **required to conduct a risk assessment** under circumstances including in relation to:

- Entry to a confined space
- Electrical work on energised electrical equipment
- Work near an overhead or underground electric line where it is not reasonably practicable to ensure the safe distance of a person, plant or thing
- Lead processes
- Plant used in connection with tree lopping
- As part of a safety assessment of a major hazard facility

When a hazard is identified, the aim is to eliminate the hazard completely. However, this is not always possible. There are many tasks which still contain a high element of risk, yet they still have to be done. For example, underground mining, crane operations, firefighting.

Where it is not practicable to totally eliminate hazardous work practices, the onus is on the PCBU to minimise the risk to an acceptable level. In order to do this, there needs to be a method of assessing risk to determine the measures that need to be taken.

When assessing hazards, we are looking at a number of things, most importantly the exposure of employees to the hazard and the possible severity of any illness or injury or damage that may result.

Exposure – the level of exposure to the hazard will affect the likelihood that an injury or illness may occur.

Severity – the possible extent of an injury or illness that could be caused by exposure to a hazard.

The following should also be considered when assessing risks:

- The layout and condition of the working environment
- The capability, skill, experience and age of persons ordinarily undertaking work
- The system of work being used
- Reasonably foreseeable abnormal conditions

The measurement of risk is not a totally scientific process however it should not be totally subjective. The accuracy of risk assessment can be enhanced by the following factors:

- The knowledge and experience of the person(s) conducting the assessment
- Consideration of previous incidents or accidents
- Consideration of industry statistics
- Consideration of current industry standards
- Consideration of controls which are already in place
- Obtaining expert advice if required.

Risk assessments are always more accurate when they are carried out in consultation with the workers who are performing the task. These workers undertake the task routinely, and therefore are more aware of the risks involved.

Accurate risk assessment allows us to:

- Prioritise the hazards ensuring high risk activities are assessed as soon as possible
- Determine whether a risk is acceptable
- Formulate and action any control measures to remove or reduce the risk
- Reassess risks after controls have been put in place, to determine if the actions have been successful in reducing the risk to an acceptable level.

There are many forms of Work Health and Safety risk assessment. There are recommended methods for most risk assessments in the *ISO 31000:2009 Risk Management Principles and Guidelines* and the relevant Codes of Practice.

These include:

- Hazard Risk Assessments
- Plant Risk Assessments
- Hazardous Chemicals Risk Assessments
- Hazardous Manual Task Risk Assessments
- Job Safety Analysis and Safe Work Method Statements (SWMS)

Example Risk Management Tool: Risk Matrix

In determining the risk, the following guide may be used

		LIKELIHOOD				Risk Rating 1-2 = Extremely High / High risk 3-4 = Medium risk 5-6 = Low Risk Monitor / Minimal risk
		Very Likely	Likely	Unlikely	Very Unlikely	
CONSEQUENCES	Fatality	1	1	2	3	
	Major Injury	1	2	3	4	
	Minor Injury	2	3	4	5	
	Negligible Injuries	3	4	5	6	

Step 1 - Possible Consequences:

Of all the different sequences of events, select the most likely consequence resulting from exposure to the hazard. Rate the consequences from 'Fatality' to 'Minor'. Choose only one outcome and note this consequence in relation to where it falls on the table.

Step 2 – Likelihood:

What is the probability (or chance) that the chosen consequence will follow once exposure to the hazard occurs. Note the likelihood on the table.

Step 3 - Calculate Risk Score:

Go across from the mark and down from the mark to end at a rating from Very High to Low. This will be the final rating and a person can work on the priorities from this.

Activity: Determining risk rating



Use the two examples of particular hazards from your workplace. Using the Risk Matrix, determine the risk rating. Justification is to be provided for each rating.



Indicative time - 10 minutes

Hazard	Likelihood	Consequence	Rating
Gravity			
Manual tasks			
Machinery & equipment			
Sources of energy			
Hazardous chemicals and biological			
Psychosocial hazard			

Acting on the Findings

After using a risk assessment tool, you will need to act on the findings. Each organisation will have agreed levels of acceptable risk and it will be important as a HSR to identify where you can obtain this information from, as it will be required in determining the control measures for identified hazards.

Following are possible conclusions from the risk assessment process.

Low Rating

- Risks are not significant now and are not likely to increase in the future
- Record details and review in two years.

Medium Rating

- Risks are significant but adequately controlled
- Risk may increase based on exposure
- Review control measures on a half yearly basis.

High Rating

- Risks are significant and not adequately controlled
- Implement new control measures within one month timeframe.

Very High Rating

- Risks are dangerous
- Stop activity
- Implement new control measures within 24 hours.

Summary of Key Points

Assess all reasonably foreseeable workplace hazards that may affect the health or safety of workers or other persons at work. Ask:

1. How serious could it be?
2. What is the likelihood of its occurrence?
3. What is the significance of the risks?
4. Are risks assessed following the hazard identification exercise?
5. Are risks to others considered?
6. Are records of assessment maintained?
7. Of the hazards you identified, which ones create a significant risk?

Different ways PCBU can evaluate and monitor risk control measures and explain the role of a HSR in this process



Control the hazards

The third step of the risk management process is to control the risks.

The most important step in managing risks involves eliminating them so far as is reasonably practicable, or if that is not possible, minimising the risks so far as is reasonably practicable.

Where a hazard has been identified, the duty holder is to focus on the outcome of eliminating the risks posed by the hazard, and if this is not reasonably practicable, to minimise the risk as far as reasonably practicable. One way of minimising the risks to health and safety is to use a combination of the hierarchy of controls provided in the WHS Regulation and is shown as an example below.

In certain circumstances, the WHS Regulation imposes safety standards to manage the risk; for example, noise not being permitted to exceed the accepted exposure standards. A PCBU must meet the stated safety standards in the WHS legislation. It should be clarified that not meeting the specified safety standard does not mean a violation of the law. For example, a PCBU may provide a higher standard of safety by reducing the noise level by 10 dB(A) below the 85 dB(A) specified in the WHS Regulation.

In deciding how to control risks you must consult your workers and their representatives who will be directly affected by this decision. Their experience will help you choose appropriate control measures and their involvement will increase the level of acceptance of any changes that may be needed to the way they do their job.

There are many ways to control risks. Some control measures are more effective than others.

You must consider various control options and choose the control that most effectively eliminates the hazard or minimises the risk in the circumstances. This may involve a single control measure or a combination of different controls that together provide the highest level of protection that is reasonably practicable.

Some problems can be fixed easily and should be done straight away, while others will need more effort and planning to resolve. Of those requiring more effort, you should prioritise areas for action, focusing first on those hazards with the highest level of risk.

Hierarchy of Control

The best way to control a hazard is to eliminate it. This concept has led to the development of a hierarchy of control that starts with the elimination of the hazard as the preferred solution.

Level 1:

- Eliminating the hazard

Level 2:

- Substituting or modifying the hazard
- Isolation
- Engineering

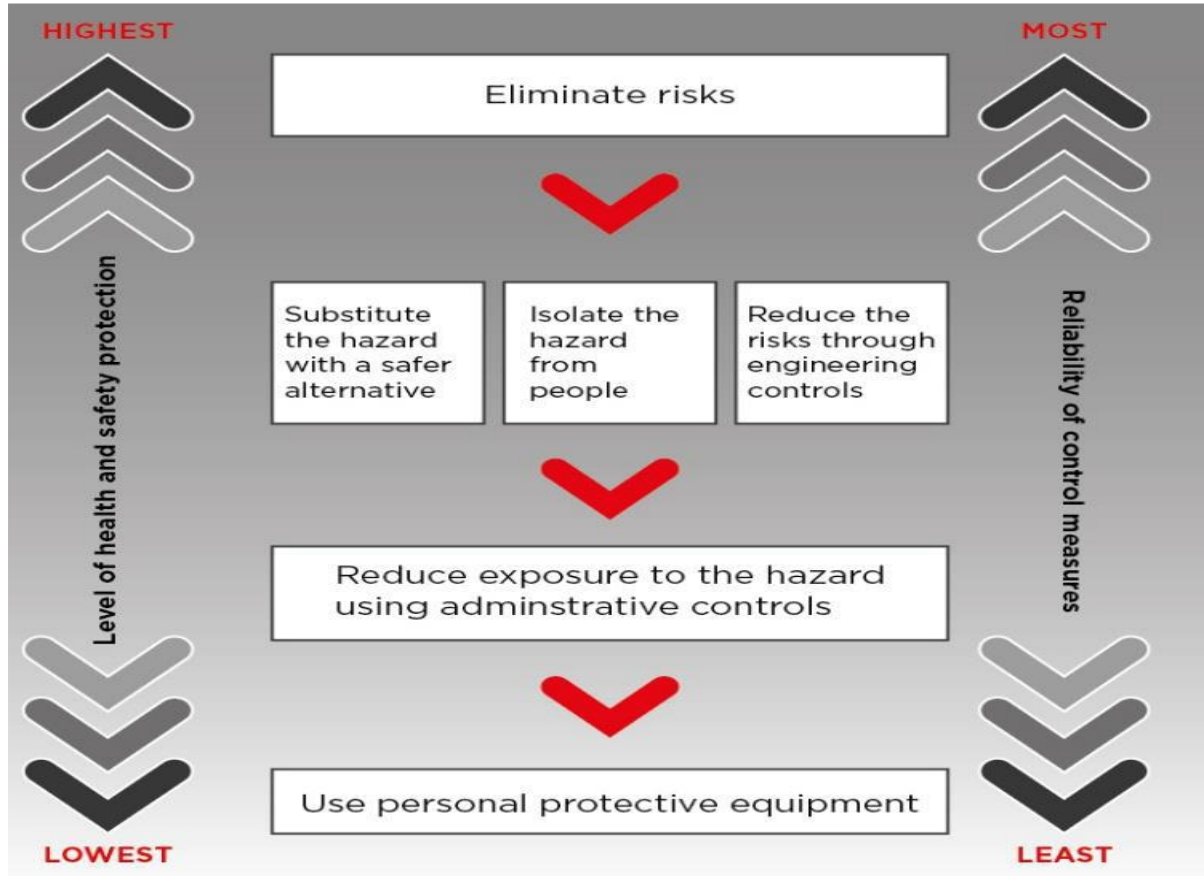
Level 3:

- Administrative controls

Level 4:

- Personal Protective Equipment (PPE)

Source: How to manage work health and safety risks: Code



Level 1: Elimination

The aim of all risk control is to eliminate the hazards for where no hazard exists, no risk of injury or illness exists. For example:

- Dispose of unwanted chemicals
- Eliminate hazardous plant or processes
- Repair damaged equipment promptly
- Increase use of electronic mail to reduce excessive photocopying and collation.

Level 2: Minimising the Risk

If elimination is not possible, then a minimisation option should be used, such as:

Substitution – If it is not possible to eliminate the hazard, substitute it with something (preferably of a lesser risk), which will still perform the same task in a satisfactory manner. Some examples are:

- Substituting a hazardous chemical with a less dangerous one
- Replacing a telephone handset with a headset where there is frequent use of a telephone
- Substituting a less hazardous material to control a vapour hazard makes more sense than installing an expensive ventilation system
- Substituting a smaller package or container to reduce the risk of hazardous manual task injuries such as a back strain.

Isolation – Isolate the problem from staff. This is often done by the use of separate purpose-built rooms, barricades, sound barriers, etc. This moves the hazardous process away from the main work area to a site where emissions can be controlled. Some examples are:

- Isolating and storing chemicals properly by using a fume cupboard
- Isolating copying equipment and other machinery in soundproof rooms to reduce fumes and noise
- Using security measures to protect staff

Engineering controls – If the hazard cannot be eliminated or a safety substitute implemented, then reduce the chance of hazardous contact. Redesign equipment, work processes or tools to reduce or eliminate the risk. Some examples are:

- Redesigning plant to reduce noise levels
- Using a scissor-lift trolley to reduce bending while lifting
- Installing forced ventilation in photography darkrooms to remove vapours
- Ensuring proper machine guarding is in place
- Using anti-glare screens on computer visual display units (VDUs)
- Using mechanical aids to minimise hazardous manual task injuries
- Using ventilation to remove chemical fumes and dusts, and using wetting down techniques to minimise dust levels
- Changing bench heights to reduce bending
- Ensuring ergonomic factors are taken into account

Level 3 & 4: ‘Back-up Controls’

If elimination or minimisation options are not practicable or available then, as a last resort, these options are available to organisations. These controls provide a ‘back-up’ to the other categories. Generally, these should not be relied upon as the primary method to control risk until all options to eliminate the hazard or minimise the risk have been exhausted. Sometimes ‘back-up’ controls should be implemented as an initial control phase while elimination or minimising controls are being evaluated and applied. ‘Back-up’ controls include:

Level 3: Administrative Controls - Training, job rotation, maintenance of plant and equipment, limitation of exposure time, provision of written work procedures. Some examples are:

- Regularly maintaining plant and equipment
- Redesigning jobs
- Using team lifting
- Limiting exposure time to a hazard through staff rotation
- Training and education to learn how to:
 - Identify and assess risks
 - Use methods of control
 - Apply legislative requirements
 - Implement safe manual handling techniques
 - Safe use of mechanical aids and equipment.

Level 4: Personal Protective Equipment (PPE) - For short-term solutions only and used as a last resort. PPE protects the employee's body from hazards. PPE must be provided free of charge and maintained by the employer. PCBUs are also required to ensure that workers are trained in the proper use of the PPE.

Workers have a responsibility to use PPE in accordance with their training and safe usage requirements. Some examples of their application are wearing:

- Earplugs in noisy areas
- Eye protection when working with hazardous chemicals
- Gloves to protect against infection.

Specific Controls to Reduce Risks

Controls should be selected from as high up the hierarchy table as is reasonably practical to maximise effectiveness. That is, the 'elimination' method is the ideal solution for safety. In many cases, a combination of controls will be necessary to reduce the level of risk. For example:

- Workplace design changes or task modification
- Substituting an extremely hazardous chemical with a less hazardous one
- Using a fume cupboard when handling the chemical
- Ensuring exposure time is limited
- Providing PPE to employees.

Activity: Determining risk controls



Using the hierarchy of control, record what level of controls you might use to minimise the risk associated with these hazards identified in previous activities.



Indicative time - 20 minutes

Hazard	Control	Level of control
Gravity		
Manual tasks		
Machinery & equipment		
Sources of Energy		
Hazardous chemicals and biological		
Psychosocial Hazard		

Summary of Key Points

Once the assessment process is complete, action to control the risks must be put in place.

Remember:

- Eliminate the hazard as a first priority
- If the hazard cannot be eliminated minimise the risks:
 - Substitute with something safer
 - Modify the plant or system of work
 - Isolate the hazardous aspects of plant or systems
 - Introduce engineering controls
 - Introduce 'back-up' controls
 - Implement administrative controls and safe work practices, or
 - Require personal protective equipment.

Effective hazard control involves human, financial and physical resources.

Monitor and review

The final step of the process of elimination or minimisation of risk is to monitor and review.

A duty holder is required to **review** and, as necessary, **revise** control measures when:

a risk control measure fails to control the risk (e.g. as determined by monitoring or a notifiable incident occurs);

a change in the workplace or work systems occurs that is likely to give rise to a new or different risk;

consultation indicates a review is required; or

a HSR requests a review (a new requirement) i.e. when

a) any of the above occurs that affects/may affect a member of the HSR's workgroup

b) the PCBU hasn't adequately reviewed the measures in response to that circumstance.

The risk management process does not cease once current workplace hazards have been successfully controlled.

A **systematic monitoring and review system** must be implemented as there is always the potential for new hazards to be introduced into a workplace. These hazards can be due to:

- Use of new technology, equipment or substances
- Implementation of new work practices or procedures
- Changes in work environment
- Introduction of new staff with different skill/knowledge levels

Planning

Effective forward planning is an integral part of monitoring and reviewing risk management processes. It is essential that all issues be addressed prior to the introduction of new equipment and work procedures. For example, planning would allow for the inclusion of WHS compliance into tender specifications for new equipment or services.

Record Keeping

An important part of monitoring and review is record keeping. Such systematic records will help to further identify hazards and review the effectiveness of risk controls. Keep records that show:

- Details of workplace inspections
- Worksheets/checklists used to identify hazards
- Methods used to assess risks
- Control measures implemented and factors that were considered in their determination
- Reviews of workplace systems of work, or health and safety audits
- Any action that has been taken to rectify particular hazards
- Instruction or training carried out to ensure staff competency
- Health surveillance of staff
- Maintenance of plant and equipment.

Achieving the Desired Results

It is important to keep checking that solutions to the workplace hazards are achieving the desired result. Only by regular monitoring and review can you ensure that this is the case.

Meeting Best Practice

Good hazard management resulting in compliance with set performance indicators is a positive signal that the organisation is on the way to WHS 'best practice'. This will have the run-on benefits of:

- Increase in staff morale
- Decrease in workers' compensation costs
- Promotion of a 'safety-conscious' culture in the workplace.

Questions that should be addressed during the monitor and review process

- Has the program achieved its purpose?
- Does it work?
- Is it being adhered to?
- What has been done to control the hazard and what remains to be done?
- Are new hazard control measures required?

HSRs powers



important

The powers and function of a HSR for a work group include to:

- represent workers in your work group,
- monitor measures,
- investigate complaints and
- make inquiries in anything that appears a risk to health and safety of workers in their work group

In performing this function to monitor measures taken by the PCBU, HSRs may:

- Inspect the workplace or any part of it at any time:
 - giving reasonable notice to the PCBU or
 - without notice in the event of an incidents or any situation involving a serious risk to health or safety of a person
- Accompany an Inspector
- Be present at an interview with consent of the worker
- request the establishment of a HSC, e.g. to examine a particular work health and safety issue such as introduction of new equipment
- receive information concerning the work health and safety of workers in the work group, and
- whenever necessary, request the assistance of any person.
- As of 29 July 2024 HSRs may request information from a PCBU regarding the health and safety of the workers in the work group and accompany an EPH at the workplace.

Obligations of PCBU to HSRs include to:

- **Allow access to information** on hazards and the health and safety of workers of the workgroup
- Allow the HSR to be **present at interviews**
- **Provide** reasonable facilities, time and assistance;
- Allow the HSR to **accompany an Inspector** during an inspection; and

- **Share costs** associated with HSRs where the PCBU is involved with multiple businesses or undertakings.
- As of 29 July 2024 - HSRs can choose their own training provider for the HSR training courses that have been approved by the regulator and receive their usual remuneration, rate of pay (e.g. including overtime) for attending training.

Summary

The process of managing risk is a systematic process that involves:

1. Identification of hazards
2. Where necessary assessing risks associated with the hazards
3. Controlling risks by elimination or if not reasonably practicable minimisation.
4. Review and evaluation of controls.

As a HSR for your work group it is important that you understand the following:

Information that is available to identify hazards

Which assessment tool the organisation uses

Processes by which acceptable risk is measured

Who is responsible for assessing and implementing controls?

Ways in which controls are determined for example with high risk activities effective controls may be prescribed or already well known by industry.

ACTIVITY: **Review of Controls**



This activity is designed to demonstrate the requirements under legislation when determining when controls of hazards should be reviewed



Indicative time - 20 minutes

Method

1. In small groups review the scenarios below
2. Consult within your group as to whether the controls measures should be reviewed.
3. Responses can be recorded on flip chart paper for presentation to the group
4. Record your responses on the handout, after discussion in the larger group

Listed below are some typical workplace hazards. When would you review controls?

A detergent in a restaurant kitchen has been substituted after complaints of skin irritation from workers. The problem still exists, the PCBU has been informed but orders are still in place for detergent.

Noisy compressor in the workshops replaced with a new one but new equipment was also placed in the area that is considered noisy by the workers

A report that improper lifting techniques in the despatch section that were causing back problems are still being practiced even after training in new procedures has been undertaken.

Shift workers have complained about additional hours worked leading up to peak season. Changes in the roster have resulted in some members of your workgroup working less shifts but others have more.

Summary - Day 3



We will review the topics that we have covered today. Record key information below that you can use back in your workplace or wish to investigate further. Don't forget to ask questions of anything that you are not sure about.

Session 1:

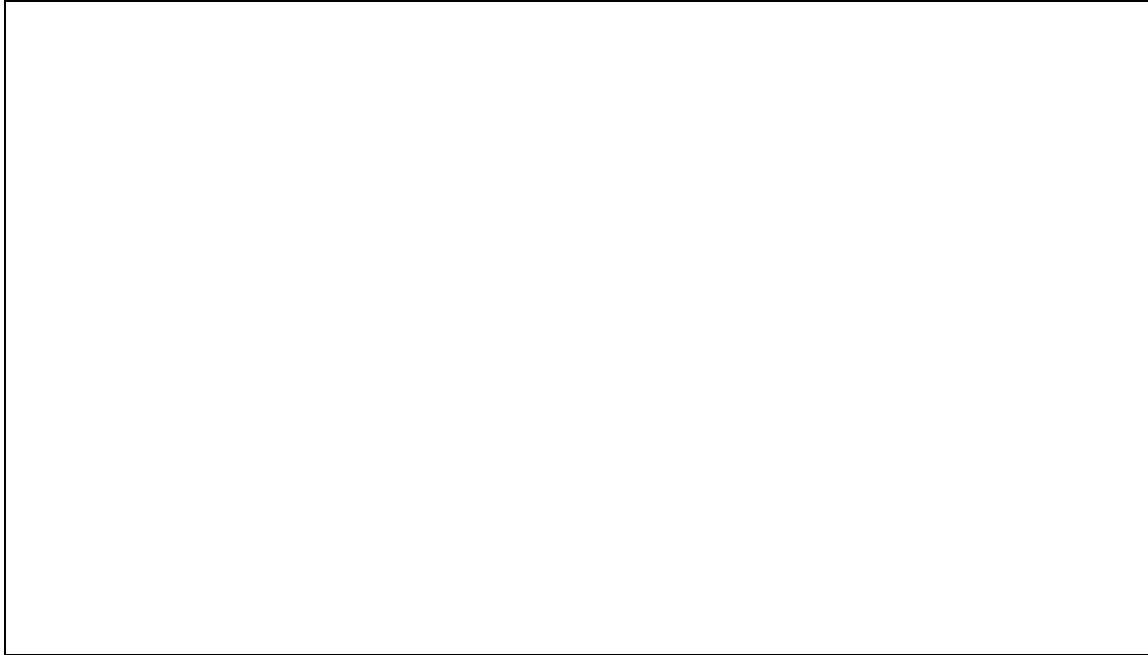
Strategies and skills for HSRs to support effective consultation

Session 2:

Representing workers as a HSR – negotiation and issue resolution

Session 3:

HSR monitoring of work health and safety risks



Day 4

MONITORING PCBU's MANAGEMENT OF WORK HEALTH AND SAFETY

Workplace inspection,
recording findings and
notifiable incidents

Day 4

Monitoring PCBU's management of work health and safety: workplace inspections, recording findings and 'notifiable incidents'

Learning Aim

Day 4 of training provides further information to HSRs on methods for effective monitoring of work health and safety risks, including workplace inspections and investigations of incidents.

Learning Outcomes

After completing this training day, participants should be able to:

1. Represent workers on health and safety issues in a range of circumstances
2. Understand how HSRs can use their powers and functions to contribute to risk management activities in the workplace
3. Identify the PCBU's obligations in relation to incident notification
4. Identify the type of assistance or support inspectors and WHS entry permit holders can provide a HSR

Assessment Method

Successful completion of face to face learning activities and exercises set out in this session.

Session Duration

The nominal duration of today's training is 9am – 4pm with breaks.

Learning Outcomes and Expected Learner Applications Day 4

Learning outcome	Expected Learner Applications
<p>After completing today's training, participants should be able to:</p> <ol style="list-style-type: none"> 1. Represent workers on health and safety issues in a range of circumstances 2. Understand how HSRs can use their powers and functions to contribute to risk management activities in the workplace 3. Identify the PCBU's obligations in relation to incident notification 4. Identify the type of assistance or support inspectors and WHS entry permit holders can provide a HSR 	<ul style="list-style-type: none"> • Describe the circumstances under which a HSR is entitled to be present during an interview concerning work health and safety • Explain the role of a HSR, during such interviews • Identify the purpose of workplace inspections and identify the powers which allow a HSR to inspect the workplace • Demonstrate the HSR's role in participating in workplace inspections and when this should be done • Provide examples of the type of incidents that could occur at work • Identify the duties placed on a PCBU in relation to notifiable incidents • Describe why a HSR should be advised by the PCBU of a notifiable incident that has occurred at the workplace • Identify tools and techniques that could be used in investigating incidents using learning activities, for example, a simulated incident investigation • Identify who can provide assistance to a HSR and under what circumstances • Identify conditions under which a representative, including a WHS entry permit holder may enter a workplace and any legislative conditions / constraints • Describe the role of a HSR when accompanying a WHS inspector on an inspection of a work location • Explain how accompanying a WHS inspector during an inspection would assist a HSR in performing their functions and / or exercising their powers

Day 4 - Session 1

Workplace inspections and recording findings

Learning Aim

This session will provide HSRs with information on the process and purpose of workplace inspections as a strategy for monitoring and evaluating WHS risks and control measures.

