



Provisional Improvement Notice (PIN)

Health and Safety Representatives (HSRs) have various powers they can use to help address health and safety issues within the workplace. One of those powers is the ability to issue a **Provisional Improvement Notice** (otherwise known as a '**PIN**').

HSRs can issue this notice to a person/PCBU who they believe is not complying (fulfilling their obligations to health and safety in the workplace) or has not complied with the Work Health and Safety Act 2011.

The HSR must also believe that it is likely the non-compliance (not living up to their legislative obligations) will continue or be repeated.

Before issuing a PIN the HSR must discuss (consult) with the person/PCBU to try and have the matter resolved.

If the matter is not resolved as a result of consultation, the HSR may then issue a provisional improvement notice (PIN).

Note: A PIN may be issued to **any person** who the HSR 'reasonably' believes is not complying with the WHS Act, Regulation, or Code of Practice – not just the PCBU.

A Provisional Improvement Notice (PIN)

- is a tool to assist in improving health and safety in a workplace, encouraging employers (PCBU) and workers to openly discuss the health and safety hazards and risks in the workplace
- is a document that provides written direction from a health and safety representative (HSR) to a person who holds a responsibility ('duty') under the Work Health and Safety Act 2011, that requires them to fix a work health and safety problem, and
- should only be used if the parties involved cannot reach an agreement on fixing the issue through the normal consultation process.

Elected Health and Safety Representatives can only issue a PIN if they have completed their initial 5-day required HSR training with an approved Registered Training Organisation (RTO), (e.g., Safe Work College).

The HSR can issue a PIN where the 'contravention' (breach) affects the work group the HSR represents.

What is the purpose of a PIN?

Allowing HSRs to issue PINs provides an alternative option to attendance by a WHS inspector. Having the involvement of HSRs, who are well informed about their workplace, means the action needed to address the issue would be local and immediate.

Having the entitlement (power) to issue a PIN is simply another 'tool' in the toolkit for HSRs to assist them in carrying out their role effectively. This tool (PIN) is enforceable and typically a WHS inspector only gets involved if there is a disagreement (commonly referred to as a 'dispute') or the person/PCBU issued with the PIN is not being compliant (known as 'non-compliance').



Provisional Improvement Notice (PIN)

Before issuing a Provisional Improvement Notice (PIN)

The HSR needs sufficient evidence to form a 'reasonable belief' that there is a contravention (breach) to health and safety at the workplace. A reasonable belief is formed by the HSR making observations, asking questions, taking measurements, accessing records etc., and then weighing up that information making a decision to issue a PIN.

Case example:

Cleaning staff are working in an office building after hours, using the stairwell to move between floors. The stair treading is coming off in places, creating a tripping hazard for the cleaners (and others who might use the stairwell). Despite repeated requests from the cleaners' HSR to the building manager, the problem has not been fixed. The issue is unresolved, so the HSR issues a PIN to their employer. The employer then addresses the issue with the building manager for a resolution.

What information needs to be included when completing a PIN?

A PIN must state:

- that the HSR believes the person is contravening (is in breach), or has contravened (has been in breach), of a part (provision) of the WHS Act or Regulations in circumstances that make it likely that the contravention will continue or be repeated;
- the provision (part) of the WHS Act or regulation that the HSR believes is being, or has been, contravened (e.g., s47 failure to consult with workers or s19 failure to provide a duty of care).
- briefly, how the provision is being or has been contravened; and
- the day, at least 4 days after the notice is issued, by which the person is required to remedy (fix) the contravention or likely contravention (e.g., if the PIN is issued on the 5th day of the month, then it would be 4 days from that date, which would be the 9th).

The HSR can also provide the person/PCBU with a range of options they believe would assist in resolving the health and safety matter.

Can an HSR make changes to a PIN once issued?

A health and safety representative may make changes to a provisional improvement notice –

- 1) a. for clarification; or
b. to correct errors or references; or
c. to reflect changes of address or other circumstances.
- 2) A health and safety representative may change the day by which the person is required to remedy the contravention (breach) or likely contravention with the agreement of-
 - a. the 'person' to whom the notice was issued; or
 - b. if the 'person' mentioned in 2(a) is a worker, the person conducting the business or undertaking (PCBU) at the workplace at which the worker carries out work.



Provisional Improvement Notice (PIN)

Can an HSR make changes to a PIN once issued? (continued)

Note: If there is more than one breach (contravention), a separate PIN should be issued for each one, stating which section of legislation (e.g., Act or Regulation) relates to each breach.

This is because certain information must be set out for each contravention, including the:

- part of the legislation being contravened (if known)
- reasons the HSR believes there has been a contravention; and
- date by which the person/PCBU has to comply with the PIN.

Putting more than one issue ('element') in each box on a PIN form could make the PIN difficult to understand. It would also leave the PIN open to challenge by the person/PCBU, because it may not be clear which reason, possible solution and time limit applies to which contravention (breach).

A PIN must contain all of the required information outlined above and may be invalid if it does not contain them.

However, a PIN is not invalid merely because of:

- a formal defect or irregularity in the notice (e.g., the information in the PIN is inaccurate or incomplete in some way); or
- a failure to use the correct name of the person to whom the notice is issued (as long as the notice sufficiently identifies the person).

A formal defect or irregularity does not automatically invalidate the PIN. If the information given is not misleading, does not cause a substantial injustice and sufficiently identifies the person to whom the PIN is issued, the PIN remains valid. However, if the defect or irregularity, when viewed objectively, may mislead the person to whom it is issued, then the PIN will be invalid.

Example of a PIN defect or irregularity

Writing on the PIN:

- PIN being illegible (hard to read/understand) or capable of multiple meanings.

The person issued with a PIN must:

- bring it to the attention of everyone whose work is affected by it
- display a copy of it in a prominent place at or near the workplace or part of the workplace where work is being carried out that is affected by the notice
- provide a copy of the PIN and details on its status to the Regulator at WHSnotification@oir.qld.gov.au or by calling 1300 362 128 as soon as practicably possible.

Note: A prominent place means open display in a place where the notice will be seen without prior knowledge that it is there, and where the relevant people (those in the work group whose work is affected by the notice) will come across it in the normal course of events and be able to examine it (e.g. on a staff noticeboard, a broadcast email to all staff).



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Review of a PIN

Any person (or the PCBU if the person issued with the PIN is a worker), can ask Workplace Health and Safety Queensland (WHSQ) to review a PIN within **3 days** of being issued with the PIN.

An inspector will attend the workplace to confirm/uphold the notice, confirm it with changes, or cancel it. A confirmed PIN must be complied with.

If a person or PCBU does not request the regulator to appoint an inspector to review a PIN within **3 days** of it being issued, the PIN must be complied with. However, where a request is made for a review, the operation of the PIN is stayed (paused) until the review.