

# HEALTH AND SAFETY REPRESENTATIVE TRAINING COURSE

## One-day Refresher Course

Participant Guide

Version 4.3 November 2024



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# Course Outline

## Course Target Audience

The target audience of this course includes all elected HSRs under the WHS Act who have previously completed the approved initial five day training course (or the equivalent training approved under the transitional provision of the WHS Regulation). Participants will refresh their understanding of their roles, powers and functions in the representation, monitoring, investigation and enquiry into work health and safety management at their workplace under the WHS law.

## Pre-requisites and Co-requisites

This refresher training package is intended to be delivered as the WHSQ HSR refresher training course for elected HSRs who have previously completed the approved five-day initial training course.

Therefore, persons eligible to complete this training package are:

- elected HSRs who have completed either the approved five-day initial training course, or the 1-day refresher course in accordance with the *Work Health and Safety Act 2011*; within the past 12 months.

## Recognition of Prior Learning (RPL)

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

## Learning Aims, Outcomes and Assessment Criteria

The learning aims, outcomes and assessment criteria for this course are specified in the Facilitator's Notes, at the commencement of each session.



## Course timing

The normal delivery time allocated for this course is a **7 hour day** (not including breaks). 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 to suit but they must retain their original intention.

## 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 the expected learner applications for all participants as detailed in the learning outcomes.

## Assessment Decision

Facilitators should 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.

## 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
- Access to a full copy of the *Work Health and Safety Act 2011* (printed or electronic\*)
- Access to relevant extracts of the *Work Health and Safety Regulation 2011* (printed or electronic\*)
- *Work Health and safety consultation, cooperation and coordination Code of Practice 2021* (printed or electronic\*)

*\*Note – if using electronic copies, each student must have access to an individual device (e.g. laptop or tablet), smart phones are not acceptable devices. If using hard copies, 1 copy per 2 students is sufficient.*



# Course Timetable

*Note: Times are approximate only*

TIME	SESSION	OUTLINE
8:00am	<b>Introduction</b>	<ul style="list-style-type: none"> <li>• General introduction</li> <li>• Course objectives</li> <li>• Learning outcomes</li> </ul>
8:20am	<b>Session 1:</b> Legislative Framework and Duties	<ul style="list-style-type: none"> <li>• Key Terminology</li> <li>• WHS Act, Regs and CoP</li> <li>• WHS Framework               <ul style="list-style-type: none"> <li>• Culture</li> </ul> </li> <li>• HSRs and HSCs</li> </ul>
10:45am	<b>Morning Tea</b>	
11:00am	<b>Session 2:</b> Work Health and Safety Culture & Issue Resolution	<ul style="list-style-type: none"> <li>• Complaint Investigation               <ul style="list-style-type: none"> <li>• Problem Solving</li> <li>• Conflict Resolution</li> </ul> </li> </ul>
12:15pm	<b>Lunch</b>	
12:45pm	<b>Session 3</b> Monitoring Health and Safety Risks Notifiable Incidents	<ul style="list-style-type: none"> <li>• Risk Management Process               <ul style="list-style-type: none"> <li>• Risk Matrix</li> <li>• Control Measures</li> </ul> </li> <li>• Notifiable Incidents</li> </ul>
1:45pm	<b>Afternoon Tea</b>	
2:00pm	<b>Session 4</b> Provisional Improvement Notice (PIN) and Ceasing Unsafe Work	<ul style="list-style-type: none"> <li>• Reasonable Belief</li> <li>• PINs (issuing, due date, process, compliance, changes and dispute)</li> <li>• Right to cease work</li> </ul>
3:30pm	<b>Course Review and Evaluation</b>	<ul style="list-style-type: none"> <li>• Review of information covered</li> <li>• Feedback forms</li> </ul>

# Course Overview

## Course Introduction

Welcome to this refresher training course. On completion of the initial training, as a HSR or Deputy HSR you are entitled to a yearly refresher training course. This course aims to reinforce your knowledge and skills attained in the initial training course.

The model WHS Act and WHS Regulation provide a national WHS framework from which the states, territories and the Commonwealth have progressively harmonised the WHS legislation to varying degrees across Australia. The WHS legislation commenced in QLD on 1 January 2012.

### Slide 3

## Course Objectives and Learning Outcomes

The course will refresh and reinforce relevant information for HSRs relating to:

- the requirements of the Work Health and Safety (WHS) legislation including the functions and powers of HSRs
- how the WHS legislation applies to their role as a HSR
- the additional knowledge and skills necessary to use their powers under the WHS legislation in issuing Provisional Improvement Notices (PINs) and ceasing unsafe 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 their knowledge and skills to continue to apply the principles of workplace consultation on health and safety matters

**Learning outcomes** of this course are that participants will have the knowledge and skills to describe and discuss:

- Work Health and Safety Culture
- Work Health and Safety Legislative Framework
- Consultation, Representation and Participation
- Role of the HSR, Issue Resolution and Support
- Risk Management and Monitoring

- Provisional Improvement Notices and ceasing unsafe work

## Slide 4

### Housekeeping

- Emergency Procedures
- Participants materials
- Slides – page numbers and legislation
- Breaks, location of facilities
- Participation in the course
- Parking, mobile phones, smoking

## Slide 5

### Course Outline

The course is divided into four sessions with a review at the end of the day.

Introduction

Session 1: Legislative Framework and Duties

Session 2: Work Health and Safety Culture and Risk Management

Session 3: Monitoring Health and Safety Risks and Notifiable Incidents

Session 4: Provisional Improvement Notices (PINs) and ceasing unsafe work

Course review and evaluation

## Slide 6

### Group Introduction – ice breaker

- Introduce yourself and talk about your experience as a HSR
- How many members are in your workgroup

# **Session 1**

## **Legislative Framework and Duties**

# **Session 1: Legislative Framework and Duties and Work Health and Safety Culture**

## **Learning Aim**

This session aims to provide participants with an understanding of the WHS legislative framework and the duties under the WHS Act as well as learning what a positive safety culture is in the workplace – Powers and functions of the regulator, HSR and HSC.

## **Learning Outcomes**

After completing this, session participants should be able to:

- Identify and understand various elements of the legislative framework
- Understand the objectives and principles of the WHS Act
- Understand the role and functions of WHSQ and their interaction with HSRs
- Summarise the duties and responsibilities of PCBU's under the legislation
- Describe the nature of the consultation process with workers
- Identify the duties and responsibilities of officers, workers and other parties
- Identify and discuss the range of enforcement options

## **Assessment Method**

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

## **Session Duration**

The nominal duration of this session is 2 hours 25 minutes.

### Key terminology

Under the WHS legislation a number of key terms and definitions have changed. 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.

Work Health and Safety (WHS)

Person Conducting a Business or Undertaking (PCBU)

- Includes corporations, partnerships, labour hire businesses, associations, franchises etc

Worker

- Includes employees, contractors, volunteers, apprentices, outworkers, trainees, work experience persons etc

Health and Safety Representatives (HSR)

Health and Safety Committee (HSC)

Officer

- Defined under the section 9 of the Corporations Act 2001

Others

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



## PCBU

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.

*Examples include: Not for profit organisations, government departments, small business owners such as retailers and self-employed persons.*

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

## 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. Section 9 of the *Corporations Act 2001* provides a full definition of an officer, and 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.

Note: 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.

## Worker

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

*Examples include: employees, contractors, labour hire, apprentices, outworkers, trainees, work experience persons etc.*

## 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 waters and any installation on land, on

the bed of any waters or floating on any waters. A workplace can include any structures, plant and/or substances.

## 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
- any component of any of those things; and anything fitted or connected to any of those things.

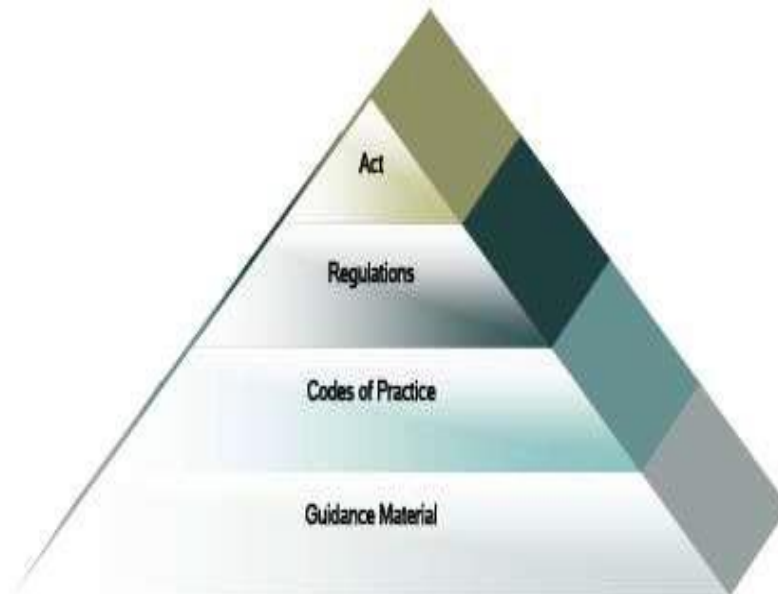
Schedule 19 of the WHS Regulation states that the meaning of plant in Part 5.2 & Part 5.3, includes a structure.

## Substance

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

Schedule 19 of the WHS Regulation provides further clarification on the meaning of substance in Part 7.1.