Learning Outcomes

After completing this session participants should be able to:

1. Understand how HSRs can use their functions and powers to contribute to risk management activities in the workplace through workplace inspections

Session Duration

The nominal duration is 3 hours 20 minutes

Learning Outcomes and Expected Learner Applications

Day 4 – Session 1

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none">1. Understand how HSRs can use their functions and powers to contribute to risk management activities in the workplace through workplace inspections	<ul style="list-style-type: none">• Identify the purpose of workplace inspections and identify the powers which allow a HSR to inspect the workplace• Demonstrate the HSRs role in participating in workplace inspections and when this should be done

Day 4 - Session 1

Introduction

Today's training focuses on the practical aspects of managing risks to health and safety in the workplace. Prior to actually conducting a workplace inspection (in a simulated scenario or at the workplace) we will discuss the process for the inspection.

After completing the inspection participants will record and present their findings to the larger group.

We will also look at other times that inspections may be required such as after a notifiable incident has occurred.

Workplace Inspections

The most important health and safety information in the workplace comes from direct observation, ie. what is actually going on. HSRs need their own source of information about what is happening in the workplace. As we have seen in previous sessions, the WHS Act gives HSRs powers to promote or ensure the health and safety of members of their workgroup. The power to conduct workplace inspections is included in WHS Act s68 (2).

Regular and special inspections should be included as part of the WHS Management System within an organisation. They can form part of the overall risk management strategy because as previously identified, workplace inspections are one method of identifying hazards. They can also be a method for enhancing and building on the safety management plan of an organisation.



Section 68 of the WHS Act provides for HSRs to undertake workplace inspections in the following circumstances:

A HSR can inspect the workplace or any part of the workplace at which a worker in the work group works:

at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace, and

at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard, and

can accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works.

The object of a HSR's involvement in workplace inspections is prevention. Regular systematic inspections of the workplace encourage consultation about health and safety issues to occur between workers and management.

The workplace inspection process can be divided into three stages:

1. Planning for the inspection
 - Consulting and agreeing the inspection procedure
 - Involving the right people
2. Conducting the inspection
 - Identifying potential and existing hazards
 - Consulting with managers and workers in the work group as part of the inspection
3. Writing an inspection report

It is important to note that the HSR does not make decisions about WHS issues; that remains the responsibility of the PCBU and its management. The HSR assists the PCBU to make better decisions by providing recommendations determined through consultation with their work group on WHS issues.

Activity: Planning and preparing for Workplace Inspections



How do you think a HSR could plan and prepare for a workplace inspection?



Indicative time - 10 minutes

Planning for a workplace inspection

Before undertaking an inspection, where possible the HSR needs to be thoroughly prepared. This requires planning and preparation at two levels:

1. Preparation for inspections generally where HSRs are monitoring controls implemented by the PCBU that impact on their workgroup.
2. Preparation for specific inspections e.g. as a result of a complaint or an issue being raised by the workgroup

The number and frequency of monitoring inspections will be a matter for the HSR to decide in consultation with the workers they represent and the PCBU who must be given reasonable notice prior to planned inspections (i.e. not those that result from an imminent risk). The frequency of inspections will depend on the nature of the work being conducted. For example, in an office where the tasks are predominantly administrative, inspections may be less often whereas in a more high-risk workplace such as a construction site where the site is regularly changing, more frequent inspection may be justified.

It is good practice to do some forward planning where possible and also to involve other parties who will be impacted by workplace inspections. As we have seen from our discussions on the power and functions regarding inspections, the HSR needs to consult with management to set the ground rules for inspections, be they routine, accident/incident or any other type. The result of the consultation should be documented within the organisation.

Some things that a HSR might like to consider in planning for an inspection and deciding on the format and practicalities are detailed below. These points are not requirements but HSRs may find the information helpful in providing a starting point for their preparation.

- **Determine the purpose of the inspection** – i.e. inspections being undertaken to monitor controls that have been implemented
- Plan a programme of inspections – a HSR may choose to plan a programme of inspections in advance. The advantage of doing this is that the HSR would be providing the PCBU with early notification of planned inspections. If the workplace has a HSC, a plan of inspections could be addressed through the committee meeting. Any changes to the planned inspections should also be made by agreement.

If the HSR is to participate in regular inspection programs that cover issues that may impact on their workgroup, they should consult and agree which parts of the workplace are to be inspected

- **Format of inspections**
 - Checklists for each area/risk/issue
 - Procedure for dealing with immediate risks – an inspection is likely to be required before directing unsafe work to cease or issuing of a PIN
 - Recording of findings after inspection
 - Reporting back to management and the workgroup on the findings and what actions are likely to be taken.

- **Agree the number of parties to participate in the inspection** – it may be helpful to have a management representative or supervisor present if the inspection is in relation to a specific issue. A HSR may decide to seek the assistance of another party such as a WHS entry permit holder, an expert in the work area being inspected or a WHS manager. Consider the nature of the inspection and circumstances in the workplace to judge what is suitable.
- **Coordinate inspections** – in a workplace where there are multiple HSRs, it may be beneficial to plan inspections together to avoid unnecessary duplication e.g. of common areas.
- **Inspect together** – in line with the above point, where there is more than one HSR at a workplace, consideration could be given to conducting inspections together.
- **Consult specialists** - if there is a safety officer or specialist advisers available at the workplace, then they should be available to give technical advice on health and safety matters that may arise during an inspection.

Break down tasks- What will be inspected

- Areas where workgroup members are exposed to risk – this may be at another workplace
- Equipment or substances involved and relevant information
- Policies and procedures e.g. if in relation to a welfare issue

If a HSR represents a large workplace, it may be necessary to break the inspection up into several sessions. Consideration could be given to inspecting by department by floor/level.

- **Review/Evaluation procedures for inspection policy/procedure** – Learn from each inspection experience and gather feedback from parties involved to determine areas for improvement.

Specific preparation

Within the framework determined by the HSR and management, individual HSRs have to prepare themselves before they undertake an inspection. In order to conduct an effective inspection HSRs need to know what they are looking at and looking for in the workplace. HSRs and members of the inspection team need to have a working knowledge of the workplace, what operations are undertaken, which groups are present, what equipment and substances are used, and what specific safety programs are in operation.

Preparation for the inspection involves both personal and mental components:

Personal preparation

- Do you have the time and resources without undue pressure?
- Look at the area from a fresh perspective

Physical components

- Operations
 - What work processes are involved in the area?
 - How do the work processes fit in with the rest of the organisation?
 - What does the section produce/process?
- Group
 - Are there contractors in the area?
 - Are there special groups with specific issues (diversity, language)?
 - How is management structured in the area?
 - Who are the supervisors and what are their responsibilities?
- Plant, equipment, substances
 - What information is available regarding their use or being near them
- Safety systems
 - Are there particular safety controls in the area that you need to be aware of?
- Issues
 - Are there any specific health and safety issues that need following up?
 - Have problems arisen in previous inspections and have they been dealt with?
 - What are the injury statistics for this area?
- Resources
 - Personal protective equipment required
 - Checklist for area or type of inspection, pen, pencil, clipboard and camera.

Documentation for inspections

Documentation should be maintained by the PCBU that records any agreed procedures for workplace inspections by a HSR. In addition, a HSR should keep documentation of any inspections that they undertake for their records.

Documentation of an inspection ensures records are kept of:

- consultation with members of the HSR's workgroup
- hazards identified (both physical and psychosocial)
- if a risk assessment was made what factors were taken into consideration
- possible ways to eliminate or minimise the hazard

The HSR and PCBU or its management may agree to a format for keeping records of inspections that would record:

- Who, what, where, when and why
- Hazards identified and where necessary or applicable risk assessment
- Suggested safety controls
- Consultation comments from the workgroup i.e. concerns, solutions

Workplace inspection checklist

The inspection checklist is an important tool within the organisation and should be relevant to the area where it is to be used. General and non-specific checklists are a useful starting point. These may be developed by a Health and Safety Committee (HSC) where there is one, with input from management and workers through their HSR/s. If the workplace does not have a specific checklist then the one attached to these notes will be a good starting point for the HSR and the organisation to improve upon.

Having a specific checklist for one area or each workgroup may not be practicable for the organisation, therefore a site checklist may be available for use. If this is the case, the HSR may have to adapt a general checklist to make it relevant to the work area they are inspecting. Checklists need to be robust enough to identify any existing or new hazards that may arise from work activities. Inspection checklists will not only provide information for identifying hazards or potential issues, they could also contain room for information such as:

- Who conducted the inspection and when?
- The area/s that were inspected
- Any issues identified and the area the issue was in
- Input from consultation with members of the workgroup.
- Recommended controls
- What action should be taken?
- Who is responsible for control/fixing?

If inspecting in relation to a specific complaint, issue or monitoring the PCBUs activities to minimise risk, additional information such as plant instructions and guides, safe work procedures and Safety Data Sheets may be useful.

In some instances, HSRs may need to conduct an inspection of an area immediately i.e. where there is immediate threat to health and safety of members of their workgroup and being aware of available resources can help ensure that such as situation progresses as smoothly as possible.

Guidance materials and checklists are available on the www.worksafe.qld.gov.au website. There are also checklists within the Code of Practices and forms tab.

Activity: Identifying workplace checklists



What types of checklists are available in your workplace? List your responses below.



Indicative time - 10 minutes

What checklists are available are available in your workplace?

Are the checklists relevant to your workplace and areas being inspected?

What items/categories/issues are contained within the checklists?

What do they believe should be included in a checklist which isn't already identified?

What could be done to improve the checklist?

Conducting the Workplace Inspection

In conducting a workplace inspection HSRs need to be mindful of not just the physical aspects of the environment but also the concerns of members of their workgroup.

HSRs can utilise a hazard prompt list similar to the one provided in these notes, possibly tailored more towards potential hazards their workgroup may be exposed to or a full workplace inspection checklist that can be applied to a particular area.

Identifying significant hazards or unsafe work during the Workplace Inspection



Discuss what you as the HSR could do and what HSR powers may be used if a hazard is identified or an unsafe work practice observed with significant potential to cause harm.

If the HSR identifies a significant hazard which poses a serious and imminent risk to workers, the HSR may need to consider immediate measures such as directing unsafe work to cease. Prior to doing this, the HSR should speak directly to the workers involved to ensure they understand why the action is being taken. Workers may also be able to contribute to possible solutions. In some circumstances (eg. where prior consultation with the PCBU about the issue has been undertaken but no action taken), a HSR may consider issuing a Provisional Improvement Notice (PIN).

In circumstances where the danger is not immediately imminent the HSR will need to discuss the issue with the relevant PCBU. The PCBU may not have been aware of the situation and this allows for them to take action without the HSR having to issue a PIN. In other instances e.g. faulty equipment the PCBU having been informed of the matter may themselves direct workers to cease work. In some instances, the HSR may request the formation of a HSC to help resolve an issue.

HSRs may be inspecting their workgroup's work area as the result of an incident and will be particularly focused on factors that may have contributed to the incident. The HSR will want to contribute to the organisation's investigation, gathering as much information as possible on the underlying cause of the incident by checking the physical environment as well as consulting with members of their workgroup who have been impacted by the incident.

Workplace Inspection Records



In performing their duties, the HSR is likely to be gathering information that they may require at a later date or wish to use to discuss issues with management. This is an essential aspect of their role which brings together recommendations to management and possibly the HSC that can then be dealt with in a formal and systematic manner.



It is vital that information recorded is clear and concise and details solutions to issues as determined through consultation with the work group. A familiar statement from management is 'don't come to me with problems, come to me with solutions.'

The information obtained can provide management with feedback on the effectiveness of health and safety systems in operation in the workplace. It can also provide management with specific information on problems in the workplace, the extent of the problem and, where possible, the HSR's view (and thus the views of the HSR's workgroup) on what should/could be done about it.

The work of the inspection is not complete until the information is passed on to management. The agreed procedure on inspections in the workplace will identify how this is to be done. Generally, the HSR will not be required to prepare a formal written report, however this will depend on the Organisational procedures.

The information obtained during an inspection should ensure that incidents investigated or hazards identified or observed during workplace inspections are corrected in an appropriate manner. The information can be used by members of the HSC, or persons with a duty to respond to information the HSR obtained in conducting an inspection.

To be completely successful, any recommendations must ensure that the persons for whom the information is intended:

- has access without delay
- understands everything discussed
- can rely on the facts, findings, conclusions and recommendations
- has the authority to consider any take any recommendations that are accepted.

To achieve this, the HSR is required to do more than merely present relevant facts accurately. It requires the ability to communicate in a way that is both acceptable and intelligible through effective communication.

HSRs need to communicate verbally and also through written correspondence. For the consultation process to be successful it is vital that the communication between all concerned is:

- open
- accurate
- fair
- objective and
- meaningful.

Recording your findings

As well as collecting and handling the information gathered the HSR will need to record the information for future reference and to be able use it to discuss the matter with management.

It is important to remember to be:

Selective: Careful choice of words can enable you to convey clear and unambiguous meanings.

Accurate: Check that everything written is factually accurate and can be verified.

Objective: The information recorded should not reflect personal emotions and opinions. Persons should state all sides of any problems that exist.

Clear and concise: The information recorded should be clear and concise without leaving out any important information. You should guard against over simplifying details. Management will require sufficient information to consider all options in making a decision.

Considered: On complex issues to achieve clarity the best way may be to allow some time to elapse and then review your findings. Allowing time to think over what you have written may allow you to look at the issue in a different light.

Where a HSR identifies an issue that cannot be resolved through consultation they may need to consider whether **a PIN should be issued to the duty holder.**



The information recorded can take the shape of the actual inspection checklist or hazard register covering items such as:

Why the inspection was undertaken e.g. in relation to a 'notifiable incident', reporting by a workgroup member of a concern

Identifying where and when the inspection took place

Identifying who was involved in the inspection

Identifying the hazards and hazardous situations encountered and any actions that may have had to be taken at the time

Making an assessment of the significance of each of the hazards identified

Making recommendations as how best to control the hazards.

The HSR is not required to write formal reports in their role but may contribute to these reports as a member of the HSC.

Workplace inspections form the basis of a HSR's knowledge on safety performance in the workplace. Conducting regular inspections allows the HSR to develop a good working relationship with colleagues and management by providing the opportunity to identify and recommend control measures for hazards.

ACTIVITY: Conducting a workplace inspection - Practical exercise

We have detailed the necessity for work health and safety to be managed in a systematic manner. This includes PCBU's developing policies and procedures, undertaking risk management activities and monitoring and reviewing what has been put in place.

This activity has been developed to put the theory into practice within the workplace.



This activity requires you to undertake a work place inspection in your workplace (or a simulated workplace) and record your findings and recommendations.



Indicative time - 2 hours

Focus on making recommendations to improve work health and safety controls and management systems. These should be based on the result of the inspection and consultation with workers or other relevant parties, in a formal way that can be submitted as recommendations to management.

As part of the workplace inspection review any relevant safe work procedure (SWP) or safe work method statement (SWMS) for work that may be undertaken at the time of the inspection. The SWP or SWMS should identify hazards associated with the task, risk and controls that have been selected. The information obtained can be incorporated in the inspection report.

Think about how you will discuss issues with your workgroup and how any systems could be changed to ensure that a hazard or issue doesn't recur.

Activity Aim

To familiarise HSRs with workplace inspections as one form of hazard identification and monitoring the effectiveness of risk controls that have been put in place by the PCBU.

Method

You may work individually or in small groups. You must take into account any relevant WHS consultation policies and procedures for requesting information and consulting with management and workers.

You are to undertake an inspection of the workplace to identify hazards. Once identified, assess the risk associated with at least 5 hazards and then decide on appropriate control measures taking into account the hierarchy of control.

Activity

1. Undertake an inspection of a specified area within the workplace to identify hazards. Tools to assist in inspections are included in your workbooks. They include a hazard prompt list, a hazard identification and consultation record and an example of an inspection checklist (if one has not been available from your workplace).
2. Assess the risks associated with each hazard and review the control measures put in place by the PCBU.
3. Decide if the control measures are appropriate by referring to the hierarchy of controls and taking into account relevant workplace factors such as cost, staffing, training, procedures etc.
4. Outline any implications you see for your work groups health and safety e.g. any system deficiencies
5. Prepare a report to management on your recommendations following the inspection.

Debrief of practical workplace inspection activity

After the practical exercise the group will debrief on their experience and work through their findings together.

Access/ Exit

- Limited exits points
- Restricted access / egress
- Directional signage
- Exit signs

Biological Substances

- Any exposure to human or animal fluids, needle-stick injuries, blood spills
- Any exposure to other infectious disease hazards (e.g. HIV, hepatitis)
- Exposure to bacteria
- Exposure to sewage
- Seasonal exposures e.g. influenza

Contact with Moving Objects or Stationary Objects

- Bumping / walking into objects
- Moving objects (e.g. tools / equipment dropped from a height, hit by opening door, etc)
- Moving / Mobile Plant or Equipment
- Falling objects
 - Items stored at height
 - Items not secured when working at heights

Ergonomics

- Constrained work postures
- Excessive duration and high frequent activities
- Inadequate working space
- Repetitive movements
- Unfavourable work postures

Electrical

- Possibility of touching electrical connections
- Equipment not tested and tagged
- Damaged or poorly maintained electrical cables or leads
- Damaged electrical switches
- Water near electrical equipment
- Equipment lacks isolation procedure e.g. earth leakage device, RCD, etc

Falls, Trips & Slips

- Lack of handrails
- Poor housekeeping / trip hazard
- Steep incline/decline
- Uneven surfaces
- Unguarded openings
- Wet or slippery surfaces / spills
- Working at heights
- Ladder use

Hazardous Substances

- Asbestos / Mineral Fibres
- Caustic or corrosive
- Fire / Burns
- Oil contaminates
- Paints / Solvents
- Toxin / Poisons
- Explosives / flammables

Hazardous Manual Tasks

- Awkward loads / awkward postures
- High forces applied
- Holding, supporting, restraining (person or object)
- Inadequate/ difficult grip
- Moving or carrying over long distances
- Pushing, pulling, other forces
- Reaching, bending, twisting
- Working space cluttered, uneven or slippery

Physical / Environmental Hazards

- Adequate Ventilation / Air Quality
- Confined Space
 - Not intended or designed as a place of work
 - Atmospheric contaminants (e.g. gases, vapours, chemicals, explosive dusts, etc)

- Oxygen deficiency or excess
- Stored substances could cause engulfment Restricted entry or exit
- Other physical hazards present e.g. Noise, heat / cold, etc

- Drowning
 - Work near water
- Heat / Cold
 - Thermal comfort range
 - Hot works
- Lighting levels
 - Applicable to task
- Radiation
 - Non-ionising (e.g. welding arc, sunburn etc)
 - Ionising (e.g. x-ray, etc)
- Vibration and pressure hazards identified
- Waste Disposal

Plant /Equipment

- Fit for purpose
- Well maintained
- Pinch, nip and other hazardous contact points identified
- Guarding missing / not in place
- Emergency stop buttons available
- Hot surfaces marked

Noise

- Noise identified and monitored
- Controls in place e.g. dampeners, signage
- PPE available and used

Psychosocial / Stress

- Demanding shift schedule
- Exposure to a traumatic event
- Work Pressure
 - Increased work load
 - Time pressures
- Work related harassment or bullying

Traffic / Motor Vehicle Accidents

- Accidents when driving as part of work duties
- Forklifts
- Lack of speed controls
- Lack of traffic management system
- Limited signage and warnings
- Pedestrian & vehicle traffic not separated

Worker Welfare

- Adequate facilities
- Well maintained
- Suitable PPE available and maintained
- First aid and emergency equipment available
- Emergency information and training

Security

- Controlled access areas
- cash Handling
- Transport of Cash or Medicines
- Working alone outside normal hours
- Isolated work
- Communication

Violence & Aggression

- Abusive / threatening behaviour
- Armed hold up / robbery
- Bullying or harassment
- Physical assault
- Working alone / isolated

Other**e.g.**

- Information not available
- Untrained persons
- Work interactions

Hazard identification and consultation record

(information obtained through observation and consultation with workgroup)

Inspected by:

Date:

Location:

Issued Identified	Location	Potential harm (consequences)	Likelihood	Suggested Controls/Corrective Action	Review Timeframe

SAMPLE Workplace inspection checklist - hazard identification

Inspection Team:

Workplace Inspected:

Date of inspection:

Purpose of inspection:

GENERAL CONDITIONS

FLOORS

√ or x

No slip, trip, or fall hazards

☐

Apertures or openings

☐

Clean, orderly, and free of oil or grease hazards

☐

No standing water on floors

☐

Grates over floor drains

☐

Nonslip surfaces wherever possible

☐

Any unsafe practices observed?

☐

Comment:

AISLES

- Clearly marked ☐
- Unobstructed and sufficient room ☐
- Corners unobstructed to offer clear view ☐
- Sufficiently wide for material handling ☐
- Any unsafe practices observed? ☐

Comment:

STAIRS and PLATFORMS

- Uniform height and tread depth ☐
- Grating-type tread on exterior stairs ☐
- Platform levels to break long flights of stairs ☐
- At least 550 millimetres wide ☐
- Sturdy railings on all open sides ☐
- No storage of material on stairs ☐
- Proper lighting in stair areas ☐
- No worn or damaged stair treads ☐
- Any unsafe practices observed? ☐

Comment:

LIGHTING

Illumination level sufficient for work performed ☐

Emergency lighting adequate and operating ☐

Task lighting on close-vision jobs ☐

Emergency lighting of all exit routes ☐

Any unsafe practices observed? ☐

Comment:

EXITS and EMERGENCY PREPAREDNESS

Adequate number of exits for emergency escape ☐

No locked or barred exits restricting escape ☐

Emergency exits adequately illuminated ☐

Exterior exit surfaces clear for prompt exit ☐

Flammable materials removed from exit areas ☐

Exterior exit doors open outward to flat surface ☐

Written and posted emergency evacuation plan with exit map for all areas ☐

Assembly point signed and known ☐

Any unsafe practices observed? ☐

Comment:

VENTILATION

- | | |
|---|--------------------------|
| Adequate ventilation for the process | <input type="checkbox"/> |
| Exhaust systems in place and working | <input type="checkbox"/> |
| Hoods draw air away from people | <input type="checkbox"/> |
| Clean-out ports for ducts provided | <input type="checkbox"/> |
| Maintenance clean-out schedule observed | <input type="checkbox"/> |
| Fans properly guarded | <input type="checkbox"/> |
| Any unsafe practices observed? | <input type="checkbox"/> |

Comment:

NOISE CONTROL

- | | |
|---|--------------------------|
| Equipment and activities generating excessive noise identified | <input type="checkbox"/> |
| Engineering controls in applied and in operation where feasible | <input type="checkbox"/> |
| Monitoring systems in place | <input type="checkbox"/> |
| Hearing protection signage in place as warning | <input type="checkbox"/> |
| Hearing protection provided where sound levels exceed standard | <input type="checkbox"/> |
| Employees have a choice of approved hearing protectors | <input type="checkbox"/> |
| Employees wearing approved hearing protection | <input type="checkbox"/> |
| Any unsafe practices observed? | <input type="checkbox"/> |

Comment:

HAND and PORTABLE TOOLS AND EQUIPMENT

Electrically grounded ☐

Good condition of connecting cords, tools, and air hoses ☐

Guards and safety fixtures safe and operable ☐

Correct load rating for work performed ☐

Constant pressure switches on power tools ☐

Tradespeople, mechanics and helpers properly trained in operation of equipment ☐

Electrical extension cords in good condition ☐

Any unsafe working practices observed? ☐

Comment:

MACHINE TOOLS

Guarding of power transmission equipment ☐

Guarding of pinch points, in-running points, and points of operation ☐

Interlock guards in operation ☐

Eye protection available where needed ☐

Operating controls locked when not in use ☐

Emergency stop buttons readily accessible and operable ☐

Guards or deflect devices provided for chips/sparks from rotating equipment ☐

Machine tool operators properly trained in operation of equipment ☐

Any unsafe working practices observed? ☐

Comment:

HOISTING and LIFTING EQUIPMENT

Load capacity identified ☐

Overhead guards in place ☐

Limit stops working effectively ☐

Special area for refuelling and recharging of batteries ☐

All hand and foot controls operational ☐

Full, unrestricted view for operator ☐

Operators properly trained in the use of the equipment ☐

Any unsafe work practices observed? ☐

Comment:

RECEIVING and IN-PLANT MATERIALS HANDLING

- Dock boards available to prevent falling objects ☐
- Trailer truck wheel chocks available in receiving/shipping areas ☐
- Pallets and skids in good repair ☐
- Special storage area for unused skids and pallets ☐
- Procedure to set aside broken skids and pallets ☐
- Paths, aisle ways, and stairways clear of obstructions ☐
- Proper drainage to prevent accumulation of water or solvents ☐
- Any unsafe work practices observed? ☐

Comment:

COMPRESSED GASES

- Special storage area away from heat sources ☐
- Stored upright and chained to prevent falling over ☐
- Contents legibly marked and segregated by item ☐
- Caps hand-tight ☐
- Workers properly trained in operation of equipment ☐
- Any unsafe work practices observed? ☐

Comment:

MECHANICAL EQUIPMENT

Nip points, rotating collars, cams, chucks, couplings, clutches, shafts, flywheels, spindles, bolt ends, key ends identified ☐

