



**Health & Safety
Representatives
Support Service**

Work Health and Safety Act 2011 (QLD)

A GUIDE FOR HEALTH AND SAFETY REPRESENTATIVES

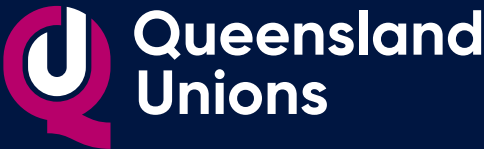
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A copy of the current legislation is available from: www.legislation.qld.gov.au



Introduction

This Guide provides an overview of aspects of the *Work Health and Safety Act 2011 (Qld)* – the “WHS Act” – targeted at Health and Safety Representatives (HSRs) who have been elected by members of a work group at their place of work, to represent those workers in consultation on Work Health and Safety Issues. It is not a replacement for the full WHS Act which is available from: www.legislation.qld.gov.au

Objects of the WHS Act

The main object of the WHS Act is to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

- protecting workers and other persons against harm to their health, safety and welfare by eliminating or reducing risks arising from work;
- ensuring workplace representation, consultation, cooperation, and issue resolution in relation to work health and safety;
- encouraging unions and employer organisations to take a constructive role in improving work health and safety practices;
- promoting information, education and training on work health and safety;
- providing effective compliance and enforcement measures;
- delivering continuous improvement and progressively high standards of work health and safety; and
- maintaining and strengthening the national harmonisation of laws and facilitating a consistent national approach to work health and safety in Queensland [WHS Act s 3(1)].

A key principle that underpins the WHS Act is that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work, or from particular types of substances or plant, as is reasonably practicable [WHS Act s 3(2)].

Under the WHS Act “health” includes psychological health as well as physical health [WHS Act s 4, sch 5 (definition of “health”)].

Who is covered by the Act?

The WHS Act applies to persons conducting businesses or undertakings (PCBUs/employers), workers (including employees), contractors, subcontractors, outworkers, apprentices and trainees, work experience students, volunteers, and the general public in Queensland [WHS Act ss 5, 7].

What the Act does not apply to

The Act does not apply to the following areas in Queensland:

- coal mines (*Coal Mining Safety and Health Act 1999*);
- metalliferous mining (*Mining and Quarrying Safety and Health Act 1999*); and
- operating plant under the *Petroleum and Gas (Production and Safety) Act 2004* (noting it may apply in specific circumstances as prescribed in Schedule 1, Part 2, Division 1 of the WHS Act)

Where there is any inconsistency with the following legislation, the WHS Act will not apply to the extent of the inconsistency:

- the *Electrical Safety Act 2002 (Qld)*; and
- the *Safety in Recreational Water Activities Act 2011 (Qld)*

The WHS Act also does not apply in relation to aviation safety.

In addition, the WHS Act does not apply to PCBUs or their workers who are otherwise covered under the *Commonwealth Work Health and Safety Act*. This includes Commonwealth or Territory public sector agencies, the Australian Federal Police, and the Defence Force, which is regulated by Comcare. The Commonwealth Act also applies to some national employers who are self-insured under Comcare such as Australia Post, Telstra, the Commonwealth Bank, and the National Australia Bank, StarTrack Express, Optus, Medibank Private and Linfox. A current list of self-insurers that the Commonwealth legislation applies to can be found at www.srcc.gov.au/current-self-insurers/list-of-current-and-former-self-insurers.

WHS Regulation and Codes of Practice

People with duties under the WHS Act should also refer to the Work Health and Safety Regulation 2011 (WHS Regulation) and approved codes of practice.

The WHS Regulation has the same force as legislation and must be complied with.

You can find an up-to-date list of all approved codes of practice on the Regulator’s website at www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice

Some common examples of approved codes of practice that apply to all workplaces include:

- First Aid in the Workplace Code of Practice 2021
- How to Manage Work Health and Safety Risks Code of Practice 2021
- Managing the Risk of Psychosocial Hazards Code of Practice 2022
- Managing the Work Environment and Facilities Code of Practice 2021
- Work Health and Safety Consultation, Cooperation, and Coordination Code of Practice 2021

Please refer to the regulator link above for the full list of codes.

WHS Regulation 2011 (Qld)

The WHS Regulation specifies the way in which a duty under the WHS Act must be performed or provides more detail on procedural or administrative matters to support the Act (e.g., requiring licences for specific activities and the keeping of records).

The Regulation also provides more prescriptive detail on how to manage specific high-risk hazards such as lead, asbestos, working in confined spaces, construction work, working at heights, or psychosocial hazards.

Matters contained within the Regulation must be complied with as a law, as a Regulation has the same status as an Act or piece of legislation.

Approved Codes of Practice

PCBUs (employers) must comply with an approved code of practice or manage hazards or risks arising from the work in a different way, only if the PCBU is able to demonstrate it can provide a standard of health and safety that is equivalent to or higher than the standard for health and safety required under a code [WHS Act s 26A].

(This is a Queensland specific provision under health and safety law.)

Approved codes of practice provide practical guidance on how to meet the standards required to ensure health and safety of workers and other persons, which are set out in the WHS Act and the WHS Regulation.

While approved codes of practice can be used as evidence in legal proceedings (such as a prosecution for not complying with the Act) to provide information on how a hazard or risk can be controlled or managed and to determine what was reasonably practicable in the circumstances, they can also be used proactively by an inspector to ensure compliance with health and safety by issuing an improvement or prohibition notice.

Did you know?

In Queensland a Code of Practice can be enforced by an inspector using a compliance notice such as an ‘Improvement Notice’.

Definitions

The following terms are used throughout this Guide

Excluded entity	a. i an entity, other than a union, that is an association of employees or independent contractors, or both; ii an entity, other than a union or an association mentioned above, that represents, or purports to represent, the industrial interests of the worker or representative; iii an entity that demands or receives a fee for representing the worker or representative; iv a union that is not a relevant union for the worker; b. an individual who: i is an officer/employee of an excluded body; ii acting agent of an excluded body; iii is otherwise representing or purporting to represent an excluded body. [WHS Act s 45B(1)(a) & (b)].
Health and safety committee (HSC)	A formal Committee, including equal representation of workers, and representatives of a person conducting a business or undertaking (an employer) that facilitates cooperation between a PCBU and workers to provide a safe place of work. Worker representation includes elected Health and Safety Representatives where they consent to be on the Committee.
Health and safety representatives (HSRs)	A worker who has been elected by a work group to represent workers in the work group about health and safety issues.
Officer	Persons within an organisation who have significant control over a business or undertaking or who can contribute substantially to the decision-making process. Commonly, this means Board Directors, the chief executive officer or chief financial officer of an organisation. However, it can extend to others provided the test is applied in relation to the person making, or participating in making decisions that affect the whole, or a substantial part of the organisation's activities [WHS Act s 4, Sch 5 (Definition of Officer)]. Officers are required to exercise due diligence in ensuring the PCBU has in place measures to comply with the WHS Act and Regulation.
Person conducting a business or undertaking (PCBU)	The legal entity that operates the business or undertaking. The PCBU has the primary duty of care for ensuring the work health and safety of workers and other people, by eliminating or minimising the risk to their health and safety, so far as is practicable. A PCBU can be a sole trader (for example a self-employed person), a partnership, company, unincorporated association, or government department or agency, including a local government authority [WHS Act s 5].
Person with management or control	A PCBU with management or control of the workplace.

Plant	Any machinery, equipment, appliance, container, implement or tool [WHS Act s 4, sch 5 (definition of 'plant')].
Relevant union	A union of which a worker is a member or is eligible to be a member, and whose rules entitle the union to represent the worker's industrial interests [WHS Act s 45A].
Representative	(a) the health and safety representative for the worker; or (b) a suitable entity for representing the worker that is authorised by the worker to represent them [WHS Act s45A].
Structure	Anything that is constructed, whether fixed or moveable, temporary or permanent, and includes buildings, masts, tower, framework, pipelines, transport infrastructure and underground works (shafts or tunnels) [WHS Act s 4, sch 5 (definition of 'structure')].
Substance	Any natural or artificial substance in the form of a solid, liquid, gas, or vapour [WHS Act s 4, sch 5 (definition of 'substance')].
Suitable entity	A relevant union for the worker, or another entity that is authorised by the worker or representative to represent or assist the worker or representative but is not an excluded entity [WHS Act s 45A].
Supply	Supply and re-supply of a thing provided by way of sale, exchange, lease, hire, or hire purchase arrangement [WHS Act s 6(1)].
Volunteer	A person who acts on a voluntary basis regardless of whether they receive out of pocket expenses [WHS Act s 4, sch 5 (definition of 'volunteer')].
Work group	An agreed work group of workers determined under the WHS Act to be represented by elected HSRs and deputy HSRs, who share similar work conditions (e.g., all the electricians in a factory; all people on night shift; all people who work in the loading bay of a retail storage facility) [WHS Act Part 5].
Worker	Employees, contractors or subcontractors, employees of contractors or subcontractors, employees of a labour hire company assigned to work at a business or undertaking, outworkers, apprentices and trainees, work experience students, volunteers and PCBUs who are individuals if they perform work for the business or undertaking [WHS Act s 7].
Workplace	Any place where work is carried out for a business or undertaking. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water such as offshore units and platforms [WHS Act s 8].

Work health and safety duties

General principles

There are a number of different parties who have a duty or a legal obligation under the WHS Act and Regulation to ensure health and safety of workers and other persons.

The WHS Act outlines the general health and safety duties of a number of parties including:

- PCBUs and officers;
- persons with management or control of a workplace;
- persons with management or control of fixtures, fittings or plant at a workplace;
- designers of plant, substances, or structures;
- manufacturers of plant, substances, or structures;
- suppliers of plant, substances, or structures;
- persons who install, construct or commission plant or structures;
- workers; and
- other people at a workplace [WHS Act ss 19-29].

Any person who has a duty requires the person to eliminate risks to health and safety, so far as is reasonably practicable, and if it is not reasonably practicable to do so, to minimise those risks so far as is reasonably practicable [WHS Act s 17].

For hazards that are outlined in the WHS Regulation e.g., lead, asbestos, construction, working at heights, working in confined spaces and for psychosocial hazards, the PCBU has a requirement to apply Part 3.1 of the Regulations meaning they must:

1. identify reasonably foreseeable hazards prescribed in the Regulation;
2. eliminate or minimise risks so far as is reasonably practicable by applying control measures using the hierarchy of controls;
3. maintain the control measures; and
4. review the control measures.

Key point

Hazards outlined in the Regulation must be managed in accordance with Part 3.1 by identifying reasonably foreseeable hazards, applying the hierarchy of controls, and maintaining and reviewing those controls.

Primary duty of care

The WHS Act requires all PCBUs to ensure the health and safety of workers, so far as is reasonably practicable. Workers include volunteers, contractors, and contractors' workers.

PCBUs also have a duty of care to any other people who may be put at risk from work carried out by the business or undertaking.

A self-employed person must also ensure his or her own health and safety while at work, so far as is reasonably practicable.

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

- providing and maintaining a work environment that is safe and without risks to health, including entering and exiting of a workplace;
- providing and maintaining plant, structure and systems of work that are safe and do not pose health risks (e.g., providing effective guards on machines and regulating the pace and frequency of work);
- ensuring the safe use, handling, storage and transport of plant, structure, and substances (e.g., toxic chemicals, dusts, and fibres);
- providing adequate facilities for the welfare of workers at workplaces under their management and control (e.g., washrooms, lockers, and dining areas);
- providing workers with information, instruction, training, or supervision needed for them to work safely and without risks to their health;
- monitoring the health of workers and the conditions of the workplace to prevent injury or illness; and
- maintaining any accommodation owned or under their management and control of the PCBU to ensure workers occupying the premises are not exposed to risks to health and safety [WHS Act s 19(3), (4)].

Note risks to health and safety include both physical and psychological risks.