## Work Health and Safety Framework



*NOTE: Throughout the WHS Act, the meaning of 'health' includes psychosocial health as well as physical health.*

### The Work Health and Safety (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 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: 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
- are admissible in evidence as an example of what reasonably practicable measures could have been adopted to avoid a specific risk.

Safe Work Australia develop the Codes of Practice, and Workplace Health and Safety Queensland have developed some further Codes of Practice relevant to Queensland. They 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. Remember, these codes don't cover every risk which may arise. It's best for you to consider all hazards connected to your work, not only those that are regulated. If you're a duty holder, you can use another method to meet your legal duties. But you need to make sure your approach gives the same or a higher standard of work health and safety than the relevant code of practice.

## 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 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 and effective representation, consultation and cooperation in relation to health and safety issues in the workplace
- 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.
- encourage unions and employer organisations to take a constructive role in improving health and safety practices

## Assistance and support for the HSR

### 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.

### Work Safe Qld (WHSQ)

WHSQ is a valuable source of information for HSRs. The WHSQ website ([www.worksafe.com.au](http://www.worksafe.com.au)) is where you can find the legislation for Queensland, guidance material. Alternatively, you can contact the HSR Direct hotline 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

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.

## Slide 12

## 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 their **knowledge** of work health and safety
- gain an **understanding** of 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 occurs 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.



## ACTIVITY: WHS Terminology

Purpose: To have participants familiarise themselves with key terminology of the WHS Act and WHS Regulation.

Guide participants to the terminology exercise in their notes and ask them to connect the terms 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 -



## Health and Safety Duties - PCBU's

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 PCBU has a primary duty under the WHS Act.

### Primary Duty of Care (WHS Act s.19)

A PCBU has **the primary duty of care** 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 Person Conducting a Business or Undertaking (PCBU's)

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, structures 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, structures 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.

### **Duty of Officers (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. (see

Key Terminology at the start of Session 1 – Officer of a ‘PCBU’ and ‘Due Diligence’)

## Health and Safety Duties - Workers

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
- Cooperate with policies or procedures relating to health and safety that they 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 a primary duty under 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
- 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. Provisions have 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. The director of a company has duties as an Officer and also has duties as a worker.

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

## Principles of 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. These 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.

## ACTIVITY: Health and Safety Duties

Have the group brainstorm one of the following scenarios. Responses can be recorded.

*Scenario 1: Consider a building construction site. The Principal contractor of the site has their own employees, but also engages various sub-contractors and regularly receives deliveries from suppliers.*

*Scenario 2: Consider a Hospital. The hospital has their own employees, but they also utilise a labour hire company for temporary roles, outsource cleaning to an external company and regularly receive deliveries from suppliers.*

Under WHS legislation:

- Who has duties and to whom? **See s.19 of WHS Act (2011)**
- Who are workers what are their duties and to whom do they owe them? **See s.28 of WHS Act (2011)**
- Who are 'others' in the workplace and what are their duties? **See s.29 of WHS Act (2011)**

## Functions and Powers of WHSQ Inspectors

Under the Work Health and Safety Act, inspectors may:

- Provide advice and information
- Investigate breaches of the WHS Act, issue notices to require compliance and assist in prosecutions
- Review PINs issued by HSRs in the event of a dispute
- Assist in resolving work health and safety issues and those relating to access and entry rights at a 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. The information can't be used against them and documents protected by 'legal privilege' are exempt from this requirement.

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.

## Role and function of Workplace Health and Safety Queensland (WHSQ)

Workplace Health and Safety QLD has several functions under the Work Health and Safety Act (s152), including:

- 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 matters 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 prosecutions.

The WHSQ website is [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au) providing information on work health and safety

## **Compliance tools available**

The tools that are available to 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
- accepting an enforceable undertaking
- commencing a criminal prosecution, and
- publicising enforcement actions and outcomes.

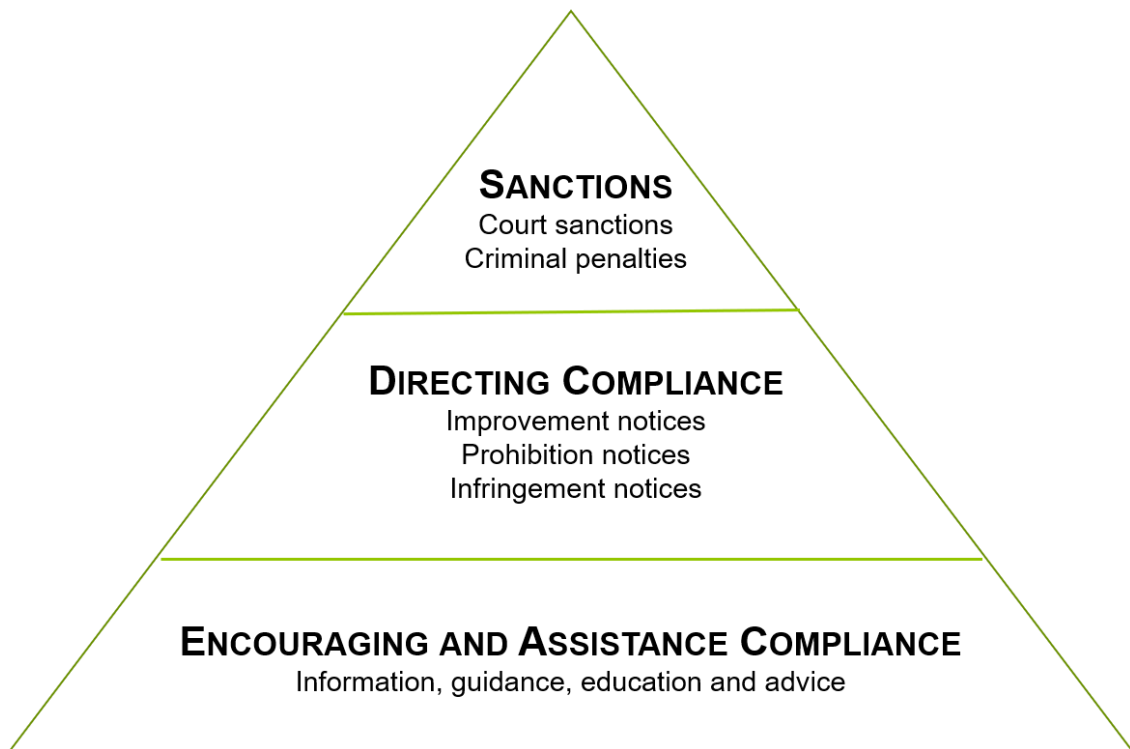
## **Slide 19**

## **Escalating Approach of Regulators**

The pyramid diagram below represents the escalating approach that regulators 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, 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. Regulators 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.





**Enforcement measures of Directing Compliance:**

- Improvement Notices
- Prohibition Notices
- Non-disturbance notices
- Enforceable (WHS) undertakings
- Infringement Notices

**Potential outcomes of Sanctions:**

- Adverse publicity orders
- Orders for Restoration
- Work Health and Safety (WHS) project orders
- Court ordered WHS undertakings
- Injunctions
- Training Order

## Activity: Navigating the WHS Website

You will be shown how to navigate WHSQ website

[www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au) (Note: This website is shared with WorkCover Queensland)

The facilitator will now guide participants through key areas of the WHSQs website including:

- Laws & Compliance (tab)
  - WHS laws
  - Codes of Practice
- Safety and Prevention (tab)
  - Incidents and Notifications
  - Mental Health (Mentally healthy workplaces toolkit)
- Resources (tab)
  - Publications
  - Videos
  - PIN Form
- Popular Links
  - Workplace concern
- News and Events
  - Newsletters (eSAFE)
- Health and Safety Representative Portal
- Licensing & Registrations

## Health and Safety Duties - Penalties

There are three categories of offence that, if prosecuted under the act, could lead to hefty fines and/or imprisonment. The Table below outlines the maximum penalties for each category:

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) or 5 years imprisonment	6,000 penalty units (\$600,000) or 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 (\$1,500,000)
Category 3	500 penalty units (\$50,000)	1,000 penalty units (\$100,000)	5,000 penalty units (\$500,000)

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## 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 PCBU's) 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 200 penalty units)
- Failure to consult workers (maximum 200 penalty units)
- Failure to notify of a notifiable incident (maximum 100 penalty units)

*Note: 1 penalty unit = \$100*

## Industrial Manslaughter

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

*A maximum penalty of 20 years imprisonment for an individual, or fine of \$10m for a body corporate, applies.*

## Slide 22

## Health and Safety Representatives

The facilitator should expand on the key points mentioned in this slide. Health and safety representatives:

- are eligible to be elected for a work group only if they are a member of that workgroup, and once elected, have a three year term of office.
- need to be re-elected after each 3 year term
- must receive approved training/refresher training within three months of election/re-election.
- As of 29 July 2024 - A HSR may choose the training course they attend and receive remuneration at their usual rate of pay (e.g. including overtime) for attending training.

As of 29th July 2024, PCBU's are prohibited from hindering a worker from making a request to facilitate the conduct of an election for one or more HSRs. A PCBU must, 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.

As of 29th July 2024, A PCBU 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.

### **Health and Safety Representatives:**

- Can cease to hold office if they (WHS Act 2011: s. 65(2):
  - they leave the work group
  - they are disqualified from being an HSR. Any person adversely affected by a decision or action of an HSR can apply to the commission to have them disqualified.
  - they resign as an HSR. The HSR must advise the PCBU in writing if they resign.
  - 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.
- are not personally liable for anything they have done or not done in 'good faith' while exercising a power or function under the WHS legislation or when they reasonably believe they were exercising a function under the legislation.