Emergency stops fully operational ☐

Adequate arrangements for oiling and greasing ☐

Vent hood in place and ventilation operational for grinding wheels ☐

Operation manuals and safe work procedures available ☐

Equipment not damaged or worn ☐

Workers properly trained in the operation of these systems ☐

Lockout and tag out procedures implemented ☐

Any unsafe practices observed? ☐

Comment:

POWER SYSTEMS – HYDRAULIC

Pressure lines clearly identified ☐

Checked for nicks, dents, and wearing in lines ☐

Pressure regulated within limits ☐

Emergency stops fully operational ☐

Properly trained person only operate the equipment ☐

Any unsafe work practices observed? ☐

Comment:

POWER SYSTEMS - ELECTRICAL

Electrical control panels clearly identified and secured ☐

Only certified electrical specialists to have access to panels ☐

Grounding tested ☐

Explosion-proof fixtures in designated areas ☐

Any exposed conductors at rear of switchboard ☐

Flexible extension cords fray-free and absence of splices ☐

Electrical specialists trained in the operation/maintenance of this equipment ☐

Electrical equipment tested and tagged where required ☐

Any unsafe work practices observed? ☐

Comment:

MACHINE GUARDING

Guard or safety device at each point of operation ☐

Guard fully prevents operator from reaching around guard ☐

All guards in place - no bypassing or removing guards ☐

START and STOP controls within easy reach of operator, clearly labelled ☐

Machinery can be oiled and greased without removing guards ☐

All controls, including foot controls, guarded against accidental start-up ☐

Emergency stop controls clearly identified and readily accessible ☐

No operating of equipment at unsafe speed ☐

Personal protective equipment is used ☐

Any unsafe work practices observed? ☐

Comment:

WORK PRACTICES

Clothing, shoes etc suitable for the work environment ☐

Worker overexertion, fatigue issues identified and addressed ☐

Potential for repetitive-motion injury identified ☐

Potential for hazardous manual task identified ☐

Hazardous environmental conditions identified e.g. heat, cold, vibration ☐

Any unsafe work practices observed? ☐

Comment:

WORKER TRAINING

Worker basic safety training updated regularly ☐

Workers trained in safe work practices of their jobs ☐

Workers trained in emergency procedures ☐

Specific training needs of workers identified and provided ☐

Any unsafe work practices observed? ☐

Comment:

LOCKOUT, TAGOUT SYSTEMS

Positive lockout systems provided for all power equipment ☐

Documentation available ☐

Known that only authorized persons allowed to perform this procedure ☐

Prominent tags indicate use of the lockout system ☐

Any unsafe work practices observed? ☐

Comment:

BIOLOGICAL HAZARDS

Biological hazards identified including seasonal hazards ☐

Workers trained in safety procedures ☐

Information available on the types, use, location, removal, and handling of personal protective equipment ☐

Emergency contact person designated ☐

Hand washing facilities available ☐

Work practices reviewed to reduce exposures ☐

Disposable and reusable sharps placed in a puncture resistant, leak proof container with BIOHAZARD label ☐

Disposal containers available for disposable PPE ☐

Workers instructed in proper way to remove PPE to minimise contamination ☐

Comment:

PROCESS SAFETY MANAGEMENT

Chemicals used in the process and their maximum inventory listed ☐

SDS readily available on all chemicals ☐

Written information, diagrams, and original equipment manuals collected on process equipment and intermediates ☐

Management has consulted with employees (and their representatives) in developing a program ☐

Operating practices reviewed, consistent with known hazards of the chemicals in the process ☐

Training sessions documented ☐

Screening process developed to hire safe operating contractors ☐

Workers advised and aware of known hazards in their work area ☐

Emergency action plan reviewed with all workers at regular intervals ☐

Hazards involved in non-routine work communicated to operators and to maintenance personnel ☐

Work authorisation permit system in effect, outlining approvals required to do the job ☐

Management policy prepared and communicated that all incidents will be formally investigated ☐

Written instructions and training developed for emergency evacuation plans ☐

Disabled employees identified and they will receive assistance to evacuate to a safe zone ☐

Facility emergency control center established in a safe zone at the facility ☐

Comment:

FIRE PROTECTION

Date of last fire drill ☐

Fire hoses checked, readily accessible, and inspected monthly ☐

Fire equipment of proper type and size ☐

Fire equipment clearly marked ☐

Sprinkler heads have adequate clearance from stacked materials or equipment ☐

Regular fire drills held-date of most recent ☐

Any unsafe work practices observed? ☐

Comment:

PERSONAL PROTECTIVE EQUIPMENT

Gloves or palm guards properly chosen for each job ☐

Eye or face protection properly selected for each job ☐

Head protection properly selected for each job ☐

Foot protection properly selected for each job ☐

Apron or protective clothing properly selected for each job ☐

Respiratory protection properly selected for the job, if necessary ☐

- Hearing protection selected for areas above noise standard ☐
- Safety belts properly chosen for the job, if required ☐
- Eye baths and showers readily available and accessible ☐
- Proper signs and instructions at eye baths ☐
- Adequate emergency rescue equipment available ☐
- Any unsafe work practices observed? ☐

Comment:

FIRST AID and MEDICAL SERVICES

- Adequate materials and equipment available ☐
- Clear instructions on medical emergencies ☐
- Incident log book near first aid station – check recent entries ☐
- Workers know who trained first-aiders are and how to contact them ☐
- Any unsafe work practices observed? ☐

Comment:

WASTE DISPOSAL

- Special containers provided for different types of waste, oily rags, chemicals, scrap paper and corrugated, garbage, medical waste, blood borne pathogens waste, etc. ☐
- Food waste handled separately ☐
- Where required, waste properly labelled ☐
- Satisfactory external cartage and disposal arrangements ☐
- Approved disposal arrangements for hazardous waste ☐
- Any unsafe work practices observed? ☐

Comment:

YARD and ROADS

- No obstructions or broken surfaces on roads ☐
- Good housekeeping in yard areas ☐
- No possibly combustible materials stored in direct sunlight ☐
- No uneven or broken sidewalk surfaces ☐
- Appropriate traffic signs and markers ☐
- Areas of dry grass kept in check so they aren't a safety hazard ☐
- Any unsafe work practices observed? ☐

Comment:

OFFICES

- Floors have no slippery surfaces due to excessive polish or wax ☐
- No holes or depressions in floors ☐
- Rugs in hallways or offices are free from holes, tears ☐
- Aisles free of obstructions, including electric cords and outlets ☐
- Stairwells and exits properly lighted ☐
- No unsafe ladders or trolleys ☐

- General housekeeping is good ☐
- No top-heavy filing cabinets (either by loading or drawer opening) ☐
- Lifting, including opening of windows, is performed safely ☐
- Correct use of pins, knives, scissors, or staplers ☐
- Fire escape doors unlocked and unobstructed for exit ☐
- Glass doors either frosted or with lettering or decals ☐
- Switch and cover plates in place ☐
- No splinters in furniture or accessories ☐
- No running, crowding or jamming revolving doors ☐
- No fire hazards e.g. from cigarette butts ☐
- Safe storage of flammables ☐
- Persons trained in requirements of Hazard Communication Standard ☐
- Correct type and placement of fire extinguishers ☐
- First aid facilities available ☐
- Electric fans properly guarded ☐
- Adequate ventilation ☐
- Any unsafe work practices observed? ☐

Comment:

LADDERS

- Safety feet in good operable condition ☐
- Clean rungs, unpainted ☐
- No splinters on wood ladders ☐
- No metal or aluminium ladders in electrical areas ☐
- Only one person on a ladder at a time ☐

Tied at top and properly positioned ☐

If used above roof, 3 foot extension above roof level ☐

Danger tags available for defective ladders ☐

Any unsafe practices observed? ☐

Comment:

SCAFFOLDS or PLATFORMS

Non-skid flooring ☐

Level and plumb ☐

Safe access to platforms ☐

4 inch toe board around all four sides of platform ☐

Working platforms at least 2 feet wide ☐

All access gates self-closing and locking ☐

No accumulation of tools and materials ☐

Any unsafe practices observed? ☐

Comment:

INDUSTRIAL/FORKLIFT TRUCKS

All operators trained and licensed ☐

Checklist for start of shift ☐

Load capacity labelled ☐

Overhead guards in place and load backrest extension in place ☐

Speed posted and slow-down ramps ☐

- | | |
|--|--------------------------|
| Forks placed evenly across load | <input type="checkbox"/> |
| Pedestrians given the right of way | <input type="checkbox"/> |
| Dock boards properly secured | <input type="checkbox"/> |
| Key from truck removed when out of operation | <input type="checkbox"/> |
| Any unsafe work practices observed? | <input type="checkbox"/> |
| Comment: | |
-

CONFINED SPACE ENTRY

- | | |
|---|--------------------------|
| Persons trained who must work in confined spaces | <input type="checkbox"/> |
| Permit-required spaces identified | <input type="checkbox"/> |
| Permit-required space entry procedures in place | <input type="checkbox"/> |
| Lifelines, harness apparatus and respirators in place | <input type="checkbox"/> |
| Involved employees informed of entry procedures | <input type="checkbox"/> |
| Any unsafe work practices observed? | <input type="checkbox"/> |
| Comment: | |
-
-

Additional Notes:

Day 4 - Session 2

Obligations in relation to 'notifiable incidents' and resources available to assist HSRs

Learning Aim

This session will provide HSRs with information on the definition of and the PCBU's obligations relating to 'notifiable incidents' as well as further information on the assistance that HSRs can receive from Inspectors and other parties

Learning Outcomes

After completing this session participants should be able to:

1. Identify the PCBU's obligations in relation to incident notification
2. Identify the type of assistance or support inspectors and WHS entry permit holders can provide to a HSR
3. Represent workers on health and safety issues in a range of circumstances.

Session Duration

The nominal duration is 3 hours

Learning Outcomes and Expected Learner Applications

Day 4 – Session 2

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Identify the PCBU's obligations in relation to incident notification 2. Identify the type of assistance or support inspectors and WHS entry permit holders can provide to a HSR 3. Represent workers on health and safety issues in a range of circumstances 	<ul style="list-style-type: none"> • Provide examples of the types of incidents that could occur at work • Identify the duties placed on PCBU's in relation to notifiable incidents • Describe why a HSR should be advised by the PCBU of a notifiable incident that has occurred in the workplace • Identify tools and techniques that could be used in investigating incidents using learning activities, for example, a simulated incident investigation • Identify who can provide assistance to a HSR and under what circumstances • Identify the conditions under which a representative, including an entry permit holder may enter a workplace and any legislative conditions/constraints • Describe the role of a HSR when accompanying a WHS Inspector on an inspection of a work location • Explain how accompanying a WHS Inspector during an inspection would assist a HSR in performing their functions and/or exercising their powers • Describe the circumstances under which a HSR is entitled to be present during an interview concerning work health and safety and explain the role of a HSR during such interviews

Day 4 – Session 2

Notifiable Incidents under the WHS Act

ACTIVITY: Notifiable Incidents



Activity to be undertaken in two groups



Indicative Time - 30 minutes

Method

Group 1: Research and report back on what types of incidents are notifiable, including practical examples.

Group 2: Research and report back on what the PCBU obligations are in relation to notifiable incidents, including timeframes.

Incident notification



Notifiable incident as described under the WHS Act means:

WHS Act s. 35 – s. 39



- (a) the death of a person; or
- (b) a serious injury or illness of a person; or
- (c) a dangerous incident.

A PCBU must notify the regulator as soon as they become aware of a death, a dangerous incident or a serious injury or illness arising out of the conduct of the business or undertaking.

Reporting requirements and duties of PCBUs

Duty to notify of notifiable incidents (WHS Act s38)

A person who conducts a business or undertaking must ensure that WHSQ is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

If a notifiable incident has occurred the PCBU must ensure the:

Notice is given by the fastest possible means

Notice is given by telephone or in writing for e.g. the notice can be given by facsimile, email or other electronic means.

A person giving the notice by telephone must:

- give the details of the incident requested by the regulator, and
- if required by WHSQ, give a written notice of the incident within 48 hours of that requirement being made.

A written notice must be in a form, or contain the details, approved by WHSQ.

If WHSQ receives a notice by telephone and a written notice is not required, WHSQ must give the person conducting the business or undertaking:

- details of the information received, or
- an acknowledgement of receiving the notice.

A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to WHSQ under this section.

Note, penalties apply for not notifying or keeping notifiable incident records for 5 years after notification.

A person is not required to give notice under this section of an incident if:

the person has given notice of the incident in accordance with section 44 (2) of the Worker's Compensation and Rehabilitation Act 2003, or

the incident occurs at a mine to which the Mining and Quarrying Safety and Health Act 1999 applies or at a coal workplace.

Serious injury or illness

Serious injury or illness of a person means an injury or illness requiring the person to have:

- (a) immediate treatment as an in-patient in a hospital; or
- (b) immediate treatment for:
 - (i) the amputation of any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or
 - (iv) a serious burn; or
 - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
 - (vi) a spinal injury; or
 - (vii) the loss of a bodily function; or
 - (viii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance,
- d) any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work:
 - with micro-organisms
 - that involves providing treatment or care to a person
 - that involves contact with human blood or body substances
 - that involves handling or contact with animals, animal hides, skins, wool hair, animal carcasses or animal waste products.
- (e) the following occupational zoonoses contracted in the course of work involving the handling or contact with animals, animal hides, skins, wool hair, animal carcasses or animal waste products:
 - Q fever
 - Anthrax
 - Leptospirosis
 - Brucellosis
 - Hendra virus
 - Avian influenza
 - Psittacosis

Note: Refer to the WHSQ website for more accurate definitions of these treatments

<https://www.worksafe.qld.gov.au/safety-and-prevention/incidents-and-notifications/notify-us-of-an-incident>

Dangerous incident

A dangerous incident means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to:

- (a) an uncontrolled escape, spillage or leakage of a substance
- (b) an uncontrolled implosion, explosion or fire
- (c) an uncontrolled escape of gas or steam
- (d) an uncontrolled escape of a pressurised substance
- (e) electric shock
- (f) the fall or release from a height of any plant, substance or thing
- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the Regulation
- (h) the collapse or partial collapse of a structure
- (i) the collapse or failure of an excavation or of any shoring supporting an excavation
- (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel
 - (k) the interruption of the main system of ventilation in an underground excavation or tunnel
 - (l) any other event prescribed by the Regulation but does not include an incident of a prescribed kind.

Duty of PCBU's

Preserve incident sites (WHS Act s. 39)

The person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

A site includes any plant, substance, structure or thing associated with the notifiable incident.

When preserving the site, it does not prevent any action:

- to assist an injured person, or
- to remove a deceased person, or
- that is essential to make the site safe or to minimise the risk of a further notifiable incident, or
- that is associated with a police investigation, or
- for which an inspector or the regulator has given permission.



important

Notice of an incident must be given by the fastest possible means. If notice is given by telephone the regulator may request a written notice of the incident. This must be provided within 48 hours of the request and the PCBU must keep a copy of this record for at least five years.

The person with management or control of a workplace at which a notifiable incident has occurred must ensure the site of the incident is not disturbed until an inspector arrives at the site or directs otherwise. This does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.

PCBU informing the HSR of a notifiable incident

The relevant HSR would need to be advised by the PCBU of a notifiable incident. The reasons for this notification are the HSR has powers to:

- Represent the workers in their work group in matters relating to work health and safety. This representation includes all possible incidents on site that may impact on members of the workgroup.
- Monitor measures taken by the PCBU in relation to the work group
- Request the establishment of a HSC
- Investigate complaints from work group members and inquire into anything that appears to be a risk to the health or safety of workers in their group
- If necessary, direct unsafe work to cease.

In exercising these powers, **the HSR may inspect the workplace or any part of the workplace where members of the work group work with or without notice as we have seen previously.**

HSR role following the report of a notifiable incident

As the HSR is the work group's representative on work health and safety issues, they are empowered to be involved in incident investigations that have affected or impacted on their work group to review if there are adequate work health and safety procedures in place and to monitor the measures put in place by the PCBU to ensure no further incidents occur involving the work group they represent.

When an incident has been notified to WHSQ, an inspector may come out and conduct further investigation on the issue. As we have identified previously under legislation **the HSR may:**

- **accompany an inspector during an inspection** of the workplace or part of the workplace at which a worker in the work group works, and
- with the consent of a worker that the health and safety representative represent, **be present at an interview concerning work health and safety between the worker and an inspector, or the PCBU**

The HSR may also continue to review what incidents have been reported by the PCBU, to ensure that notifiable incidents are being addressed and any potential impact on members of their workgroup.



Note. A HSR also has the power to direct work to cease where it is identified there is an immediate and serious risk to work health and safety of workers.

Activity: Role of the HSR following a notifiable incident



In pairs discuss the scenario below and determine if this is a notifiable incident and the role of the HSR. List your response below:



Indicative time - 10 minutes

Scenario

As the HSR you have become aware through a member of your workgroup of that a worker has received an electric shock from plant in their work area. The PCBU has been informed but no immediate action has been taken.

Incident Investigation

The importance of Incident Investigation

In addition to the regular inspection process the workplace can be inspected at any other time including when investigating an incident or accident that has occurred; following a complaint from a worker; or as a result of any matter that may be a risk to the health and safety of workers.

The procedures for these investigations must be determined through consultation at the time the organisation sets up its consultation mechanism.

The importance of incident investigation cannot be underestimated as it can contribute to:

- Preventing similar incidents occurring in the future;
- Determining the cause;
- Determining improvements to the WHS Management System (WHSMS);
- Providing details for an insurance claim (workers compensation or property damage);

Compliance with legislation

When incidents happen, it usually indicates that there has been a breakdown in the WHSMS. Instead of laying blame we should be looking at why a mistake was made. Was it inadequate training, fatigue, inadequate procedures or inadequate supervision?

It is important to ask these questions to ensure that improvements are made to the WHSMS and to avoid targeting individuals. Blaming individuals will result in lowered morale and in turn, higher rates of absenteeism.

Before an investigating team can proceed to gather the evidence, they must have a clear understanding of the theory of incident and disease prevention in the workplace. They must understand current theories of the causes of incidents if they are to make sound recommendations for future prevention.

The Incident Investigation Process

Activity: What are the objectives of an Incident Investigation?

What are the objectives of the following stakeholders in an incident investigation?

PCBU/Senior Management

--

Managers and Supervisors

--

The HSR and/or Health and Safety Committee

--

WHSQ Inspector

--

The primary objective of an incident investigation is to identify all of the factors that contributed to the incident. Secondary objectives are related to prevention, improving WHS management systems, assisting in any insurance claims, and compliance with legislation. This is an important distinction if preconceived ideas are to be avoided but it also leads to one of the major human factors that can compromise an effective investigation.

As most of the evidence describing the events will not be present after the event, a large part of the evidence will rely on eyewitness accounts of the predisposing events and conditions. We are therefore dealing with people.

If people know that the intent of the investigation is to attribute blame.

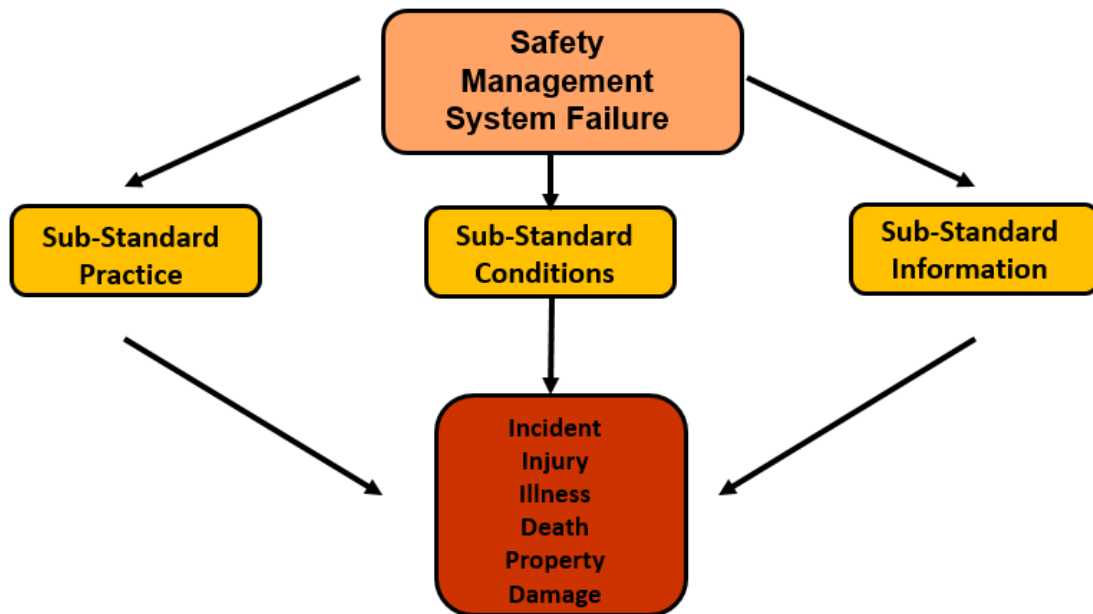
- a) They will not voluntarily offer the information.
- b) If asked, they will reply selectively to the questions. If the questioning is inadequate, they will possibly avoid giving all the information they have consciously available.
- c) If blame is an intended outcome and sufficient time has elapsed, their recollections will be distorted by unconscious mental processes of self-preservation and rationalisation.

Reasons that incidents go unreported:

- Fear
- Work interruption
- Lack of time
- Personal reputation
- Illiteracy
- Cultural
- 'Red tape'.

It is therefore essential that such human factors be considered before initiating and during the investigation.

Incident Flowchart



Substandard Practices

- Operating without authority
- Use of defective equipment
- Overriding safety devices
- Repairing live equipment
- Failure to wear/use PPE
- Poor manual handling

Substandard Conditions

- Storage racks overloaded
- Inadequate guards
- Inadequate warning systems
- Combustible materials allowed to accumulate
- Slippery/cluttered floors
- Equipment in poor condition

Substandard Information Systems

- No SDS available for workshop solvents
- Supervisor not trained in supervision techniques
- Induction training not conducted
- Relevant Standards not available
- No standard work practices available
- Lack of information on hazards (e.g. noise levels)

Nearly all workplace incidents are a result of safety management system failures.

With effective Safety Management Systems nearly all workplace incidents can be prevented.

As an occurrence has taken place the investigator should be conscious that at least one preventative WHS Management System has been ineffective/incomplete/or was non-existent. In most cases the event is the result of a series of WHS preventative Management System failures. It therefore must be a **key objective of the investigation**:

To identify the Safety Management System deficiencies that has allowed the predisposing situations/conditions to be present.

There should be two levels in the analysis of the causes of incidents.

a) Immediate Causes

Substandard Practices
Substandard Information Systems
Substandard Conditions

b) Underlying (Real) Causes

Management System Failures.

Who should conduct the investigation?

The investigator(s) should have a well-developed exposure to the range of Safety Management Systems needed in that particular industry or enterprise. Various factors must be considered when identifying individuals or groups who should perform incident investigations.

- Is there a statutory right or obligation involved e.g. line management;
- Does the individual have adequate knowledge of the workplace and procedures concerned?
- Does the individual have sufficient technical knowledge/skills in the fields of:
 - causes of incidents
 - relevant equipment or processes
 - personnel management?
- Can the person concerned gather the evidence objectively?
- What is the expected outcome of the investigation?

The above factors must be weighted depending on the severity of the incident. For a near-miss, the area Supervisor working alone may be adequate whereas in a serious case e.g. a fatality, a team approach including an independent 'expert' may be appropriate.

The PCBU's management are generally delegated with responsibility to ensure a **safe place of work and safe systems of work** and they therefore have a vested interest in identifying why the PCBU has not been able to meet their legal obligations.

There may be situations where individuals may not be suitably qualified; therefore, it is recommended that a team of suitably qualified people, including line managers, undertake the investigation. If available at the workplace trained WHS personnel should be included as part of the investigation team. Sometimes people with engineering skills should be included, where plant and equipment have been involved in the incident.

The team could consist of:

- Manager / Supervisor
- HSR/s
- HSC members
- Workplace Health and Safety Officer (WHSO) (From 1 July 2018)
- WHSQ Inspector
- Union Representative
- External Consultant
- Persons with specialist knowledge.

In reviewing an incident, the HSR can contribute to an investigation through consultation with their workgroup members on matters such as:

- what was or wasn't in place prior to the incident, for example, the usual supervisor being unavailable, different equipment in use
- what should have been in place e.g. pre-start checks and additional instruction and supervision in use of the equipment
- examining with the investigation team the wider implications i.e. changes to the SMS that could prevent the incident from recurring

Investigation Steps:

1. Attend the scene before any physical evidence is disturbed, removed, altered or obliterated
 - Take any immediate control actions
 - Prevent any further immediate incidents
 - Isolate the area and hazard
2. Take comprehensive details of the incident scene: sketches, photographs.
3. Identify key personnel
 - Who were aware of the pre-conditions?
 - Who saw the incident?
 - Who saw the immediate post incident events?
4. Interview each person as soon as possible. HSRs are entitled to be present at WHS interviews with members of their work group if the work group member/s consent

A HSR involved in an investigation should talk to members of their workgroup about what they observed

 - prior** to the incident,
 - at the time** of the incident and
 - immediately afterward.**
5. Determine the immediate causes: substandard practices, conditions and information systems
6. When they have sufficient information the HSR will be able to determine whether further action is required from them i.e. directing unsafe work to cease or issuing of a PIN
7. Determine the underlying (real) causes: Safety Management System failures
8. Identify corrective action
9. Report.

