



WHS Cease Work Directions

The Queensland work health and safety (WHS) legislative framework includes a legal right for a worker to cease work and for Health and Safety Reps (HSRs) to direct workers to cease work, where there is a serious risk to a worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

What does serious risk and immediate or imminent exposure to a hazard mean?

The term 'serious risk' is not defined in the WHS Act and therefore its plain or ordinary meaning will apply.

The Queensland WHS Regulator has stated in the context of ceasing work, that –

'the term serious risk captures risks that may cause death or serious injury or illness, including diseases of long latency from immediate exposure to a hazard such as crystalline silica dust, and in circumstances of psychological threat or other similar conditions'.

Likewise, the terms 'immediate or imminent exposure (to a hazard)' are not defined in the WHS Act.

The Victorian OHS regulator has issued public guidance material stating that '**imminent**' means '*likely to occur at any moment*', and '**immediate**' means '*happening or done without delay*'.

In relation to the right to cease work, the Queensland WHS Regulator has also stated that –

'For the right to cease work to apply, the risk (the likelihood of it occurring and the consequences if it did) would have to be considered 'serious' and emanate from an immediate or imminent exposure to a hazard. For example, a worker working at heights with no fall arrest system, or a worker removing asbestos without using the appropriate personal protective equipment or safe work methods'.

A workers' right to stop or refuse to carry out unsafe work

In some circumstances, an individual or group of workers have a statutory right to cease work, or to refuse to carry out particular work. This right exists where a worker(s) has a reasonable concern that there is a serious risk to their health and safety arising from an immediate or imminent risk of exposure to a hazard [WHS Act s 84].

A worker(s) who ceases work must, as soon as practicable, inform the person conducting the business or undertaking (PCBU) that they have ceased work, and make themselves available to carry out suitable alternative work [WHS Act s 86].

If a worker ceases work, 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 is able to resume normal duties [WHS Act s 87].



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A workers' right to stop or refuse to carry out unsafe work (continued)

A serious risk to health and safety arising from an immediate or imminent exposure to a hazard could include matters such as exposure to or lack of regulated controls for –

- heat stress e.g., in circumstances where temperature and humidity are at high risk levels and there is non-compliance with industry controls detailed in an enterprise agreement or within an agreed workplace heat stress policy;
- any type of regulated hazard such as asbestos containing materials, silica or other dusts, lead etc; or confined spaces, falls from heights etc; or
- exposure to the risk of occupational violence and non-compliance with the Psychosocial Hazards Regulation or Code of Practice to manage violence or harassment.

HSR right to issue a cease work direction after consultation

A Health and Safety Representative (HSR) may provide a written direction to a worker who is in their work group to cease work, if they have a reasonable concern that to carry out work would expose the worker to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard [WHS Act s 85(1)].

A HSR must not give a written direction unless the matter is not resolved after –

- (i) consulting with the PCBU for whom the worker is carrying out work; and
- (ii) attempting to resolve the matter as a WHS issue under the issue resolution procedure in the Act [WHS Act s 85(2)].

Once the HSR gives the cease work notice to the worker, the HSR must give the PCBU a copy of the notice and display the notice in a prominent way in an area used by workers in the work group [WHS Act s 85(2A)].

HSR right to issue a cease work notice without consultation

Consultation is not required prior to issuing a cease work direction or seeking to resolve the matter as a WHS issue if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction – in which case the direction may be given orally or in writing [WHS Act ss 85(3), (4)].

Where a cease work direction is given without notice, the HSR must then –

- (i) give the PCBU a written cease work notice as soon as possible after giving the direction;
- (ii) display a copy of the notice in a prominent way in an area used by the workers in the work group; and
- (iii) consult with the PCBU to attempt to resolve the matter [WHS Act s 85(5)].



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How long does a cease work direction remain effective?

A cease work direction remains effective until –

- the direction is withdrawn in writing by the HSR;
- the issue is resolved with the assistance of an inspector;
- an inspector issues a prohibition notice in relation to the matter; or
- the commission decides or deals with the dispute under the dispute resolution procedures in the WHS Act (Part 5, Division 7A) [WHS Act s 85(7)].