*While there is no standard definition under QLD law, 'good faith' is generally considered to be any necessary actions taken with the right intent under the given circumstances. (i.e. carrying out their duty to the best of their ability with the given resources and with honest intention). For example, if a Provisional Improvement Notice (PIN) is issued by a HSR, and it is done because of serious concerns for health and safety and other attempts to resolve the matter have failed.*

- Persons are not eligible for election if they have been disqualified under the WHS Act 2011 s.65 (eg. for inappropriate behaviour with respect to their role).

## **Slide 23**

### **Deputy HSRs**

- Deputy HSRs can fulfil the HSR 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.

### **HSR Lists**

A PCBU must keep a current list of all HSRs and deputy HSRs and display a copy at the workplace. It is also a requirement that the PCBU notifies the Regulator of all trained HSRs. This can be done via the Health and Safety Representative Portal

## Slide 24

### Powers and Functions of HSRs

The responsibility for providing a healthy and safe workplace rests with the PCBU and its officers. A HSR has an important role to play in representing members of their work group and bringing issues to the attention of the PCBU.

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.

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 their duties to consult with workers under Part 5 Division 3 (s. 70) 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
- As of 29 July 2024 - request and receive information from a PCBU and accompanying an Entry Permit Holder (EPH) at the workplace.
- attending interviews with one or more members of the work group 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 and

- in certain circumstances, issuing a Provisional Improvement Notice (PIN) and directing a worker to cease unsafe work.

## Slide 25

### Additional Powers and Functions of HSRs

- **Request** the establishment of a Health and Safety Committee (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 WHSQ Inspector or a suitable entity for the HSR 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 e.g. Technical expert such as an engineer.

**When might a HSR request assistance from another person?**

**How might HSRs monitor the measures taken by the PCBU?**

## Powers of Health and Safety Representatives

	Power/function/right	Restrictions
S68(1)	<ul style="list-style-type: none"> <li>• Represent workers</li> <li>• Monitor compliance</li> <li>• Investigate complaints</li> <li>• Inquire into risks</li> </ul>	WHS matters relating to workers in relevant work group (unless other HSR not available)
S68(2)	<ul style="list-style-type: none"> <li>• Inspect workplace</li> <li>• Accompany inspector</li> <li>• Attend worker interview</li> <li>• Request HSC</li> <li>• Receive information re WHS of workers in work group</li> <li>• Request assistance</li> </ul>	Of work group and after notice In workplace of work group With consent of worker(s)  Other than personal or medical information where identity apparent Whenever necessary
S81(2)	<ul style="list-style-type: none"> <li>• Commence issue resolution</li> </ul>	Meet the requirements Clause 23 “Default procedure”
S85	<ul style="list-style-type: none"> <li>• Direct worker to cease unsafe work</li> </ul>	Reasonable concern of serious risk HSR must be trained After consultation with PCBU
S90	<ul style="list-style-type: none"> <li>• Issue PIN</li> </ul>	HSR must be trained and after consultation with PCBU

## Slide 26

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

**What assistance can you provide as a HSR of another work group?**

**What challenges may occur in doing so?**

## Slide 27

### Protection 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

## Slide 28

### ACTIVITY: HSR duties under the WHS Act

Have participants discuss the answers to questions below.

**Is the HSR a duty holder under the WHS Act?**



Can a HSR be personally responsible for mistakes?

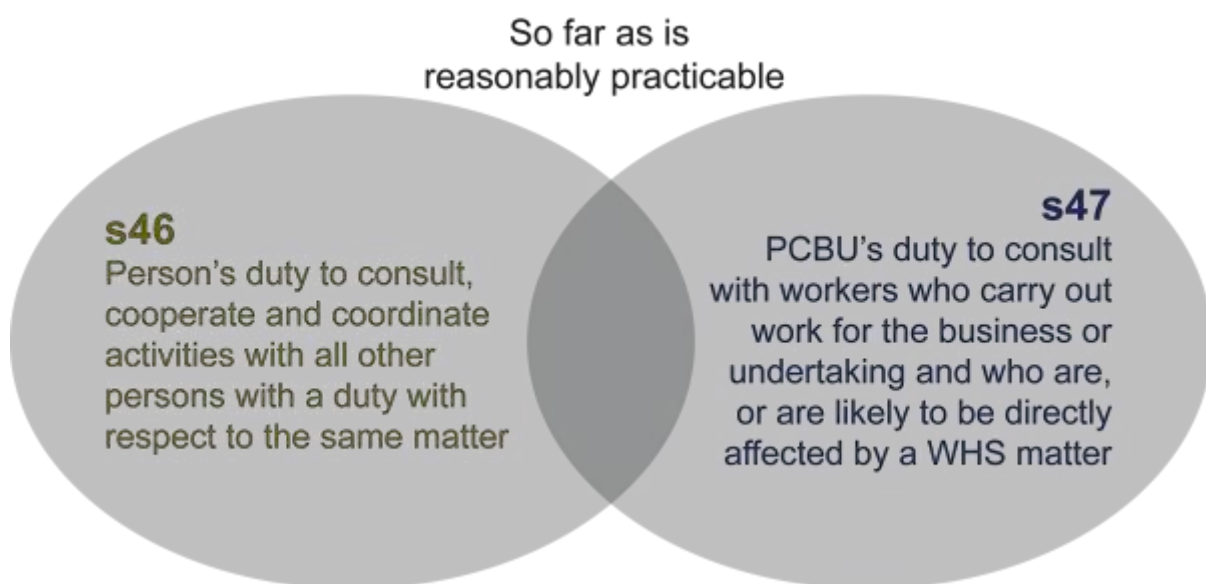
What can I do if I feel my manager is discriminating against me because I'm a HSR?

## Slide 29

### PCBU Duty to Consult with workers

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 affect the health and safety of workers.

Consultation involves **sharing of relevant information** about hazards in the work environment and work activities. For example, 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.



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, and (b) workers are given a reasonable opportunity to express their views, raise health and safety issues and contribute to the decision-making process. The views of workers are to be taken into account by the PCBU and the outcome of the consultation is to be advised to workers in a

timely manner. Section 48(2) also states that if workers are represented by an HSR, the consultation must involve the HSR. *Further information is available in the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021*

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

## Slide 30

### Consultation Arrangements

Consultation under the WHS Act between duty holders is designed to ensure that all persons who may impact on work health and safety contribute to the management of health and safety e.g. suppliers, persons in control of the workplace, other PCBUs.

Consultation arrangements between PCBUs and workers include:

- **Health and Safety Representatives** (HSRs) and deputy HSRs with their role focused on monitoring, investigating, enquiring and representing workers' work health and safety issues for their workgroup
- **Health and Safety Committees** (HSCs) – having a role as the forum for consultation which will facilitate and assist in developing standards, rules and procedures relating to health and safety for the workplace
- Consultation, cooperation and coordination **between duty holders**
- Consultation involving **multiple-business** work groups
- The role of **WHS entry permit holders** (union representatives)

- **Issue Resolution process** requirements
- Issuing of **Provisional Improvement Notices (PINs)** and **directing unsafe work to cease** by trained HSRs
- The right of workers to **cease unsafe work** being clearly stated
- **Terms of office** and **training** for HSRs, HSC members and WHS entry permit holders.

*Further information is available in the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021*

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

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, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter.

**HSRs can be shared between PCBUs**, for example a labour hire company and the host employer sharing a HSR 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.

## **Workplace Health and Safety Officer (WHSO)**

A WHSO may be employed by the PCBU to assist with the management of safety within the workplace.

## **Slide 31**

## **Obligations of PCBUs to HSRs**

One of the objectives of the Act is '**providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety**'. This objective is met through provisions in the Act that emphasise consultation and cooperation between PCBUs and workers. The WHS Act provides for a consultative framework that incorporates:

- Work groups
- HSRs and deputy HSRs
- HSCs.

A PCBU has the following obligations (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 workplace 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
- allow a suitable entity assisting 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's also have obligations to HSRs regarding providing information, copies of notices, copies of information given to the regulator about notifiable incidents, permitting HSR's to accompany entry permit holders, informing HSR an inspector is at the workplace, and ensuring HSR's are paid their usual remuneration (including overtime, penalties, and allowances) when 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 the 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 their functions and exercise their powers.

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

## When Consultation is required

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.

The WHS Act requires that the views of workers and HSRs 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 PCBUs 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.