Upstream Duty Holders

There are a number of other duty holders who are also responsible for ensuring aspects of health and safety which are often referred to as upstream duty holders these are summarised below.

A **person with management or control of a workplace** must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace do not affect the health and safety of any person [WHS Act s 20].

A **person with management or control of fixtures, fittings or plant** at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings, and plant do not affect the health and safety of any person [WHS Act s 21].

A **designer of any plant, substances or structures** that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to the plant, substances, or structures, including its handling, construction or storage, dismantling and disposal is designed, so far as is reasonably practicable, to be without risks to health or safety when used for its intended purpose [WHS Act s 22].

A **manufacturer of any plant, substances or structures** which is manufactured to be used, or could reasonably be expected to be used at a workplace, must ensure all workplace activity relating to the plant, substances, or structures, including its handling, storage and disposal or dismantling is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose [WHS Act s 23].

An **importer of plant, substances or structures** which is to be used, or could be reasonably be expected to be used at a workplace, must ensure activity relating to the plant, substances, or structures, including its handling, storage and disposal or dismantling, is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose [WHS Act s 24].

A **supplier of plant, substances or structures** that is to be used, or could be reasonably be expected to be used at a workplace, must ensure all workplace activity relating to the plant, substances, or structures, including its handling, storage and disposal or dismantling is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose [WHS Act s 25].

A **person who installs, constructs, or commissions plant or structures** must also ensure, so far as is reasonable practicable, all workplace activity relating to the plant or structures, including its decommissioning or dismantling is without risks to health or safety [WHS Act s 26].

Shared duties

A person may have more than one duty [WHS Act s 15]. For example, a working director of a company has duties as an officer of the company and also as a worker.

In addition, more than one person may have the same duty [WHS Act s 16]. For example, a construction site may have multiple duty holders including the principal contractor, contractors, and sub-contractor – or be part of a shared building where there are multiple occupiers and businesses who occupy the same building.

Where there are shared duties, each duty holder must comply with that duty to the standard required by the Act even if another duty holder has the same duty and cannot contract out of their duty. Each person who has a duty must carry out their duty to the extent they have capacity to influence or control a matter or would have the capacity, except for an agreement or arrangement that purports to limit or remove that capacity. For example, a duty holder can enter into an agreement with another duty holder that shares the same duty about how the duty will be carried out [WHS Act s 16].

Duty to comply with an approved code of practice

A PCBU must comply with an approved code of practice or provide an equivalent or higher standard of health and safety when managing hazards or risks arising from the work carried out as part of the business or undertaking [WHS Act s 26A].

It is the duty of an officer of a PCBU to exercise due diligence to ensure the PCBU complies with its health and safety duties and obligations. An officer may be charged with an offence under the WHS Act independently of any breach of duty by the PCBU.

Duties of officers

Officers of a PCBU are required to exercise due diligence when carrying out their WHS duties.

Due diligence includes taking reasonable steps to:

- acquire and keep current information on work health and safety matters;
- understand the nature and operations of the business or undertaking and associated hazards and risks;
- ensure the PCBU has, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety;
- ensure the PCBU has appropriate processes to receive and consider information about incidents, hazards, and risks, and to respond in a timely manner; and
- ensure the PCBU has, and implements, processes for complying with their duties and obligations (e.g., reports notifiable incidents, consults with workers, complies with notices, provides training and instruction, and ensures HSRs receive training entitlements) [WHS Act s 27(5)].

Duties of workers

While at work, workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any reasonable instruction given by the PCBU and any reasonable policy or procedure of the PCBU to comply with the WHS Act and WHS Regulation [WHS Act s 28].

Duties of other persons

Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any actions taken by the PCBU to comply with the WHS Act and WHS Regulation [WHS Act s 29].

Duty to consult

A PCBU must consult with workers and HSRs (where they are in place) about work health and safety 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 [WHS Act s 47].

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 all other people with the same duty. Each duty holder must share information in a timely manner and cooperate to meet health and safety obligations [WHS Act s 46].

Key point

All people are to be given the highest level of health and safety protection, so far as is reasonably practicable.

What is reasonably practicable?

The guiding principle of the WHS Act is that all people are given the highest level of health and safety protection from hazards and risks arising from work, substances, or plant, so far as is reasonably practicable.

The term “reasonably practicable” is a legal requirement which

requires a duty holder to do what they are reasonably able to do in the circumstances to ensure the health and safety of workers and others like volunteers and visitors – i.e. what could reasonably be done at a particular time to ensure health and safety measures were in place.

In determining what is reasonably practicable, there is a requirement to weigh up all relevant matters including:

- the likelihood of a hazard or risk occurring (i.e., the probability of a person being exposed to harm);
- the degree of harm that might result if the hazard or risk occurred (i.e., the potential seriousness of injury or harm);
- what the person concerned knows, or ought to reasonably know, about the hazard or risk and ways of eliminating or minimising it;
- the availability of suitable ways to eliminate or minimise the hazard or risk; and
- the cost of eliminating or minimising the hazard or risk [WHS Act s 18].

Although the cost of eliminating or minimising a risk is relevant in determining what is reasonably practicable, there is a clear presumption in favour of safety over cost. Cost is normally only a matter to consider if it can be shown that the cost of introducing a measure to eliminate or minimise a risk of a hazard is “grossly disproportionate” to the risk, and that there are other less costly measures which could effectively minimise the risk.

An accepted principle that also underpins “what is reasonably practicable” is that a PCBU cannot expose people to a lower level of protection because it is in a lesser financial position than another PCBU facing the same risk or hazard in similar circumstances.

Further information

Safe Work Australia “How to determine what is reasonably practicable to meet a health and safety duty – Interpretive Guideline”

www.safeworkaustralia.gov.au/doc/how-determine-what-reasonably-practicable-meet-health-and-safety-duty

Incident notification

Notifiable incidents

A PCBU has a duty to notify Workplace Health and Safety Queensland (the regulator) immediately after becoming aware of a death, a serious injury or illness, or a dangerous incident at a workplace [WHS Act s 38].

Notification of an incident to the regulator must be given by the fastest possible means. If notice is given by telephone, Workplace Health and Safety Qld may request a written notice of the incident. This must be provided within 48 hours of the request and the PCBU must keep a copy of this record for at least five years.

Serious injuries or illnesses

A serious injury or illness means one that results in:

- immediate hospital treatment as an in-patient in a hospital;
- immediate medical treatment for serious injuries (e.g., amputation, scalping, a spinal injury, loss of a bodily function or a serious laceration, burn, head or eye injury); or
- medical treatment within 48 hours of exposure to a substance [WHS Act s 36].

A serious illness also means:

- any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work:
 - i with micro-organisms;
 - ii that involves providing treatment to a person;
 - iii that involves contact with human blood or body substances; or
 - iv involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products.
- the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
 - i Q fever;
 - ii anthrax;
 - iii leptospirosis;
 - iv brucellosis;
 - v Hendra virus;
 - vi avian influenza; or
 - vii psittacosis [WHS Regulation s 699].

Dangerous incidents

A dangerous incident at a workplace is one that exposes a person to a serious health and safety risk from immediate or imminent exposure to:

- the uncontrolled escape, spillage, or leakage of a substance;
- an uncontrolled implosion, explosion, or fire;
- an uncontrolled escape of gas, steam, or a pressurised substance;
- an electric shock;
- the fall or release from a height of any plant, substance, or thing;

- the collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be licensed or registered;
- the inrush of water, mud or gas in workings, in an underground excavation or tunnel;
- the collapse or partial collapse of a structure;
- the collapse or failure of an excavation or any shoring supporting an excavation; or
- the interruption of the main system of ventilation in an underground excavation or tunnel [WHS Act s 37].

Duty to preserve incident site

The person with management or control of a workplace at which a notifiable incident has occurred has a duty to ensure the site of the incident is not disturbed until an inspector arrives at the site or directs otherwise. This does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe [WHS Act s 39].

Further information

Further information on mandatory reporting requirements for “notifiable incidents” can be found in the **Safe Work Australia Information Sheet – Incident Notification**

www.safeworkaustralia.gov.au/doc/incident-notification-information-sheet

Consultation

Duty to consult

A PCBU must, so far as is reasonably practicable, consult with workers who carry out work for the business or undertaking, or who are, or are likely to be directly affected by a matter relating to work health and safety [WHS Act s 47(1)].

Requirements for agreed procedures

Where there are agreed procedures in place for consultation about WHS issues, consultation must occur in accordance with those procedures. However, any agreed procedures must comply with the following:

- relevant information about WHS matters are shared with workers;
- workers are given a reasonable opportunity
 - i to express their views and to raise work health or safety issues in relation to the matter, and
 - ii to contribute to the decision-making process relating to the matter.
- the views of workers are taken into account by the PCBU; and
- workers who have been consulted are advised of the outcome of the consultation in a timely way [WHS Act ss 47(2), 48(1)].

Importantly, if workers are represented by a health and safety representative (HSR), any consultation must involve the HSR(s) [WHS Act s 48(2)].

Also, if one (1) or more workers ask the PCBU to consult their 'representative' (i.e, their relevant union), the consultation must involve that representative [WHS Act s 48(3)].

The person conducting the business or undertaking (PCBU) must carry out the consultation only at the time and place agreed by all parties [WHS Act s48(5)].

When consultation must occur

Consultation by a PCBU with workers must occur when:

- identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;
- when making decisions about ways to eliminate or minimise those risks;
- when making decisions about the adequacy of facilities for the welfare of workers;
- when proposing changes that may affect the health or safety of workers;
- when making decisions about the procedures for:
 - i consulting with workers; or
 - ii resolving work health or safety issues at the workplace.
 - iii monitoring the health of workers;
 - iv monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
 - v providing information and training for workers [WHS Act s 49].

Further information

Further information on requirements about consultation can be found in the **Work health and safety consultation, cooperation and coordination Code of Practice 2021**

https://www.worksafe.qld.gov.au/___data/assets/pdf_file/0026/72647/whs-consultation-cooperation-coordination-cop-2021.pdf

Template

A template agreed procedure for consultation about WHS matters is included in Appendix 1 of this Guide.

Health and Safety Representatives (HSRs)

Who is an HSR?

An HSR represents the health and safety interests of a work group. There can be as many HSRs and deputy HSRs as needed after consultation, negotiation, and agreement between workers and their employers [WHS Act s 52].

To be an HSR, the worker must be a member of the work group and not disqualified from being an HSR under the WHS Act [WHS Act s 60].

Work groups

Key point

When negotiating work groups HSRs must be readily accessible to each worker in the work group.

Any worker or group of workers can ask the PCBU for whom they are carrying out work to facilitate the conduct of an election for 1 or more HSRs [WHS Act s 50].

Once that request is made, work groups must be determined [WHS Act s 51]. A work group is a group of workers who share a similar work situation.

For example, a work group might consist of all workers in the office part of a manufacturing complex, or it might consist of people of the same trade, or it might consist of people on night shift. If agreed, workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers, and apprentices.

Request to negotiate work groups

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

- number and composition of the work group(s);
- number of HSRs and deputy HSRs;
- workplaces(s) to which the work group(s) apply; and
- the businesses or undertakings to which the work groups will apply [WHS Act ss 52, 56].

A work group must be determined by negotiation and agreement between the:

- person conducting the business or undertaking (PCBU);
- workers who are proposed to form the work group or their representative;
- a relevant union if the union notifies the PCBU, in writing, that the union want to be a party to the negotiations and agreement [WHS Act s52(1)].

A PCBU must negotiate with and must not exclude a representative of a worker or a relevant union from the negotiations [WHS Act s52(5)].

The parties must agree on when and where in the workplace negotiations are to be carried out and negotiations are to be carried out only at the agreed time and place [WHS Act s 52(5B)].

The PCBU must also notify workers as soon as practicable of the outcome of the negotiations [WHS Act ss 53(1), 57(1)]. At any time, the parties to a work group agreement may negotiate a variation [WHS Act s55(3)].