A HSR cannot give a cease work direction unless they have –

- (i) completed their initial 5 days of HSR training; or
- (ii) previously have completed their 5 days of HSR training when acting as a HSR for another work group; or
- (iii) completed equivalent 5 days of HSR training under a corresponding jurisdiction e.g., NSW, Victoria or Comcare HSR 5 days training [WHS Act s 85(6)].

What must be included in a cease work notice?

A cease work notice must now be in writing and include a number of matters, including the risk to health or safety of particular workers, and any consultation that has been undertaken by the HSR with the PCBU, among other matters [WHS Act s 85A].

A cease work notice template from the Regulator can be found at https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0012/131700/cease-work-notice-2024.pdf.

Is a worker entitled to be paid for ceasing work?

Any worker who has ceased work or refused to carry out work because of a serious risk arising from an immediate or imminent exposure to a hazard is entitled to be paid for the time they have ceased work, subject to performing other suitable alternative work if directed to do so by the PCBU. This includes accrual of their normal entitlements such as annual and sick leave as well as superannuation benefits for the same period [WHS Act s 88].

A worker must however, perform other suitable alternative work at the same or another workplace, if directed to do so by the PCBU, and if that work is safe and appropriate to carry out until the worker is able to resume normal duties [WHS Act s 87].



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Are there protections to support workers who have ceased unsafe work or for HSRs issuing cease work notices?

There are also protections for workers against forms of discriminatory conduct that another person such as a PCBU may take against them because they were involved in resolving a WHS issue or because they took action to ensure a person complied with their duty of care to ensure the health and safety of workers, including by ceasing unsafe work [WHS Act ss 105, 106(c), (i), (j)].

Relevant unions may now make applications to the commission on behalf of workers, including taking out orders to prevent discriminatory conduct or to take corrective action against discriminatory conduct that has already occurred e.g., reinstating a worker to their position where they have been dismissed for exercising a WHS right such as ceasing work [WHS Act Part 6].

What can be done if the PCBU/employer disputes whether the circumstances were a serious risk?

If a worker has notified the PCBU that they have ceased work or are refusing to carry out work because they have a reasonable belief that to do otherwise, would place them at serious risk of an immediate or imminent exposure to a hazard, and the PCBU disputes this they have a number of options –

1. seek the immediate assistance of their Health and Safety Rep who may issue a cease work direction to a worker or group of workers, if the HSR holds a similar reasonable belief;
2. seek the immediate assistance of a WHS entry permit holder or an organiser to assist them with the matter;
3. seek the immediate assistance of the WHS Regulator to appoint an inspector to attend the workplace and seek a prohibition notice on the particular work.

A relevant union has the capacity to raise the issue as part of the issue resolution procedure, or alternately file a dispute immediately with the commission seeking their assistance by way of conciliation, mediation or arbitration.

If the matter is disputed, the PCBU may argue that the worker has engaged in unprotected industrial action rather than exercising their statutory right to cease work under section 84 of the WHS Act and assistance of a union is strongly recommended.



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What can be done if the PCBU/employer counteracts the cease work direction of a HSR?

While a Health and Safety Rep may issue a cease work direction to a worker or group of workers in their work group, a PCBU may still elect to dispute the notice and/or provide a oral direction to the worker(s) to continue work.

Similar to above, if this occurs and there is a serious risk to health and safety that is immediate or imminent from exposure to a hazard, the HSR should contact their union organiser and/or the WHS Regulator to attend the site to deal with the safety issue.

For instance, a WHS entry permit holder can enter a workplace without notice if they have a reasonable belief there is serious risk to a worker's health or safety arising from an immediate or imminent exposure to a hazard. The permit holder simply needs to notify the PCBU and person with management or control of the workplace, as soon as reasonably practicable after entering the workplace [WHS Act s 119(4), (5)].

A relevant union can also seek to deal with the matter as part of issue resolution or dispute resolution seeking the urgent assistance of the commission.