### **Discussion:**

**How can workers be involved in identifying and assessing risks?**

**How can workers contribute to the ways in which risks are to be eliminated or minimized?**

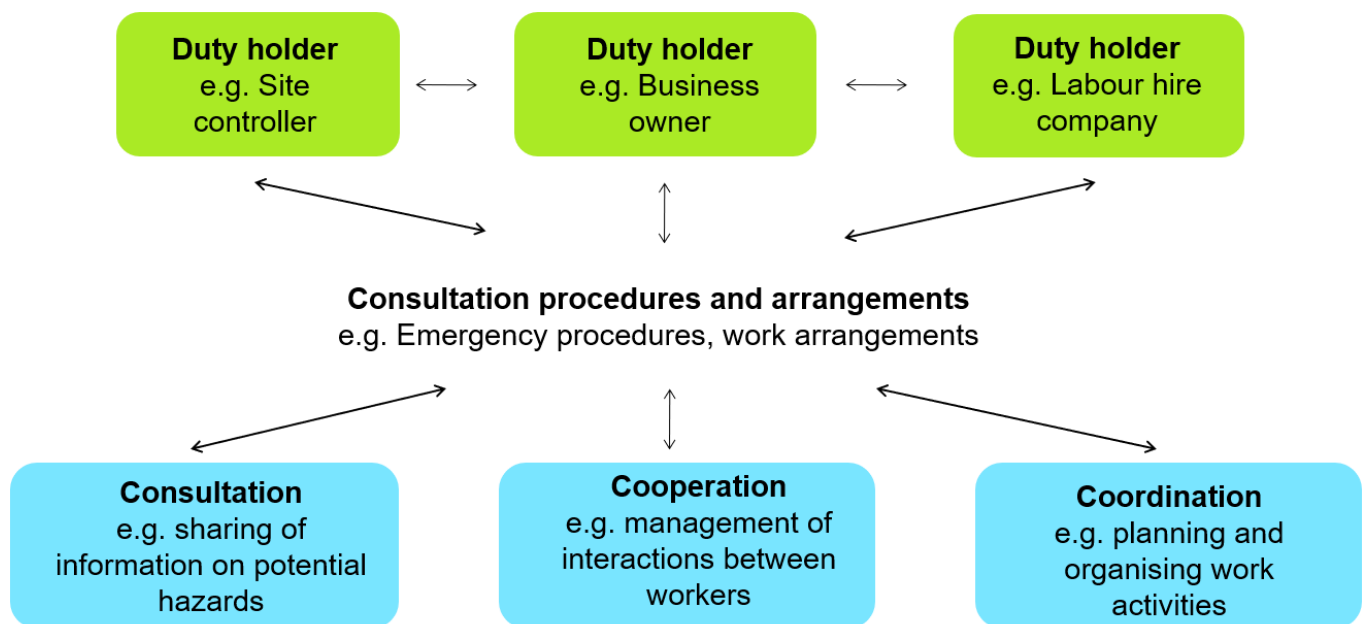
**When consultation is required, what is the role of the HSR?**

## Consultation Between Duty Holders

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 with other duty holders to ensure that they meet those duties

**Consultation** between duty holders could involve sharing of 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 or minimised.

**Cooperation and coordination** could involve the planning and coordination of activities to firstly eliminate the risks to health and safety and, if it is not reasonably practicable to minimise the risks associated with planned and unplanned interactions. It could, for example, be a planned and coordinated approach to managing emergency situations.



### Role of the HSR in Consultation

A HSR's primary role is to represent the work group to management in relation to health and safety issues. They have a very important role in developing or maintaining a relationship between the PCBU and workers on all WHS matters in the workplace. The WHS Act prescribes functions and powers to ensure that they can represent the workgroup, which will allow them to actively participate in decisions about their health and safety at work.

Deputy HSRs can also be selected for workgroups though they are not mandatory. Deputy

HSRs can perform in the role of HSR if the HSR is absent from the worksite.

## Slide 34

### Health and Safety Committees

As of 29 July 2024 - The PCBU must establish a HSC as soon as practicable but no later than 28 days of a request by:

- a HSR for a workgroup carrying out work at the workplace
- 5 or more workers at the workplace, or
- as required by the regulation

A PCBU may also establish a HSC on their own initiative.

#### **A HSC under the WHS Act can:**

- facilitate cooperation to instigate, develop and carry out measures designed to ensure workers' health and safety
- assist in developing health and safety standards, rules and procedures that need to be followed and
- any other functions prescribed by the regulation or agreed between PCBU and the HSC

**At least half the members must be workers who are not nominated by the PCBU** and no training is required.

A HSC member, if not a HSR and is not entitled to carry out the functions of an HSR, be it trained or untrained.

HSCs must meet at least once every 3 months and at any reasonable time at the request of at least half of the members of the committee.

Under the WHS Act, the functions of the HSC are different to that of the HSR. 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 cooperation, 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. If the parties can't agree about the constitution of the HSC, they can ask the regulator to appoint an inspector to assist with reaching an agreement.

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, cooperation and coordination of activities between multiple PCBUs to develop a coordinated systematic management of health and safety of workers.



The focus of HSCs is more on being the forum for consultation on the business wide management of health and safety such as policies and monitoring systems.

## Slide 35

### Role of the HSR and as a member of a HSC

Unless they do not wish to participate, HSRs are automatically a member of the relevant HSC. If there is more than one HSR at the workplace, the HSRs may agree among themselves as to who will be on the HSC. More than one HSR may be a member of the HSC. A HSR or a member of a HSC you have no additional duties other than those of a worker.

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.

PCBUs must allow each member of the HSC to spend a reasonable amount of time that is necessary to attend HSC meetings or to carry out functions as a member of the HSC and pay HSR members same pay that they are entitled to if they were to perform their normal duties during that period.

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.

## Slide 36

### Functions of the HSC

Functions of the HSC are to:

- Facilitate cooperation between the PCBU and workers in instigating, developing and carrying out measures to ensure workers' health and safety.
- Assist in the development of health and safety standards, rules and procedures to be used and complied with in the workplace.
- Any other functions as agreed to between the PCBU and the HSC.

**How do these functions differ from those of the HSR?**

## WHS entry-permit holders

A **WHS entry permit holder** is an authorised union official who has completed an approved training course and holds a valid and current entry permit issued by the regulator or authorising authority in the relevant jurisdiction.

A WHS entry permit holder may enter a workplace to consult or provide advice to workers on health and safety matters. A WHS entry permit also allows the union official to enter a workplace during working hours to inquire into a suspected contravention of the WHS legislation.

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.

After entering a workplace, a WHS entry permit holder may:

- 
- 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 system, plant, substance, structure or relevant thing at the workplace in relation to the suspected contravention
- inspect and make copies of relevant records or documents kept at the workplace in hard copy or on a computer in relation to the suspected contravention. However, at least 24 hours' (but less than 14 days) notice of the proposed entry must be given to the person from whom the documents are requested as well as the relevant PCBU.
- consult and advise relevant workers in relation to the suspected contravention,
- consult with the PCBU about the suspected contravention
- warn any person who they believe may be/is exposed to a serious and/or immediate

health or safety risk; and

- remain at the workplace for the time necessary for them to achieve the purpose of them entering the workplace (S118(F))

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.

**While at a workplace under right of entry**, a WHS entry permit holder must have their WHS entry permit and photographic identification available for inspection by any person on request.

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' but not more than 14 days' notice.

When entering the workplace to inquire into a suspected contravention of the WHS legislation, a WHS entry permit must give notice of the entry to the PCBU and the person with management or control of the workplace as soon as reasonably practicable unless to give notice would defeat the purpose of the entry or unreasonably delay the entry 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"> <li>Inspect anything relevant to contravention</li> <li>Consult relevant workers and PCBU</li> <li>Inspect or copy any avail document directly relevant</li> <li>Warn any person of risk</li> </ul>
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 <sup>rd</sup> 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"> <li>Consult with or advise 1+ workers who wish to participate in discussions</li> <li>Warn any person of risk</li> </ul>

## Slide 38

### Activity: Roles and Duties of HSRs and HSCs

**Discuss with participants how the roles of a HSC member and a HSR differ, and the activities they may be involved in, in both roles. Divide into smaller groups to discuss the scenario in your workbooks then report back to the larger group with your findings.**

- What is the role of a HSR?
- Are the duties of a HSC member the same as those of a HSR?

- Can a HSC member be personally responsible for mistakes?
- What activities am I likely to be involved in as both a HSR and a HSC member?

# **Session 2**

## **Work Health and Safety Culture Issue Resolution**

# **Session 2: Work Health and Safety Culture & Issue Resolution**

## **Learning Aim**

This session aims to provide details on safety culture and how to identify and manage potential risk in the workplace and utilise issue resolution processes as per the WHS legislation to resolve conflict.

## **Learning Outcomes**

After completing this, session participants should be able to:

- Identify and understand the benefits and procedures of HSR's investigating complaints relating to WHS issues
- Understand the problem solving steps and implement the issue resolution process in accordance with the WHS legislation
- Identify the types of conflict and conflict skills and strategies used in negotiations using the negotiation steps

## **Assessment Method**

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

## **Session Duration**

The nominal duration of this session is 75 minutes

### What is safety leadership

Safety leadership is influencing others to adopt health and safety as an important work goal.

Safety leadership is a particular type of leadership that promotes both physical and psychological safety, and so contributes to a positive safety culture, a physically and mentally healthy workplace, and business performance generally.

Safety leadership refers to the specific behaviour and skills that HSRs, team leaders, supervisors, and managers show in the workplace that promote health and safety.

Many of these behaviours overlap with good leadership practices in general and are especially useful in safety-specific situations.

There are also several behaviours that are specific to safety leadership, such as being vigilant to risks and identifying hazards.

Leading by example in the workplace can:

- help build workers' health and safety knowledge and motivation
- increase compliance with safety rules
- encourage proactive safety behaviours.

### Safety Climate and Safety Culture

Safety climate is the perceived value placed on safety in an organisation at a particular point in time. These perceptions and beliefs can be influenced by the attitudes, values, opinions and actions of other workers in an organisation, and can change with time and circumstance.

- The safety climate is referred to as an organisation's 'mood'.

*Example: The safety climate may improve after implementing a new safety procedure that has been developed in consultation with workers for a specific hazard.that has been developed in consultation with workers for a specific hazard.*

Safety culture embodies the value placed on safety and the extent to which people take personal responsibility for safety in an organisation.

- Safety culture is often described as the 'personality' of an organisation, as it is a shared value of safety.