If an agreement is not reached about the formation of work groups within 14 days after a request is made, an inspector may be appointed on request. The inspector must make a decision within 7 days after the appointment [WHS Act s54].

A party may apply to the Queensland Industrial Relations Commission to determine the matter by conciliation, mediation, or arbitration if they do not agree with the decision of an inspector, [WHS Act Part 5, Division 7A].

Factors to take into account for work groups

Negotiations for and determination of work groups and variations of work groups must be directed at ensuring that the workers are grouped in a way that:

- a. most effectively and conveniently enables the interests of the workers, in relation to work health and safety, to be represented; and
- b. has regard to the need for a health and safety representative for the work group to be readily accessible to each worker in the work group [WHS Regulation s 16].

Negotiations for and determination of work groups and variation of work groups must take into account all relevant matters including the following:

- a. the number of workers;
- b. the views of workers in relation to the determination and variation of work groups;
- c. the nature of each type of work carried out by the workers;
- d. the number and grouping of workers who carry out the same or similar types of work;
- e. the areas or places where each type of work is carried out;
- f. the extent to which any worker must move from place to place while at work;
- g. the diversity of workers and their work;
- h. the nature of any hazards at the workplace or workplaces;
- i. the nature of any risks to health and safety at the workplace or workplaces;
- j. the nature of the engagement of each worker, for example as an employee or as a contractor;
- k. the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term;
- l. the times at which work is carried out; and
- m. any arrangements at the workplace or workplaces relating to overtime or shift work, [WHS Regulation s 17].

Powers and Functions of Health & Safety Representatives (HSRs)

The role of an Health and Safety Representative (HSR) is to represent workers in their work group about work health and safety matters in the workplace.

An HSR can:

- represent workers in the work group in matters relating to work health and safety;
- monitor measures to comply with the WHS Act taken by the PCBU;
- investigate complaints from members of the work group relating to work health and safety;
- inquire into anything that appears to be a risk to the health safety of workers in the work group;
- inspect the workplace or any area where work is carried out by a worker in the work group after giving reasonable notice to the PCBU (or without notice in the event of an incident, or a situation involving a serious risk to health and safety of a person emanating from an immediate or imminent exposure to a hazard);
- accompany an inspector during an inspection of the area the HSR represents;
- accompany a Work Health and Safety Entry Permit Holder (WHS EPH) while at the workplace, where the entry relates to the work group or part of the work group the HSR represents;
- request and receive information about the WHS of workers in the work group;

- whenever necessary, request the assistance of a ‘suitable entity’ (i.e., their relevant union)
- be present at an interview with a worker that the HSR represents (with their consent) and the PCBU or an inspector about health and safety issues; and
- request a health and safety committee be established [WHS Act s68].

An HSR also has the power to:

- request a review of a control measure if they reasonably believe a duty holder has not adequately reviewed a control measure:
 - as a result of a measure not controlling the risk it was intended to control;
 - before a change at the workplace that is likely to give rise to a new or different risk;
 - when a new relevant hazard or risk is identified; or
 - when the results of consultation indicate a review is necessary [WHS Regulation s 38(4)].

A change at a workplace includes:

- a change to the workplace itself or any aspect of the work environment; or
- a change to a system of work, a process, or a procedure [WHS Regulation s 38(3)].

An HSR may direct one or more workers to cease work by giving the worker/s a written cease work notice.

The HSR can do this if –

- they have reasonable concern that to continue to carry out the work would expose a worker(s) to a serious risk to the worker’s health or safety, resulting from an immediate or imminent exposure to a hazard; and
- a worker, mentioned in paragraph (a), is part of the work group the Health and Safety Representative (HSR) represents [WHS Act s85(1)].

The HSR must not give a direction unless they have consulted with the PCBU and attempted to resolve the work health and safety issue using the issue resolution procedure. However, consultation is not required prior to issuing a direction if the risk is so serious and immediate or imminent that it is not reasonable to consult before doing so [WHS Act s 85(2), (3)].

As soon as practicable after giving the cease work notice to a worker, the HSR must provide the PCBU with a copy and display a copy in a prominent way in an area used by workers in the work group [WHS Act s 85(2A)].

The role of an elected HSR is generally limited to their work group unless there is a serious risk to the health or safety of other workers from an immediate hazard, or where a worker in another work group asks for their assistance and the HSR for that other work group is not available [WHS Act s 69]

Obligations of a PCBU to an HSR

Just like an HSR has specific powers and functions under the Act, a PCBU also has legal obligations or duties towards an HSR. These include:

- consulting, so far as is reasonably practicable, on work health and safety issues affecting workers in the HSR’s work group;
- conferring with an HSR for a work group, whenever reasonably requested by an HSR, for the purpose of ensuring health and safety of workers in the work group;
- allowing any HSR for a work group access to information the person has relating to hazards and risks and the health and safety of workers in the work group;
- allowing an HSR to be present at an interview with a worker (with their consent) with an inspector or the PCBU;
- providing any resources, facilities and assistance to an HSR that are reasonably necessary to enable the HSR to exercise their powers or perform their functions;
- allowing a ‘suitable entity’ (i.e., a relevant union) assisting an HSR to have access to the workplace if that is necessary to enable the assistance to be provided;
- informing an HSR about a notice and the entry of a WHS EPH or an inspector;
- allowing an HSR to accompany a WHS EPH or an inspector while at the workplace;

- providing copies of relevant notices (entry notices, compliance notices);
- notifying the HSR about any notifiable incidents in their workplace/work group, and providing the HSR with either a copy of the written notice given to the regulator or the information received by the person from the regulator under section 38(6) of the WHS Act as soon as practicable after it is received; and
- allowing the HSR to spend the time reasonably necessary to exercise their powers or functions under the Act [WHS Act s 70].

The PCBU is required to ensure there is a copy of the up-to-date list of Health and Safety Representatives and Deputy Health and Safety Representatives displayed at the workplace in a way that is readily accessible to workers in each of the work groups at the principal place of the business or undertaking, and at any other relevant workplace [WHS Act s 74].

The PCBU is also required to notify Workplace Health and Safety Queensland (the regulator) of their current Health and Safety and Deputy Health and Safety Representatives [WHS Act s 74(b)].

Link

A link to the regulator portal is provided here:

<https://fswqap.worksafe.qld.gov.au/hsr-web/views/notification/main.zhtml>

Information an HSR is entitled to in a workplace

As part of performing their role, an HSR may request access to:

- information relating to any work-related incident or disease, including statistical records, such as an injury register;
- an asbestos register and asbestos management plan, which a person with management or control of a workplace must ensure ready access to the HSR at any time;
- health and safety policies and procedures, including Safe Work Method Statements;
- safety data sheets for the chemicals that are used in the workplace;
- technical specifications for equipment regarding noise, vibration or radiation emission;
- results of occupational hygiene measurements, including dust levels, noise levels or chemical fumes;
- records of risk assessments conducted at the workplace;
- reports on work health and safety matters, including reports prepared by consultants for the PCBU;
- minutes of health and safety committee meetings;
- information provided by manufacturers and suppliers about plant, equipment or substances at the workplace; and
- health monitoring information that does not contain personal or medical information about a worker.

However, an HSR is not entitled to access personal or medical information concerning a worker that identifies the worker, without the worker’s consent [WHS Act s 71(2)].

A PCBU may also refuse to grant information to an HSR that is “confidential commercial information” [WHS Act s 71(7)]. This means information about a trade secret, or financial information or other information that has a commercial value and, if disclosed, will cause significant financial harm to a business or undertaking [WHS Act s 4, Sch 5 (Definition of confidential commercial information)].

Liability of an HSR

A HSR is not personally liable for anything done, or not done, in good faith while carrying out their role [WHS Act s 66].

What resources, facilities and assistance does an HSR need?

A PCBU must provide any resources, facilities and assistance that are reasonably necessary to enable the HSR to exercise their powers and carry out their functions [WHS Act s 70(1)(f)].

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.

However, the resources, facilities and assistance provided must include:

- a means for the HSR to communicate with 1 or more workers in the work group (e.g., access to a phone, access to an electronic device with internet access from which to send emails or attend online meetings with the workers), including, if the HSR and the workers work at different workplaces, a means of transport to the workers' workplace;
- a means for the HSR to communicate with the PCBU;
- a means for the HSR to hold face-to-face or online meetings with 1 or more workers in the work group (e.g., access to a room or area);
- a means for the HSR to send and receive information about health and safety in accordance with the Act;
- a means for the HSR to monitor measures taken by the PCBU under the Act in relation to the health or safety of workers in the work group (e.g., a noise meter); and
- a means for the HSR to print or display relevant health and safety information or notices [WHS Regulation s 20A].

Further information

See the **Safe Work Australia “Worker Representation and Participation Guide”** [pp 25-26].

Should HSRs be paid as normal when they perform their functions?

Whilst exercising their powers as an HSR, the PCBU must –

- pay the health and safety representative (HSR), the amount including overtime, penalties, or allowances, the HSR would be entitled to receive if the HSR were performing their normal duties during the same period [WHS Act s70(3)].

HSRs should not be disadvantaged for taking on the role of HSR. When an HSR is exercising their powers as an HSR or performing any of the functions the WHS Act gives them, they must be paid the same amount that they would be entitled to receive for performing their normal duties. Payment must include any allowances to which the worker is entitled [Safe Work Australia “Worker Representation and Participation Guide” p 26].

HSRs to be protected from Discriminatory or Coercive Conduct

A person must not engage in discriminatory conduct for a prohibited reason [WHS Act s 104].

Discriminatory conduct means any of the following:

- dismissing a worker;
- terminating a contract for services with a worker;
- putting a worker to their detriment in their engagement as a worker;
- altering the position of a worker to their detriment;
- treating a worker less favourably than other workers of the person;
- refusing or failing to offer or engage a prospective worker;
- treating a prospective worker less favourably than another prospective worker in offering terms of engagement;
- terminating a commercial arrangement with another person;
- refusing or failing to enter into a commercial arrangement with another person; and
- organising to take any of the action mentioned above or threatening to organise or take that action [WHS Act s 105].

A prohibited reason means a worker or prospective worker:

- is, has been or proposes to be a work health and safety officer, an HSR, or a member of a health and safety committee;
- undertakes, has undertaken, or proposes to undertake another role under the Act;
- exercises, has exercised, or proposes to exercise a power or perform a function as a work health and safety officer, an HSR, or a member of a health and safety committee;
- exercises, has exercised, or proposes to exercise a power under the Act in any way;
- performs, has performed, or proposes to perform a function under the Act;
- refrains from, has refrained from, or proposes to refrain from exercising a power or performing a function under the Act;
- assists, has assisted or proposes to assist, or gives, has given, or proposes to give any information to any person exercising a power or performing a function under the Act;
- raises, has raised, or proposes to raise an issue or concern about work health and safety with the PCBU or another person under the Act;
- is involved in, has been involved in, or proposes to be involved in resolving a work health and safety issue under the Act; or
- is taking action, has taken action, or is proposing to take action to seek compliance by any person with any duty or obligation under the Act [WHS Act s 106].

Note An eligible person (including a relevant union representing an affected worker) may commence civil proceedings in relation to discriminatory or coercive conduct - they may apply to the Queensland Industrial Relations Commission (QIRC) for an order in relation to a person who has engaged in discriminatory conduct [WHS Act s 112].

Election and eligibility to be elected as an HSR

A PCBU has a ‘positive duty’ to advise workers in writing about their rights to request the election of HSRs, the formation of work groups, the processes to do so, and about the powers and functions of an HSR –

- as soon as reasonably practicable after the term of office for an HSR ends; or
- as soon as reasonably practicable after the day an HSR ceases to hold office; or
- otherwise, every year if an HSR has not been elected [WHS Act s50B].

