

HSR | SafeWork SA

Health & Safety Representative Handbook

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What is a Health and Safety Representative (HSR)?

The primary role of a HSR is to represent workers on health and safety matters.

A HSR is not the person responsible for health and safety in a workplace and they are not expected to be an expert on work health and safety (WHS) matters. The responsibility for providing a healthy and safe workplace rests with the person conducting a business or undertaking (PCBU).

A HSR represents workers in their workgroup in relation to WHS matters, through ongoing consultation and cooperation between workers and the PCBU.

The role of a HSR is voluntary. There is no budgetary allowance for undertaking HSR duties, however, HSRs and deputy HSRs are entitled to undertake training and perform their functions within work time. Please refer to individual enterprise agreements to determine what, if any, allowances are made within your organisation.

Some of the benefits provided by HSRs include:

- a single point of contact for workers raising health and safety issues
- improved efficiency, particularly where there is a large group of affected workers, enhancing the consultation process
- a HSR who has attended an approved training course can exercise certain powers and functions outlined in the WHS Act
- more effective representation, through their training, experience and regular involvement with health and safety matters.

Who can be a HSR?

Any worker of a work group may nominate to be a HSR.

A person can be a HSR if:

- they are a member of the work group who elected the HSR, and
- they have not been disqualified from performing the HSR role.

The person can only be disqualified from the HSR role if a court or tribunal decides that they:

- used a power or carried out a function for an improper purpose, or
- used or disclosed information obtained for an improper purpose.

A person in a management role can be a HSR if they are a member of the work group and have been elected. However, managers, team leaders, and supervisors have specific work health and safety duties attached to their role and may be put in a difficult position when needing to respond to concerns. It is recommended that this potential conflict be discussed prior to the voting and election of a HSR.

Support and advice

SafeWork SA has introduced a HSR Advisor whose primary purpose is to provide support and advice to HSRs in South Australia.

To help achieve improved consultation and representation in South Australian workplaces, we work with HSRs, **Health and Safety Committee** (HSC) members, PCBUs and workers.

Our **Advisory Service** can provide free support, advice and information about:

- forming work groups
- determining appropriate HSRs
- electing HSRs and deputy HSRs
- **HSR training** and entitlements
- HSR and HSC roles and functions
- establishing HSCs
- promoting the roles of HSRs and HSCs in the workplace.

Our advisors also conduct information sessions for workplaces and groups on HSR and HSC roles and functions and consultation processes for resolving safety issues.

Upon a request to the Regulator (SafeWork SA), one of our WHS Inspectors can be appointed to:

- decide on the structure of a work group that has not been successfully negotiated or agreed upon between PCBUs and workers (including negotiations concerning the variation of an agreement)
- assist in the negotiations of a work group (or a variation of an agreement) for work groups of multiple businesses
- settle a disagreement or delay in the provision of HSR training

- assist in resolving a refusal by a PCBU to grant access to the workplace by a person assisting the HSR
- decide on the constitution of a health and safety committee or that the health and safety committee should not be established
- assist in the **resolution of a health and safety issue** that is unable to be resolved, despite reasonable efforts, or an issue arising from the **cessation of unsafe work**
- any other HSR related matters
- conduct a review and decide on the outcome of a disputed **provisional improvement notice** (PIN).

For help with any of the above please telephone us on 1300 365 255 or email HSR.safework@sa.gov.au.

Legislative Framework

The WHS Act and WHS Regulations provides a legal basis for ensuring the physical and psychological health and safety of workers at work.

The WHS legislative framework comprises:

- the *Work Health and Safety Act 2012* (SA) (WHS Act)
- the *Work Health and Safety Regulations 2012* (SA) (WHS Regulations)
- approved Codes of Practice.

The WHS Act and WHS Regulations provide the framework for HSRs and the functions they perform.

Legislative Provisions

Provisions	WHS Act	WHS Regulations
Consultation, cooperation and coordination between duty holders	Section 46	Regulation 294
Consultation with workers	Sections 47 – 49	Regulation 575
Election of health and safety representatives	Sections 60 – 67	Regulations 18 – 21
Health and safety committees	Sections 75 – 79	
Health and safety representatives	Sections 50 – 74	Regulations 18 – 21
Issue resolution	Sections 80 – 82	Regulations 22 – 23
Obligations of person conducting a business or undertaking to health and safety representatives	Sections 70 – 74	Regulation 19
Person conducting a business or undertaking	Section 5	
Persons with management or control of a workplace	Section 20, S27 and S28 (Duties of and officer and Duties of a worker)	
Provisional improvement notices	Sections 90 – 102	
Powers and functions of health and safety representatives	Sections 68 – 69	
Reasonably practicable	Section 18	
Definition of worker	Section 7	
Definition of workplace	Section 8	
Review of decisions	Sections 223 – 229	
Work health and safety disputes	Sections 102A – 102F	
Prohibition of discriminatory, coercive or misleading conduct	Sections 104 – 109	
Work groups	Sections 51 – 59	Regulations 16 – 17
Definition of representative	Section 4	

Legislative Protections

Provisions	WHS Act	WHS Regulations
Immunity	Section 66	
Powers and functions	Sections 68 – 69	
Prohibition of discriminatory conduct	Sections 104 – 109	

Protections for HSRs can also be found within the *Fair Work Act 1994* (SA) and the *Fair Work Act 2009* (Cth).