Some basic tips for finding out relevant information

- ✓ Determine who in your work group was involved and when may be a good time to talk to them preferably as early as possible
- ✓ Actively listen to what the person has to say
- ✓ Ask questions directly related to the issue and the incident
- ✓ Make an accurate note of the important points
- ✓ Check with the PCBU/supervisor that the points noted are accurate
- ✓ Find out if there are other people who can confirm the information
- ✓ Understand the role of the HSR, the HSC and the PCBU in dealing with the issue
- ✓ Keep the channels of communication open in case further information on the issue is required.

Root Cause Analysis

This tool was originally developed by the Japanese quality expert Kaoru Ishikawa as one of his seven basic quality tools. Because of its design it is sometimes known as a fishbone diagram or, after its inventor, an Ishikawa diagram.

Its use is to provide a focus for brainstorming by a team or workgroup so that a specific problem or issue can be analyzed. This leads to the immediate causes or contributory factors for the problem or issue being identified. It can therefore be readily used for such WHS activities as the hazard analysis of a specific work area, the analysis of a specific task or process, or the analysis of a new piece of plant or machinery.

Each of the headings provided are intended to promote questions about causes and contributing factors arising in the various categories as follows.

People

The actions, or lack of actions, either deliberately or in error, of people in the workplace may affect the health and safety of themselves and others. Examples could include:

- not following established safe work practices
- removal of guards
- not reporting incidents or hazards
- not keeping the workplace neat and tidy
- neglecting to wear PPE

Equipment

This covers all equipment from hand tools to major plant. It also covers all of the phases of the life of the equipment such as design, manufacture, purchase, commissioning, operation and disposal. Factors such as guarding, sharp edges and corners, hot or cold surfaces, emergency controls and preventative maintenance should be considered.

Environment

The working conditions are considered under this heading. Specifically, temperature, layout, access/egress, lighting, floor surfaces, ventilation, noise, air quality and storage should be addressed.

Work Methods

The methods or procedures adopted to carry out tasks, as well as any inherent hazards, need to be considered in any analysis.

Materials

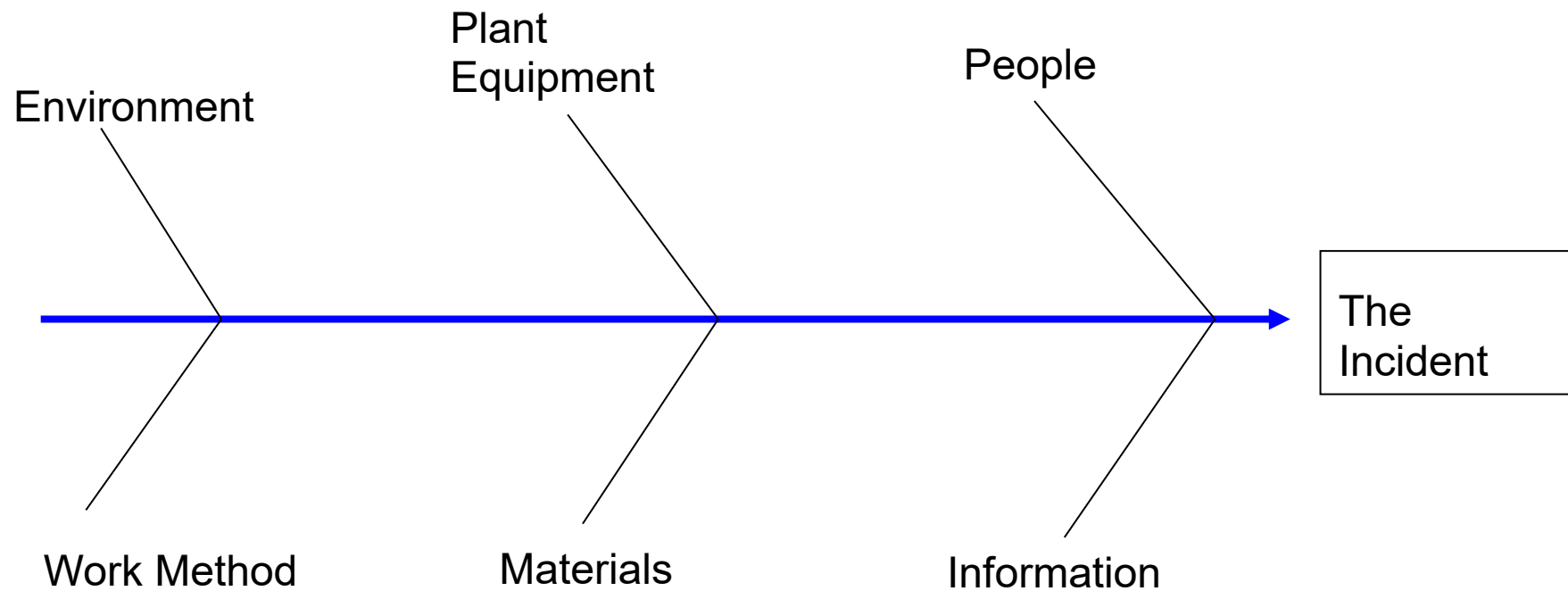
All of the materials, including chemical substances, which are required as part of the workplace structure, maintenance and manufacturing processes should be included in deliberations. Properties that should be considered include that they may be sharp, heavy, awkward, hot/cold, slippery, toxic, reactive or flammable.

Information

This may include written information such as safe working procedures and safety data sheets, which may also be considered under the headings Work Methods or Materials. Information (or lack of) provided by the senses (sight, smell, hearing and taste), which may contribute to hazards or to avoidance of them, should be considered.

It may be the content of the information or the way the information is presented by dials, indicators, pointers, warning devices etc. Verbal instructions can be included here also.

Fishbone Tool



Environment	Plant/Equipment		People
Noisy	In use/not in use	Mobile plant	Trained/untrained
Dusty	Serviceable/unserviceable	Fixed plant	Not applied training
Poor illumination/unable to be illuminated	Poor access/egress	Portable tools	Incorrect use of...
Extremes of temperature – hot/cold/windy/snow/ice	Unguarded/guard removed	Ships/boats	Error/mistake
Wet area	Fast/slow speed	Trains/aircraft	Ignored/defied
Congested/cluttered area	Height/depth of plant	Vehicles	Horseplay
Restricted movement	In a confined space	Lifting plant	Wrong decision
Confined space	Ergonomic issues	Scaffolding	Failed to apply work instruction
Flammable/toxic atmosphere	Manual handling issues	Radiation	Failed to authorise
Untidy/cluttered area	Power source issues		Failure to provide...
Poor housekeeping	Untested/uncalibrated		Failure to ensure...
Poor quality surface conditions	Incorrect tools for task		Unsupervised
Busy traffic area			Absent supervision
Substandard ground/sea/water conditions			Absent from area of responsibility
Substandard weather conditions			Not qualified for task

Work Method	Materials	Information
Lack of work instructions	Hazardous substances/Dangerous goods	Signs/notices/labels
Work instructions inadequate for task	Flammable/toxic/corrosive/reactive	Lack of warning lights/alarms
Work instructions not implemented	Solid/liquid/vapour/gases	Lack of or not following manufactures instructions
Work instructions not enforced	Heavy/very heavy	Lack of Safety Data Sheets (SDS)
Training not provided in work instructions	Large/bulky	Lack of colour coding/labelling
No induction/poor quality induction	Loose/floppy/difficult to handle	Lack of painted signs on floors/equipment
Work instructions not applied as stated	Hot/cold/wet/steam	No provision/use of portable signs
Permit system inadequate	Under pressure	Failure to follow information on – signs/alarms/labelling/colour coding
Lack of formal risk assessments	Granulate/power/dust	
Authorisations not approved	Animal/vegetable/mineral	
Lack of competency requirements	Biological/bacterial/viral/fungal/carcinogen	
No supervision provided where required	Bags/drums/cylinders/boxes/cartons/pallets	

Activity: Incident Investigation



This activity is designed to promote discussion and demonstrate the need for investigation and analysis of the facts.



Indicative time - 1 hour

Instructions

1. Read through scenario provided below
2. Identify and discuss if the 'systems' or persons were at fault
3. In small groups review the incident in detail
4. Note on flip chart paper:
 - The sequence of events
 - Use the box form of the 'fishbone' tool to review contributing factors and help determine the system failure/s that caused the incident to happen
 - Determine and record possible corrective actions that would be recommended to management
5. Report back on your findings.

Activity sample: Incident scenario

In August 2014, an incident occurred at a Prep to Year 12 school. It was science week, and some practical demonstrations were organised to be conducted during school assembly to encourage children to become interested in science. One of the science teachers was allocated to choose the experiments to be demonstrated, in consultation with the head of the science department. One particular experiment chosen involved the use of sodium hydroxide (caustic soda).

On the morning of the demonstration, a generic risk assessment was signed by both the teacher and the head of science. It correctly identified that the main chemical being used was hazardous and the risk assessment nominated some control measures. It identified sodium hydroxide as a hazardous substance that was extremely corrosive to skin and eyes. The risk of using this chemical without controls was deemed 'high'. The risk assessment identified that controls should consist of a protective screen, safety glasses, chemical gloves and a laboratory coat. It further suggested that consideration should be given to the control of any fumes given off, and that care should be exercised in the handling of the chemical. The generic risk assessment also recommended that the safety data sheet (SDS) for the chemical be consulted before undertaking any experiment. Both teachers briefly discussed the risk assessment, agreed with and signed it off, that with those controls in place and the experiment being managed by 'routine science procedures in the classroom', the overall risk was reduced to 'medium' which they alone deemed acceptable. The two teachers did not discuss this experiment with any other science teachers, or senior school management, and did not review the SDS.

Subsequently, the school did not have a protective screen, and in its absence, the teacher undertaking the demonstration decided on an informal exclusion zone was an appropriate substitute (approximately two metres between him and the first row of students).

The entire school population was present at assembly that day (including the head of science, who was watching from the side of the assembly), which was being conducted outdoors on a concrete floor, and under the roof of an open sided sports shed. The demonstration was performed on some plastic collapsible tables, as this was an impromptu location. During the demonstration some of the younger students moved closer to get a closer look at the experiment, but no teachers present addressed the encroachment of the students into the informal exclusion zone.

During the experiment, one of the bottles containing chemicals fell over because of the instability of the portable tables being used. Because of this, the teacher decided to secure the lids on all the bottles in use (including the bottle which now contained the sodium hydroxide and aluminium). A short time later that bottle burst, causing its contents to spray out over the students at the front of the demonstration.

Approximately 60 students reported contact with the hazardous chemical. Emergency services were called while teachers washed students down with water.

Environment	Plant/Equipment	People
Work Method	Materials	Information

Assistance from Health and Safety Committee (HSC)

As we already know HSCs make recommendations on WHS issues that will enable the PCBU to make informed decisions. Some of the activities they may be involved can include:

- Consultation
- Participate in workplace inspections and investigations
- Analysis of statistics to assist in facilitating consultation on work health and safety issues
- Conducting regular meetings
- Review of company policy and procedures



The HSR can discuss with HSCs any relevant information that they are aware of that concerns the incident that has occurred. This may include whether the incident has occurred, or issues been identified previously and the outcome of these matters. They may also be able to assist with up to date information on the current processes in place in accordance with work activities. HSCs may also have particular expertise in their group of which may assist the HSR when an issue arises that requires a resolution.

Assistance from a WHSQ Inspector

A WHSQ Inspector conducting an inspection would assist an HSR by:

- Providing advice and information on a workplace issue as a result of carrying out an inspection or examination
- Targeting the reason for the visit or look at the whole worksite and attempt to resolve workplace health and safety disputes.

As we already have identified Inspectors have powers to enter places of work and as part of investigating suspected breaches of the WHS Act may assist the HSR by:

- Providing information and advice
- Conducting searches and inspections
- Require the PCBU to provide them with assistance
- Require the production of particular documents if required as well as take copies of the documents.

Summary - Day 4



We will review the topics that we have covered today. Record key information below that you can use back in your workplace or wish to investigate further. Don't forget to ask questions of anything that you are not sure about.

Session 1: Worksite inspection and recording of findings

Session 2: Notifiable incidents, incident investigations and the role of the HSR

Day 5

**WORKPLACE CULTURE,
PRACTICAL
CONSULTATION, ISSUING
A PROVISIONAL
IMPROVEMENT NOTICE
(PIN) and DIRECTING THE
CESSATION OF UNSAFE
WORK**

Day 5 - Session 1

Workplace Culture

Learning Aim

This session of training provides an outline of understanding the influences of workplace cultures and the opportunity to demonstrate practical consultation strategies.

Learning Outcomes

After completing this session participants should be able to:

1. Understand how a workplace safety culture can influence and impact an organisation's safety performance
2. Understand and identify the key concepts of the 'cooperation model' of negotiation communication
3. Use practical consultation, negotiation skills and strategies to resolve work health and safety issues

Session Duration

The nominal duration is 2 hour 15 minutes

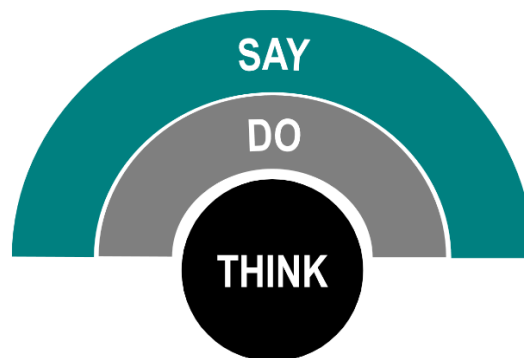
Learning Outcomes and Expected Learner Applications Day 5 – Session 1

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Understand how a workplace safety culture can influence and impact an organisation's safety performance 2. Understand and identify the key concepts of the 'cooperation model' of negotiation communication 3. Use practical consultation, negotiation skills and strategies to resolve work health and safety issues 	<ul style="list-style-type: none"> • Describe how inconsistency in a workplace culture influences worker behavior • Identify the difference between a culture and a safety culture • Identify the key differences and similarities between workplace safety cultures and expectations of workers • Describe potential difficulties that a HSR could face in exercising powers and functions • Understand the difference between one-way and two-way communication barriers • Understand the different approaches to conflict and negotiation style methods • Understand the underlying four concepts of the cooperation model of negotiation • Demonstrate, using practical consultation and negotiation skills how a HSR could represent a relevant party or stakeholder, based on multiple mock scenarios • Describe the next steps available to a HSR after a failed issue negotiation and how to refer an unresolved issue to the regulator for resolution

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0What is Workplace culture?

Workplace culture has layers. The things that people say and do are the observable parts. These outer layers contribute to our performance at work. The things that people think is the unobservable part, which drives and explains our behaviour. Together, the observable and unobservable parts make up what we refer to as the culture.



The culture of a group is set by its leaders; whether they be formal leaders like supervisors, or informal leaders such as people like yourselves. The way that leader behaves and interacts with the group determines the type of behaviours that get rewarded and valued, which in turn drives the way we think. We learn over time how to behave to be successful against the goals and priorities that our leader thinks are important. Where we can run into trouble is if safety is deprioritised relative to other goals such as production and efficiency.

One explanation for this inconsistency is culture. Culture both drives and explains behaviour in groups. Workplaces are a type of group, so have their own culture. Workplaces create a culture through the attitudes and beliefs of leaders, learning how things are done through experiences, and when new people join the workplace.

On its own, a culture is neither good or bad because it has been learned over time to help the group solve problems and get things done in the ways that the organisation rewards and values. It is only when we start to look at the culture from a particular angle or perspective, such as safety, that we can evaluate whether it is helpful at achieving the organisation's goals. Sometimes in a workplace people have learned that production is an important priority and the best way to solve that problem is to take short-cuts when the pressure is on. In other organisations, safety is a high priority and people have learned that slowing the job down and checking for unmanaged risks is acceptable.

- *When we say the work culture, what do we mean?*
- *When we say 'safety culture', what do we mean?*

Adding the word 'safety' means that we pass judgment on the culture. We evaluate the culture to determine how much it supports our goal of doing work safely and minimising harm or loss. It means we can reflect on our culture and make changes that drive our safety performance in a desired direction.

What is a safety culture? A safety culture is an Organisational culture that places a high level of importance on safety beliefs, values and attitudes—and these are shared by the majority of people within the company or workplace. It can be characterised as 'the way we do things around here'. A positive safety culture can result in improved workplace health and safety (WHS) and Organisational performance.

Let's now reflect on the safety culture at *your* workplace.



Questions to reflect on safety culture.

- What is your employer's approach to safety at your workplace?
- What do workers actually do about safety at your workplace?
- What are the similarities between what management say and what people do about safety at your workplace?
- What are the differences between what management say and what people do about safety at your workplace?

Sometimes what we say, what we do, and what we think about safety can be drastically different. When this is the case, our culture could be driving poor safety performance. To increase safety performance, we need to make sure our actions and our thoughts are lined up because we are acting and thinking in ways that support, rather than detract, from safety.

HSRs have an important influence over safety culture. This is because HSRs can be perceived as safety leaders. In a workplace, we look to people in leadership roles, both formal and informal, to figure out what to say, what to do, and how to think. What leaders pay attention to, measure, reward, and punish, and how they react to important situations, such as a safety incident or an opportunity to step up and represent workers; can have a big effect on the safety culture.



In an ideal World?

- *What does a HSR do in a workplace?*
- *How do these actions contribute to a positive safety culture?*

Sometimes, the existing workplace safety culture can make it difficult for HSRs to perform their powers and functions effectively. This is because the ways other workers or even leaders act and think about safety can mean that other priorities, such as production or quality, become people's focus. This can lead to unhelpful or unsafe actions that increase risk, or a lack of cooperation between and within workgroups. This becomes a problem when doing things unsafely or a lack of consultation and communication becomes a habit and part of the safety culture.



- *What can make it difficult for an HSR to do their powers and functions effectively?*
- *What are some of the ways you or others you know have overcome a difficulty in performing the HSR role?*

Building a positive safety culture, and doing well at the HSR role, relies heavily on good communication skills. By talking and acting in ways that challenge others, we can create a positive force that starts to work on the way people think. If we keep up our influencing behaviours, we can contribute to a positive safety culture, and drive improvements in safety performance.

The following is an indicative list of positive **leadership behaviours**, depending on the person's role at the workplace.

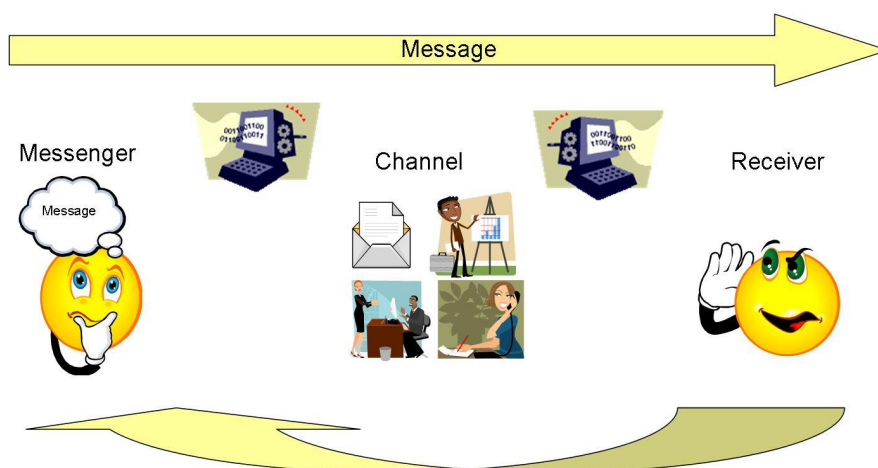
1. Communicate positive company values
2. Demonstrate leadership within their role
3. Clarify required and expected behaviour
4. Personalise safety outcomes
5. Develop positive safety attitudes
6. Engage and own safety responsibilities and accountabilities
7. Increase hazard/risk awareness and preventive behaviours
8. Improve understanding and effective implementation of safety management systems
9. Monitor, review and reflect on personal effectiveness.

Reference: [Understanding Safety Culture, WHSQ, 2013](https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0004/82705/understanding-safety-culture.pdf)
https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0004/82705/understanding-safety-culture.pdf

Practical Consultation

As discussed earlier in the course, communication is the transmission of a message from one person to another person, which is designed to be understood by the receiver; as the sender intended. Effective consultation as a HSR requires good communication and the open sharing of information and ideas amongst all parties. A HSR needs to have the confidence to be able to initiate, facilitate and effectively communicate. In practice, this can be easier said than done. The ability to accurately and concisely communicate is of critical importance to remain effective in the HSR role. This will involve the ability to ask questions of the various stakeholders to understand their concerns, so that you then have a clear picture of the situation before you are able to address or escalate it further if required.

COMMUNICATION MODEL



Activity: One-way communication



In pairs, complete the following activity. Allocate roles so that one of you is the instructor and the other is the receiver.



Indicative time – 8 minutes

Activity instructions:

With both of you sitting back to back, the instructor is going to ask the receiver to draw a picture, consisting of some shapes. The receiver is not allowed to ask the instructor any questions, repeat or clarify anything said from the instructor. The receiver is allowed to say 'ok, or yes' to acknowledge that they have completed that set of instructions and is now ready to receive the next set of instructions. The aim is for the receiver to replicate the exact picture (sight unseen) that the instructor has. Once the instructor has completed the instructions, the activity is over, and the receiver can show the picture they have drawn.

Receiver: use the blank page overleaf to produce your drawing. Ensure that you cannot see the instructors image, and that they cannot see your drawing.

Instructor: turn to page 317 of this handbook. That is the exact picture (including the same size) that you need to communicate to the receiver. Ensure that the receiver cannot see this image, and that you cannot see their drawing.

Debrief amongst yourselves.

Left blank for one-way activity

Activity Debrief.

Debrief between yourselves, and then as a class.

- How did you both go? How hard was it for the instructor to relay the exact information, with only minimal acknowledgement from the receiver?
- How frustrating was it for the receiver to get mixed messages from the instructor?
- What does your drawing look like?
- How close to an exact match is it? How desperate were both of you to ask questions of each other to clarify information?

What you have just experienced was communication; but it was an example of poor communication, where ideas, concerns and clear information was lacking. A HSR that is trying to communicate to stakeholders, but doesn't ask questions or clarify information will struggle to remain effective in workgroup representation.

Activity: Two-way communication



In pairs, complete the following activity. SWAP your previously allocated roles so that one of you is the instructor and the other is the receiver.



Indicative time – 8 minutes

Activity instructions.

With both of you sitting back to back the instructor is going to ask the receiver to draw a picture, consisting of some shapes. This time, both of you can talk, ask questions, repeat instructions or clarify anything. The aim is for the receiver to replicate (sight unseen) the exact picture that the instructor has. Once the instructor has completed the instructions, the activity is over and the receiver can show the picture they have drawn.

Receiver: use the blank page overleaf to produce your drawing. Ensure that you cannot see the instructor's image, and that they cannot see your drawing.

Instructor: turn to page 318 of this handbook. That is the exact picture (including the same size) that you need to communicate to the receiver. Ensure that the receiver cannot see this image, and that you cannot see their drawing.

Debrief amongst yourselves.

Left blank for two-way activity

Activity Debrief.

Debrief between yourselves, and then as a class.

- How did you both go this time?
- Did you both find it easier because of the ability to ask questions and clarify information?
- Was there less mixed messages from the instructor?
- What does your drawing look like? How close to an exact match is it?
- Were there any new frustrations or developments that occurred in this activity that you didn't expect?

What you have just experienced was communication; but hopefully it was an example of good communication, where ideas, concerns and clear information was being sought and exchanged. Despite this second activity allowing questions to be asked and a free range of questions to be exchanged, the drawing still might not be an exact match. This demonstrates the principal that even when we have open and clear communications, it doesn't always result in what either stakeholder thought or wanted.

Communication between stakeholders can take many forms (eg, meetings, consultation, toolbox talks, negotiations, conflict resolution, forums, performance reviews) and regardless, effective communication is of paramount importance. As a HSR, a common form of communication will be negotiation. Negotiation is a communicative process that occurs between two or more parties and it is intended to reach an understanding of a problem or resolve an issue. Often we associate negotiation with 'winning at all costs'. This approach, based on competition and that one person or persons have power over others, can work in some situations but often intensifies the conflict and can impact negatively on the working relationship.

Conflict resolution skills and strategies to represent a work group and consult with the PCBU

Resolving conflict and negotiating is part of the HSR role as you seek to advocate for workers' needs and obtain the necessary resources that you need to achieve health and safety goals. Sometimes you might even experience resistance or push back from people as they have other goals that might conflict with your requests.

Factors that could contribute to a WHS issues not being resolved

Conflict can arise in the workplace from many factors. As we have seen previously when looking at the investigating complaints issues arise from the interaction of systems involving:

- Materials
- Environment
- Personnel
- Management
- Tasks

Each situation is going to be different, no matter how often we have addressed similar situations. We will always be negotiating with people who have different styles, goals and objectives, and who are coming from different circumstances and have different standards.