*Example: If that safety climate lasts a long time, it can lead to positive changes in the underlying safety culture.*

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### Safety Performance

Strong safety leadership will influence the safety climate and build a positive safety culture within an organisation. This will result in improved worker safety behaviours, leading to improved safety performance.

If safety leaders display a strong commitment to safety, motivate staff and provide a positive example of safety, this will improve the safety climate.

If safety leaders continue these efforts over time, it will cause workers to reassess and change their beliefs and values about safety which will positively effect safety culture.

This improved safety culture then positively influences worker safety performance and/or safety behaviors.

Remember:

- When we invest in safety leadership, we can start to influence the safety climate.
- Over the long term we can build a positive safety culture.
- Of course, the desired end product is improved worker safety behaviours.



*Note: It all starts with positive, proactive, engaged safety leadership practices - A leader sets the standard for what is expected, valued, and prioritised.*

## Safety Leadership Skills

HSRs are safety leaders and have an important influence over safety culture.

### *1. Lead by example – be inspirational*

Inspiring leaders provide a role model of the types of behaviours they expect their work group to demonstrate. This could mean getting involved in safety initiatives themselves, sharing a mistake with the team, or helping others to complete work safely.

### *2. Recognise good performance and positive safety behaviours*

Some tips to ensure recognition is carried out effectively include:

- provide timely feedback; don't leave it too long
- check preferences for recognition; how does the work group prefer to receive praise? Not everyone is the same.
- recognise leading rather than lagging indicators; whilst both have a place in worker/work group recognition – leading indicators will look forward at future outcomes and events, for example in a safety sense looking at proactive measures rather than focusing on looking back at whether an intended result was achieved or a reactive measure tracking a negative outcome. Leading indicator is a performance driver, a lagging indicator is an outcome measure.

### *3. Empower your work group*

Empowerment is using your authority as safety leader to give your work group the confidence, a sense of ownership and the responsibility for achieving outcomes.

Empowerment is achieved by giving people autonomy and support. Autonomy means we allow people to make their own decisions about work. Support means we offer help and guidance, if needed, to ensure workers are successful.

Some examples include:

- Giving your work group the chance to make WHS decisions
- Using participative decision-making such as seeking out ideas, solutions and opinions from the team.
- Meaningful consultation at the workplace
- Providing teams with different options to complete WHS tasks.

### *4. Encourage growth and confidence within your work group*

Growth means coaching and nurturing your work group to increase their skills and capabilities around health and safety.

Coaching can help teams to develop new health and safety skills in line with opportunities or changes being pursued.

Encouraging confidence enables your work group to speak up and voice their concerns without fear of reprisal. Some practical tips include:

- Show 'visible leadership'
- Role-model openness and fallibility (showing you have your own weaknesses, doubts, etc.)
- Invite and recognise input
- Ask open-ended questions rather than providing the answers
- Reframe difficulties and mistakes as opportunities to learn
- Encourage opinions from diverse team members
- Follow-up with quiet team members individually

#### *5. Practice resilience within your work group*

Being resilient is about being prepared for emergency scenarios and recovering back to the original functioning as quickly as possible. A bit like a metal spring – there is a capacity to withstand applied pressures and come back to the original mode of functioning when the pressure is removed.

Some practical things we can do to build resilience include

- Integrate 'what if' scenario thinking into planning sessions
- Rotate roles around the team to increase experience
- Refer to expertise
- Encourage error reporting and provide timely feedback
- Analyse team performance during emergency drills and provide feedback.

## Encourage a Positive Safety Culture

HSRs can encourage their work group to:

- prioritise health and safety over unrealistic work demands and/or time pressures.
- understand, respect and value workplace health and safety requirements.
- take personal and work group responsibility for adopting safe systems of work.
- discuss mistakes or near misses to ensure everyone learns from the error/incident.
- routinely practice proactive risk management.
- have input into developing/reviewing processes that impact their work area.
- proactively raise health and safety concerns and provide potential solutions to manage the risk appropriately.
- listen to feedback and understand decisions that impact their health and safety.
- be mindful and adaptable to changes that affect their health and safety.
- recognise proactive health and safety behaviours in a positive way.
- be mindful of how their work may generate hazards for other work areas.
- be confident to ask for specific training and/or resources to assist with health and safety related hazards.
- support one another as part of normal work day activities.
- be confident to intervene if they observe high risk behaviours.
- work safely as per safe systems of work, policies and procedures.
- speak up if they feel they don't have the competencies to work safely.
- lead by example by demonstrating positive health and safety behaviours.
- talk about or raise health and safety issues without fear of reprisal.
- provide input into reviewing safe systems of work affecting their work area.
- promote worker participation by reporting unsafe work or incidents.
- support and actively promote the organisation's health and safety programs and initiatives.
- think proactively about the health and safety requirements of their work tasks and the consequences for not following safe systems of work.
- be mindful and seek information on emerging WHS issues affecting their work.
- understand their legal duties as workers under the legislation.

## Encourage a Positive Safety Culture

As a safety leader, write down at least:

- one thing you will start doing
- one thing you will stop doing
- one thing you will keep doing.

Now that you have these, put them up on your desk/post-it-note/diary at work.

Start thinking about an action plan to put in motion how you are going to start, stop and continue these safety leadership actions?

Share your learnings with your senior management and your team and involve them in the planning process.

## Benefits of HSR complaint investigation:

- Identification of potential/actual hazards
  - Prevention of injury or illness
  - Improve work environment
  - Improve morale and participation
- Increased consultation
- Identify training needs
- Revise outdated methods and work practices
- Encourages involvement in safety performance
- Improves safety culture

## Complaint Investigation Procedure

### Investigation Procedure

- Understand the complaint
- Talk with workgroup members and the relevant PCBU
- Research the complaint
  - WHS Regulations
  - Code of Practice, Australian/Industry standards
  - WHSQ
  - Consultants or Union representatives
- Analyse the information collected
- Develop a strategy to move forward with the complaint/issue

### 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.

## Problem solving steps

When investigating issues it is important to gauge the feelings associated with the issue but to try and remain objective in the process. This will allow systems issues to be identified and addressed.

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

### Example: Fire door blocked by boxes

1. Fire door is blocked
2. Size of deliveries too large for allocated storage room
3. Reduce the size of deliveries
4. Increase the frequency of the deliveries to allow for smaller quantities of each delivery
5. Review after deliveries to ensure they can be stored in the allocated space and not block the fire doors

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.

## Step 1 – Identify the problem

### Example: Fire door blocked by deliveries

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

*Example: Size of deliveries too large for allocated storage room*

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

*Example: Reduce the size of the deliveries*

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

*Example: Increase the frequency of the deliveries to allow for smaller quantities of each delivery*

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

*Example: Review after deliveries to ensure they can be stored in the allocated space and not block the fire doors and that the deliveries are frequent enough to maintain required supplies*

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.

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.

## 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).

## Slide 50

### Issue Resolution Under WHS Regulation

Applies to unresolved WHS issues

Workplaces should aim to establish a written issue resolution procedure prior to issues arising. Procedure to cover all steps of the default issue resolution procedure outlined in the WHS Regulation. Where there is no established procedure, the default procedure stipulated in the WHS Regulation is to be used. If the issue is resolved, any party can request that the details of the issue and resolution be set out in writing

#### Issue resolution (WHS Act s.80–s.82)

An 'issue' is any concern about work 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 or not something is a risk to health and safety, or a whether a particular control measure is adequate.

**As of 29 July 2024 – Pathways for dispute resolution** - HSRs can resolve issues or disputes through two different pathways:

1. 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. 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:** 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).

#### Factors that could contribute to a WHS issue not being resolved

Conflict can arise in the workplace from many factors. As we have seen previously when looking at investigating complaints, issues arise from the interaction of systems involving:

- Materials
- Environment

- Personnel
- Management
- Tasks

## Slide 51

### **The role of various parties including HSRs, PCBU 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 a worker or HSRs
- When no HSR has been elected, a suitable entity representing the workers can be a party to the unresolved issue.
- As of 29 July 2024 - A relevant union for a worker affected by an issue, the relevant union notifies the PCBU in writing.

The person representing the PCBU must:

- Have a level of seniority and competency to act as the PCBU's representative
- Not be a HSR
- Allow all parties to the unresolved issue to enter and remain at the workplace for the purpose of attending discussions to resolve the issue.

Ideally, PCBU 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 WHS Act 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. If there are no agreed procedures, the default procedure for issue resolution under the WHS Regulation must be followed.

## Slide 52

### Group Discussion

*A member of your workgroup has noticed that other workers in their work area are leaving the area untidy after their shift and they consider that there is potential for trips and falls in the area. It is an ongoing problem. They have come to you as their HSR for assistance.*

**How should you approach that matter?**

**You are also a member of the HSC. How could you use their assistance?**

## Slide 53

### Conflict Skills and Strategies

#### What types of conflict will arise?

There are basically two types of conflict situations that may be 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.

#### Type 1 - Agreement Conflict

The first form of conflict might simply be called **agreement conflict**, where one person's views or position conflicts 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.

#### Type 2 - Allocation of Resources Conflict

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 a 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.

## Slide 54

### Negotiation

#### Why enter a negotiation?

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.

#### 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.

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 psychological 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?