Key terminology

What is a Work Group?

A work group is a group of workers that is formed by negotiation and agreement between the PCBU and the workers who are proposed to form the work group.

Forming a work group is the first step to take before the election of one or more HSRs.

Employers must start negotiating with workers and/or their representatives within 14 days of being asked to establish a work group or groups. As reaching agreement can take time, the actual formation of a work group may take longer. The PCBU must negotiate with union representatives or any other person that a worker has nominated to represent them. Penalties may apply to a PCBU that excludes a nominated representative from those negotiations. When negotiating to form work groups or variations to existing work groups, you must ensure that workers are grouped in a way that they can raise WHS matters in the most effective and convenient manner, and that the elected HSRs are readily accessible to all workers of the workgroup.

There are a range of matters that must be considered when determining a work group, including:

- the number of workers
- the views of workers
- the diversity of workers
- the different types of work
- the different types of work carried out by the workers
- the areas or places where each type of work is carried out
- the nature of any hazards or risks
- the nature of the engagement of workers, e.g. employees or contractors
- the pattern of work, e.g. full-time, part-time, casual, short-term or seasonal work, and
- the times work is carried out, e.g. night shifts or rotating rosters.

Negotiations need to decide:

- the number and composition of work group/s
- the number of HSRs and deputy HSRs (if any) to be elected, and
- the workplace/s to which the work groups will apply if there is more than one workplace.

A work group may be determined for workers at one or more workplaces and may include workers carrying out work for two or more PCBUs.

If negotiations to establish work groups fail, the regulator may be asked to appoint an inspector to decide the matter. An inspector's decision in such a matter is a reviewable decision under the WHS Act.

Once work groups have been set up, they should remain unchanged, unless the HSR, employer, or representatives negotiate a variation (e.g. due to workforce changes, an organisational restructure or due to noncompliance with regulation 16 and/or 17 of the WHS Regulations).

Further information regarding work groups and their formation can be found in Part 5, Division 3, Subdivision 2 and 3 of the *Work Health and Safety Act 2012* (SA) (WHS Act).

What is a Health and Safety Committee?

Health and Safety Committees (HSCs) provide a forum for consulting on health and safety management across a whole workforce.

An HSC is not required, however a PCBU may establish an HSC on their own initiative.

A PCBU must establish an HSC within 2 months after being requested to do so by a HSR or 5 or more workers at the workplace, or if required to by the WHS Regulations.

The composition of an HSC, to be agreed between a PCBU and workers, should:

- include at least 50% worker representation, not managers or supervisors nominated by the PCBU
- include PCBU representatives from senior management with the necessary level of decision making and organisational operation expertise
- be reflective of the different areas of the workplace
- automatically include HSRs, unless they do not want to participate.

HSCs provide an effective means for PCBUs to meet regularly to talk about work health and safety matters. HSCs bring together workers' practical knowledge of their individual jobs and the PCBU's overview of the workplace and work organisation.

The functions of an HSC include:

- facilitating co-operation between PCBUs and workers to initiate, develop and carry out measures to ensure workers' health and safety
- helping develop and review work health and safety policies, procedures and systems to ensure PCBUs are meeting their duty of care obligations
- dealing with any other health and safety matters, as agreed between a PCBU and committee members.

Some examples include:

- formulating procedures, including for issue resolution and the conduct of committee meetings
- assisting in the development of safe working procedures
- analysing reports of hazards, work-related incidents and statistics to make reports to management
- recommending corrective actions
- reviewing health and safety monitoring and audit reports
- considering reports submitted by HSRs.

HSC Meetings

PCBUs should ensure that all worker members of the HSC are able to attend meetings during paid time. Any time that HSC members spend attending meetings or carrying out committee functions should be paid at the HSC members' usual pay rates.

HSCs must meet at least every 3 months, or at any other reasonable time when at least half of the HSC members make a request. Meetings should allow reasonable time for discussion of all business. When deciding how often to meet, committee members should consider the:

- size and location of the workplace
- number of workers and workforce composition
- nature of the work being carried out
- nature of the hazards at the workplace.

What is a worker?

Under the WHS Act, a worker is broadly defined to mean a person who carries out work in any capacity for a business or undertaking. This includes employees, outworkers, apprentices, trainees, students gaining work experience, volunteers, contractors or subcontractors and their employees.

It is important for HSRs to understand the diversity of workers in their work group, noting that apprentices, trainees and new workers are identified as vulnerable workers and as a result, comprise a higher rate of workplace incidents.

This definition ensures that the WHS Act coverage extends beyond the traditional employer/employee relationship to include new and evolving work arrangements and risks. For example, individuals working in labour hire arrangements and the gig economy (e.g. 'Uber', 'AirTasker' and in food delivery).