Key elements of conflict

What types of conflict will arise?

There are basically two types of conflict situations that may encountered in a negotiation, which might present singularly, or as a combination of the two types. It is vital that the negotiator carefully analyse the conflict issues, either individually or collectively, to fully appreciate the unique challenges they present.

The first form of conflict might simply be called **agreement conflict**, where one person's views or position conflict with another individual's, or members of a group. This is a situation that takes into account their conflicting views relating to opinions, beliefs, values and ideology.

For example, two executives may have different views about whether a policy should be implemented. Another example is a trade dispute between two countries brought about by ideological or religious based differences. Or the conservative viewpoints of management might conflict with the more left-wing approach of union leaders.

The second form of conflict involves the **allocation of resources** like money, quantity, production or put simply, things. Any physical commodity will fall into this category of conflict. Other issues might involve the allocation of resources as a separate segment of the trade dispute. Resource issues are more tangible as they comprise knowable items, or particular products. By analysing the types of conflict into categories, negotiators can have a better understanding of the real measure of the disputes, and frame or focus their strategies more effectively.

Assess the situation

Each negotiation is going to be different, no matter how often we have addressed similar situations. We will always be negotiating with people who have different styles, goals and objectives and who are coming from different circumstances and who have different standards. So always take stock and view each negotiation as something unique.

Types of negotiation

There are basically 3 circumstances to consider.

1. Is it a one-time negotiation where it will be unlikely to have interaction with the person or company again?
2. Is it a negotiation that is going to be repeating?
3. Is it a negotiation where we are going to form some kind of long-term relationship?

Most safety negotiations are likely to fall into the last two categories. HSRs will be handling a lot of repeat negotiations where they negotiate with on-site supervisors or managers, regular contractors, or engage in labour negotiations with the same union representatives, for example. Or they will be seeking a long-term negotiated agreement such as a joint venture.

Why would we negotiate?

There are only two reasons why we enter into a negotiation. The first reason is out of **necessity. i.e. we have to**. This could be due to some immediate need, such as urgency to find a particular solution, or it could be that we face severe consequences if we cannot fix the problem.

The second reason is we are **seeking out an opportunity**. This situation may arise simply because an opportunity has arisen to increase our overall safety performance or culture at a convenient time. The reason for entering into a negotiation will affect both our approach and strategy, and also our relative negotiating power compared to our counterpart.

The Ripple Effect

We also need to ask ourselves whether the results of the negotiation we are conducting will affect other negotiations or agreements later. Many organisations today have interstate and international interests. It is vital that HSRs, consider the impact or consequences of an agreement in developing the strategy.

Does Agreement need to be made?

We either enter into negotiations because we have to, or because we want to. Part of our strategy will involve a careful analysis of our 'Best Alternative to a Negotiated Agreement'. If an agreement is absolutely essential and we have few alternative options, our strategy will be affected if talks collapse. Or, if the negotiated agreement is not essential because we have a strong option and can walk away with confidence, this also influences the approach to our strategy.

Do other parties need to formally approve the agreement?

Most agreements made during the negotiation process require formal approval, or ratification, before an agreement is official. Staff members may vote before they accept an agreement or solution that was previously negotiated between management and the HSR. A Board of Directors, CEO, stakeholders, or other outside constituents may need to review and ratify an agreement before it comes into effect.

Are there time pressures?

Time has an impact on the course of negotiations from two perspectives. Firstly, there are deadlines that might be imposed to either make or break an agreement. Offers with expiry dates may be tendered.

Secondly, we all know that '*time is money*'. Negotiations use up time, and if plant or equipment is shut down whilst the clock is ticking because of a PIN or an unresolved safety concern, then this is costing money. Or it could be due to some other resource issue, such as waiting for necessary components in order to resume production. The point to remember is that the longer the negotiations drag out, the more costly to the organisation.

Where should negotiations be held?

In much the same way as sports teams enjoy a '*home advantage*', negotiators playing away from home need to adjust their game plan and strategies. There are three possibilities to consider when deciding where the talks will occur. We can either hold the talks in **their offices**, **our offices** or at a **neutral domain**. We might choose the latter so no one has the psychosocial and resource advantage of holding the negotiations on their premises. Often, workers or the HSR will feel uncomfortable in offices of management, so a neutral option such as the lunchroom or off-site would be advisable.

Will we need a third party?

Third parties have many different functions and roles to play in developing a negotiation strategy. They may act as agents, intermediaries, translators, consultants, or other specialists who have an expertise that one or both parties require. There are occasions when a neutral third party will act as a facilitator or chairperson to manage the negotiations, such as in multiparty negotiations, inter-organisational negotiations, or even international negotiations.

There are other occasions when we hit a roadblock in negotiation. During these times we may use a neutral third party to act as a mediator or an arbitrator to either facilitate or impose an agreement, such as in a labour dispute. HSRs have powers to use consultants and will also be able to call on WHSQ inspectors if need be.

Who is going to make the first move?

There are situations when we have to decide how a proposal or offer is to be presented, or who is going to go first. Will we make an informal proposal before we start the negotiations, or wait until we meet face to face? Will we be prepared to make an offer after listening to their proposal, or do we need more information? Will we respond right away, or refer the matter to our constituencies? Will it be to our advantage to be first in making an offer or proposal, to set an anchor around which the talks revolve? Or will it be better to hold our cards tight to our chest and let the other side go first? Of course, this will all relate to the issues, positions, goals and objectives that determine our approach. These are very serious questions that we need to address intelligently before we begin our talks.

Who are the decision makers?

Before we enter into the negotiations, we must establish who is going to make the decisions. What is our authority and who do we report to in this issue? Similarly, what are the authority levels of our counterparts? Finally, can we make an agreement in principle, or an unofficial agreement that will likely stand the test of scrutiny?

Are we in the stronger or weaker position?

Two or more parties who are about to engage in a negotiation are seldom operating from an equal power base. If one party has something that we desperately need for our issues or the workgroup's survival, and we have no alternatives, then we may find ourselves negotiating at a disadvantage. Size is not necessarily relevant. We have all heard the old biblical account of '*David versus Goliath*', and how that conflict turned out. Weakness can be countered by strengthening our best alternative, or even by finding allies to support our position and add to our strength. Further, before we begin our negotiations, or even during the negotiation process itself, we should seek ways to diminish the power base of the opposing party where possible.



Group discussion;

- *What situations in your workplace typically create conflict?*
- *How do you typically approach conflict in the workplace?*
- *What obstacles do you think you will experience in resolving conflict and negotiating a fair and equitable outcome for all parties back at you workplace?*

Negotiation skills and strategies to resolve work health and safety issues



Negotiation is a process that occurs between two or more parties and it is intended to reach an understanding of a problem or resolve an issue. When persons enter into negotiations they hope to gain something out of the process however the aim is to have all parties come to a compromise (or win-win) situation.

Negotiation is not a large part of the HSR's role however, whether it is participating in hazard control activities or developing a strategy for improving the safety culture of the workgroup as part of the HSC, negotiation can and often will play a part. It is essential that HSRs know how to negotiate and practice their skills in this area, as successful negotiation will benefit the members of the workgroup through increased safety performance, and participation in consultative forums.

Negotiations can form part of the consultation and issue resolution processes. Consultation within the workplace is a requirement and a HSR forms part of the process. Therefore, they will be involved in consultation and negotiations on a regular basis. Negotiations can also form part of the issue resolution process within the workplace, and as a HSR they may be required to enter into negotiations with management or members of their workgroup.

We will look at the actual process of how to negotiate later in this session. However, knowing how to participate in negotiations, and the actual process of negotiations is not enough. The first basic principle to any issue resolution, conflict, problem solving or negotiation situation is to prepare.

Principles and tools that can be used

Preparing for Negotiation

To perform well, HSRs must learn to prepare before they can expect to succeed.

The following information will provide some useful advice on how to prepare and handle negotiations.

Negotiation Steps

Negotiation strategies need to be developed by considering a number of factors that might have a powerful impact on success. It is also wise to remember that the strategy has to be flexible and will need to be adjusted as the process plays itself out. The HSR cannot know everything before going into their first meeting, so they need to be prepared to adjust their strategy and tactics, as the situations change shape. Flexibility is vital, but good preparation is essential.

Like many other things, negotiation follows a basic process and no matter how serious or complex the negotiations become, if all people involved follow the process the end result will be success. Too often people forget the basic steps of negotiation and this is when conflict will arise. Understanding and using this basic technique in negotiations will result in principled bargaining instead of positional bargaining:

1. Separate emotion from the issues
2. Focus on WHS issues
3. Provide options for resolving the WHS issue
4. Use objective criteria

Step 1: Separate emotion from the issue

One should look at the issue or dispute based on substance and relationship

Has the relationship (a people problem) become entangled with substance?

- Separate
- Deal directly with people problem

Understand how others PERCEIVE the dispute

Suspend judgement/disbelief

Listen to all views

put yourself into their shoes

Ask WHO, WHAT, WHERE, HOW, WHEN?

Ask WHY and WHY NOT

Look a person in the eye while they are talking to you

Lean forward and have your body posture facing toward them

Nod, respond, e.g. 'I understand'

Paraphrase what they said back to them for e.g.: 'So am I correct in my understanding that you are concerned about X?'

Step 2: Focus on WHS issues

Interests may be shared, conflicting or inconsistent, or compatible and reconcilable.

Identify interests by asking:

- Why? To the parties directly, and amongst yourselves
- Why Not? Consider why the other party does not see it your way

There is rarely only one right answer

Do not rush to judge

List ideas without advocacy

Try to resolve BOTH parties problems

Do not grasp one of the ideas before you exhaust your list

Brainstorm (mind mapping), encourage wild ideas.

Step 3: Provide options for resolving the WHS issue

Define your purpose

Limit participants

Change the environment

Have an informal atmosphere

Seat participants side by side facing the problem (whiteboard, easel, with note pad)

Off the record 'Ground Rules'

No attribution of ideas

Make a long list

Write a list in full view

Amicable agreements

Efficient agreements

Fair agreements.

Step 4: Use Objective Criteria

Law, precedent,

Professional standards, efficiency, costs

Safe work procedures



Summary

A HSR's may be taking part in negotiations regularly. Whether they are formal or informal sessions, they will need to remember these four steps and implement them each time in order to reach mutually positive results. It is important to remember that HSRs will need to ascertain their authority to act in any negotiations.

Negotiation Styles

We can think about our approach to conflict and negotiation as a style or method that we take on to get to an outcome. The four most common styles include:

Compete: The style that most of us default to is competing with others. Think about a typical salesperson – they give a price, you come back with a price, and this continues until someone ‘wins’ or walks away with a deal. This deal might benefit one of the parties, but rarely will it benefit both.

Avoid: Sometimes we might think that resolving conflict and negotiating a good outcome is just too hard and avoid the situation completely. As a HSR this may have the negative effect of reducing the trust and respect of our workgroup.

Give-in: Although we might start out with the best intentions, sometimes the other party comes back hard and we fall back to a ‘giving in’ style. Under this approach, the negotiation is completely one sided and the other person gets what they want, at your expense. Again, this is an unhelpful style because it can mean a loss of respect or failure to resolve an important health and safety issue.

Cooperate: The last style of negotiation and arguably the most effective is a cooperation style. Under this approach, the focus is on trying to understand each person’s underlying interests or needs, rather than their wants or positions. Digging deeper in this way means we have a more meaningful negotiation that concentrates on the real issues rather than what we simply want to get out of the deal.

Compete	Cooperate
Avoid	Give-in

Executing the cooperate model in practice can be quite simple. It has just four straightforward steps:

1. What do people want? Acknowledge the surface level issues or 'wants' with each person, allowing them turns to speak and share.
2. Why do people want these things? Dig deeper by sharing why these surface issues or 'wants' exist. For example, a surface level issue might be 'we need new drilling equipment'. The 'why' might be 'we need the new gear because the old gear is causing significant dust issues and potential health and safety risks to workers'.
3. Explore 'how' the reasons 'of why' can be resolved through a resolution that both parties can be happy with. Brainstorm options together, without judging, and then discuss pros and cons of each one.
4. Finalise the 'who and when'. Finally, document or formalise the agreement (e.g., send an email, write a short note) so accountabilities and timeframes are identified. That way the negotiation is more likely to follow through into action.

Difficult Conversations

As a HSR, some of the conflict resolution and negotiation conversations that you will have to facilitate will be with your immediate supervisor, a manager or even your PCBU. This is a harsh reality of the role as a HSR as you represent your workgroup. This may at times be complicated, controversial and uncomfortable for all stakeholders, however it is a necessary function as a HSR. By using the cooperate model, it tries to acknowledge what each stakeholder wants, and why. It removes the emotion from the issue and tries to focus on a positive outcome.

Activity: Negotiation Activity 1



In pairs, complete the following scenario. Allocate roles so that one of you is the PCBU and the other is the HSR. You will need to negotiate positive outcomes in the scenario.



Indicative time – 10 minutes

Scenario 1.

Both HSR and PCBU notes;

The business is a medium sized manufacturing workshop. It's an older building with no wall or ceiling insulation, the workplace is cold in winter and hot in summer. It's mid-spring, and although working conditions are currently comfortable, the workers are already grumbling about what is in store in the coming months as summer approaches and how the workers are affected by the heat and conditions in the workplace.

An area of known angst is the refrigerated water bubbler located in the actual workshop area. Although it tries to refrigerate the water, it struggles to do so, for several reasons, including that there is only 1 of these bubblers, and that the water supply to it is black plastic 'poly pipe' tubing, most of it which is run on the outside of the building (in the sun). There is a second bubbler located in the general lunch room, however, you must remove your boots to enter this room (because of the dirt on the bottom of the boots), and the workers feel this is too much effort just to fill a drink bottle.

Note: the HSR is to lead and drive this negotiation.

HSR only read your notes. PCBU only read your notes.

HSR only notes;

- Workers have approached you about their concerns over the temperature of the drinking water.
- You have a good relationship with the owner of the business, your concerns/ideas are usually well received and actioned reasonably quickly.
- They usually have a positive outlook on safety, but the business is just too small to have a formal safety committee.

As HSR you may need to think about;

- A second refrigerated water bubbler
- The black plastic poly pipe water supply to be re-routed out of direct sunlight
- Consider purchasing some bags of ice, to be stored in the lunchroom

PCBU only notes;

- You have a good relationship with the workers including the HSR, you are a hands-on owner and you care about their concerns.
- Your business is too small to have a formal safety committee, and any safety issues that are noticed or brought to your attention are fixed.
- Along with safety concerns, consider the budget accordingly.
- The HSR has come to you with a safety concern as summer approaches.
- You listen to the HSRs concerns and suggestions (which you like and will agree to), some additional ideas you suggest back to the HSR for discussion are;
 - You are prepared to hire a water chiller unit to cool the water down before it reaches the water bubbler.
 - You are prepared to purchase a bottlebrush boot scraper (to clean workers boots without removal), located it just outside the lunchroom door.
 - You are willing to buy and make available in the lunchroom Electrolyte powdered sachets to help in worker hydration.
 - You are willing to hire a fridge for the workshop to allow the workers to keep their own additional cold water and if successful purchase one next year.

PCBU Note: for the purposes of this scenario, you (the PCBU) are to be an approachable, agreeable and cooperative PCBU.

Negotiation Activity 1 Debrief.

Participants debrief between themselves and then as a class. How apprehensive was the HSR at raising the issues? What did the PCBU think about implementing the HSRs suggestions? Were there any difficulties encountered or any unexpected outcomes?

There should have been an underlying theme of openness, willingness and cooperative communication between both parties to resolve the identified issues. This is an ideal example of effective communication and issue negotiation resolution in practice.

It is unfortunate that this type of issue negotiation with the desired outcomes that HSRs want will not always occur. The reality is that there are a number of circumstances that can, and will, affect the ideal process and outcomes HSRs desire. This can include our own mannerisms and human nature, the businesses current priorities, budget and work demands, the workplace politics and interpersonal working relationships, the workplace's culture and perceptions, morale of the workers and management. In most workplaces there may never be a 'good time' for a HSR to wait to raise an issue, however, being aware of the workplaces idiosyncrasies will inadvertently contaminate our ideal communication expectations.

Barriers during communication

It will not always be 'smooth sailing' for HSRs with regards to effectively communicating and resolving safety issues with management.

Sometimes there can be a level of distrust between a HSR and a manager creating an immediate and ongoing barrier to effective communication. This can occur for a wide-range of reasons, and may include; a managers experience in dealing with a previous HSR, a site with multiple HSRs, other agendas that the HSR might have and any associated industrial relation activities.

If a HSR experiences this, or the HSR knows this likely to occur, remember to;

- Separate the emotion from the issue,
- Focus on the WHS issue,
- Provide options for resolving the WHS issue,
- Use objective criteria to decide an outcome.

Communication Barriers

Communication breakdown has been cited as a main cause of dissention amongst workers. Many problems and inefficiencies are caused by the barriers that interfere with a message. 'Noise' stops or distorts the process. The more we are aware of the different barriers that hinder understanding, the better communicators we can become.

The top nine communication barriers that you need to recognise and overcome in order to use effective communication as a tool for safety improvement are:

1. Language
2. Perceptions, prejudice and stereo typing
3. Self-image
4. Status
5. Incongruity
6. Time and timing
7. Environmental factors
8. Listening
9. Message complexity

1. Language

The words we choose, the way we structure a sentence, and the way we say it can all be major obstacles to effective communication. Jargon and slang hinder understanding, many words have several meanings and some often have difficult interpretations or have different connotations. The different emotions and images that are stirred by an individual's perception of such words will greatly affect the communication process.

Negative statements often block communication. People can dismiss an idea or suggestion without explaining why and often make the person who offered the idea, feel put down due to their negative perception.

2. Perception, Prejudice and Stereotyping

People tend to hear what they expect to hear, see what they expect to see, and think what they have always thought. We all tend to ignore things that do not fit into our pattern of expectations or reshape them so that they do fit our mindset.

Do HSRs, supervisors or safety leaders need the 'strength' to tell others what to do, that they should be obeyed without question? Or, is the role seen as one that requires stamina or patience to talk through contentious issues and find solutions that satisfy all concerned? How you see the role of safety leader will guide how you communicate in that role. What you believe and how you perceive safety will dictate how you communicate it to others.

If we think we know just what a person is going to think, do, or say, because we have met that 'type' before, or because all people of that 'sort' are the same, we will communicate our attitudes and beliefs in subtle ways. Those concerned will begin to behave in the ways we expect and may even give up trying to communicate with us at all. People will tend to rise or sink to others' expectations.

3. Self-image

Self-image is how we see ourselves, professional or amateur, strong or weak, eloquent or inarticulate, friendly or shy, confident or anxious. Our self-image is reflected in what we say and do, and colours our communications, whether as receivers or senders. A poor self-image is a significant barrier to effective communication and successful safety leadership.

4. Status

Status or a person's position in terms of power or importance within an organisation can also be a barrier to clear communication. It can restrain people from speaking freely to those up or down the 'ladder'. For example, in the presence of a manager, floor staff may not be able to express their thoughts, ideas or dissatisfaction openly or clearly.

5. Incongruity

Sometimes a person's body language does not support their words. This creates communication incongruity. When this occurs, most people will believe a person's body language and their own eyes, over their ears and the other person's words.

6. Time and Timing

In today's pared down organisations, people often do not have enough time to communicate thoroughly and ensure that they have been understood. In the rush, messages might be incomplete, unclear or poorly understood. Poor timing can also cause communication to fail.

7. Environmental factors

Noise, interruptions and distractions can get in the way of clear and complete communication. When communication is not face-to-face, misunderstandings can occur more easily. This is because we cannot see the expressions, gestures and other signals that help communicate the true meaning of a message. It also makes it more difficult to establish a rapport, ask questions, check out meanings, or express confusion.

8. Listening

'Nature has given man one tongue, but two ears that we may hear from others twice as much as we speak'

(Epictetus the Greek AD 60 – 120)

Listening is hard work. It is too easy to drift off or listen with only 'half an ear' when we have other things on our minds. Reasons for not listening in the workplace include:

- Not interested in what the other person is saying
- Turning off because you do not like the person speaking
- Switching off due to a preconceived idea of the issue
- Concentration wanders and you lose the thread of message
- You are just looking for a point to butt in
- You tend to over react to certain words or phrases
- You want to speak instead of listen, you need to be in control
- You are only listening for facts and not the feeling behind the facts
- You are looking for flaws in the person's argument.



True listening is about trying to understand how other people see things and what the real meaning of their message is. This is hard work! Listening is a skill that needs determination and practice. When we are really listening, our non-verbal behaviour will show the speaker that we are really paying attention.

Tips for better listening

- Listen to the words being said and how they are being said
- Beware of personal bias
- Ignore mental distractions
- Ignore environmental distractions
- Be alert to any implied meanings
- Do not interrupt or change the subject: 'Stepping on thoughts is as bad as stepping on toes'
- Summarise often and ask questions to clarify
- Look at the speaker
- Clear up any ambiguous words

9. Message Complexity

Sometimes safety information is very complex and detailed, and the sheer volume of information can cause overload. Break down complex information into manageable chunks if required.

Activity: Negotiation Activity 2



In pairs, completed the following scenario. Allocate roles so that one of you is the PCBU and the other is the HSR. You will need to negotiate positive outcomes to the identified WHS issue/s.



Indicative time – 20 minutes

Scenario 2.

The business is a Call Centre where high volumes of both phone conversations and live data entry notes are undertaken by the workers. The Call Centre operates 5 days a week, with shifts being 7 hours a day. The business has been going through a difficult time for the last 18 months and has a high staff turnover. The business owners, who now rarely visit the workplace, appear stressed and tired whenever they do. Office furniture owned by the business is in poor condition. Most of the chairs are damaged including; missing and broken wheels, base damage due to the broken wheels, fraying and arm rest damage. Some broken wheels are still being used, due to base damaged new wheels can't be fitted. Other furniture issues include a number of the workstation tables damaged and starting to fall apart. Workers stockpile broken chairs in a corner, these chairs are an eyesore and is creating a hazard. When a worker needs a chair, they rummage through this pile and choose the least damaged one.

Note: the HSR is to lead and drive this negotiation.

HSR only read your notes. PCBU only read your notes.

HSR only notes;

- Some of the workers have approached you about the state of the office furniture.
- You know that a number of the workers have received scratches and grazes from the damaged tables and armrests and often complaints of sore backs and headaches.
- You have raised these issues twice before with your supervisors, but because of the staff turnover, including supervisors, nothing gets done.
- You did email the PCBU about 6-months ago and didn't receive a reply.
- You are aware that the company is in trouble, and the prospect of downsizing makes you hesitant to pursue the issues, but you are also aware the state of the furniture is causing you and others real issues that need to be addressed.

Again, you mentioned to the supervisor these concerns and he said "why don't you raise it with the Boss when they are here onsite tomorrow".

Issues to raise;

- Ask if the PCBU is aware that the chairs are in poor condition/ broken and causing health issues? (Topics to raise: chairs are 10 years old, excessive use of chairs)
- Ask the PCBU if they have received your email or been approached by any of the supervisors on this issue, as you have raised it with them on a number of occasions.
- You are aware of budget restraints therefore, you suggest that an audit be done on the chairs to determine the budget for repair (using available parts from other chairs), replace and disposal.
- You suggest that the broken and unsalvageable chairs be disposed of.
- You are aware that this audit and repair process will still result in not enough chairs.
- You also need to discuss that a number of the desks are also in a poor state.
- You ask the PCBU to come for a walk around and look at the state of the furniture.
- You explain that the poor condition is affecting the posture and health of the workers (headaches and sore backs), and that productivity could be increased with addressing these issues. You are aware that the company is financially struggling, but you need to find a way to work with the PCBU to try to improve the workplace conditions.
- As the HSR, what other suggestions do you have to progress these issues?

Note: as the HSR, you need to drive this meeting and try to achieve some results and resolution to the issues facing your workgroup.

PCBU only notes;

You're tired, the demands of running the business, especially the last 18 months have really taken its toll on you, but you still make an effort to try to visit the workplace. You don't enjoy talking to the workers, because all they ever want is to do is complain about everything or aren't interested in talking to you at all. You really only pay them 'lip service' because you know there is a turnover of the staff and most of them won't be here for very long. You know that there are a few safety related issues but there haven't been any serious injuries, and you prefer to know less than more. You know that the HSR has requested to meet with you, and you reluctantly agree to meet with them, but only because you know you have to.

You haven't really had too many dealings with the HSR.

You listen to the HSR, your body language is neutral, your tone is firm, but polite. After listening to the HSR, you;

- Are aware that the furniture is old, and some of it is broken, but work still seems to be happening.
- Do recall a supervisor mentioning something about the chairs, and they said they would look into it on your behalf, but they left the business and you had forgotten about it.
- There haven't been any serious injuries that you have been told about, but you aren't sure what kind of injuries broken furniture could result in. – You are surprised and skeptical to hear that people are getting headaches and sore backs from the chairs.