## Slide 55

### ACTIVITY: Conflict Resolution

**The facilitator is to divide the group into smaller groups to discuss the scenario below. Participants are to record answers in their workbook before reporting back to the larger group.**

*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 paperwork regarding the products in the file.*

*Note: If you make assumptions regarding the workplace or the floor cleaner, identify those assumptions up front*

**What are the issues?**

**Identify the problem solving steps.**

- **What authority does the HSR have to act in this situation?**

**How could this matter be raised and addressed with the PCBU?**

# **Session 3**

## **Monitoring Health and Safety Risks**

### **Notifiable Incidents**

## **Session 3: Monitoring Health and Safety Risks; Notifiable Incidents**

### **Learning Aim**

This session will detail the requirements to enable the HSR to fulfil their role effectively by giving them knowledge on how to observe, analyse, monitor and inquire into the effectiveness of the mechanisms implemented by the primary PCBU to ensure that work health and safety issues have been appropriately addressed.

### **Learning Outcomes**

After completing this, session participants should be able to:

- 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 risk management concepts
- Identify the PCBU's obligations in relation to incident notification

### **Assessment Method**

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

### **Session Duration**

The nominal duration of this session is 60 minutes

## Managing Risks to Health and Safety

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 is reasonably practicable. The management of risks to health and safety requires the person:

- to eliminate risks to health and safety, so far as is reasonably practicable; and
- if it is not reasonably practicable to **eliminate** risks to health and safety, to **minimise** those risks so far as is reasonably practicable.

To ensure the health and safety of workers, the emphasis is on the elimination of risks to health and safety so far as is reasonably practicable. If it is not reasonably practicable to eliminate the risks to health and safety, to minimize those risks so far as is reasonably practicable. 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.

## Health and Safety Duties of PCBUs

PCBUs have a '**primary duty of care**' to ensure, as far as is reasonably practicable, the health and safety of:

- **workers engaged** directly or indirectly by the PCBU
- **workers** whose work activities are **influenced** or **directed** by the PCBU
- **other persons** present where work activities are being conducted.

PCBUs involved in the management or control of workplaces have a duty firstly to **eliminate** the risk; if it is not reasonably practicable, steps should be taken to **minimise** risks to health and safety (i.e. a primary duty of care) over the matters they control in relation to these workplaces, – including the means of entering and exiting the workplace

and the management or control of fixtures, fittings or plant.

**This includes complying with the management of risks to at least meet the standard outlined in the WHS Regulation such as:**

- not exceeding an exposure standard (e.g. noise)
- implementing a specific control measure (e.g. fall protection)
- assessing a risk (e.g. risks associated with a confined space).

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 some chapters of the WHS Regulation, control measures are specified in a given order for implementation e.g. in regards to managing risk associated with falls.

In some areas where a risk assessment and management are specifically prescribed, the WHS Regulation may also stipulate the requirements for record keeping e.g. for confined spaces.

## Slide 58

### Reasonably practicable

What is reasonably practicable in ensuring health and safety is defined in section 18 of the WHS Act to mean that there is a requirement for the duty holder to take into account and 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.

The Interpretive Guideline '*The meaning of reasonably practicable*' published by Safe Work Australia provides information of this term within the context of work health and safety.

## Slide 59

### Risk Management Process



PCBUs should 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
- supervising 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 resulting in a work environment that does not pose risks to the workers' health and safety remain the same.

## **The role of workplace inspections**

Regular and special inspections should be included as part of the systems for managing risks 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. HSRs are given the power in the WHS Act to conduct workplace inspections but must give reasonable notice to the PCBU before carrying one out.

The purpose of any type of inspection is to identify hazards in the workplace so they can be assessed and controlled as per the company Risk Management procedure. Regular inspections also allow the HSR access to other employees on a regular basis to monitor that the workers' work and environment do not pose a risk to health and safety. The monitoring and review of health and safety will also show employees that the HSR is performing an important role within the Risk Management process and the organisation is committed to good health and safety management.

**Slide 60**

## Risk Matrix

		LIKELIHOOD				CONSEQUENCES	Risk Rating
		Very Likely	Likely	Unlikely	Very Unlikely		
Fatality		1	1	2	3		
Major Injury		1	2	3	4		
Minor Injury		2	3	4	5		
Negligible Injuries		3	4	5	6		

1-2 = Extremely High / High risk

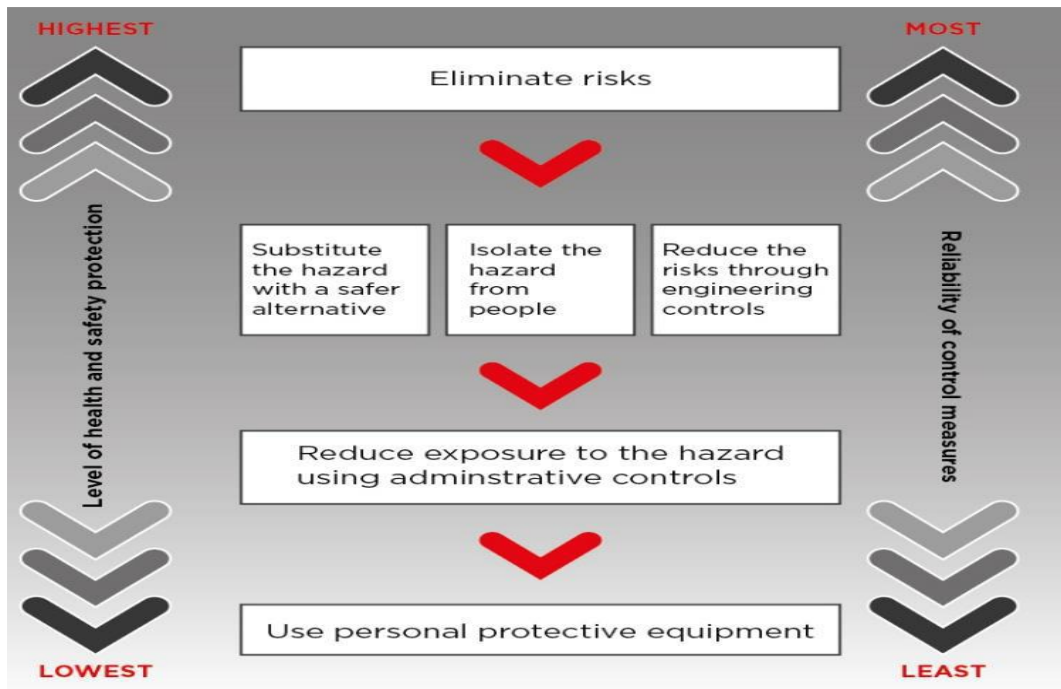
3-4 = Medium risk

5-6 = Low Risk / Minimal risk

Slide 61

## Hierarchy of Control





## Slide 62

### Discussion.

Refer page 71-72 of the participant handbook

As a group, discuss the below hazards and how the hierarchy of controls could be applied also using the risk matrix to give the hazards risk rating:

- Machine Operation
- Manual Handling
- Use of Chemical Substances

## Hazard identification and consultation record

(information obtained through observation and consultation with workgroup)

**Inspected by:**

**Date:**

**Location:**

Hazard Identified	Location	Potential harm (consequences)	Likelihood	Suggested Controls/Corrective Action	Review Timeframe
Fire door blocked by boxes	Fire exit South side	Fatality	Very likely	Remove boxes and place in storage	ASAP

## Requirement to Review Control Measures

Where a duty holder has obligations under the WHS Regulation to manage health and safety risks, the 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 and monitoring indicate a review is required
- **a HSR requests a review** ) i.e. when
  - any of the above occurs that affects/may affect a member of the HSR's workgroup and
  - the PCBU hasn't adequately reviewed the measures in response to that circumstance.

**The HSR's role in the 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 s68 and s69 stays the same and will enable HSRs to monitor and review risk control measures, such as:

- Any process for risk assessment that is used. (In many case no assessment will be required).
- Processes by which controls are determined
- Who is responsible for assessing and implementing controls?

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.

## **‘Notifiable incident’ (WHS Act s.35)**

In the WHS Act, a ***notifiable incident*** means:

- the death of a person, or
- a serious injury or illness of a person, or
- a dangerous incident.

## **Serious injury or illness (WHS Act s. 36)**

***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
- (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, and any other injury or illness prescribed by the regulation but does not include an illness or injury of a prescribed kind.

## **Dangerous incident (WHS Act s.37)**

**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; or
- (b) an uncontrolled implosion, explosion or fire; or
- (c) an uncontrolled escape of gas or steam; or
- (d) an uncontrolled escape of a pressurised substance; or
- (e) electric shock; or
- (f) the fall or release from a height of any plant, substance or thing; or
- (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; or
- (h) the collapse or partial collapse of a structure; or
- (i) the collapse or failure of an excavation or of any shoring supporting an excavation; or
- (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
- (k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
- (l) any other event prescribed by the regulation, but does not include an incident of a prescribed kind.

## **Reporting requirements and duties of PCBU's**

### **Duty to notify of notifiable incidents (WHS Act s. 38)**

Notice of an incident must be given by the fastest possible means immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

The notice must be given by the fastest possible means

- by telephone, or

- in writing.

### **Notice by Telephone**

A person giving notice by telephone must:

- give the details of the incident requested by the regulator, and
- if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.

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. If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the PCBU:

- details of the information received, or
- an acknowledgement of receiving the notice.

### **Notice by Writing**

A written notice must be in a form, or contain the details, approved by the regulator.

## **Duty to preserve 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 reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.

This requirement 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.

These requirements under the WHS Act do not apply to a mine to which the Coal Mining

Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999 applies.