To be eligible for election, a person must be a member of the designated work group and not be disqualified from acting as an HSR [WHS Act s 60].

An HSR for a work group is to be elected by the members of that work group. All workers in the work group are entitled to vote in the election for the HSR for their work group [WHS Act s 62].

An election is not required to be conducted where there is only one eligible candidate for the HSR or deputy HSR role [WHS Act s 63].

Workers in a work group are able to determine how an election will be conducted but it must comply with the following minimum requirements:

- each PCBU in which a worker in the work group works must be informed of the date on which the election is to be held as soon as practicable after the date is determined;
- all workers in the work group are given an opportunity to:
 - i nominate for the position of HSR or deputy HSR; and
 - ii vote in the election;
- all workers in the work group and all relevant PCBUs are to be informed of the outcome of the election [WHS Act s 61(2); WHS Regulation s 18].

If the majority of workers in a work group decide the election can be conducted with the assistance of a ‘suitable entity’ (e.g., Union) [WHS Act s61(3)].

If requested by the workers, the PCBU must provide any resources and assistance to carry out the election that are reasonably necessary to enable the election to be conducted [WHS Act s 61(4)]. Elections for a deputy HSR are to be carried out in the same way as for an HSR [WHS Act s 67].

A PCBU must not intentionally hinder, prevent, or discourage the election of an HSR or deputy HSR, or workers from making a request to conduct elections. This includes any person/s conducting the election at the request of the workers (e.g., Union) [WHS Act ss 50A, 61(3), 62A].

Template

See [Appendix 2](#) for template forms for the conduct of elections of HSRs.

Term of office for a HSR or deputy HSR

The term of office for a HSR or deputy HSR is three years. They cease to hold office if:

- they leave the work group;
- they are disqualified from being an HSR; or
- they resign as an HSR [WHS Act ss 64, 65].

In addition, an HSR can be removed by the majority of members of a work group where the majority of members sign a written declaration that the HSR should no longer represent the work group.

Once the written declaration is signed, a member of the work group nominated by members of the work group who have signed the declaration must, as soon as practicable, inform the HSR who is to be removed, the PCBU for the work group, and take all reasonable steps to inform all members of the work group of the removal.

The removal of the HSR takes effect when the HSR, the PCBU and all members of the work group have been informed of the removal [WHS Regulation s 20].

HSRs can be re-elected. Elections are not needed when the number of candidates is the same as the number of vacancies.

HSR Training

Once an HSR is elected, they must complete an initial five-day training course approved by Workplace Health and Safety Queensland (the regulator). An HSR must complete the training within **28-days** of the day of their election, or as soon as practicable thereafter, if the initial five-day course is not reasonably available. A one-day refresher training course is required at least **every 12 months** (1-year) [WHS Regulation s 21].

An elected Health and Safety Representative has the right to choose the training provider they wish to attend to complete both the 5-day HSR training and the 1-day refresher. (e.g., Safe Work College) [WHS Act s72(2), (aa)].

The PCBU must allow an HSR to attend the training and be paid their normal rate of pay for doing so, in accordance with s 72 (4) of the WHS Act.

It should be noted that before an HSR can issue a provisional improvement notice (PIN) or give a direction to cease unsafe work, they must have attended an approved training course [WHS Act ss 85(6), 90(4)].

Provisional Improvement Notices (PINs)

One of the key powers of an HSR is to be able to issue a Provisional Improvement Notice (a PIN) to a person who they reasonably believe is not complying or has not complied with the WHS Act. The HSR must also believe that it is likely the non-compliance will continue or be repeated.

Before issuing a PIN, the HSR must consult with the person. If the matter is not resolved as a result of this consultation, the HSR may issue the person with a PIN in writing.

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

What is the purpose of a PIN?

The purpose of the PIN is to outline how the HSR believes the person is not complying with the Act, Regulation or a Code of Practice, and to provide a reasonable time within which the matter can be remedied. However, if the matter is a serious risk that may result in an immediate or imminent harm to a person, the HSR can also issue a cease work direction to the person.

Before an HSR issues a PIN, the HSR needs sufficient evidence to form a “reasonable belief” of the contravention. A reasonable belief is formed by making observations, asking questions, taking measurements, accessing records etc., and then weighing up that information to make the decision to issue a PIN.

It is important that the problem is clearly and specifically identified when forming a reasonable belief.

Case examples

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 resolution.

Towards the end of a shift in a commercial kitchen, workers may experience slips, trips and falls due to several missing floor tiles. This hollowed area allows pooling of water and oil which is tracked throughout the kitchen. This is most likely to cause an incident and there have been two recorded near miss incidents. The HSR consults with the kitchen supervisor, but the issue remains unresolved. The HSR issues a PIN to the kitchen supervisor.

What information needs to be included in a PIN?

A PIN must state:

- that the HSR believes the person is contravening, or has contravened, a provision of the WHS Act or regulations in circumstances that make it likely that the contravention will continue or be repeated;
- the provision of the WHS Act or regulations that the HSR believes is being, or has been, contravened;
- briefly, how the provision is being or has been contravened; and
- the persons issued with the PIN has 4-days to remedy the contravention or likely contravention [WHS Act s92(d)].

An HSR may suggest a range of options that they reasonably believe will remedy the situation; however, a duty holder is not required to implement these options where other measures resulting in the same or better safety outcomes can be applied.

Workplace Health and Safety Queensland (the regulator) has a template PIN which can be used.

Template

A copy of this template PIN is included in [Appendix 2](#) [p. 45] of this Guide.

Note A separate PIN should be completed for each contravention of the Act or Regulation. This is because certain information must be set out for each contravention, including the:

- part of the legislation being contravened (if known);
- reasons for the belief about the contravention; and
- date by which to comply with the PIN.

Putting more than one element in each box on a PIN form could make the PIN difficult to understand. It would also leave the PIN open to challenge because it may not be clear which reason, possible remedy and time limit applies to which contravention.

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 [WHS Act s 98].

Examples of a defect or irregularity that could mislead the person receiving the PIN and that could cause a substantial injustice include the writing on the PIN being illegible or capable of multiple meanings.

What happens after a PIN is issued?

A person issued with a PIN must:

- 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;
- bring it to the attention of everyone whose work is affected by it; and
- provide a copy of the PIN as soon as practicable after it is issued, and the details on its status to the Regulator at WHSnotification@oir.qld.gov.au or by calling 1300 362 128 as soon as practicably possible [WHS Act ss 97, 97A].

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 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). It is an offence for a person to intentionally remove, destroy, damage, or deface a PIN [WHS Act s 97].

A PCBU should have in place procedures to ensure that any PIN issued to management or supervisory staff is passed on promptly, as it is the employer's responsibility to deal with the PIN. Any person (or the PCBU if the person issued with the PIN is a worker), can ask Workplace Health and Safety Queensland to **review a PIN within three (3) days** of it being issued [WHS Act s100(1)]. An inspector will attend the workplace to confirm the notice, confirm it with changes, or cancel it. A confirmed PIN must be complied with [WHS Act s 102].

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 [WHS Act s 99]. However, where a request is made for a review, the operation of the PIN is stayed until the review [WHS Act s 100(2)].

Note an HSR cannot issue a PIN unless they have completed the HSR training [WHS Act s 90(4)].

Right to cease unsafe work

If a worker has a reasonable concern about a serious risk to their health or safety from an immediate or imminent exposure to a hazard, they may cease or refuse to carry out work. A worker who ceases work must notify the PCBU as soon as practicable and remain available to carry out suitable alternative work [WHS Act ss 84, 86]. Workers can be redirected to undertake suitable alternative work at the same or another workplace, until they can resume normal duties [WHS Act s 87].

An HSR may direct one or more workers to cease work by giving the worker/s a written cease work notice if the workers are part of the work group represented by the HSR and they have a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard [WHS Act s 85(1)].

The HSR must not issue a cease work notice unless they have consulted with the PCBU and attempted to resolve the work health and safety issue using the issue resolution procedure [WHS Act s 85(2)].

However, consultation is not required prior to giving a direction to cease work if the risk is so serious and immediate or imminent that it is not reasonable to consult before doing so [WHS Act s 85(2), (3)].

The direction remains effective until the notice is withdrawn in writing by the HSR, the issue is resolved with the assistance of an inspector, an inspector issues a prohibition notice, or the Queensland Industrial Relations Commission (QIRC) deals with the matter as a dispute [WHS Act s 85(7)].

Note An HSR may also direct workers orally to cease work [WHS Act s 85(4)].

A PCBU, worker or HSR may request an inspector to attend the workplace and assist in resolving an issue with the cessation of work [WHS Act s 89]. A PCBU may also notify the Queensland Industrial Relations Commission of a WHS dispute and seek to have the matter conciliated, mediated, or arbitrated [WHS Act ss 102A, 102B].

Note an HSR cannot give directions to cease unsafe work unless they have completed the HSR training [WHS Act s 85(6)].

Health and Safety Committees (HSCs)

The purpose of a health and safety committee (HSC) is to facilitate cooperation between a PCBU and workers in developing and carrying out measures to ensure health and safety at work. This includes health and safety standards, rules, and procedures for the workplace [WHS Act s 77].

If an HSR or five or more workers in a workplace request a PCBU to set up an HSC, the PCBU must do so as soon as practicable but no later than **28-days** of receiving the request [WHS Act s75(1)(a)]. However, a PCBU may also establish an HSC on their own initiative [WHS Act s 75(2)].

The Constitution for a HSC may be agreed between the PCBU and workers, but must comply with the following:

- membership of the committee must include HSRs if they consent;
- membership of the committee must include a work health and safety officer (WHSO);
- if there are two or more HSRs at a workplace, the HSRs may choose one or more of their numbers (who consent) to be members of the committee; and
- at least half of the members of the committee must be workers who are not nominated by the PCBU [WHS Act s 76].

A party may ask the regulator to appoint an inspector to assist the parties to reach an agreement, about the constitution of a committee, if unlikely to reach an agreement within 28-days (timeframe) [WHS Act s76(5)].

If the inspector reasonably believes the parties are unlikely to reach an agreement, the inspector **must, within 7-days** after the appointment –

- a. decide the constitution of the health and safety committee; or
- b. decide that a health and safety committee should not be established [WHS Act s 76(6A), (6B)].

A decision of an inspector under this section is taken to be an agreement under this section between the parties [WHS Act s76(7)].

If a party disagrees with an inspector's decision, they may file a dispute with the Queensland Industrial Relations Commission (QIRC) to have the matter reviewed.

An HSC must meet at least once every three months and at any reasonable time at the request of at least half of the members of the committee, or if the WHSO requests a committee meeting, [WHS Act s 78].

Work Health and Safety Officers (WHSOs)

A PCBU may appoint a Work Health and Safety Officer (WHSO) if the person holds a certificate of authority for appointment as a WHSO [WHS Act s 103A].

The regulator can issue a certificate of authority to a person if it is satisfied they have successfully completed an approved work health and safety officer course (such as a certificate IV in Work Health and Safety qualification), or an approved recertification course. The person may be issued with a certificate of authority if they have higher qualifications or the experience necessary to satisfactorily perform the functions of a WHSO [WHS Regulation ss 31B, 31C].

A WHSO has specific functions to advise the PCBU on work health and safety matters [WHS Act s 103B].

The functions of a WHSO (who is not the PCBU) are:

- to notify the PCBU about health and safety matters;
- to identify hazards and risks to health and safety arising from work carried out by the business or undertaking;
- to report in writing to the PCBU, any identified hazards and risks;
- to immediately notify the PCBU about:
 - any incident the WHSO is aware has occurred at the business or undertaking; or
 - any immediate or imminent risk to health and safety at the business or undertaking.
- to investigate, or assist in the investigation of any incidents that occurred at the business or undertaking;
- to accompany and assist an inspector during an inspection of the business or undertaking; and
- to establish educational and training programs on matters relating to work health and safety [WHS Act s 103B].