- HSR has requested to do a chair audit to see what is broken and what isn't. The HSR explains that there are a lot of chairs that need repairing. Your concerns – Who is going to do this audit? Who is going to do the repairs and how long will this all take? You're not convinced that the chairs will be able to be repaired but you agree to let 'them' do an audit.
- The HSR is really concerned that the leftover and really broken chairs (in a pile somewhere) should be disposed of. You don't see the need to hire a skip bin, but you are happy for the really broken chairs to be tossed into the industrial bin (over time), but only after the supervisor checks to ensure that the chair really is broken and cannot be repaired or salvaged in any way.
- The budget is really tight, and you haven't allocated any money to purchase new chairs, especially the number of chairs that the HSR keeps talking about. You are prepared to purchase some good condition **secondhand** chairs from an auction site. You feel that this is a good compromise. You have no intention in the to commit to purchasing any new chairs, as you just can't afford it.
- Whilst looking at the auction site, you will also see if you can purchase a couple of desks to replace some of the more damaged ones presently in use.
- You know that the HSR means well, and has both your and the workers best interest, and you appreciate that, but you are stressed about the financial strain.

PCBU Note: for the purposes of this scenario, you (the PCBU) are to be an approachable, however somewhat skeptical of the issues, elusive in your commitment to action all the solutions, but provide some 'wins' for the HSR, but no (or vague answers) to some of the HSRs other suggestions. **You** may need to end the scenario if discussions stall.

End of scenario

Activity 2 Debrief.

Debrief between yourselves, and then as a class. How well did the HSR raise the issues? How did the HSR handle the vagueness of the PCBU? How did the PCBU feel about not being overly concerned by the HSRs issues? Were there any unexpected developments or emotions during the negotiations?

Despite having different scenarios, there should have been an underlying theme that the PCBU was skeptical, willing to comply with some resolutions, but elusive at committing to a number of the HSRs suggested measures.

In these examples, the HSR may have resolved some issues, but there are other issues that have not been resolved. It is important to follow these up. Maybe consider an email to the PCBU, where you clarify the discussion points and who is responsible for what action. Maybe a more casual secondary follow-up meeting is required to cover off on what was left undecided. Have you or the PCBU got some follow up research to undertake, that can resolve or clarify any outstanding items? The theme of this scenario is most common, and it is important for the HSR to know what the issues are that the workgroup is expressing concern over, as well having time to think about some positive suggestions or solutions to the issue. Of critical importance is knowing 'when the best time is' for all stakeholders to meet to discuss.

Again, in these circumstances, the most effective negotiation style is cooperation (focus on trying to understand each person's underlying interests or needs, rather than their wants or positions). Potentially, this type of negotiation can become demanding, even with the cooperation style, and this is where attitudes can be formed surrounding conflict resolution and negotiations, which can be very hard to change after time. As a HSR, at times you may need to be assertive in the HSR role, to ensure that your workgroups issues are being raised, and that the PCBU is fulfilling their obligations towards the HSR as outlined in legislation.

Assertiveness is a critical skill in life. Without assertiveness we run the risk of either being steamrolled into a situation we don't like or coming at the other person too hard and destroying the relationship. Our personality is a big driver of our assertiveness. Some of us are naturally more passive in nature and happy to 'go with the flow'. Others are more aggressive and quicker to anger, meaning that we challenge other people in ways that could be unhelpful or create conflict. Others may be assertive naturally. The good news is that we can all learn how to improve our assertiveness skills.

Some people confuse assertiveness with aggressiveness or getting what you want. If you are confused about assertiveness, the following description might be of help.

When we are passive, we allow others to take advantage of us or to continue on doing what they want, even if it causes us some inconvenience or discomfort. An example might be voicing a concern to a co-worker who is working unsafely and backing down if they become angry or aggressive.

At the other end is an **aggressive approach**, where we end up disrespecting others and potentially damaging the working relationship. At times, a situation may make us feel angry, frustrated, or even upset. If we show this to the person we are speaking with, it may result in conflict or disagreement, and an outcome that may be even worse than the original situation we were trying to fix. An example might be where someone takes a piece of safety equipment without asking, and responding angrily or abusively, which ultimately results in a poor working relationship that may affect future work tasks where you need to work together or rely on each other for success.

Activity: Negotiation Activity 3



In pairs, with the following scenario, allocate roles so that one of you is the PCBU and the other is the HSR. The HSR will need to try to negotiate positive outcomes to the identified WHS issue/s in this scenario.



Indicative time – 25 minutes

Scenario 3.

The business is a mobile home handyman operation. It owns a small fleet of vehicles and employs a variety of workers including administration staff and qualified trades people.

Most days it's the same personnel using the same car, but occasionally the cars can be reassigned to other people. Due to the varying type of work, each of the cars have different types of tools and appliances. The office also has an 'unmanned' tool store where spare, infrequently used and specialised tools are kept. At times the limited tools available can be quite stressful for all workers due to delays with some cars returning to the office that are carrying tools needed by other workers.

There are two job coordinators who are responsible for trying to organise and streamline all these requirements, but because the business is so busy, the two coordinators are also acting in a sales and purchasing roles, leaving no or little time oversee this daily hectic process. A lack of accountability in this area has developed, and an 'every person for themselves' culture is emerging with the workers responsible for making sure that their car is ready for the next day's work.

As a result of the above behaviour:

- Workers taking another's tools
- Electrical power tools left in an unsafe state e.g. Recently there was a serious near miss incident where a portable angle grinder disc exploded upon start-up because it had been dropped the day before, and no one did anything about it
- The business is always looking for ways to cut corners and costs wherever it can.

Note: the HSR is to lead and drive this negotiation.

HSR only read your notes. PCBU only read your notes.

HSR notes;

- You have a volatile and strained relationship with the PCBU from previous safety discussions.
- Workers have approached you about their concerns over the safety and condition of the portable power tools. Only about half of the power tools have an 'electrical safety test tag'.
- Some of the power tools have damaged leads and large cracks on the plastic housing of the tool, exposing the internal components.
- Each of the cars were issued a portable residual current device (RCD) safety switch, but some have gone missing.
- The angle grinder incident is another in a string of recent serious near misses within the business.
- The PCBU has a reputation of being impetuous, hot headed and business focused 'at any cost'. Getting a meeting with them to discuss these issues will be difficult. The PCBU tolerates safety but only to the minimal standard required and even that is hard work.

Raise the following points for their consideration:

- A number of electrical power tools that are in electrically unsafe condition – the damage to the power tools is a result of no accountability by workers.
- The majority of the electrical power tools do not appear to have been electrically tested and tagged in recent months – the PCBU didn't think it was necessary anymore because of RCDs in the cars, and that this negates testing and tagging – you have doubts that this course of action is correct. Furthermore, not all cars have an RCD.
- The recent angle grinder incident could have been a lot worse but highlights your concerns (personal injury). The damaged angle grinder was not addressed by the person who damaged it but placed back for the next user.
- There is no process for identifying any damaged power tools or equipment or subsequently having it repaired by an authorised person.
- You are concerned with the developing negative culture in the workplace in this regard.
- You feel that the two coordinators need to spend less time on the other tasks they are doing, and more time on their coordinating role within the tool store.

After discussing your concerns with the PCBU, you hope to negotiate/ resolve the following;

- Electrical test and tagging be scheduled and completed, and faulty/damaged power tools are repaired or replaced as soon as possible.
- Audit – to determine how many portable RCDs are in the cars and then clearly marked so that they stay with the allocated cars, checking the condition of the tools assigned to each car is undertaken regularly
- Spare RCDs be purchased and made available at the office

- The tools and equipment assigned to each car, are clearly marked and stays with that vehicle
- That the two job coordinators begin to focus back on their coordination role – and potentially staff the tool store at peak periods
- Tag out system be implemented for unsafe or defective tools

Note: as the HSR, you need to drive this meeting. It may be a difficult meeting, but you will need to try to achieve some results and resolution to the issues facing your workgroup.

PCBU only notes;

You're a shrewd business owner, you feel the pressures to keep the business profitable. It has its busy and quiet periods. At times making 'unpopular' and hard decisions to keep the business afloat, which contributes to your reputation as a hot head. As far as you're concerned, it's 'your way or the highway'. You know there are issues in the workplace, especially concerning your trades people, but you expect there to be issues because no workplace is perfect.

You think your HSR is a bit overzealous with safety. The relationship is strained over previous safety discussions. You're irritated that the HSR has requested to meet with you to discuss some safety concerns. You don't have a good record at addressing safety concerns, but you agree to hear what the HSR has to say.

The HSR will likely raise the following points;

- electrical power tools that are in a poor and/or electrically unsafe condition. (You are not aware of this because they are the workers tools, how are you expected to know this, as you work in the office; not on the tools.)
- Test and tag has not taken place. (You're aware of this as you bought some portable RCDs for each of the cars, eliminating the need for testing and tagging. The HSR may claim that they are not sure if this RCD solution negates the requirement of testing and tagging)
- They claim not all cars have an RCD, and there are no spares available. (You are further annoyed because you spent about \$1200 purchasing RCDs for this purpose. You suspect worker theft, but you have done your bit, and if the RCDs are now missing, that's the worker's problem)
- The HSR mentions the recent incident with the angle grinder, as an example of the careless nature and lack of accountability for the tools.

HSR believes:

- Tools are being damaged due to no worker accountability
- No system in a place for tools being loaned out from tool store
- No system to report damaged or broken tools
- Co-ordinators need to return to their original job, and less time in sales and purchasing.

You believe:

- HSR comments are a bit of a stretch
- As far as you're concerned about the angle grinder incident, it's just that worker and he is accident prone
- You have no idea about broken tools, but that is why you have co-ordinators. You assume they look after it.
- Workers are adults and should be looking after the tools of their own accord
- Co-ordinators returning to their original role will not be considered as it's contributing to profits.

This scenario is specifically designed for the PCBU not to cooperate or yield to the HSRs suggestions, making it a 'failed negotiation' discussion, where the HSR walks away with no or very little resolution to the issues. You need to display standoff (but not hostile) behaviour, and essentially you are not to commit or agree to any of the proposed HSR solutions or resolutions, however; the HSR has been instructed to try to resolve all these issues.

After hearing what the HSR has had to say, you (the PCBU) decide;

- That it's not necessary to clarify electrical testing and tagging requirements. You've bought and issued portable RCDs for each car; you don't need to audit them.
- Damaged or faulty power tools, workers should know to report it to the coordinators. If you remember, you will mention this to the coordinators at the meeting next week.
- You don't think that a formal system to track, test or tag out equipment is needed. It's not a big issue. Too many tools to track and not that many broken.
- You might consider buying one or two spare RCDs.
- Even though you don't believe that there is an issue, you're not prepared to commit the coordinators back to their organising roles or manning the tool shed without further discussion with them.
- Furthermore, you tell the HSR that you're not impressed that these issues even exist, and that you're not very happy that HSR has spent work time on these 'trivial' issues. If these issues continue to exist then the workers had better figure it out amongst themselves, because if you step in, you will deal with it indifferently.

It is expected that the HSR will terminate the discussion after considerable discussion, or if the HSR is unable to continue the discussion because of your stance, **you may** have to end it by stating something similar to "Well, that concludes our meeting, let's both get back to work now". The HSR may end the meeting as well, although this is less likely as they have been prompted to try to resolve these issues with you.

End of scenario

Activity 3 Debrief.

Debrief between yourselves, and then as a class. Discussion points could include;

- How well did the HSR raise the issues?
- Did the HSR try different ways to try to engage with the PCBU?
- How did the communication style change over the course of the scenario?
- Was the HSRs frustration becoming apparent or did the HSR choose to disengage?
- How did the scenario conclude (who terminated the discussions)?
- As the HSR, what would you do different next time?
- Were there any unexpected developments or emotions during the negotiations?

Despite having different scenarios, there should have been an underlying theme that the PCBU was skeptical of the issues, scathing of the HSR and mostly uncooperative to commit to resolving any issues that were raised by the HSR.

In this scenario, the HSR should have had a difficult time communicating and negotiating with the PCBU. The result should be that all (or at least most) of the issues that were raised; have not been resolved, and that the HSRs issues conflict with the PCBUs views. Furthermore, the issues discussed still remain unresolved, and the HSR cannot successfully report back to the workgroup about the successful outcomes of the negotiation. It is also possible that the HSR feels their professional or personal relationship with the PCBU has been further strained or threatened because of their HSR role and their workgroups expectation to raise safety issues with the PCBU. These facts and emotions are all important for a HSR to consider after any hostile negotiation session with a line Manager, supervisor or PCBU.

Follow up Actions:

In order to address the outstanding issues from this scenario, the HSR will need to determine the most appropriate time and approach method, to try to have these issues resolved yet wanting to avoid a repeat of what just happened and risk further alienation from both management and the HSRs workgroup. Options for the HSR to consider include;

- Undertake further research on the issues that were identified or disputed by the PCBU. This research must authoritative in nature (i.e. from the various regulators and/or advisory bodies), and the findings should be relevant, clear and unambiguous.
- Consider involving any associated Union organisation to help clarify the issues.
- Raise a workplace concern via the WHSQ website. Completion of this online form will formally notify WHSQ of your concerns for follow-up by WHSQ. This method has the option for the complaint to remain anonymous.
- The HSR could consider requesting another meeting with the PCBU. On this occasion with the HSR having time to research and prepare appropriate responses to the PCBUs concerns, and possibly with written information from the regulator clarifying the issue, the HSR may be able to persuade or negotiate a better outcome than the last meeting.

- Consider issuing a Provisional improvement notice (PIN) to the PCBU, requiring them to rectify the safety issue. Ensure that the HSR has researched and is clear on what legislative provision is being or has been contravened.
- Ask **WHSQ a question or formally ask the regulator or assistance**. This can be done two ways. Either by calling the 1300 633 419 phone number and chatting verbally to a subject matter advisor, or via the WHSQ website, where an electronic form can be filled in.



Section 54 of the WHS Act 2011 states, if there is a failure of negotiations, one may ask the regulator to appoint an inspector even before issuing a PIN.

Links can be found on our website under 'Contact'.

Lodge a Workplace Concern using this link:

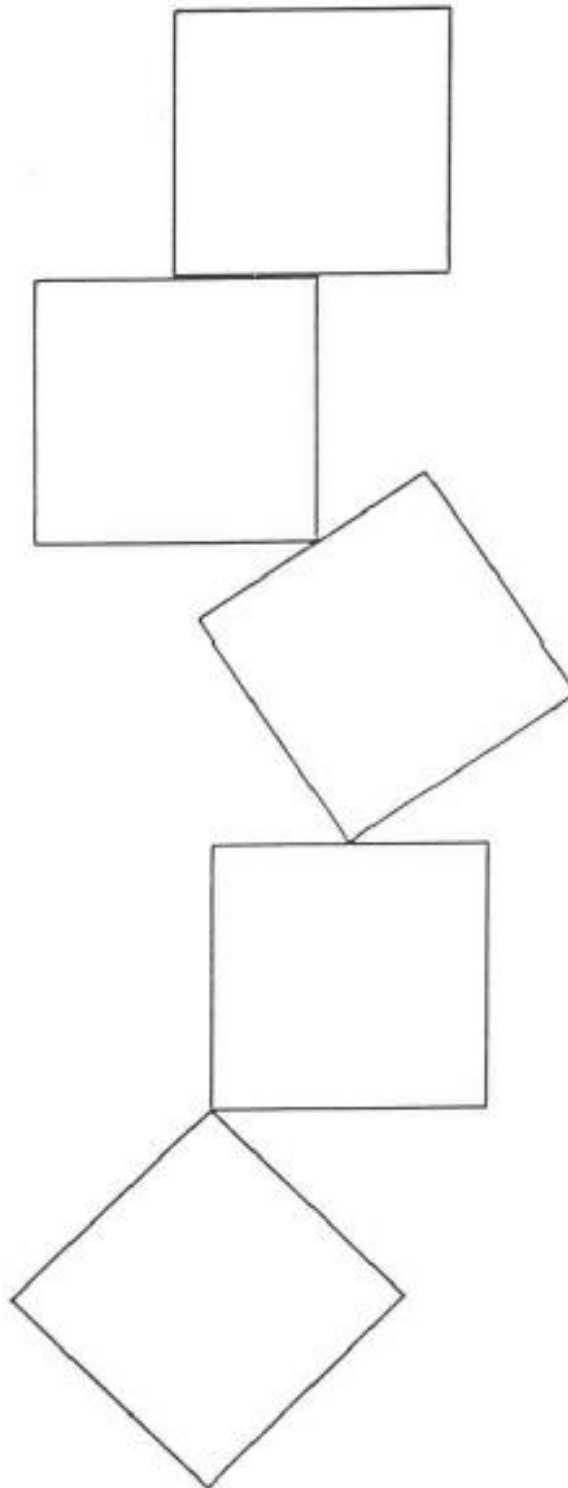
<https://www.worksafe.qld.gov.au/services/raise-a-workplace-safety-concern>

Ask a safety question using this link:

<https://fswgap.worksafe.qld.gov.au/whsq-enquiry/>

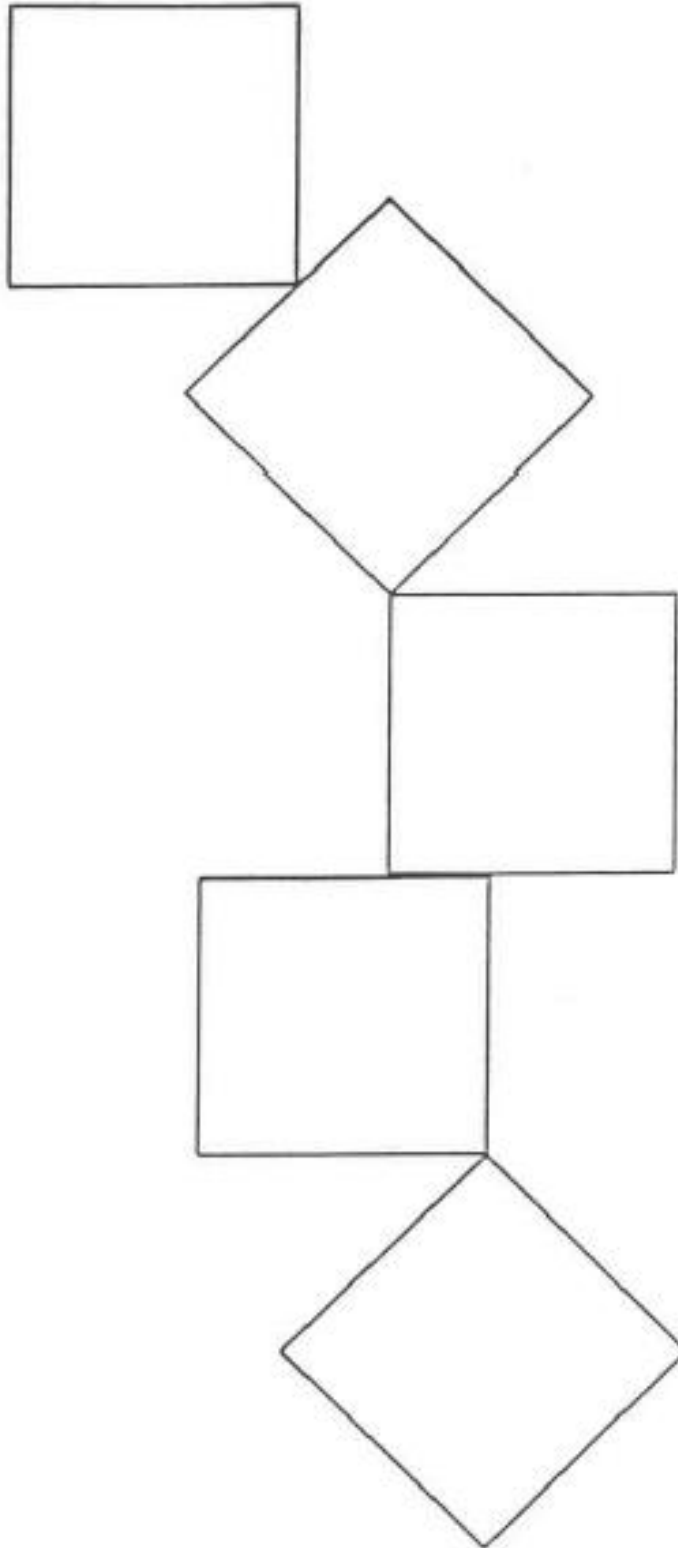
Activity: One-way communication

Instructor; below this sentence is what the receiver is required to draw exactly.



Activity: Two-way communication

Activity instructor; below this sentence is what the receiver is required to draw exactly.



Day 5 - Session 2

Reasonable belief and issuing a Provisional Improvement Notice

Learning Aim

This session will describe the process and requirements for the issuing of PINs by HSRs.

Learning Outcomes

After completing this session participants should be able to:

1. Provide an overview of Provisional Improvement Notices (PINs)
2. Explain the features and contents of a PIN
3. Identify the range of actions arising once a PIN is issued and identify who would take these actions

Session Duration

The nominal duration is 2 hours 45 minutes

Learning Outcomes and Expected Learner Applications

Day 5 – Session 2

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Provide an overview of Provisional Improvement Notices 2. Explain the features and contents of a PIN 3. Identify the range of actions arising once a PIN is issued and identify who would take these actions 	<ul style="list-style-type: none"> • Explain the purpose and function of a PIN • Identify the restrictions in the legislation that prevent a HSR from issuing a PIN • Identify to whom a HSR can issue a PIN • Describe the manner in which a person may be issued a PIN • Identify that a PIN must be in writing and that the PCBU is responsible for providing a copy to WHS. • Distinguish between what must be included in the contents of a PIN and what may be included • Identify the extent of any changes a HSR can make to a PIN once it has been issued • Undertake an activity to complete a PIN • Identify the alternative courses of action that the person can take when issued with a PIN • Describe the role and powers of an WHS Inspector when reviewing a disputed PIN Identify appeal provisions for appealing inspector decisions

Session 2



Outline and overview of Provisional Improvement Notices (PINs)

The purpose and functions of PINs and who a HSR can issue a PIN

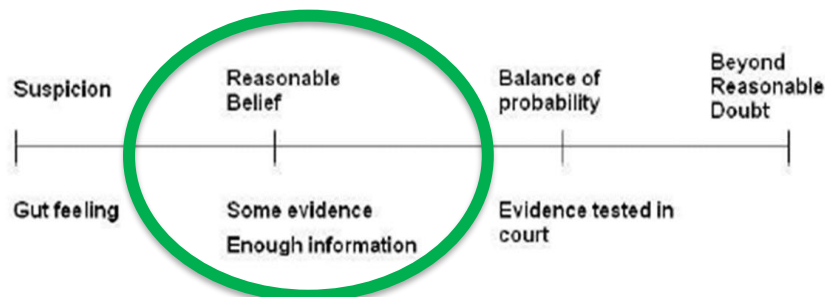
A Provisional Improvement Notice (PIN) is a notice that a HSR can issue to a person, requiring them to address a safety or health concern in the workplace. The HSR may issue a PIN if there is reasonable belief that the person has contravened a provision of the legislation.



What is your understanding of reasonable belief?

With the group and your trainer, discuss some examples of formation of reasonable belief of a risk to health and safety using examples both in your workplace and the ones provided.

Reasonable belief is less than proof but more than suspicion and requires the existence of facts.



In forming a reasonable belief to issue a notice consider the following For EACH element of the contravention:

- observations made by the HSR;
- information obtained from speaking with persons in your workgroup;
- information obtained from reviewing relevant documents at the workplace;
- information about the correct situation – from relevant codes of practice, Australian Standards and other published guidance material;
- advice provided by suitable technical specialists (if relevant);

DON'T

- Rely on no evidence
- Insufficient inquiries
- Assume

A PIN is a notice that a HSR can issue to the relevant duty holder to remedy a contravention or likely contravention. The duty holder may be an individual and/or an organisation such as a company.

Before issuing a PIN, the HSR must consult the person whom the HSR believes is contravening the provision in the WHS Act or Regulations. This means that the HSR should:

- provide information, either verbally or in writing, to the person about fixing the alleged contravention or activities causing the contravention. At this point the HSR does not need to specify which part of the WHS Act or Regulations the issue relates to (though the HSR can do so if they wish);
- allow the person an opportunity to express their views and give them adequate time to fix the contravention;
- take into account the views of the person before issuing the PIN; and
- advise the person of the outcome of the consultation in a timely manner.

Consultation can still be said to have occurred even if:

- the person does not respond to the HSR in a reasonable time or at all
- there is no agreement between the HSR and the person. The person does not have to agree that there is or is likely to be a contravention or agree on how to fix the matter.

A PIN is part of the powers given to a HSR in order to represent the health and safety interests of their workgroup. It provides the HSR with a powerful tool that can provide for the improvement of safety in the workplace.

A PIN may be issued to *any person*. This can include a PCBU (either an organisation or an individual person) or other duty holders such as workers, officers and other persons at the workplace.

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

The duty holder should be clearly identified on the PIN so that there can be no confusion as to whom it is addressed to and who is expected to comply with the requirements in the PIN.

A PCBU could be a body corporate, unincorporated association, partnership or an individual. Therefore, the 'person' doesn't necessarily have to be in the workplace; the PCBU could also be a designer, manufacturer or supplier of plant, substances or structures.

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

A PIN must be in writing and state:

- the HSR believes a person is in breach of the WHS Legislation, or is likely to continue or repeat the breach;
- what that provision is and how it is being breached; and
- a due date of a minimum of 4 calendar days after date of issue as to when the breach is to be remedied.