## Records

A PCBU **must keep a record of each notifiable incident for at least 5 years** from the day that notice of the incident is given to the regulator under this section.

Maximum penalty:

- (a) in the case of an individual—\$5,000, or
- (b) in the case of a body corporate—\$25,000.

## Slide 65

### Role of the HSR regarding incidents

The HSR may inspect the workplace at any time (limited to matters relevant to their workgroup), 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 (**WHS Act s68(a)(ii)**)

The HSR, as described above, may also be involved in the incident investigation assisting members of the work group, accompanying an inspector and attending interviews.

The HSR through their activities can support the worker of the workgroup they represent, assist the PCBU by taking steps to inquire, investigate and monitor the measures taken enable the PCBU to ensure future occurrences are prevented so as to enable PCBU to fulfil the primary duty of ensuring the health and safety of workers.

In the event of a notifiable incident, when carrying out their functions, HSRs will also need to take into consideration that they are not exposed to health and safety risks.

The HSR can request the WHS entry permit holder to assist them in relation to notifiable incident involving workers of their workgroup that may be impacted by the event.

## **ACTIVITY: Role of the HSR**

Have the group brainstorm the following questions. Responses can be recorded on flip chart paper

**Why does a HSR need to know when there is a notifiable incident?**

**What actions is the HSR permitted to take under the WHS Legislation?**



# **Session 4**

## **Provisional Improvement Notice (PIN) Ceasing Unsafe Work**

# **Session 4: Provisional Improvement Notice (PIN) and ceasing unsafe work**

## **Learning Aim**

This session aims to provide an outline of how HSRs will be able to use their knowledge of the provisions in the legislation to inform their decision making when evaluating the risk (immediate or otherwise) to workers arising from a work health and safety issue.

## **Learning Outcomes**

After completing this, session participants should be able to:

- Provide an overview of 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 directing the cessation of unsafe work

## **Assessment Method**

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

## **Session Duration**

The nominal duration of this session is 90 minutes.

## Provisional Improvement Notice (PIN)

A **Provisional Improvement Notice (PIN)** is a written notice from a HSR 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

### The purpose and functions of PINs and when a HSR can issue a PIN

A PIN is a notice that a HSR can issue to a person, requiring them to address a safety or health concern in the workplace.

A PIN may be issued to any person who the HSR believes is contravening a provision of the WHS Act or regulation, for example, a PCBU. The PIN should be directed to the person who is best able to address the safety issue. HSR is not to issue a PIN unless the HSR has consulted with the person.

#### A PIN must be in writing and state:

- the HSR believes a person is in breach of the WHS Act, or is likely to continue or repeat the breach
- what that provision is and how it is being breached
- a date 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
- a choice of ways in which the breach could be remedied or prevent a likely contravention from occurring.

### When a HSR Cannot Issue a PIN

A HSR cannot issue a PIN until the representative has:

- (a) **completed initial training** prescribed by the regulations referred to in section 72 (1), or
- (b) previously completed that training when acting as a health and safety representative for another work group, or
- (c) completed training equivalent to that training under a corresponding WHS law.

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.

Review the information that **MUST** be included against the information that **MAY** be included

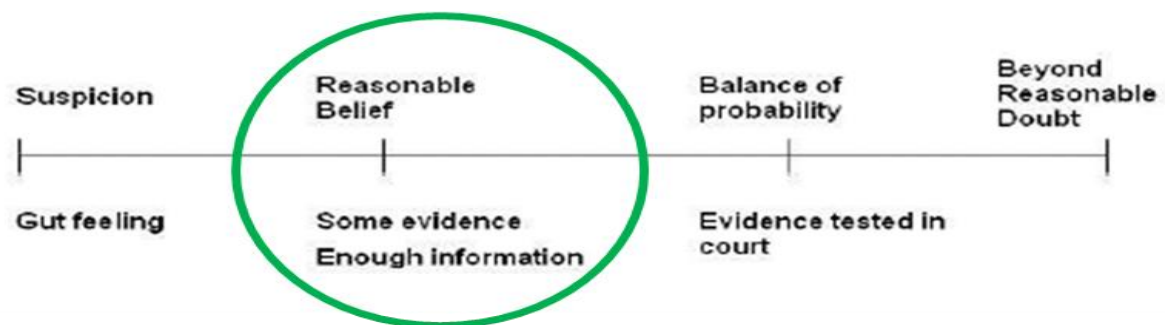
in a PIN.

## Slide 69

### Reasonable belief – Issue a PIN

The HSR may issue a PIN if there is **reasonable belief** that the person has contravened a provision of the legislation.

**Reasonable belief** is less than proof but more than suspicion and ‘requires the existence of facts which are sufficient to induce that state of mind in a reasonable person’.



## Slide 70

### Forming a Reasonable Belief

What evidence is required for a HSR to form a reasonable belief?

#### Good

- Observations
- Photographs
- Conversations
- Diary Notes
- Inquiries
- Documents
- Measurements

#### Not so good

- Poorly recorded information
- Not relevant
- assumptions

**In forming a reasonable belief to issue a PIN consider the following:**

- 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);

**For each element of the contravention DON'T**

- Rely on no evidence
- Insufficient inquiries
- Assume

### Discussion

**As a group discuss if you could form a reasonable belief that there may be a risk to workers health and safety**

*PCBU purchased a new piece of machinery from overseas for the workplace. The Manufacturers Manual and instructions are not written in English. The PCBU provided training on how to operate the machinery in the form of a toolbox meeting. The PCBU was aware that not all workers were present at the time of the meeting. Workers were told, they would need to show other workers who did not attend the meeting, how to operate the machinery as there would be no additional training or supervision provided*

**Before issuing a PIN, the HSR is required to:**

- consult the person whom the HSR believes is contravening the provision in the WHS Act or Regulations
- 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.

### Discussion

**As a group discuss the following:**

- When would it be appropriate to issue a provisional improvement notice (PIN) in their workplace.
- And when wouldn't it be appropriate to issue a provisional improvement notice (PIN) in their workplace



## Possible reasons for issuing a PIN

- 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 or
  - lack of consultation on work health and safety matters

## Slides 74-76

PIN information	tick
1. A PIN <b>must</b> state that the HSR believes the person : is contravening a provision in the WHS Act, or has contravened a provision of the WHS Act and it is likely that the contravention will continue or be repeated.	<input type="checkbox"/>
2. A PIN <b>must</b> state the provision the HSR believes is being, or has been, contravened	<input type="checkbox"/>
3. A PIN <b>must</b> contain a brief outline how the provision is being, or has been contravened	<input type="checkbox"/>
4. A PIN <b>must</b> 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. PIN <b>may</b> include directions about: how the contravention can be remedied how to prevent a contravention the matters or activities that are causing the contravention or likely contravention	<input type="checkbox"/>
6. A PIN <b>may</b> include directions that refer to a Code of Practice and offer a choice of ways the contravention can be remedied.	<input type="checkbox"/>

## 5. Details of contravention:

Site location: _____	
I, <u>Health and safety representative's name</u> reasonably believe on _____ date _____ at _____ time _____	
1	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:
2	<input type="checkbox"/> Work Health and Safety Act 2011, section _____ <input type="checkbox"/> Work Health and Safety Regulation 2011, regulation _____
3	Brief description of how the provision is being or has been contravened: _____
5	<b>Note:</b> 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 / /	4 Date compliance with PIN required / / (Minimum of 4 calendar days after date PIN issued)	Signature of HSR
------------------------	---	------------------

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*.

## Slide 77

### Due date for a PIN

- As of 29 July 2024 - The PIN must have a due date of a minimum of 4 calendar days after the date of issue (in line with s. 92(d) of the WHS Act)
- To calculate when a notice is due, the HSR should not include the date of issue in the calculation.
- This will allow the person to whom the PIN is issued sufficient time to request a review within 3 days (as of 29<sup>th</sup> July 2024) after it is issued (in line with s. 100 of the WHS Act).
- In addition, it is advisable that the due date does not fall on a Saturday, Sunday or Public Holiday.

## Slide 78

### Issuing a PIN

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.

**The PCBU must provide a copy of any PIN issued by the HSR to Workplace Health &**



## GROUP ACTIVITY: Issuing of Provisional Improvement Notices (PINs)

### Activity – In small groups, complete scenario 1

- Use the Form 44 Provisional improvement notice (PIN).
- You will need to discuss the scenario and make assumptions as to other actions that have taken place that have led your decision to issue a PIN. Write down your assumptions and then complete the PIN.
- You will need to locate the provision in the WHS legislation that is being breached.

### Scenario 1

*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.*

### Details required for PIN

The person responsible within the meaning of WHS Act Part 2 - *Matt Blanci*

HSR - *Stephen House* elected as the Health and Safety Representative under s60-67 of the WHS Act for *Laboratory staff*

The breach is: *Management has failed to take action regarding the noise emitted from the equipment used within the laboratory.*

The breach is occurring at: *256 Young Street, Lutwyche 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 s. 93 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.*

In accordance with s. 92 (d) *Matt Blanch* is required to rectify the contravention or likely contravention

## Slide 80

### INDIVIDUAL ACTIVITY: Issuing of Provisional Improvement Notices (PINs)

As a individual complete scenario 2

- Use the Form 44 Provisional improvement notice (PIN handouts) to complete the PIN
- Whilst details of the issue is provided, you will need to locate the provision in the WHS legislation that is being breached.

#### Scenario 2

*A 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, Lutwyche 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 measures can be taken to help minimise potential incidents occurring 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).*

In accordance with s.92 (d) *Sue Fernley* is required to rectify the contravention or likely contravention.