A WHSO must, at least every 12 months, assess the risks to health and safety arising from work carried out by the business or undertaking and prepare a report identifying any risks and recommending measures to control those risks. A copy of the report must go to the PCBU and to the HSC if one exists [WHS Act ss 103D, 103E].

The PCBU has certain obligations to provide information, resources, and support to the WHSO including allowing inspections and implementing any recommendations from the 12 monthly assessment report [WHS Act s 103F].

Similar to an HSR, a WHSO is not personally liable for anything done or omitted to be done in good faith when performing the functions under the WHS Act [WHS Act s 103G].

Issue resolution

Issue resolution is the process of resolving any issues about work health and safety matters at the workplace level under the WHS Act. It is important to remember that this process is different to the normal grievance or dispute resolution procedure found in an award, enterprise, or certified agreement.

What is the issue resolution process?

Using the issue resolution process under the WHS Act, if there is a health and safety issue at a workplace that remains unresolved after an initial discussion, the relevant parties must in the first instance, make reasonable efforts to achieve a timely, final, and effective resolution of the issue in accordance with an agreed procedure or the default procedure set out in the WHS Regulation [WHS Act s 81(2)].

The person conducting the business or undertaking (PCBU) must allow all the parties to the issue to enter and remain at the workplace for the purpose of attending discussions with a view to resolving the issue [WHS Act s81(3)].

Relevant parties to an issue are (but not limited to):

- The relevant union – if the union notifies the PCBU in writing, that the union wants to be a party to the issue [WHS Act s 80(e)];
- Health and Safety Representative (where one has been elected) [WHS Act s80(c)]

A complete list of relevant parties can be accessed in the WHS Act s80(1) (a-e).

If an issue remains unresolved, one of the parties may ask Workplace Health and Safety Queensland (the regulator) to appoint an inspector to attend the workplace and assist in resolving the issue [WHS Act s 82(2)].

It should be noted that a request made to appoint an inspector, does not prevent a worker from ceasing unsafe work or an HSR from issuing a PIN [WHS Act s 82(3)].

Although an inspector cannot determine the outcome of the issue, the inspector may exercise any of their compliance powers under the WHS Act [WHS Act s 82(4)].

What must an agreed procedure contain?

Parties to a WHS issue must either have an agreed procedure about how to resolve WHS issues or follow the default procedure. However, any agreed procedure must contain all of the steps in the default procedure, be in writing, and be communicated to all of the workers to whom the agreed procedure applies [WHS Act s 81(2); WHS Regulation s 22].

So, for example, parties could agree to write an agreed procedure for WHS issue resolution into their enterprise agreement or have it as a stand-alone agreement provided it is in writing, is communicated to all workers to whom it applies, and complies with all of the steps set out in the default procedure.

What is the default procedure?

The default procedure is contained within the WHS Regulation.

1. The issue resolution procedure commences when a party notifies the other party there is an issue to be resolved and the nature and scope of the issue.
2. As soon as the parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.

3. The parties must have regard to all of the relevant matters including:
 - a the degree and immediacy of risk to workers or other persons affected by the issue;
 - b the number and location of workers and other persons affected by the issue;
 - c the measures (both temporary and permanent) that must be implemented to resolve the issue; and
 - d who will be responsible for implementing the resolution measures.
4. A party may, in resolving the issue, be assisted or represented by a person nominated by the party.
5. If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.
6. If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.
7. A copy of the written agreement must be provided to all parties to the issue and if requested, to the health and safety committee for the workplace.
8. For the avoidance of doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of their health and safety representative [WHS Reg s 23].

Template

A template agreed procedure is included in [Appendix 2](#) of this Guide.

Role of the Inspectorate in issue resolution

If an issue has not been resolved after reasonable efforts to achieve an effective resolution, any party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.

On attending the workplace, an inspector may exercise any of their compliance powers under the Act in relation to the workplace [WHS Act s 82].

Note while the inspector may use their compliance powers, the inspector is not able to share any information collected where the matter relates to a potential non-compliance matter which is evidence, which may be used in a potential prosecution of the matter.

Referral to an inspector is not mandatory, and the dispute resolution process in Part 5, Division 7A of the WHS Act can be used to resolve the issue (work health and safety disputes are discussed in the next section).

Work health and safety disputes

This was introduced in 2017 after a review of the WHS Act (Qld) and follows on from the parties essentially exhausting the issue resolution procedure at the workplace. However, a dispute can be notified irrespective of whether the issue resolution procedure has been engaged in.

If a dispute about a WHS matter arises in a workplace, any party to the matter can provide written notification to the QIRC of the dispute.

Amendments to the WHS Act in 2024 expanded the powers of the Commission (QIRC) to deal with WHS disputes. These include:

- determination of work groups;
- access to information by an HSR;
- notices or information to be provided to HSRs;
- requests to access training for HSRs;
- Health and Safety Committee (HSC) constitutions;
- WHS issues under the issue resolution process; and
- issues about cessation of work.

Work group determinations, work group variations, and the establishment of a health and safety committee (HSC) disputes can only be lodged with the QIRC after an Inspector has been appointed to assist the parties and made a decision relating to the dispute [WHS Act s102AA(a)].

Any other type of dispute can be lodged with the QIRC whether or not an inspector has been appointed to assist in resolving the dispute [WHS Act s 102AA(b)].

A notice to the QIRC must outline:

- the names of the parties to the dispute;
- the workplace where the dispute exists;
- the WHS matter that is subject to the dispute; and
- whether a decision made by an inspector to exercise, or not to exercise, compliance powers under the Act is subject to review [WHS Act s 102B].

Further information

The appropriate form to use for such an application is **Form 73A** which can be found at the QIRC website www.qirc.qld.gov.au/sites/default/files/2022-09/form73A.pdf

Note the QIRC is the nominated relevant tribunal under the WHS Act to deal with any WHS dispute arising under its scope and coverage. This includes all Queensland workplaces with the exception of the Queensland coal or metalliferous mining industry, or PCBU/employers covered under the Commonwealth WHS Act

It is not relevant that the QIRC is also the tribunal established for Queensland public sector and local government employers and employees. It is simply the nominated tribunal to deal with WHS disputes under the WHS Act (Qld).

For example, an employer may be covered by the Fair Work Act (Cth) for employment conditions, but disputes about WHS matters will be heard by the QIRC - not the Fair Work Commission.

The QIRC can deal with the dispute in any way it sees fit, including mediation, conciliation, or arbitration, and may make any order it considers appropriate for the prompt settlement of the dispute [WHS Act s 102C].

For example, directions orders for parties to attend report back meetings or provide certain documentation to the other party relating to the WHS dispute.

In dealing with a dispute, the QIRC may also review a decision to issue or not issue a compliance notice such as an improvement or prohibition notice, to assist in resolving the dispute.

In doing so, the QIRC can:

- confirm or vary the compliance decision;
- set aside the compliance decision and substitute another decision the QIRC considers more appropriate; and
- set aside the compliance decision and return the matter to the inspector who made it with directions the QIRC considers appropriate.

Where the QIRC does so, it must also notify the regulator of its decision to review a compliance decision and any decision it subsequently makes [WHS Act s 102D].

Entry permit holders (EPH)

Who is an WHS entry permit holder?

A WHS entry permit holder (WHS EPH) is an officer or employee of a registered union who has completed an approved training course and holds a valid and current entry permit under the *Fair Work Act 2009* (Cth) or the *Industrial Relations Act 2016* (Qld) [WHS Act s 133].

What purposes can a person enter for?

A WHS EPH may:

- a. enter a workplace for the purpose of inquiring into a suspected contravention of the WHS Act or the Electrical Safety Act (Qld) that relates to, or affects a relevant worker who is a member or is eligible to be a member of the EPH's union [WHS Act s 117];
- b. inspect and make copies of employee records or other documents directly relevant to a suspected contravention of the WHS Act or Electrical Safety Act [WHS Act s 120]; or
- c. enter a workplace to consult on work health and safety matters with, and provide advice to, workers who wish to participate in those discussions [WHS Act s 121].

The WHS Regulator

Functions of the regulator

Workplace Health and Safety Queensland (WHSQ) is the regulator for the WHS Act in Queensland and has a broad range of functions including to:

- advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
- monitor and enforce compliance with the WHS Act and WHS Regulation;
- provide advice and information on work health and safety to duty holders, including PCBUs and workers, of their duties, obligations, and rights under the WHS Act;
- engage in, promote, and coordinate the sharing of information to achieve the object of the WHS Act, including the sharing of information with other regulators;
- collect, analyse, and publish statistics relating to work health and safety;
- foster a cooperative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;
- promote and support education and training on work health and safety matters; and
- engage in and promote and coordinate the sharing of information to achieve the object of the Act, including the sharing of information with corresponding regulators [WHS Act s 152].

Power of the regulator to require documents and information

If WHSQ has reasonable grounds to believe a person is capable of giving information or documents in relation to a possible contravention of the WHS Act, or that will assist in monitoring or compliance, WHSQ can require the person to provide this after serving them with a written notice [WHS Act s 155].

Functions and powers of inspectors

Inspectors have the following functions and powers:

- to provide information and advice about how to comply with the WHS Act;
- to help resolve work health and safety issues;
- to help resolve right of entry disputes;
- to review a disputed PIN;
- to issue notices to require compliance with the WHS Act; and
- to investigate contraventions and assist to prosecute offences [WHS Act s 160].

An inspector in a workplace may require a person to provide information about and access to a document, as well as answers to questions. While inspectors will be able to compile answers, the answers to questions or information provided cannot be used as evidence against that person in civil or criminal proceedings. Inspectors may also copy and retain documents and seize evidence [WHS Act ss 171-181].

Inspector powers

An inspector entering a workplace can:

- inspect, examine, and make inquiries;
- inspect and examine anything, including a document;
- bring and use any equipment or materials they may be required;
- take measurements, conduct tests, and make sketches or recordings (e.g., photographs, films, audio, and video);
- take and remove samples for analysis;
- require a person to give them reasonable help to exercise these powers; and
- exercise any compliance power or other power reasonably necessary to be exercised by the inspector for the purposes of the Act [WHS Act s 165].

Regulator enforcement and compliance measures

Improvement notices

An inspector may issue an improvement notice if they reasonably believe a person is contravening or has contravened the WHS Act or WHS Regulation in circumstances that make it likely that a contravention will continue or be repeated [WHS Act s 191].

The notice will identify the provisions of the WHS Act that have or may have been contravened, the reasons for the notice, and a reasonable date by which to fix the contravention. An improvement notice may also include directions and/or recommendations about how to fix or prevent a contravention [WHS Act s 192].

A person issued with an improvement notice must comply with the notice within the time set out in the notice [WHS Act s 193].

For example

An inspector forms a reasonable belief that there is inadequate safety signage for dangerous goods and requires the PCBU to rectify the matter within 7 days.

Prohibition notices

An inspector may issue a prohibition notice if they reasonably believe an activity involves a serious risk to a person's health or safety arising from immediate or imminent exposure to a hazard [WHS Act s 195].

The notice prohibits the activity continuing or being carried out in a specific way and is issued to the person with control over the activity. It may include directions on how to remedy the risk and remains in place until an inspector is satisfied the risk has been fixed [WHS Act s 196].

A person issued with a prohibition notice must comply [WHS Act s 197].

For example

An inspector forms a reasonable belief that the operation of an item of machinery without appropriate guarding constitutes a serious risk to an operator's health and safety arising from an immediate or imminent exposure to the machinery.

The inspector issues a prohibition notice prohibiting the operation of the machinery until such time an appropriate guard is fitted.

What is the difference between an improvement and a prohibition notice?

An improvement notice is a mechanism to require a person to do something to comply with the Act, Regulation, or a Code of Practice. By contrast, a prohibition notice is a mechanism to stop a person from doing something, where there is a non-compliance.

Infringement notices

An inspector may also issue an infringement notice (an 'on the spot' fine) for certain matters, as an alternative to prosecution for prescribed offences.