A PIN may also state:

- directions on what is required to remedy or prevent the breach (this may include a reference to a Code of Practice);
- the cause or likely cause of the breach; and/or
- a choice of ways in which the breach could be remedied or prevent a likely contravention from occurring.

As of 29 July 2024 A HSR can change the required remedy date on a PIN agreement with the person to whom the notice was issued, or with the PCBU of the workplace.

A PCBU will need to provide a copy of any PINs issued by the HSR to WHSQ.

This can be sent to WHSnotifications@oir.qld.gov.au

A HSR cannot issue a PIN unless the representative has:

- (a) **completed training** prescribed by the regulations referred to in section 72 (1) of the WHS Act, or
- (b) previously completed that training when acting as a health and safety representative for another work group, or
- (c) completed refresher training within the legislative timeframe



important

A health and safety representative cannot issue a provisional improvement notice 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.

Activity: When might a provisional improvement notice be issued?



Brainstorm the following question. Responses can be recorded on flip chart paper

Indicative time - 20 minutes

When would it be appropriate to issue a PIN in your workplace?

When wouldn't it be appropriate to issue a PIN in your workplace?

Possible reasons for issuing a PIN

- activity or event is about to occur that puts workers at risk of injury
- a contravention that continues or is being repeated e.g.
- excessive noise levels in the workplace
- an ongoing requirement to manually lift heavy objects
- regular exposure to hazardous chemicals that are used in the workplace
- unguarded machines
- lack of consultation on work health and safety matters

Examples of where a PIN may be issued:

1. A worker finds that a valve from a steam line becomes displaced, allowing a jet of steam to escape. The worker refers the issue to the HSR who takes it up with the supervisor. The supervisor, after consulting with the HSR on how it can be fixed, may settle the matter on the spot by calling in maintenance staff immediately.
 - If the leak is not fixed, however, and the HSR believes that the leaking pipe poses a risk to people in the workplace (thereby contravening the WHS Act or Regulations), the HSR may issue a PIN to the PCBU.
 - A PIN issued to the PCBU would state that the HSR believes there is a contravention of section 19 of the WHS Act.
2. Cleaning staff are working in an office building after hours, using the stairwell to move between floors. Due to an electrical problem, the lights have recently gone out in the stairwell causing poor visibility. Despite repeated requests from the HSR to the building manager, the problem has not been fixed.
 - The issue is unresolved so the HSR issues a PIN to the building manager. In this example, the HSR believes that the building manager has contravened section 20 of the WHS Act.

Role and requirements for HSRs in issuing PINs, including alternatives to issuing of PINs



As mentioned earlier, the HSR must consult with the person who the HSR believes is contravening the provision in the WHS Act or regulation. The HSR should provide the person with an opportunity to express their views, with reasonable time to remedy the action and take into account their views before issuing the PIN.

If after consultation no resolution can be reached and the HSR still believes that the 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, they may issue a PIN.

Remember: A PIN cannot be issued for a matter that an inspector has already addressed.

Review the information that *MUST* be included against the information that *MAY* be included in a PIN.

<i>PIN information</i>	<i>tick</i>
1. A PIN must state that the HSR believes the person : 1. is contravening a provision in the WHS Act, or 2. has contravened a provision of the WHS Act and it is likely that the contravention will continue or be repeated.	<input type="checkbox"/>
2. A PIN must state the provision the HSR believes is being, or has been, contravened	<input type="checkbox"/>
3. A PIN must contain a brief outline how the provision is being, or has been contravened	<input type="checkbox"/>
4. A PIN must state the date the contravention is required to remedy by. This date must be at least four days after the contravention is issued.	<input type="checkbox"/>
5. A PIN may include directions about: 3. how the contravention can be remedied 4. how to prevent a contravention 5. the matters or activities that are causing the contravention or likely contravention	<input type="checkbox"/>
6. A PIN may include directions that refer to a Code of Practice and offer a choice of ways the contravention can be remedied.	<input type="checkbox"/>

PIN Errors

Issuing a PIN requires a HSR to take into consideration a number of things that must be done, and technical errors are common. It is important to note that a PIN is not automatically invalid because of a formal defect or irregularity in the notice (unless the error is likely to cause substantial injustice).

Examples of when an error may violate a sense of fairness include:

- where the PIN states the wrong provision has been contravened
- where the information in the PIN is very unclear, or
- where there is confusion surrounding the date by which the contravention must be remedied.

Minor Changes

A HSR can make **changes to a PIN** after issuing it to a person for any of the following reasons:

- for clarification such as simplifying language or removing jargon
- to correct errors or references, or
- to reflect changes of address or other circumstances.

Cancelling a PIN

A HSR may also **cancel a PIN** at any time by providing a written notice to the person the PIN was issued to. A HSR may wish to cancel a PIN after receiving further information or advice relating to the legislation requirements surrounding the WHS issue, or more information about the issue becomes available.

Compliance Date for Pins:

To calculate when a notice is due, the HSR should not include the date of issue in the calculation and **allow at least 4 days (as of 29th July 2024) from the date of issue.**

This will allow the person to whom the PIN is issued sufficient time to request a review **within 3 days (as of 29th July 2024)** after it is issued (in line with s100 of the WHS Act).

In addition, it is advisable that the due date does not fall on a Saturday, Sunday or Public Holiday.

What is the ‘same matter’ in relation to which an inspector has already issued (or decided not to issue) an improvement or prohibition notice

Section 90(5) of the WHS Act provides that a HSR must not issue a PIN if an inspector has already issued or decided not to issue an improvement notice or prohibition notice in respect of the same matter.

The inspector must have decided the same matter in relation to the same duty holder in the same workplace.

The substantive issue which was the subject of an inspector’s decision (to issue a notice or not to issue a notice) must have been the same as that identified in the PIN and where the circumstances have not changed since the time of the inspector’s decision.



Discussion: In groups discuss the scenarios below and decide whether the situation would be considered to be the same or a different matter.

6 months prior to the issue of the PIN, the inspector had issued an improvement notice or confirmed a PIN requiring risks associated with an unguarded machine to be remedied. The improvement notice (or confirmed PIN) was complied with, by the PCBU. The PIN identifies that the previously supplied guard is missing.

The PCBU has a procedure for working at heights to perform a specific task. The PIN identifies that the HSR disagrees with the procedure. However, an inspector had reviewed and supported the procedure 2 months before the PIN was issued, deciding not to issue a notice at that time.

Previously, rostering arrangements were determined by an inspector to not create a risk to health and safety due to fatigue. Sometime later, a HSR issues a PIN identifying rostering arrangements as a risk to health and safety due to fatigue.

Activity: Issuing of Provisional Improvement Notices (PINs)



Complete all 3 PIN Scenarios.



Indicative time – 30 minutes

Scenario 1

As a class complete—Trainer guided PIN completion

The facilitator will explain and guide you through the completion of this PIN. (Refer to Page 330 for scenario)

Scenario 2

In small groups complete—Group Guided PIN

discuss and make assumptions as to other actions that have taken place that have led to your decision to issue a PIN. Write down your assumptions and then complete the PIN. (Refer to page 331 for scenario)

Scenario 3

As a individual complete – Independent PIN

- Use the Form 44 Provisional improvement notice (PIN handouts) to complete one PIN for each scenario
- Whilst details of the issue is provided, you will need to locate the provision in the WHS legislation that is being breached.

(Refer to Page 332 for scenario)

Refer to Page 333-334 of your handbook for an example copy of a PIN (Form 33)

Scenario 1

A new metal press has been installed in the workplace where many of the workers have limited English skills and literacy levels in general are low.

Training was provided in the form of a toolbox talk and workers provided with a Safe Work Method Statement (SWMS) written in English only. Two workers from the night shift crew have been given the job of testing the press but have very limited English skills.

Details required for PIN

The person responsible within the meaning of WHS Act Part 2 - Martha Smith,
ph 0500 017 717

HSR - Jack Langley elected as the Health and Safety Representative under s. 60 – s. 67 of the WHS Act for the night shift crew

The breach is: The PCBU has failed to provide for the health and safety of workers by not providing training and instruction that is appropriate to their level of literacy in a format they can understand and use.

The breach is occurring at: 540 Ferntree Gully Road, Bowen Hills, QLD

The reasons for the opinion are as follows: Instruction and training for testing of the new metal press were presented verbally at a toolbox meeting where not all workers were present at the time. The SWMS were printed in English using a new format and provided to workers at the meeting. No additional supervision was provided for the testing.

In accordance with s93 of the Act it is recommended that the following action should be taken: The testing of the metal press should be stopped until all workers in the area and required to use the equipment have had the appropriate training. All instructions, SWMS and associated materials should be provided in the appropriate languages using photos where applicable to assist understanding for workers on or near the machine. Training must be held so that all workers from all shifts can attend. Adequate supervision should be provided for the testing.

Scenario 2

The machinery in the lab is aging and the noise being generated has increased significantly over the last couple of years. Workers now have to leave the area to have a conversation. Workers are working in this area for a full shift on a rotating basis. The supervisor has provided workers with earmuffs however no noise testing has been carried out.

Details required for PIN

The person responsible within the meaning of Part 2 of the WHS Act - Matt Blanch

HSR - Stephen House elected as the Health and Safety Representative under s. 60 – s. 67 of the WHS Act for Laboratory staff

The breach is: Management has failed to take appropriate action regarding the noise emitted from the equipment used within the laboratory.

The breach is occurring at: 256 Young Street, Bowen Hills, QLD

The reasons for the opinion are as follows: Attempted consultation with management regarding monitoring the noise level, providing audiometric testing for workers and the investigation of permanent measures including the replacement of equipment over time but to date no action has been taken. Further attempts at consultation have been rejected by management who clearly state that there is no provision in this year's budget.

In accordance with s93 of the Act it is recommended that the following action should be taken: The noise level within the Lab should be tested and if found to exceed the recognised levels all efforts should be made to either eliminate or minimise the noise to acceptable levels. Audiometric testing of affected workers should also occur. Consultation with other relevant workers e.g. maintenance workers and contractors on other forms of minimization could be initiated.

Scenario 3

A contract care-worker has been on overnight stays at an accommodation facility. There has been several incidents involving client violence and workers have asked for additional training in skills to deal with these types of situations. To date there has been no response from management and workers are becoming increasingly on edge.

Details required for PIN

The person responsible within the meaning of WHS Act Part 2 - Sue Fernley

HSR - Bruce Goodman elected as the Health and Safety Representative under s. 60 – s. 67 of the WHS Act for the Contract care workers

The breach is: Workers are being exposed to potentially violent situations without having received adequate training to respond. Other security measures have also not been put in place e.g. communication procedures. Workers also have limited understanding of assistance that is available to them after an incident has occurred (e.g. access to counseling).

The breach is occurring at: 57 Russell Street, Bowen Hills, QLD

The reasons for the opinion are as follows: Workers have raised concerns for their safety and appear apprehensive in discussions. A number of small incidents have occurred involving different clients over a period of time. No training in response to potentially violent incidents has been provided to date and the training schedule for this year does not include any such training. Workers when asked had little knowledge that they were entitled to access counseling if they were having trouble coping or after an incident.

In accordance with s. 93 of the Act it is recommended that the following action should be taken: Appropriate training should be provided as soon as possible. A new risk assessment should be completed to determine if other measure can be taken to help minimise potential incidents occurring e.g. review of staffing levels, client behaviour management plans, communication and response procedures. Information on worker support should be included in induction to all workers and information be made readily accessible to existing workers (perhaps include an update in team meetings).

Provisional improvement notice (PIN)

V29 July 2024

This provisional improvement notice (PIN) is issued under section 90 of the *Work Health and Safety Act 2011* (the 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 Act or 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. Section 97 of the Act requires that the person to 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 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):

Name:	
First name:	Last name:
Contact number:	
Work group represented:	

2. PIN issued to:

Name of duty holder:		
<i>(i.e. individual natural person or an organisation such as a company or public authority as relevant)</i>		
Address:		
State/territory:		Postcode:

3. PIN given to (if the PIN is given to someone on behalf of the duty holder):

Name:	
First name:	Last name:
Position:	Contact number:

4. I have consulted with the duty holder prior to issuing this PIN (section 90(3)) of the *Work Health and Safety Act 2011*:

☐ Yes ☐ No

5. Details of contravention:

Site location:		
I, _____	reasonably believe on _____	at _____
<i>Health and safety representative's name</i>	<i>date</i>	<i>time</i>
that you <input type="checkbox"/> are contravening a provision or <input type="checkbox"/> have contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; of the:		
<input type="checkbox"/> <i>Work Health and Safety Act 2011</i> , section _____	<input type="checkbox"/> <i>Work Health and Safety Regulation 2011</i> , regulation _____	
Brief description of how the provision is being or has been contravened:		
Note: The HSR may, but is not required to, specify measures, in accordance with section 93 (1) of the <i>Work Health and Safety Act 2011</i> , that they believe should be taken to remedy or prevent the contravention or likely contravention or matters or activities causing the contravention or likely contravention:		

6: Compliance:

Date PIN issued / /	Date compliance with PIN required / / <i>(Minimum of 4 calendar days after date PIN issued)</i>	Signature of HSR
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Note: Work Health and Safety Regulators have developed this sample form that may be used by health and safety representatives to issue a provisional improvement notice. There is no requirement that a PIN be in this form, provided that the PIN is in writing and meets the requirements of Division 7 of Part 5 of the Work Health and Safety Act 2011.

General information about provisional improvement notices (PINs)

Work Health and Safety Act 2011

- A health and safety representative (HSR) may issue a PIN if they reasonably believe that a provision of the *Work Health and Safety Act 2011* (WHS Act) or any regulation is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated.
- A PIN is issued to the relevant duty holder to remedy a contravention or likely contravention of the Act or Regulation. The duty holder may be an individual natural person or an organisation such as a company or public authority. The duty holder does not 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. However, the contravention must relate to the work group the HSR represents.
- 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.
- 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).
- A HSR cannot issue a PIN unless the HSR has completed an approved initial HSR training course or completed that training when acting as a HSR for another work group or completed training equivalent to HSR training under the WHS Act.
- 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 (see section 90(5) of the WHS Act).
- 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.
- If the PIN recipient wishes to dispute the PIN, they can contact the regulator and request an inspector to review the PIN - this must be done within **3 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 up to and after the compliance date for the PIN has expired. An inspector can confirm, confirm with changes or cancel the PIN. A copy of a decision by an inspector 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.
- 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 84 of the WHS Act regarding the right of a worker to cease unsafe work and sections 80-82 of the WHS Act regarding issuer resolution.
- If there is more than one contravention, a separate PIN should be written for each contravention.
- 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 PIN recipient or if the PIN fails to sufficiently identify the PIN recipient (see section 98 of the WHS Act.)
- A reasonable time should be allowed between the 'Date PIN issued' and the 'Date compliance with PIN required', to enable compliance to be achieved. However, the date for compliance must be at least **4 days** after the date of issue. [Amendment to s 94\(2\) WHS Act](#) - a HSR can change the day by which the person is required to remedy the contravention or likely contravention with the agreement of either the person to whom the notice was issued, or, if that person is a worker, the PCBU of the workplace.
- The HSR should retain a copy of the completed PIN for their records.
- If the issue has not been remedied by the 'Date compliance with PIN required' and an inspector has not already attended the workplace, the regulator should be contacted.
- The PIN recipient 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.
- A person must not intentionally remove, destroy, damage or deface a PIN that is displayed during the period the PIN is in force.
- Failure to do any of the things referred to in points 15 and 16 is a contravention of the WHS Act and penalties apply.
- 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 an inspector to attend (see point 8 above).

For queries about PINs or other health and safety matters, visit worksafe.qld.gov.au or phone 1300 362 128.

Process for issuing a PIN



Manner of issuing a PIN (WHS Act s. 90 – s. 102 and s. 209)

A PIN can be issued or 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.

by **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.

by **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.

PINs are often issued by giving it to the management representative that the HSR has consulted with at the workplace on the WHS issue which has given rise to the PIN. However, it could be another employee who has responsibility for a work process, or the owner of the workplace or plant or equipment. If the HSR is not sure who the responsible person is, they may issue a PIN to the person whom they believe has the authority to fix the issue.

Actions that can be taken once a PIN is issued

Responsible person duties

As soon as it is practicable, the person issued with a PIN **must display a copy** of the PIN in a prominent place at the workplace

A place that is prominent is easily accessible, noticeable and where workers or other persons affected by the PIN will come across it in the normal course of events and be able to examine it. An example may be the lunchroom, front door or other prominent place.

The person who has been issued with a PIN **must not intentionally remove, destroy, damage or deface** a notice that is being displayed during the period that the notice is in force.

Note: If an inspector has not been required to attend, the person must comply with the provisional improvement notice within the time specified in the notice.

The person issued with a PIN must also:

- **Inform the HSR** of the action taken
- **Notify the workers affected** by the PIN



Remember: the PCBU has a duty to consult with workers (and any HSR who represents them) who are, or are likely to be, directly affected by a matter relating to work health and safety. Therefore, in taking action to remedy a safety issue identified through a PIN, the PCBU must follow the established or default consultation procedures.

Timeframe

The HSR has the power to extend the timeframe on the PIN if they believe it is necessary.

An HSR can change the day by which a contravention is to be remedied with the agreement of the person to whom the notice was issued (or the PCBU if the notice was issued to a worker) as of 29th July 2024.

As of 29 July 2024 the PIN must have a due date of a minimum of 4 calendar days after date of issue.



The HSR may at any time cancel a PIN that they have issued to a person by giving the person written notice of the cancellation.

The HSR should also retain a copy of the PIN for their records.

Disputes regarding PINs

The person, who receives the PIN, must either comply with it or advise WHSQ that the PIN is disputed within three days of it being issued.

If **within three days** of being issued with a PIN the person issued with the PIN asks WHSQ to review the notice, an inspector will attend the workplace to review the PIN and inquire into the WHS matters which are the subject of PIN. The PIN is temporarily suspended until the inspector determines the matter.



important

If the responsible person fails to take action within the timeframe on the PIN, and they have not disputed the PIN with WHSQ or an inspector, the HSR who issued the PIN may request WHSQ to attend and investigate the matter.

Roles and Powers of a WHS Inspector when reviewing a disputed PIN

WHSQ must ensure an inspector comes to the workplace as soon as practical after a request is made.

The Inspector must review the PIN and inquire into the circumstances surrounding the PIN. This could involve finding out why a PIN was issued, the nature of the consultation that took place, whether the PIN was correctly issued and why it is being disputed.

After an Inspector has reviewed the PIN, they must either:

- confirm the PIN
- confirm the PIN with changes
- cancel the PIN.

The timeframe for reviewing the PIN will depend on the nature of the issue and extent of the enquiries required for the Inspector to make a decision to confirm, modify or cancel the PIN.

If the PIN is confirmed or varied, it is taken to be an improvement notice that has been issued by the Inspector under the WHS Act. An improvement notice still requires a person to remedy a contravention, but it is issued directly from the Inspector.

The Inspector will give a copy of their decision to the person who applied for the review and the HSR who issued the notice.

An Inspector can review a PIN even if the compliance period has expired.

If the HSR who issued the PIN, the person issued with the PIN, an affected worker, another affected HSR or a PCBU does not agree with the Inspector's decision, they can request the regulator (WHSQ) to review the Inspector's decision.

Reasons why a PIN may not be upheld by an Inspector

A PIN may not be upheld by an inspector following an investigation if the inspector determines that the PIN is not valid. A PIN will be invalid if:

Item	Section of WHS Act
HSR issuing the PIN is not elected under the WHS Act	Subdivision 4 of Division 3 of Part 5 of the WHS Act
HSR has not first consulted with the relevant person	s. 90(3)
HSR has not completed initial training	s. 90(4)
The subject matter of the PIN has already been dealt with by an inspector	s. 90(5)
PIN is not in writing	s. 91
PIN does not state: <ul style="list-style-type: none"> - the HSR's belief that the person is contravening, or has contravened, a provision of the WHS Act or Regulation in circumstances that make it likely that the contravention will continue or be repeated - the provision the HSR believes has been or is likely to be contravened - how the provision is being or was contravened; and - the day by which the person is required to remedy the contravention (which must be at least 4 days after the notice is issued. The date on the notice does not count for this purpose) 	s. 92
PIN was not issued or given to the person in the correct manner	s. 209
The subject matter of the PIN does not affect members of the HSR's work group or any other work group the HSR can act in relation to	s. 69
The actual HSR for the other work group in relation to which the issuing HSR has acted was available	s. 69
Any irregularities or defects in the PIN are likely to cause substantial injustice e.g. be misleading	s. 98(a)
The name of the person to who the PIN is issued is not correct and does not sufficiently identify the person	s. 98(b)

Appeals against Inspector's decision

A decision made by an inspector to confirm or cancel a PIN is a reviewable decision. Detail on the types of decisions that are classified as 'reviewable decisions' is contained in section 223 of the WHS Act.

An Inspector's decision on a PIN review will include information on how eligible persons may seek a review of the inspector's decision.

Eligible persons include:

- the person to whom the provisional improvement notice was issued
- the HSR who issued the notice or who represents a worker affected by the notice
- a worker whose interests are affected by the decision
- a PCBU whose interests are affected by the decision.

Application for internal review

The eligible person may apply to WHSQ for review (an **internal review**) of the decision within:

- the prescribed time after the day on which the decision first came to the eligible person's notice, (within the period stated in the notice or 14 days whichever is the lesser) or
- such longer period as the regulator allows



important

The application must be made in the manner and form required by the regulator. A request for an internal review should include a copy of the PIN that was issued or information about its content.

Decision on internal review

As soon as practicable after reviewing the decision, the internal reviewer must give the applicant in writing:

- the decision on the internal review, and
- the reasons for the decision.

Application for external review

An eligible person may apply to an external review body for a review of:

- decisions of the internal reviewer
- the original decision of the regulator.

From the day the applicant received or became aware of the original decision, an application for an external review must be made within:

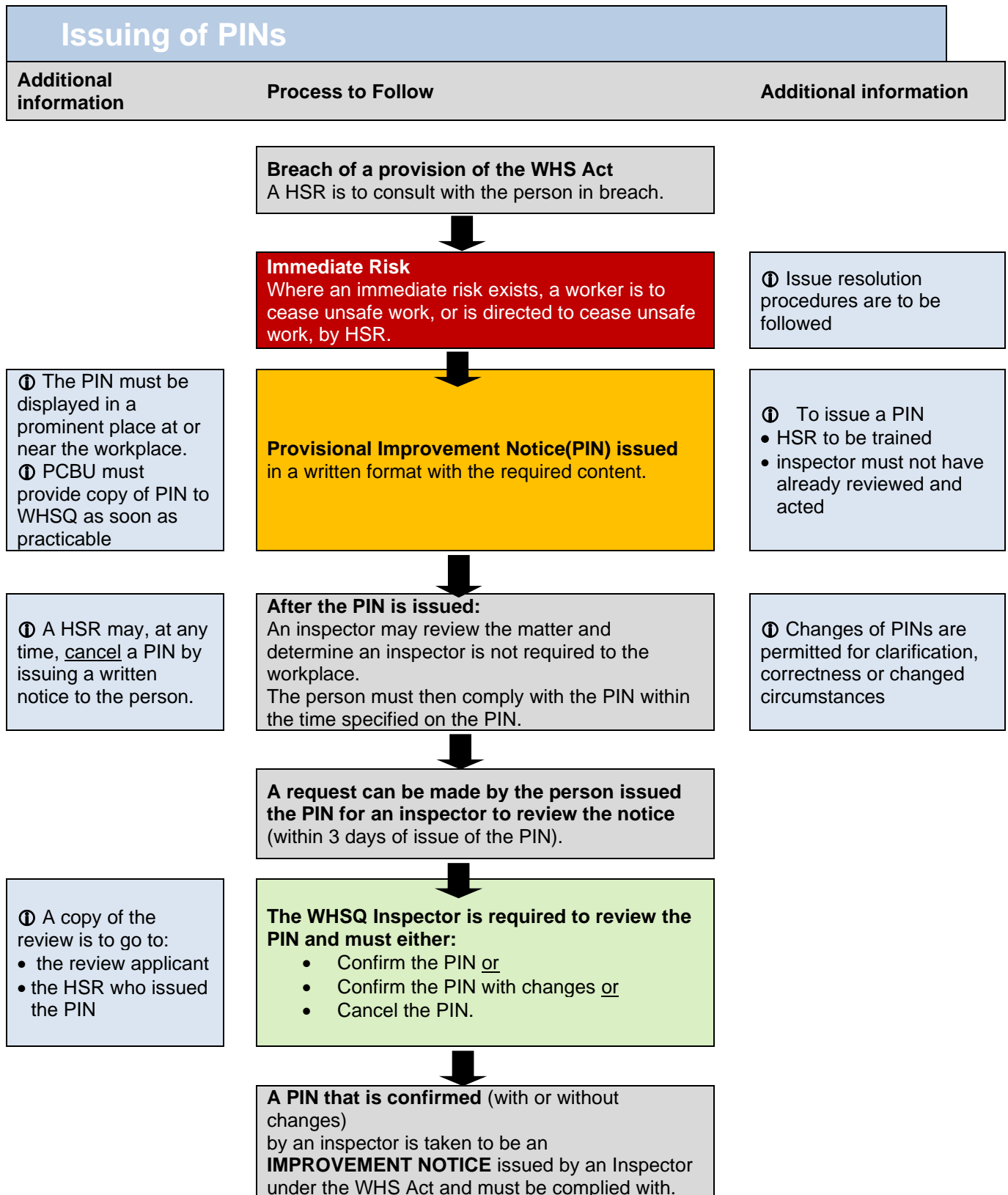
- 30 calendar days to the Queensland Industrial Relations Commission (QIRC), or
- 28 calendar days to the Queensland Administrative Tribunal (QCAT).