## 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.

Name:
<div>First name:</div> <div>Last name:</div>
Contact number:
Work group represented:

Name of duty holder:

(i.e. individual natural person or an organisation such as a company or public authority as relevant)

Address:

State / territory:

Postcode:

Name: \_\_\_\_\_  
 \_\_\_\_\_  
 First name: \_\_\_\_\_ Last name: \_\_\_\_\_  
 \_\_\_\_\_  
 Position: \_\_\_\_\_ Contact number: \_\_\_\_\_

☐ Yes      ☐ No

Site location: \_\_\_\_\_

I, \_\_\_\_\_ reasonably believe on \_\_\_\_\_ at \_\_\_\_\_  
*Health and safety representative's name* *date* *time*

that you ☐ are contravening a provision or ☐ have contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; of the:

☐ *Work Health and Safety Act 2011, section* \_\_\_\_\_ ☐ *Work Health and Safety Regulation 2011, regulation* \_\_\_\_\_

**Brief description of how the provision is being or has been contravened:**

*Note:* The HSR may, but is not required to, specify measures, in accordance with section 93 (1) of the WorkHealth and Safety Act 2011, 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 / / (Minimum of 4 calendar days after date PIN issued)	Signature of HSR
------------------------	--	------------------

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

1. 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.
2. 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.
3. A HSR can issue a PIN to the relevant duty holder by one of the methods listed in section 209 of the WHS Act. For example:
  - delivering it personally to the duty holder, or
  - leaving it for the duty holder at the workplace to which the PIN relates with a person who is in management or control of that workplace (for example, leaving it with the area manager).

If the above methods of delivery are not possible, the HSR can send it by post, fax or electronic transmission to the home or business address of the duty holder or leave it for the duty holder at their home or business with a person over 16 years who lives or works there.
4. The HSR must consult with the duty holder about remedying the contravention prior to issuing the PIN (see section 90(3)) of the WHS Act.
5. A HSR cannot issue a PIN unless the HSR has completed 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.
6. 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).
7. The duty holder to whom the PIN is issued is responsible for fixing the identified contravention by the date written in 'Date compliance with this PIN is required'. It is an offence under section 99 of the WHS Act for the person not to comply with the PIN by the 'Date compliance with the PIN is required' - penalties apply.
8. If the 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.
9. For urgent issues that are an immediate threat to the health and safety of any person, a PIN may not be an appropriate means to address the situation. Refer to section 84 of the WHS Act regarding the right of a worker to cease unsafe work and sections 80-82 of the WHS Act regarding issue resolution.
10. If there is more than one contravention, a separate PIN should be written for each contravention.
11. If the PIN contains formal irregularities, defects or fails to use the correct name of the person to whom the PIN is issued, the PIN may still be valid. The PIN will not be valid, however, if the formal irregularity or defect causes or is likely to cause substantial injustice to the PIN recipient or if the PIN fails to sufficiently identify the PIN recipient (see section 98 of the WHS Act).
12. 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.
13. The HSR should retain a copy of the completed PIN for their records.
14. If the issue has not been remedied by the 'Date compliance with PIN required' and an inspector has not already attended the workplace, the regulator should be contacted.
15. 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.
16. A person must not intentionally remove, destroy, damage or deface a PIN that is displayed during the period the PIN is in force.
17. Failure to do any of the things referred to in points 15 and 16 is a contravention of the WHS Act and penalties apply.
18. If the person to whom the PIN is issued disagrees with the PIN or believes they will have difficulty complying with it, they should discuss this with the HSR who issued the PIN. They may also request an inspector to attend (see point 8 above).

For queries about PINs or other health and safety matters, visit [worksafe.qld.gov.au](https://worksafe.qld.gov.au) or phone 1300 362 128.

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Workplace Health and Safety Queensland

[worksafe.qld.gov.au](https://worksafe.qld.gov.au)

1300 362 128

## Complying with a PIN:

A PIN:

Must be displayed in a prominent place at the workplace and must not be removed, destroyed, damaged or defaced during its period of enforcement.

- Must be complied with in the time specified on the notice, if a review has not been requested.

The HSR:

- As of 29 July 2024 - Has the power to extend the timeframe on the PIN - 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).
- May at any time cancel a PIN that they have issued to a person by giving the person written notice of the cancellation.
- Should also retain a copy of the PIN for their records.
- Must be informed of the action taken and notify the workers affected by the PIN.

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.
- Maximum penalty:
  - (a) in the case of an individual – 50 penalty units, or
  - (b) in the case of a body corporate—\$25,000.

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.

Maximum penalty:

- (a) in the case of an individual – 50 penalty units, or
- (b) in the case of a body corporate—\$25,000.

**Note: If an inspector has not been required to attend, the person must comply with the PIN within the time specified in the notice.** Maximum penalty:

- (a) in the case of an individual—\$50,000, or (b) in the case of a body corporate—

## Changes to a PIN

A HSR can make **minor 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

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.

## Dispute of PIN

The person, who receives the PIN, must either comply with it or advise WHSQ that the PIN is disputed within seven days of it being issued.

As of 29 July 2024 - 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.

## Role of WHSQ Inspectors

The regulator 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, 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 WHSQ to review the inspector's decision.

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### Workers right to cease work

#### Right to cease 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.

#### Ceasing unsafe work

**A worker has a right to cease or refuse to undertake work if:**

- they have a reasonable concern that doing the work would expose them to a serious risk to their health and safety from immediate or imminent exposure to a hazard.

#### Direction to cease work (WHS Act s. 85)

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 as an issue.

The HSR may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter in the first instance if the risk is **so serious and immediate or imminent** that it is not reasonable to consult before giving the direction. This direction can be given verbally.

A HSR cannot give a direction under this section unless the representative has:

- completed initial training prescribed by the regulation referred to in section 72 (1), or
  - previously completed that training when acting as a health and safety representative for another work group, or
  - completed training equivalent to that training under a corresponding WHS law.

#### HSR 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 the HSR directs workers to cease work without consulting the HSR, they must advise the PCBU as soon as possible after giving the cease unsafe work direction. As of 29 July 2024 - 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).



**If a worker disagrees with the direction to cease work, either party may contact WHSQ and request that an Inspector assist in resolving the matter.**

## Slide 85

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### **Rights of 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
- 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.

**WHSQ will be developing a template cease work notice for HSRs**

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### **HSR's and Workers Right to Cease Work**

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

As of 29 July 2024 - A HSR may issue a written cease work notice outlining contents of cease work to the PCBU. The written notice must comply with Section 85A of the WHS Act.

**The HSR must display the cease work notice in a prominent place for workers in the affected work group.**

So long as a worker agrees to carry out suitable alternative work if directed to do so by an employer, the worker who exercised the right to cease 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.

A HSR, PCBU, or affected worker can request an inspector to attend the workplace and assist in resolving an issue with the cessation of work.

### **Alternative work (WHS Act s.87)**

If a worker ceases unsafe work under the WHS Act, the PCBU may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.

### **Continuity of engagement of worker (WHS Act s.88)**

If a worker ceases work under the WHS Act, that action does not affect the continuity of engagement of the worker under the law, 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.

**As a worker, have you previously experienced situations where you needed to stop work?**

**As a HSR what actions would you take immediately after a worker has stopped or refused to undertake unsafe work?**

## Slide 87

### **ACTIVITY: Directing unsafe work to cease**

Divide participants into groups and ask each group to review the following scenarios. The groups should discuss what would be the most appropriate actions to undertake in the circumstances.

- 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 transporting 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?*

**In any of these above scenarios, you are able to seek guidance from the regulator, industry bodies, unions etc.**

### **Remember, the role of HSR is voluntary, but a very important one**

The HSR plays a key role in work health and safety in the workplace with the main function of the HSR being to represent **the members of their workgroup** in relation to matters and decisions on work health and safety.

HSRs are not expected to be the person responsible for health and safety in the workplace, nor are they expected to be an expert on work health and safety issues.

Final Questions?

# Course Review and Evaluation

## 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. 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.			
3. A PIN can be issued by a suitably trained HSR if they believe a provision of the WHS Act has been breached and may continue to be breached.			
4. A HSR could be personally liable for exercising a power or function in good faith			
5. 'Risk management' means taking action to eliminate health and safety risks so far as is reasonably practicable			
6. A WHSQ inspector is entitled to inspect any item or document and take samples.			
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.			

Statement	True	False	Provision
8. A PIN can be issued by a trained HSR, be reviewed by an inspector and be enforceable.			



## 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.	[ ]	[ ]	[ ]	[ ]	[ ]
3. I understand the responsibilities of workers and others.	[ ]	[ ]	[ ]	[ ]	[ ]
4. I understand the responsibilities of persons conducting a business or undertaking (PCBU).	[ ]	[ ]	[ ]	[ ]	[ ]
5. I understand who officers are and their responsibilities.	[ ]	[ ]	[ ]	[ ]	[ ]

#### **Representation and participation under WHS laws**

1. I understand the difference between the role of a HSR and a HSC.	[ ]	[ ]	[ ]	[ ]	[ ]
2. I understand who can issue a provisional improvement notice (PIN) and a direction to cease unsafe work	[ ]	[ ]	[ ]	[ ]	[ ]
3. I understand the process for issuing of a PIN	[ ]	[ ]	[ ]	[ ]	[ ]
4. I understand the issue resolution process.	[ ]	[ ]	[ ]	[ ]	[ ]