These matters are outlined under the State Penalties Enforcement Regulation 2014 (Qld) in Schedule 1 and for work health and safety, include for example:

- not keeping a record of a notifiable incident for at least five years [WHS Act s 38(7)];
- a PCBU not allowing an HSR access to information about hazards or risks or the health and safety of workers in their work group [WHS Act s 70(1)(c)];

- a PCBU not allowing an HSR to be present at an interview with workers with their consent [WHS Act s 70(1)(d), (e)];
- a PCBU not keeping an up-to-date list of HSRs, displaying the list in a ‘readily accessible’ way, or notifying the regulator of the up-to-date list [WHS Act s 74];
- a PCBU not establishing a health and safety committee within 28-days after a request by an HSR or at least five workers [WHS Act s 75(1)];
- a PCBU not allowing a health and safety committee access to information about hazards or risks or the health and safety of workers at the workplace [WHS Act s 79(3)];
- a person not displaying a copy of a PIN in a prominent place at or near the workplace [WHS Act s 97(1)];
- a PCBU not complying with an improvement notice within the period stated within the notice [WHS Act s 193]; and
- imposing a levy or a charge on a worker, or permitting a levy or charge on a worker, for anything done or provided in relation to work health or safety [WHS Act s 273].

A payment cannot be taken as an admission of guilt or liability for any future civil claim. If the monetary penalty imposed by an infringement notice is paid within the set time, no proceedings may be taken for the offence and no conviction recorded. However, prosecution may take place if penalties are not paid.

Non-disturbance notices

An inspector can issue a non-disturbance notice to a person with management or control of a workplace, if the inspector believes it is necessary to enable them to exercise their compliance powers [WHS Act s 198].

The notice may require the person to preserve the site at which a notifiable incident took place, or to prevent disturbance of a particular site in other circumstances for up to seven days that is reasonable in the circumstances [WHS Act s 199].

The notice must set out the obligations of the person to whom it is issued to, and the measures taken to preserve a site or prevent disturbance of a site, including the penalty for contravening the notice [WHS Act s 199].

A site includes any plant, substance, structure, or thing associated with the site.

Enforceable undertakings

An Enforceable Undertaking (EU) is an alternative to a court-imposed sanction, such as penalties, for an alleged contravention of the WHS Act and the Electrical Safety Act. An EU requires the PCBU to deliver effective health and safety initiatives that provide tangible benefits for workers, industry, and the community as a whole.

Further information

A current list of **Enforceable Undertakings with WHS Queensland** (the regulator).

www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/enforceable-undertakings/enforceable-undertakings-list

An EU is not available for an alleged contravention involving a fatality or for a category 1 (reckless conduct) offence as defined under the Act [WHS Act 216(2)].

For example

Obligation holder: Premier Ducts (Qld) Pty Ltd and Mr. Sau Van Tran (Director)

Date accepted: 14 April 2022

Incident: On 29 August 2019 a worker, employed by Premier Ducts (Qld) Pty Ltd (Premier), was folding sheet metal on a piece of plant known as the Formtek B&K Pan Brake. The worker observed that the folding blocks of the plant were not aligned and placed their left hand under the press in an attempt to align the rear folding block with the front block. As the worker commenced moving the rear block, the worker accidentally placed a foot on the foot pedal which activated the folding blocks in a downwards stroke.

As result the worker sustained a large laceration and crush injuries to the left hand.

Alleged breach: It was alleged that between:

- 1 October 2017 and 30 August 2019, Premier, having a health and safety duty under section 19(1) of the Work Health and Safety Act 2011 (WHS Act), failed to comply with that duty contrary to section 32 of the WHS Act; and
- 6 March 2019 and 30 August 2019, Mr. Tran (a Director of Premier), having a health and safety duty under section 27 of the WHS Act, failed to comply with that duty contrary to section 32 of the WHS Act.

Summary of undertaking

In the event of an alleged contravention of the WHS Act, the WHS regulator may, as an alternative to prosecution, accept an EU given by a person who is alleged to have committed the contravention. An accepted EU aims to deliver tangible work, health and safety (WHS) benefits to workers and the workplace, industry and the community, which may not have been delivered if the matter were prosecuted.

A combined undertaking given by Premier and Mr. Tran, in relation to the above alleged contraventions, has been accepted by the WHS regulator as an EU under Part 11 of the WHS Act and includes a commitment to:

- an acknowledgment and clear statement of the facts and circumstances surrounding the alleged contravention;
- a statement of regret and assurance about future WHS behaviours;
- dissemination of information about the undertaking through a dedicated toolbox meeting to workers and a presentation to Premier’s management and leadership;
- employ an Administration/WHS Officer (WHSO) and a Rehabilitation and Return to Work Coordinator (RRTWC) who will complete a Certificate IV in WHS and Workplace RRTWC course and develop an occupational health and safety management system (OHSMS) procedure;
- engage an external occupational health and safety (OHS) consultant to:
 - develop and implement an online bilingual OHSMS with
 - documented information available to workers in both English and Vietnamese and designed to address the varying literacy levels in the workforce;
 - mentor and coach, the new WHSO/RRTWC to improve their health and safety knowledge and capability to maintain the OHSMS;
 - develop and deliver core OHS induction and training for workers in English and Vietnamese and conduct a literacy assessment to ensure the training meets worker needs;
 - engage an ergonomics consultant to undertake a hazardous manual tasks assessment and then develop and deliver a custom hazardous manual tasks training course to all employees, taking into consideration literacy levels; and
 - provide a Directors OHS coaching program with monthly coaching sessions for Mr. Tran with the intention to teach and support Mr. Tran regarding duties as an officer under safety laws and the importance of OHS in the Australian culture.
- engage a certified third-party auditor to conduct three independent audits of Premier’s OHSMS over the life of the undertaking and ensuring any recommendations identified within the audits are recorded as actioned and implemented;

- participate in industry occupational hygiene research projects conducted by the University of Queensland and providing funds for students to visit Premier’s worksite and plan, execute, interpret, and report on the collection of occupational hygiene data, including designing a control strategy for chemical, physical, or biological hazards;
- host a supply chain forum in the Heathwood business precinct where Mr. Tran will present on the lessons learnt and initiatives arising from this undertaking;
- host a Vietnamese Brisbane business forum where Mr. Tran will present on managing health and safety, lessons learned and specified initiatives arising from this undertaking. The forum will also include a notable Vietnamese guest speaker from the broader Australian Vietnamese community who will also speak about business management mindset and safe working environments; and
- recover departmental costs associated with the EU.

This undertaking has a total minimum expenditure of \$331,984 (Premier – \$309,724, Mr. Tran – \$22,260), including recoverable departmental costs.

Review of decisions

Types of decisions that may be reviewed

Part 12 of the WHS Act deals with decisions that may be reviewable.

Reviewable decisions are outlined in Schedule 2A to the Act and include the following matters:

Decision on review of provisional improvement notice	section 102
Forfeiture of thing by an inspector	section 109
Return of seized things	section 180
Issue of improvement notice by inspector	section 191
Extension of time for compliance with improvement notice by inspector	section 194
Issue of prohibition notice	section 195
Issue of non-disturbance notice	section 198
Issue of subsequent notice	section 201
Decision of regulator to vary or cancel notice	section 207

Internal review

For the above matters an inspector’s decision is initially subject to internal review process. People dissatisfied with the outcome of the internal review decision, may then apply for external review.

The application for internal review must be made within 14 calendar days of the decision coming to the notice of the eligible person. However, for an internal review of an improvement notice, an application must be made in the time stated in the notice or 14 calendar days, whichever is shorter [WHS Act s 224].

The internal review process means that the regulators will appoint a person other than the person who made the original decision, to review the decision [WHS Act s 225]. The reviewer must make a decision within 14-calendar days of receiving the application for review by either:

- confirming or varying the original decision; or
- substituting the original decision for another decision [WHS Act s 226].

The reviewer can seek further information from the applicant. If this happens, the 14-calendar day period is paused until the applicant provides the information to the reviewer. When requesting further information from the applicant, the reviewer must give the applicant at least seven days to provide the information [WHS Act s 226].

Once the reviewer makes the decision, they must notify the applicant of the decision and the reasons for the decision in writing. The reasons must set out the reviewer’s findings (including what happened and when) and the evidence on which those findings were based [WHS Act s 227].

Once an application for a review is made (other than an application for a review of a prohibition notice or non-disturbance notice), the original decision cannot be enforced (a stay is granted) [WHS Act ss 228, 229C].

Where the original decision involves the issue of a prohibition notice or non-disturbance notice, it is up to the reviewer to determine whether or not the original decision will be enforced pending the outcome of the review. This decision can be made at the reviewer’s own initiative or the person seeking the review can also apply for no action to be taken. This decision must be made within one working day after receipt of the application [WHS Act s 228].

External review

An application for an external review of a decision made by the WHS regulator can be made within 30 days after the day the decision came to the person’s notice [WHS Act s 229B]. The review is generally heard by the Queensland Industrial Relations Commission and may include an application to extend a stay on a decision of the regulator [WHS Act ss 229B, 229C].

Offences and penalties

Civil penalty provisions

A relevant Union, a Work Health and Safety Entry Permit Holder (WHS EPH), or a person affected by a contravention or alleged contravention, may apply to the Commission (QIRC) for an order related to a contravention, or alleged contravention, of particular WHS civil penalty provisions relating to the exercise of a WHS EPH's rights [WHS Act s 260(3), (4)].

Offences

The WHS Act makes it an offence to breach the WHS Act by breaching:

- the primary duty of care by a PCBU;
- the duty of care of an upstream duty holder; or
- a duty of an officer of a PCBU, a worker, or another person.

It is also an offence to not comply with an approved Code of Practice [WHS Act ss 26A, 30].

There are three categories of offences for a breach of each of these duties:

Negligent and Reckless Conduct – Category 1

A person commits a category 1 offence if:

- the person has a health and safety duty; and
- the person, without reasonable excuse, engages in conduct that exposes an individual to whom a duty is owed to a risk of death or serious injury or illness; and
- the person –
 - i engages in the conduct with negligence; or
 - ii is reckless as to the risk to the individual of death or serious injury or illness.

A Category 1 offence is a criminal offence which will be dealt with in the District Court.

An individual who is prosecuted may face imprisonment of up to five years if found guilty of the crime and/or a financial penalty of up to \$300,000. An officer of a PCBU may face a penalty of up to \$600,000, and a PCBU of up to \$3 million [WHS Act s 31].

Failure to Comply with Health and Safety Duty – Category 2

A person commits a Category 2 offence if:

- the person has a health and safety duty; and
- the person fails to comply with that duty; and
- the failure exposes an individual to a risk of death or serious injury or illness.

A Category 2 offence is also a criminal offence which will be dealt with in the Magistrate's Court.

An individual who is prosecuted may face a monetary penalty of up to \$150,000 if found guilty. An officer of a PCBU may face a penalty of up to \$300,000, and a PCBU of up to \$1.5 million [WHS Act s 32].

Failure to Comply with Health and Safety Duty – Category 3

A person commits a Category 3 offence if:

- the person has a health and safety duty; and
- the person fails to comply with that duty.

A Category 3 offence is also a criminal offence and will be dealt with in the Magistrate's Court.

An individual who is prosecuted may face a monetary penalty of up to \$50,000 if found guilty; an officer of a PCBU up to \$100,000; and a PCBU up to \$500,000 [WHS Act s 33].

Note Generally, the prescribed value of a penalty unit is adjusted annually. However, section 5(1)(d) of the Penalties and Sentences Act 1992 (Qld) prescribes the value of a penalty unit for the WHS Act to be \$100.

Industrial Manslaughter

The WHS Act was amended from 2017 to include an industrial manslaughter offence.