QCAT and QIRC may stay the operation of a decision that is the subject of an external review pending their decision on the review. In deciding the external review, QCAT and QIRC may, confirm, vary or revoke the decision concerned.

**Remember to call WHSQ HSR Direct if you
have any questions:**

1300 633 419

Provisional Improvement Notice process summary



Day 5 - Session 3

Direction to cease unsafe work

Learning Aim

This session of training provides an outline of the process for persons to make directions to cease unsafe work and of the HSR informing of their decision making by issuing a PIN.

Learning Outcomes

After completing this session participants should be able to:

1. Provide an overview of the right to cease or direct the cessation of unsafe work

Session Duration

The nominal duration is 1 hour 20 minutes

Learning Outcomes and Expected Learner Applications Day 5 – Session 3

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Provide an overview of the right to cease or direct the cessation of unsafe work 	<ul style="list-style-type: none"> • Explain the conditions or circumstances that would <ol style="list-style-type: none"> 1. cause a worker/s to cease work 2. cause a HSR to direct the worker / workers to cease work • Identify any legislative restrictions placed on HSRs that prevents a HSR from directing a worker to cease work • Outline the processes a HSR must follow after giving a direction to cease work to a worker / workers • Outline the employment conditions that apply to a worker / worker who have ceased work • Outline what the role and function of an WHS Inspector would be following a request from either the PCBU or the worker to attend the workplace in these circumstances

Conditions and circumstances that could arise to cause a HSR to direct a worker to cease unsafe work.



Workers right to cease unsafe work



Right to cease unsafe work (WHS Act s. 83 – s. 89)

The WHS Act provides for workers to cease what they believe to be unsafe work under certain conditions and when doing so, are afforded the protection of the law.

If a worker has a reasonable concern about a serious and immediate risk to their health or safety related to their work, they may cease or refuse to carry out that work.

A worker who **ceases** work must:

- as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work, unless the worker ceased work under a direction from a health and safety representative, and
- remain available to carry out suitable alternative work.

Alternative work

If a worker ceases work, the person conducting the business or undertaking may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.

Continuity of engagement of worker

If a worker ceases work that action does not affect the continuity of engagement of the worker, if the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work:

- at the same or another workplace, and
- that was safe and appropriate for the worker to carry out.



So long as a worker agrees to carry out suitable alternative work if directed to do so by a PCBU, the worker who exercised the right to cease the unsafe work is still entitled to any benefits under their employment agreement such as:

- remuneration and promotion, as affected by seniority
- superannuation benefits
- authorised leave entitlements, and
- any entitlement to notice of termination of the engagement.

Health and safety representative may direct that unsafe work cease

If a HSR has a reasonable concern that in carrying out work, workers in their work group would be exposed to a serious health and safety risk, the HSR can either:

- consult with the PCBU and then direct workers to cease the hazardous work, or
- if the risk is so serious and immediate that it is not reasonable to consult the PCBU first, the HSR can direct workers to cease work without consulting with the employer.
- if a HSR issues a cease work direction to a worker, as soon as possible thereafter the HSR must as soon as possible give a cease work notice to PCBU, prominently display a written cease work notice, and consult with the PCBU to resolve the matter
- a HSR cease work notice must contain certain information, such as the name of the HSR, the provision of the WHS Act the notice is given under, the day and time the notice is given, a brief description on the work being performed by the worker and the exact risk the worker is being exposed to.

A HSR can only direct that work cease if the HSR has completed initial HSR training. If the HSR directs workers to cease work without consulting the PCBU, they must advise the PCBU as soon as possible after giving the cease unsafe work direction.

If a worker disagrees with the direction to cease unsafe work, either party may contact WHSQ and request that an Inspector assist in resolving the matter.



When an immediate threat to the health and safety of workers has been identified by a HSR, the PCBU must take action to remove the threat. In doing so, they may direct the workers to carry out other suitable tasks.

If a worker fails to cease work after being directed to do so, the HSR must notify the PCBU as soon as reasonably practicable and if the direction is still not followed the HSR should contact WHSQ on 1300 633 419 (option 3).

Conditions and circumstances that could arise for a direction to cease unsafe work are:

- Serious activity or event is occurring or about to occur
- A contravention that continues or is being repeated e.g.
 - excessive noise levels in the workplace
 - an ongoing requirement to manually lift heavy objects
 - regular exposure to hazardous chemicals that are used in the workplace
 - unguarded machines, and
 - lack of consultation on work health and safety matters.

Legislative restrictions on HSRs when directing to cease unsafe work



Direction to cease unsafe work (WHS Act s85)

The HSR must not give a direction to cease work unless the matter is not resolved after:

- consulting about the matter with the PCBU, and
- attempting to resolve the matter

The HSR may direct the worker to cease work without carrying out consultation or attempting to resolve the matter as an issue, if the risk is **so serious and immediate or imminent** that it is not reasonable to consult before giving the direction. Where this is the case, the HSR must carry out the consultation as soon as practicable after giving a cease work direction.

The HSR must inform the PCBU of any direction given by them to workers under this section.

A health and safety representative cannot give a direction to cease unsafe work unless the representative has:

- completed training prescribed by the regulation

As of 29 July 2024, if a HSR directs worker(s) to cease work, the HSR must as soon as possible give a cease work notice to PCBU, prominently display a written cease work notice, and consult with the PCBU to resolve the matter.

As of 29 July 2024, a HSR cease work notice must contain certain information, such as the name of the HSR, the provision of the WHS Act the notice is given under, the day and time

the notice is given, a brief description on the work being performed by the worker and the exact risk the worker is being exposed to.

Activity: Directing unsafe work to cease

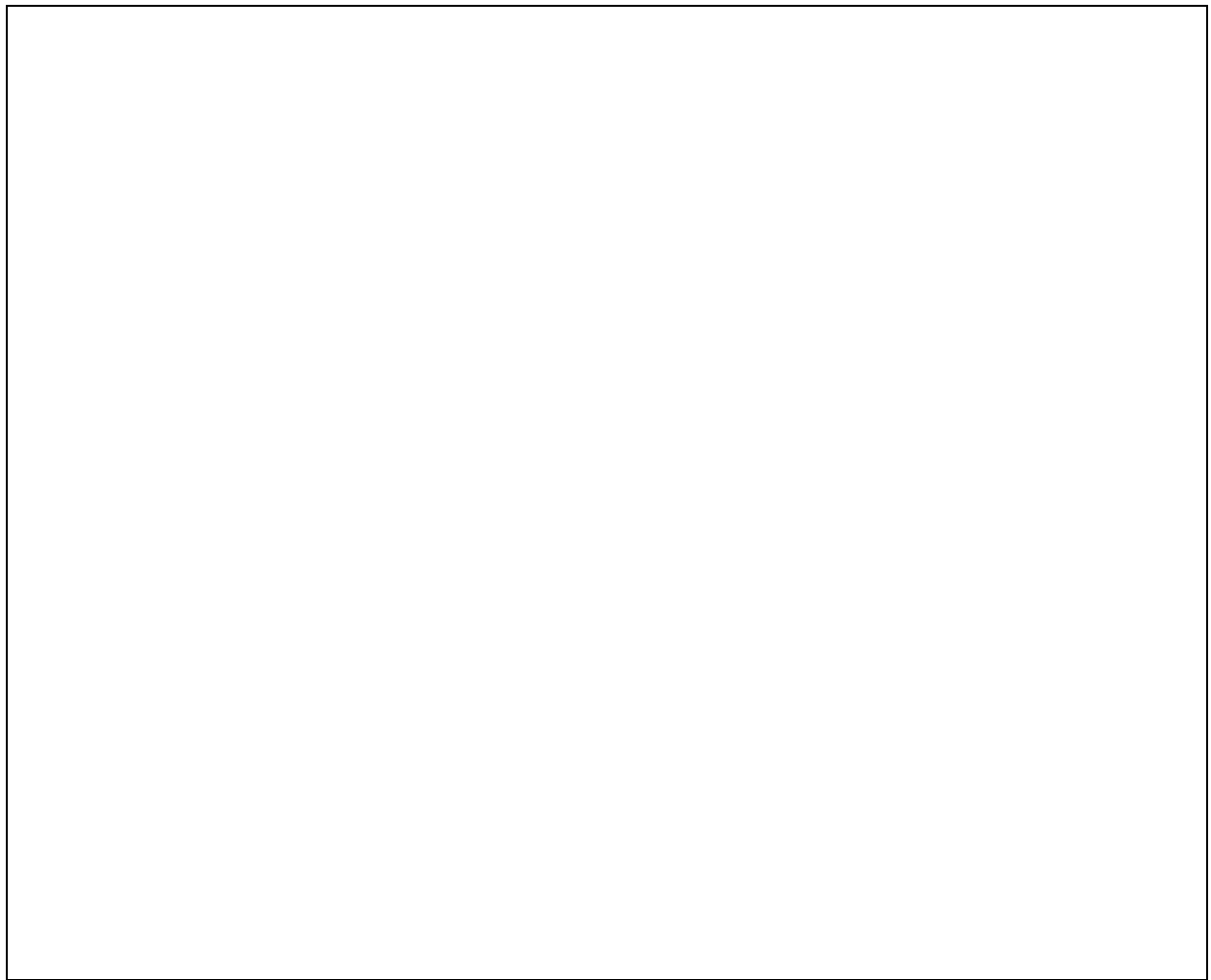


Review the following scenarios and discuss what would be the most appropriate actions to undertake in the circumstances.



Indicative time – 20 minutes

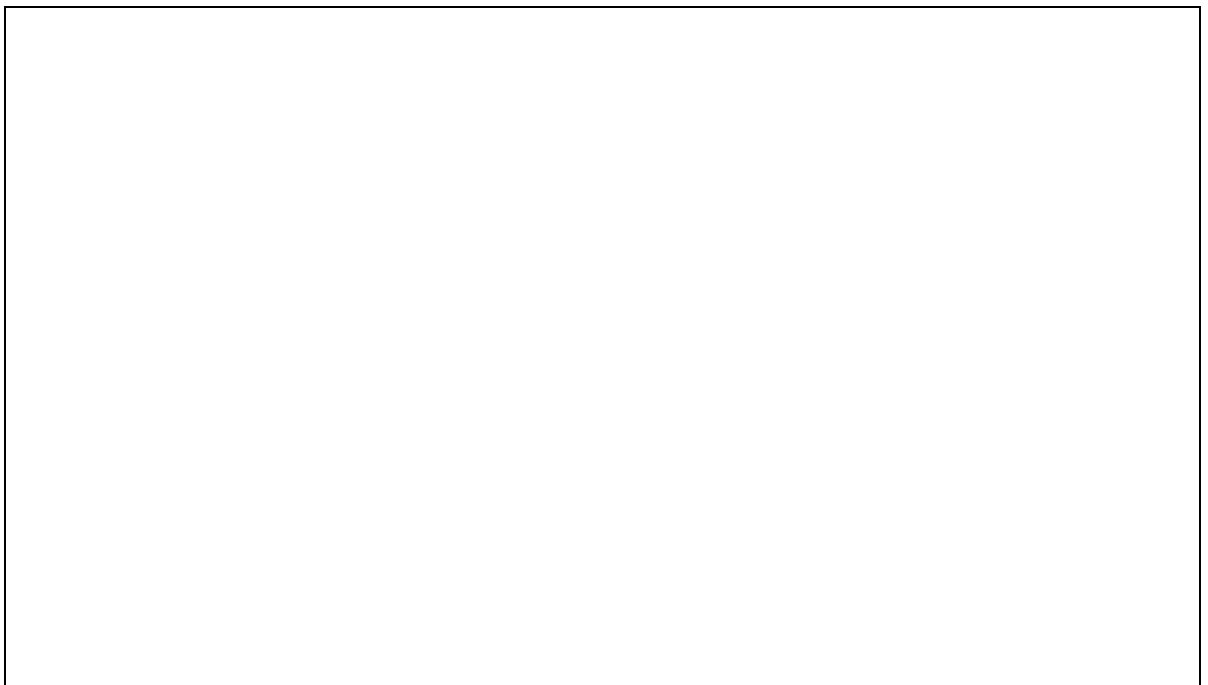
1. A contract worker enters a workplace to undertake work on behalf of their PCBU to find that the equipment that they have been given to work with is unsafe, with obvious damage, and could possibly cause an electric shock. What can you do as the HSR for this worker who is a member of your workgroup?



2. A worker in a factory finds guarding is continually being removed from some equipment that they regularly work with and is not being replaced. That matter has been reported to the supervisor, but no actions appear to have been taken and it continues to happen.



3. A worker for a transport company arrives at a distribution centre to find mobile equipment is being used in the loading area making it unsafe to unload. As the worker's HSR you are called to the area. What actions can be taken?



Process and requirements for cessation of unsafe work including responsibilities of PCBUs, workers, HSRs and WHSQ Inspectors



Request to regulator to appoint Inspector to assist (WHS Act s89)

The HSR or the PCBU or the worker may ask the regulator to appoint an Inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work.



As we have identified earlier in training a WHSQ Inspector may:

- provide information and advice
- conduct inspections (take photographs and make video and audio recordings),
- require the occupier of those premises to provide the authorised representative with such assistance and facilities as is or are reasonably necessary to enable the representative to exercise his or her functions under this section (or as prescribed under regulation)
- require the production of and inspect any documents in or about those premises that directly affect or directly deal with the work health and safety of employees working at those premises,
- take copies of or extracts from any such documents.
- require production of documents and persons to answer questions
- copy and retain documents, seize evidence and the workplace or part, if deemed to be dangerous

Inspector activity for cessation of work requests

A system of escalating enforcement measures is available under the WHS Act to achieve the best outcome for work health and safety at the earliest opportunity.

Some of these measures include the issue of:

- Improvement notices
- Prohibition notices
- Infringement notices
- Non-disturbance notices

Where early intervention measures either fail or are not appropriate (e.g. Category 1 offences), prosecutions may result in various types of orders being imposed, fines or imprisonment.

Exercising Inspector Powers (WHSQ Act S.188-190)



A person must not:

- Intentionally hinder or obstruct (or encourage anyone else to do so) an inspector in exercising their powers.
- Directly/indirectly assault, threaten or intimidate or attempt to do so to an inspector or any person assisting an inspector.

Maximum penalty of 100 penalty units may apply to any person falsely claiming to be an Inspector.

Summary - Day 5



Record key information below that you can use back in your workplace or wish to investigate further. Don't forget to ask questions of anything that you are not sure about.

Session 1: Issuing of PINs

Session 2: Directing unsafe work to cease

Session 3: Workplace culture and practical consultation.

Continuous Learning, Certification and Evaluation

Continuous or lifelong learning encourages people to take part in work related skills through school and at all stages throughout their career and working life.

Australia has experienced major changes in the global labour markets throughout the years. These changes include:

- Increase global competition
- Rapid technological change
- Growth in small business
- Change in working arrangements as in varying shifts and part time workers
- Change in governments which allow increased roles and initiatives
- Emergence of service and knowledge based industries

As with the changing markets, the principle of managing WHS is constantly changing. The field of WHS is continuously evolving, therefore, WHS persons must continuously evolve in keeping with these changes.

Persons who wish to undertake additional training in WHS can access continuous learning materials on WHSQ's website www.worksafe.qld.gov.au and Safe Work Australia's site on www.safeworkaustralia.gov.au

A PCBU with internet capabilities should encourage those workers wishing to undertake this continuous learning via internet access.

In addition to the continuous learning materials on the WHSQ's website, there are many useful links to other WHS sites.

Subscriptions to professional WHS journals, newsletters and/or magazines also provide excellent sources for continuous learning, particularly current trends and updates.

Day 5 - Session 4

Course review and evaluation

Learning Aim

This session summarises and concludes this course including assessment of participants understanding and evaluation of the course

Learning Outcomes

After completing this training session, participants should be able to:

1. Explain the need for effective consultative arrangements in the workplace.
2. Review the elements of effective and meaningful consultation
3. Discuss the responsibilities of the HSR, PCBU and HSC
4. Summarise the principles of eliminating and managing risk
5. Understand the role and powers of a WHSQ inspector
6. Detail the various resources available to provide for continuous WHS learning

Session Duration

The nominal duration is 2 hours

Learning Outcomes and Expected Learner Applications Day 5 - Session 4

Learning outcome	Expected Learner Applications
<p>After completing this session, participants should be able to:</p> <ol style="list-style-type: none"> 1. Explain the need for effective consultative arrangements in the workplace. 2. Review the elements of effective and meaningful consultation 3. Discuss the responsibilities of the HSR, PCBU and HSC 4. Summarise the principles of risk management 5. Understand the role and powers of a WHSQ inspector 6. Detail the various resources available to provide for continuous WHS learning 	<ul style="list-style-type: none"> • Describe and explain the need and importance for effective consultative arrangements in the workplace • Detail the legislative responsibilities of HSRs, PCBUs and HSCs • List activities or duties that HSRs and HSCs can perform • Detail the process of risk management and state the methods of hazard identification, processes for risk assessment and hierarchy of control • Describe the powers of a WHSQ inspector • List examples of various resources available • Complete course review and evaluation

Activity: Course review

Complete a Provisional Improvement Notice (PIN)

Participants are to use a Form 44 provisional improvement notice to complete the PIN for the scenario detailed below. All areas must be completed.

Details

Duty holder/PCBU: David Doe

Name of business: Doey's Warehouse

Address of workplace: 222 Avocado Street, Parkwood, Queensland 4214

Participant: Elected HSR

Contact Number: 12345

HSR workgroup: Back Room

Scenario

A worker from your workgroup has raised concerns regarding chemicals being stored in the work area. After closer inspection you identify these chemicals are hazardous. After conducting research on hazardous chemicals, you identify that the PCBU must have and maintain a Hazardous Chemical Register if storing hazardous chemicals on-site.

You approach DOE and ask to see the register. DOE tells you he doesn't have one. You inform DOE it's a requirement under legislation. DOE promises he'll organise one within the week. After the conversation you forward DOE an email confirming what was discussed and a friendly reminder of the responsibilities of the PCBU.

A week later you approach DOE and ask to see the Hazardous Chemicals Register. DOE states he's been too busy, but just give him a couple more days and he'll have it organised. You again follow this conversation up with an email to DOE.

After 3 days you approach DOE, he again tells you, he still hasn't had time to organising the register because work's been busy, dog's been sick and drove Aunty Florence to the airport, but when things settle down he'll create a Hazardous Chemicals Register.

Knowledge Questions:



Read through the following questions and answer accordingly. You may consult with members of your group as well as review relevant course information. All responses will be reviewed in large group discussion.



Indicative time - 1 hour

Relevant points

Throughout the course there has been a great deal of information provided to you. It is important that we review the principals involved and answer any questions you may have before we conclude the course.

We have learnt that an effective consultative process is an important part of an integrated systematic approach to managing WHS.

It is important that HSRs, HSCs and other representatives are familiar with their function or role.

Q1. What are the functions of a HSR and a HSC as outlined in the legislation?

The powers and functions of a health and safety representative for a work group are:

The functions of a health and safety committee are:

Q2. What are some of the activities or functions that a HSR may perform in exercising a power or performing a function?

Q3. List some of the ways hazards could be identified?

Q4. What is the Hierarchy of Controls?

We established that our first method of control was to **eliminate the hazard** or work method that creates the risk.

Q5. When can a HSR issue a Provisional Improvement Notice (PIN)?

Q6. What requirements must be met to enable the HSR to issue a PIN?

Q7. When may a HSR give a direction to cease unsafe work?

Q8. What must a HSR do prior to giving this direction?

Activity: Course review



Discuss the following statements and determine whether they are true or false. Record your answers on the table and they will be discussed with the facilitator and the wider group.

(You may review information in the WHS Act and WHS Regulation if needed)



Indicative time - 30 minutes

Representation and Participation Review

Discuss with your group members the following statements and determine whether they are true or false. Record your answers and they will be discussed with the facilitator and the wider group.

Statement	True	False	Provision
1. A worker can only cease work if directed to by a Health and Safety Representative (HSR).			
2. A WHS entry permit holder is not permitted to warn persons other than workers from the workgroup they represent of a serious and immediate risk to health and safety in the workplace.			
3. Consultation under the WHS Act requires relevant information to be shared with workers and that workers be given reasonable opportunity to express their views, have their views taken into account, raise WHS issues and contribute to decision making processes. If there is a HSR they must be involved in the consultation.			
4. A worker who ceases work or does not commence unsafe work must notify the relevant PCBU of the workplace as soon as possible and then remain available for alternative work.			
5. A WHSQ inspector may only be requested by the PCBU to help resolve an issue about unsafe work.			
6. A PIN can be issued by a suitably trained HSR if they believe a provision of the WHS			

Statement	True	False	Provision
Act has been breached and may continue to be breached.			
7. A PIN can still be issued by a HSR if an inspector has reviewed the matter and decided not to issue an improvement or prohibition notice.			
8. Discriminatory, coercive and misleading behaviour is prohibited in order to protect people with various roles (including HSRs) and functions under the WHS laws.			
9. A HSR who disclosed a person's medical information to others without the person's permission could be disqualified			
10. A HSR could be personally liable for exercising a power or function in good faith			
11. A HSR has a duty to manage health and safety risks for their work group			
12. 'Risk control' means taking action to eliminate health and safety risks so far as is reasonably practicable			

Enforcement Measures

Discuss with your group members the following statements and determine whether they are true or false. Record your answers and they will be discussed with the facilitator and the wider group.

Statement	True	False	Provision
1. WHSQ's role as the regulator is to provide advice and information on work health and safety; foster cooperation and consultation; and monitor and ensure compliance with the WHS legislation.			
2. Inspectors can only enter a workplace when invited by the PCBU or worker.			
3. WHSQ Inspectors can assist in resolving work health and safety issues and those relating to access and entry rights at a workplace.			
4. A WHSQ inspector is entitled to inspect any item or document and take samples.			
5. You do not have to answer questions from an inspector when they are investigating as it could be used against you in court.			
6. A WHSQ inspector is not entitled to request your name and residential address when at the workplace.			
7. A person is not permitted to hinder, obstruct, threaten or intimidate an inspector or encourage another person do so and can receive serious fines and possibly jail time if they do so.			
8. A PIN can be issued by a trained HSR, be reviewed by an inspector and be enforceable.			
9. The court can order a person to undertake or arrange for workers to undertake specific training.			

Now it is time to undertake a course evaluation

Activity: Course evaluation



Please complete the course evaluation form and provide an **honest** assessment of the course.

The evaluation of this training course will assist WHSQ and the training provider to further develop the package to the benefit of future participants.



Indicative time - 10 minutes

Further information

This course has been designed to give persons the necessary skills and knowledge to enable them to operate effectively as an HSR.

Should you have any questions once you return to the workplace you can contact the WHSQ Advisory Services (HSR Direct Line) on **1300 633 419 or lodge a safety question on the website.**

Link to Ask a Safety/Legislative question:

<https://fswgap.worksafe.qld.gov.au/whsq-enquiry/>

Course Review

NOTE: Participants are to be given this page separately to complete

How do you feel about the following statements?	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
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Work Health and Safety (WHS) laws

- | | | | | | |
|---|-----|-----|-----|-----|-----|
| 1. I know what the work health and safety laws are and where to find information on them. | [] | [] | [] | [] | [] |
| 2. I understand my employers' responsibilities under WHS laws. | [] | [] | [] | [] | [] |
| 3. I understand my responsibilities as a worker under WHS laws. | [] | [] | [] | [] | [] |

Current involvement in safety in the workplace

- | | | | | | |
|--|-----|-----|-----|-----|-----|
| 1. I know what the arrangements for consultation are in my workplace. | [] | [] | [] | [] | [] |
| 2. I know how hazards and incidents are identified and reported in my workplace. | [] | [] | [] | [] | [] |
| 3. I understand how hazards are to be managed in my workplace. | [] | [] | [] | [] | [] |

Duties in the workplace under WHS legislation

- | | | | | | |
|--|-----|-----|-----|-----|-----|
| 1. I understand what a duty holder in the workplace is and who they are. | [] | [] | [] | [] | [] |
|--|-----|-----|-----|-----|-----|

How do you feel about the following statements?	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
2. I understand the definition for workers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. I understand the responsibilities of workers and others.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. I understand the responsibilities of persons conducting a business or undertaking (PCBU).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. I understand who officers are and their responsibilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Representation and participation under WHS laws

1. I understand the difference between the role of a HSR and a HSC.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. I understand who can issue a provisional improvement notice (PIN) and a direction to cease unsafe work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. I understand the process for issuing of a PIN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. I understand the issue resolution process.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>