A PCBU or a Senior Officer of a PCBU commits the offence of industrial manslaughter if:

- a. an individual to whom the person has a health and safety duty –
 - i dies; or
 - ii is injured and later dies; and
- b. the person's or senior officer's conduct causes the death of the individual; and
- c. the person or senior officer is negligent about causing the death of the individual by the conduct [WHS Act s 34C & 34D].

If found guilty, if the PCBU is an individual, may face imprisonment of up to 20 years, or otherwise, a financial penalty of up to \$10 million.

If found guilty, a senior officer may face imprisonment of up to 20 years. For an offence committed by an individual as a PCBU, the penalty is the same. Otherwise, a PCBU may face a monetary penalty of up to \$10 million.

A senior officer of a PCBU is an executive officer of the corporation, or the holder of an executive position in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions [WHS Act s 34A (1)].

Volunteers cannot be prosecuted for the offence of industrial manslaughter [WHS Act s 34B].

Volunteers may, however, be liable for a breach of a duty of care owed by a worker or other people at a workplace [WHS Act s 34(1)].

An unincorporated association is also exempt from prosecution for the offence of industrial manslaughter. However, a senior officer of an unincorporated association (other than a volunteer) may be prosecuted for an offence [WHS Act s 34B(2)]. An officer of the unincorporated association (other than a volunteer) may also be prosecuted for a failure to comply with an officer's duty, and a member of the association may be prosecuted for failure to comply with the duty of care of a worker or of another person at a workplace [WHS Act s 34(3)].

Note Always refer to the WHS Legislation for amendments/changes to the offence categories and financial penalties.

Work Health and Safety Prosecutor

Who is the WHS Prosecutor

The WHS Act in Queensland creates the position of a WHS Prosecutor who is tasked with overseeing, conducting, and defending proceedings under the WHS Act before a court or tribunal. The WHS Prosecutor is equivalent to the Director of Public Prosecutions who undertakes prosecutions within the Criminal Code Queensland.

The WHS Prosecutor must issue and publish on the WHS Prosecutor’s website, general guidelines in relation to the prosecution of offences under the WHS Act.

Procedure if prosecution is not brought

If a person considers a Category 1 or 2 offence has occurred and no prosecution has been brought between six and 18 months of the date of the alleged contravention, the WHS Act allows the person to make a written request that a prosecution be brought [WHS Act s 231].

Similarly, a person can request that a prosecution be brought in relation to an industrial manslaughter offence if it has been at least six months since the alleged contravention and no prosecution has been brought.

The WHS Prosecutor has three months to advise of a decision. If the decision is not to prosecute, a person may make a written request to the WHS Prosecutor to refer the matter to the Director of Public Prosecutions within one month.

The Director of Public Prosecutions must consider the matter and advise the WHS Prosecutor within one month whether a prosecution should be brought. The WHS Prosecutor must provide a copy of the advice to the person who made the request, and the person alleged to have committed the offence. If the WHS Prosecutor declines the advice, the reasons for declining must be provided to those receiving the advice.

Note Prosecutions are subject to a limitation period which is detailed in section 232 of the WHS Act.

More information

To access an up-to-date copy of the WHS Act, go to www.legislation.qld.gov.au

Further information

Workplace Health and Safety Queensland

www.worksafe.qld.gov.au

T 1300 362 128

Health and Safety Representative’s Support Service or the Queensland Council of Unions

T (07) 3010 2555

Online assistance

HSR Support Service

hsrsupport.org.au

Queensland Unions

qldunions.com

Appendix 1

TEMPLATE

Agreed Work Health and Safety Consultation Arrangements

1 General

This agreement outlines the agreed consultation requirements for work health and safety matters and issues. The PCBU must, so far as is reasonably practicable, consult, with workers who carry out work for the business or undertaking who are or are likely to be directly affected by a matter relating to work health or safety.

Consultation is to be undertaken in accordance with the terms of this agreement which complies with Part 5 Division 2 of the *Work Health and Safety Act 2011* (Qld) (the WHS Act).

2 Parties To The Agreement – The parties to this agreement are:

- a. **INSERT FULL NAME OF PCBU**; and
- b. **INSERT FULL NAME OF UNION**.

3 Scope

This agreement covers the consultation requirements between the parties and includes consultation with all employees of the PCBU/as well as consultation with contractors or labour hire workers who are part of my workforce [**INCLUDE AS APPROPRIATE**].

4 Workplace Consultation Arrangements

Consultation over all work health and safety issues or organisational or workplace changes that may impact on work health and safety must involve health and safety representatives (HSRs) or deputy HSRs if they are not reasonably available.

5 Consultation with Union

Consultation on work health and safety matters must also occur with the union at the request of an HSR or workers which may also form part of the issue resolution procedure for the organisation/workplace.

6 When consultation is required

Consultation over work health and safety must occur when:

- identifying hazards and assessing risks;
- in determining how risks are to be eliminated or minimised;
- when monitoring and reviewing health and safety risks;
- when making decisions about the adequacy of facilities for the welfare of workers;
- proposing changes to the workplaces, systems of work, plant or substances, including purchasing new or used plant or new substances or materials, or changing hours, rosters or shift or working hour arrangements; and
- developing and reviewing safety policies and procedures, including but not limited to matters relating to consultation, issue resolution, monitoring the health of workers or conditions at the workplace, or for the provision of information and training about work health and safety matters.

7 Nature of consultation

Section 48 of the WHS Act requires that consultation means:

- that relevant information about the matter is shared with workers;
- that workers be given a reasonable opportunity:
 - to express their views and to raise work health or safety issues in relation to the matter; and
 - to contribute to the decision-making process relating to the matter;
- that the views of workers are taken into account by the person conducting the business or undertaking; and
- that the workers consulted are advised of the outcome of the consultation in a timely way.

To meet these requirements, the agreed consultation procedure for the workplace is **[INSERT AS APPROPRIATE FOR THE PARTICULAR ORGANISATION/WORKPLACE]**

Examples

- the regular weekly/fortnightly/monthly meeting with workers where work health and safety is a standing item on the agenda;
- the monthly meeting of the Health and Safety Committee;
- regular emails across sites and/or information provided on an intranet;
- dedicated item for health and safety representatives and deputy HSRs to consult with workers in their respective work groups;
- monthly meetings between the health and safety representatives(s) and the health and safety Manager;
- to enable this consultation to work effectively, HSRs and workers must be given a reasonable opportunity to express their views, raise work health and safety issues and contribute to health and safety decisions. This should involve **[INCLUDE AS APPROPRIATE]**;
- providing a suitable time during work hours for consultation with workers;
- allowing opinions about health and safety to be regularly discussed and considered during workplace meetings;
- providing workers with different ways to provide feedback (e.g., using email, setting up an intranet health and safety page or a suggestion box); or
- providing dedicated time for HSRs and deputy HSRs to undertake consultation with their work groups to provide feedback.

Appendix 2

Notice to the Person Conducting the Business or Undertaking (PCBU) – Request by Majority of Workers for the Conduct of an Election of Health and Safety Representatives and Deputy Health and Safety Representative

[Section 61 Work Health and Safety Act (Qld); Section 18 Work Health and Safety Regulation (Qld)]

Designated Work Group

(For example, Warehouse Section, night shift)

Organisation/Workplace Name

Workplace Address

1. We, the undersigned, request that [INSERT NAME OF UNION] facilitate and conduct the election of Health and Safety Representatives and Deputy Health and Safety Representatives on behalf of our work group.

In accordance with section 18 of the Work Health and Safety Regulation:

1. It is our intention to conduct a workplace election on [INSERT DATE] by the following method:

Select one (circle): Electronic Ballot Workplace Ballot Postal Ballot

2. We acknowledge that all workers in the work group will be given the opportunity to nominate for the position of Health and Safety Representative or Deputy Health and Safety Representative.
3. We acknowledge that all workers will be given an opportunity to vote in the election.
4. We acknowledge that all workers and the Person Conducting the Business or Undertaking (the PCBU) will be informed of the outcomes of the election.

Note This form must be provided on completion to the Person Conducting the Business or Undertaking or their authorised representative.

Full Name of Member of Work Group	Signature	Date of Signing

For Display in the Workplace – Health and Safety Representative Election Results

[Section 74 Work Health and Safety Act (Qld); Section 18(2)(c) Work Health and Safety Regulation (Qld)]

Organisation/Workplace Name

Workplace Address

Date

Work Group Name	Name of Elected Health and Safety Representative	Name of Elected Deputy Health and Safety Representative

Notes Section 18(2)(c) of the Work Health and Safety Regulation (Qld) requires that all workers in the work group and all relevant persons conducting a business or undertaking are informed of the outcome of the election.

Section 74 of the Work Health and Safety Act (Qld) provides that:

- a. a list of each health and safety representative and deputy health and safety representative for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date;
- b. as soon as practicable after the list is prepared or amended, a copy is given to the regulator; and
- c. a copy of the up-to-date list is displayed, in a way that is readily accessible to workers in each of the work groups:
 - i at the principal place of business of the business or undertaking; and
 - ii at any other workplace that is appropriate, taking into account the constitution of each work group.

Section 72 of the Work Health and Safety Act (Qld) and Section 21 of the Work Health and Safety Regulation provides that a PCBU must ensure, so far as is reasonably practicable, a health and safety representative (and deputy health and safety representative) for a work group for that business or undertaking has completed the initial five days of HSR training within 28-days of being elected, or if one is not available, as soon as is reasonably practicable thereafter, and a further one day of refresher training every 12-months (subject to any updates/changes to the current WHS Act).

Work Health and Safety Resolution Procedure

Scope

This procedure applies to the resolution of any work health and safety issue that arises at [INSERT NAME OF WORKPLACE OR BUSINESS OR UNDERTAKING].

Parties

The parties to this procedure include:

1. [INSERT FULL NAME OF PCBU/ORGANISATION]
2. [INSERT FULL NAME OF UNION/S]
3. All employees of the [INSERT FULL NAME OF THE PCBU/ORGANISATION]
4. All workers, including employees of contractors, sub-contractors, labour hire companies etc [INSERT AS APPLICABLE].

Definitions

Commission means the Queensland Industrial Relations Commission as the designated tribunal to determine WHS disputes under the Work Health and Safety Act 2011 (Qld).

Industrial Registrar means the registrar for the Queensland Industrial Relations Commission.

Regulator means the WHS Regulator that administers the Work Health and Safety Act 2011 (Qld).

WHS Act means the Work Health and Safety Act 2011 (Qld).

Worker means person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as –

- a. an employee; or
- b. a contractor or subcontractor; or
- c. an employee of a contractor or subcontractor; or
- d. an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
- e. an outworker; or
- f. an apprentice or trainee; or
- g. a student gaining work experience; or
- h. a volunteer

Distribution and access to this procedure

1. An agreed procedure on issue resolution must be in writing and must be communicated to all workers.
2. These procedures are accessible on [e.g., the workplace noticeboard(s)/intranet site etc – INSERT AS RELEVANT].

Application

This procedure applies regardless of any other grievance or dispute resolution procedure outlined in a modern award or enterprise agreement as it applies to the resolution of any issue relating to a work health and safety matter under the Work Health and Safety Act (Qld).

Agreed procedure

Where an initial discussion between the parties about a work health and safety issue has not been resolved, the following procedures apply:

1. A party must advise the other parties to this procedure that they wish the matter to be resolved using the issue resolution procedure, including telling the other party about the nature and scope of the WHS issue.
2. All parties must meet or communicate with each other to attempt to resolve the issue within 24 hours of a party providing notice of the WHS issue, or as soon as is reasonably practicable thereafter.
3. In attempting to resolve the issue, the parties must take the following matters into consideration:
 - a. the degree and immediacy of risk to workers and other persons affected by the issue;
 - b. the number and location of workers and other persons affected by the issue;
 - c. the measures (both temporary and permanent) that must be implemented to resolve the issue; and
 - d. who will be responsible for implementing the resolution measures.
4. Where agreement about the WHS issue is reached between the parties, the details of the issue and how it is resolved, including any of the matters outlined above, must be set out in a written agreement at the request of any of the parties to this procedure.
5. All parties to the issue must be satisfied that a written agreement reflects the resolution of the issue.
6. A copy of a written agreement must be provided to:
 - a. all parties to the issue; and
 - b. if requested, to the health and safety committee for the workplace.
7. While the issue resolution procedure is being followed, normal work is to continue except where an employee has a reasonable concern about a serious risk to their health or safety arising from an immediate or imminent exposure to a hazard. In such cases a worker –
 - a. has a right to cease work or to refuse to carry out work under section 84 of the WHS Act;
 - b. must advise the [INSERT NAME OF PERSON CONDUCTING THE BUSINESS OR UNDERTAKING] as soon as is practicable that they have ceased work or the unsafe work; and
 - c. remain available 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.
8. Nothing in this procedure prevents any party at any time from –
 - a. requesting the assistance of the Regulator to appoint an inspector to assist in resolving the issue; or
 - b. advising the Industrial Registrar of a WHS dispute under the WHS Act requesting the commission to exercise its conciliation, mediation or arbitration powers to help resolve the dispute.
9. Nothing in this procedure prevents a Health and Safety Representative from:
 - a. issuing a provisional improvement notice (PIN) where the Health and Safety Representative has a reasonable belief that a person:
 - a. is contravening a provision of the WHS Act; or
 - b. has contravened a provision of the WHS Act in circumstances that make it likely the contravention will continue or be repeated; or
 - a. issuing a cease work direction under section 85 of the WHS Act where the Health and Safety Representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

Issue Resolution Procedure

Commencing issue resolution

Any party to the issue may commence the procedure by telling the other party:

- a. that there is an issue to be resolved; and
- b. the nature and scope of the issue.

After parties are told of the issue

Parties meet or communicate with each other to attempt to resolve the issue.

The parties must have regard to all relevant matters including the following:

- a. the degree and immediacy of risk to workers and other persons affected by the issue;
- b. the number and location of workers and other persons affected by the issue;
- c. the measures (both temporary and permanent) that must be implemented to resolve the issue;
and
- d. who will be responsible for implementing the resolution measures.

If the issue is resolved

Details of the issue and its resolution must be set out in a written agreement if any party to the agreement requests this. If a written agreement is prepared, all parties to the issues must be satisfied that the agreement reflects the resolution of the issue.

Note under the WHS Act, parties to an issue include not only a person conducting a business or undertaking, a worker and a health and safety representative, but also a relevant union, see section 80 of the WHS Act.

Distribution of written agreement

- a. A copy of the written agreement must be provided to:
- b. all parties to the issues; and
- c. if requested, to the health and safety committee for the workplace.

Note for the avoidance of doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of the workers' health and safety representative.

TEMPLATE

Provisional Improvement Notice (PIN)

FORM 44

Workplace Health and Safety Queensland

Provisional improvement notice (PIN)

V29 July 2024

This provisional improvement notice (PIN) is issued under section 90 of the *Work Health and Safety Act 2011* (the Act). This PIN requires the duty holder to whom it is issued to remedy a contravention, prevent a likely contravention from occurring or remedy the things or operations causing the contravention or likely contravention of the Act or Regulations. Depending on the particular contravention, the duty holder may be an individual natural person or an organisation such as a company or public authority. Section 97 of the Act requires that the person to whom a PIN is issued must, as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace at which work is being carried out that is affected by the PIN. There are a number of things that must be done or taken into account before a PIN is issued by a HSR – see reverse side of this form for relevant information.

- Health and safety representative (HSR):**

First name:	Last name:
Contact number:	
Work group represented:	
- PIN issued to:**

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:	
- PIN given to (if the PIN is given to someone on behalf of the duty holder):**

First name:	Last name:
Position:	Contact number:
- I have consulted with the duty holder prior to issuing this PIN (section 90(3)) of the *Work Health and Safety Act 2011*:**
☐ Yes ☐ No
- Details of contravention:**

Site location: _____

I, _____ Health and safety representative's name reasonably believe on _____ date at _____ 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 *Work Health 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.



Provisional Improvement Notice (PIN)

6: Compliance:

Date PIN issued	Date compliance with PIN required	Signature of HSR
/ /	/ / (Minimum of 4 calendar days after date PIN issued)	

Note: Work Health and Safety Regulators have developed this sample form that may be used by health and safety representatives to issue a provisional improvement notice. There is no requirement that a PIN be in this form, provided that the PIN is in writing and meets the requirements of Division 7 of Part 5 of the Work Health and Safety Act 2011.

General information about provisional improvement notices (PINs)

Work Health and Safety Act 2011

- A health and safety representative (HSR) may issue a PIN if they reasonably believe that a provision of the Work Health and Safety Act 2011 (WHS Act) or any regulation is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated.
- A PIN is issued to the relevant duty holder to remedy a contravention or likely contravention of the Act or Regulation. The duty holder may be an individual natural person or an organisation such as a company or public authority. The duty holder does not necessarily have to be in the workplace where the HSR works – for example, they could be a designer of plant, buildings and structures; or a manufacturer or supplier of plant or substances. However, the contravention must relate to the work group the HSR represents.
- A HSR can issue a PIN to the relevant duty holder by one of the methods listed in section 208 of the WHS Act. For example:
 - delivering it personally to the duty holder, or
 - leaving it for the duty holder at the workplace to which the PIN relates with a person who is in management or control of that workplace (for example, leaving it with the area manager).
 If the above methods of delivery are not possible, the HSR can send it by post, fax or electronic transmission to the home or business address of the duty holder or leave it for the duty holder at their home or business with a person over 16 years who lives or works there.
- The HSR must consult with the duty holder about remedying the contravention prior to issuing the PIN (see section 90(3)) of the WHS Act).
- A HSR cannot issue a PIN unless the HSR has completed an approved initial HSR training course or completed that training when acting as a HSR for another work group or completed training equivalent to HSR training under the WHS Act.
- A HSR cannot issue a PIN in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter (see section 90(5) of the WHS Act).
- The duty holder to whom the PIN is issued is responsible for fixing the identified contravention by the date written in 'Date compliance with this PIN is required'. It is an offence under section 99 of the WHS Act for the person not to comply with the PIN by the 'Date compliance with the PIN is required' – penalties apply.
- If the PIN recipient wishes to dispute the PIN, they can contact the regulator and request an inspector to review the PIN – this must be done within 3 days of the 'Date of issue' of the PIN. The inspector will review and inquire into the circumstances that are the subject of the PIN up to and after the compliance date for the PIN has expired. An inspector can confirm, confirm with changes or cancel the PIN. A copy of a decision by an inspector must be given to the applicant for the PIN review and the HSR who issued the PIN. If the PIN is confirmed (with or without changes), the PIN is taken to be an improvement notice issued by the inspector.
- For urgent issues that are an immediate threat to the health and safety of any person, a PIN may not be an appropriate means to address the situation. Refer to section 84 of the WHS Act regarding the right of a worker to cease unsafe work and sections 80-82 of the WHS Act regarding issue resolution.
- If there is more than one contravention, a separate PIN should be written for each contravention.
- If the PIN contains formal irregularities, defects or fails to use the correct name of the person to whom the PIN is issued, the PIN may still be valid. The PIN will not be valid, however, if the formal irregularity or defect causes or is likely to cause substantial injustice to the PIN recipient or if the PIN fails to sufficiently identify the PIN recipient (see section 98 of the WHS Act).
- A reasonable time should be allowed between the 'Date PIN issued' and the 'Date compliance with PIN required', to enable compliance to be achieved. However, the date for compliance must be at least 4 days after the date of issue. **Amendment to s 94(2) WHS Act** - a HSR can change the day by which the person is required to remedy the contravention or likely contravention with the agreement of either the person to whom the notice was issued, or, if that person is a worker, the PCBU of the workplace.
- The HSR should retain a copy of the completed PIN for their records.
- If the issue has not been remedied by the 'Date compliance with PIN required' and an inspector has not already attended the workplace, the regulator should be contacted.
- The PIN recipient must as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace that is affected by the PIN.
- A person must not intentionally remove, destroy, damage or deface a PIN that is displayed during the period the PIN is in force.
- Failure to do any of the things referred to in points 15 and 16 is a contravention of the WHS Act and penalties apply.
- If the person to whom the PIN is issued disagrees with the PIN or believes they will have difficulty complying with it, they should discuss this with the HSR who issued the PIN. They may also request an inspector to attend (see point 8 above).

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

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Workplace Health and Safety Queensland

FORM 44

Provisional improvement notice (PIN)

V29 July 2024

This provisional improvement notice (PIN) is issued under section 90 of the Work Health and Safety Act 2011 (the Act). This PIN requires the duty holder to whom it is issued to remedy a contravention, prevent a likely contravention from occurring or remedy the things or operations causing the contravention or likely contravention of the Act or Regulations. Depending on the particular contravention, the duty holder may be an individual natural person or an organisation such as a company or public authority. Section 97 of the Act requires that the person to whom a PIN is issued must, as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace at which work is being carried out that is affected by the PIN. There are a number of things that must be done or taken into account before a PIN is issued by a HSR – see reverse side of this form for relevant information.

1. Health and safety representative (HSR):

First name: <u>David</u>	Last name: <u>Jones</u>
Contact number: <u>0404 777 777</u>	
Work group represented: <u>Clean Linen</u>	

2. PIN issued to:

Name of duty holder: <u>123 Clean Linen Solutions Pty Ltd</u>	[This is the PCBU not the Office. An Officer is i.e. individual natural person or an organisation such as a company or public authority as relevant] <u>CEO or similar</u>
Address: <u>60 Teatree Close, Aspley</u>	State/territory: <u>Qld</u> Postcode: <u>4034</u>

3. PIN given to (if the PIN is given to someone on behalf of the duty holder):

First name: <u>Sarah</u>	Last name: <u>Constable</u>	[This is the person you are handing the PIN to]
Position: <u>Laundry Supervisor</u>	Contact number: <u>0402 888 888</u>	

4. I have consulted with the duty holder prior to issuing this PIN (section 90(3)) of the Work Health and Safety Act 2011:

☒ Yes ☐ No

5. Details of contravention: [This is where the incident occurred]

Site location: 60 Teatree Close, Aspley Qld 4034
 I, David Jones reasonably believe on 21/02/24 at 10:00am
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: [You must insert the Act or Reg that applies]

☒ Work Health and Safety Act 2011, section 47 ☐ Work Health and Safety Regulation 2011, regulation _____

Brief description of how the provision is being or has been contravened: PCBU has changed work procedures without consulting workers. Workers have been told the folding machine will no longer be used and all workers will now be folding and packing the linen. Workers were not consulted and unable to voice their concerns.

Note: The HSR may, but is not required to, specify measures, in accordance with section 93 (1) of the Work Health 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.

Work health and safety consultation, cooperation, and coordination code of practice 2011.



Appendix 3

6: Compliance: It is 4-days to comply from the date the PIN is issued, and 3-days for the PCBU to dispute.

Date PIN issued	Date compliance with PIN required	Signature of HSR
01 / 03 / 2024	05 / 03 / 2024 (Minimum of 4 calendar days after date PIN issued)	D. Jones

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 workgroup 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 or phone 1300 362 128.

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Quick Reference Guide to the WHS Act (1)

Cease Work	s84
Discrimination	s104
Duty of Workers	s28
Duty to Consult	s47
Election of HSRs	s50
Health and Safety Committees	s75
Immunity for HSRs	s66
Management of Risks	s17
No Transfer of Duty	s14

Quick Reference Guide to the WHS Act (2)

Notifiable Incident	s35
Obligations of the PCBU to HSRs	s70
PINs	s90
Powers and Functions of HSRs	s68
Primary Duty of Care	s19
Reasonably Practicable	s18
Review of Decisions	s223
Work Groups	s51



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