What is a workplace?

Under the WHS Act, a workplace is defined as a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. In relation to work places, a 'place' is further defined to include vehicles, vessels, aircraft, other mobile structures, waters and any installation on land, water bed or floating on any waters.

Who is an officer

An officer is the person who makes, or participates in making, the decisions that affect the whole or a substantial part of a business or an organisation and must exercise due diligence to ensure work health and safety obligations are met.

Examples of officers:

- company directors
- CEOs and senior executives
- senior managers who have significant decision making power.

Refer to S27 to know more about due diligence.

What is 'a person conducting a business or undertaking'?

In the WHS Act, the term 'person conducting a business or undertaking' (PCBU) is used instead of the term 'employer'. Such a 'person' can include a body corporate (e.g. a company), an unincorporated body or association or partnership. The word 'person' as used in this context, is not in reference to a 'natural person', but rather the legal entity.

The WHS Act does not define a 'business' or an 'undertaking'. However, a business can be taken to mean an enterprise which is usually conducted with a view to making a profit and has a degree of organisation, systems and continuity. An undertaking may have elements of organisation, systems, and possibly continuity, but are usually not profit-making or commercial in nature.

The term PCBU also extends to other duty holders under the WHS Act, including contractors, designers, manufacturers, importers, suppliers and installers of plant, substances or structures used in the workplace, and imposes particular duties on these types of PCBUs.

When assessing whether an accident or incident arises out of the conduct of a business or undertaking, consideration should be given to the broad range of activities or work, including services, that are undertaken by, or can be attributed to, the business or undertaking. Whilst in many cases a work group is made up of workers of the same PCBU, it is possible to establish work groups across multiple PCBUs. A situation where there may be a group of workers from different PCBUs might be a worksite that uses multiple sub-contractors.

HSRs for work groups of multiple businesses

Multiple-business workgroups

Multiple-business work groups are voluntary and built on the commitment of the various PCBUs to collaborate in addressing health and safety matters.

If agreed, workers from multiple businesses working on a single site can be part of the same work group which could cover:

- contractors
- labour hire staff
- outworkers
- apprentices.

Examples of multiple-business work groups include:

- a principal contractor and numerous sub-contractors working together on a construction site
- labour hire staff and the employees at a manufacturing site
- joint venture businesses
- a principal operator engaging workers from PCBUs such as airports, entertainment venues and hospitals.

Similarly, a work group might consist of workers of the same trade or it might consist of all workers on the same night shift.

Formation of multiple work groups should be by consultation to negotiate an agreement that focuses on:

- the workplace location/s of work groups
- the number and composition of work groups
- the number of HSRs and deputy HSRs.

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

Establishing multiple-businesses workgroups

Work groups are established by negotiation and agreement between each of the PCBUs and their workers.

Establishing work groups for more than one PCBU does not need to affect how existing work groups at each business or undertaking operate.

A worker may be part of more than one work group. For example, an on-hire worker may be a member of the on-hire firm's work group, and a member of a work group in the business that engages the worker to carry out work.

A party to negotiations, or to an agreement, may withdraw from the negotiation or agreement at any time by providing reasonable notice (in writing) to other parties. If a party has withdrawn from an agreement, the other parties must negotiate a variation to the agreement, which remains valid in the meantime.

Sharing costs of the HSR

The PCBUs must equally share the cost of HSRs exercising their powers and functions, course fees and other reasonable costs. However, the PCBUs may agree to share costs in different portions. For example, where most of the work group carry out work for one business or undertaking, that PCBU would pay the majority of HSR-related costs.

At any time, the PCBUs can negotiate and agree to change how costs are shared.

Example - Negotiating work groups involving multiple businesses

A plumbing business (contractor) is engaged by a principal contractor of a major construction project to install plumbing services. The contractor does not have enough staff to complete the works on schedule and enters into a contract with another plumbing business (sub-contractor) to provide additional resources.

Both businesses have duties under the WHS Act to provide a safe working environment for staff engaged to undertake the work at the construction project. A meeting is arranged between both businesses and their workers to review existing workgroup arrangements. The workers of the contractor authorise their union to represent them at these negotiations, the sub-contractor workers authorise their supervisor as their representative in the negotiations.

The negotiations involve the union delegate, the sub-contractor's workers representative and a management representative for both businesses. All relevant matters are taken into account during negotiations including the nature of the risk, the work location and hours worked. An agreement is reached to establish a multi-PCBU workgroup for the project.

It is determined that one HSR and a deputy HSR would be required for the plumbing workers workgroup and these HSRs are authorised to represent these workers when on site.

If negotiations fail

Where an agreement cannot be reached to establish or vary work groups for multiple PCBUs, the relevant party can request the Regulator (SafeWork SA) to appoint an inspector to assist with the negotiations. An inspector will facilitate reaching an agreement but cannot make a determination. If all parties still cannot agree, the PCBUs involved may choose to negotiate with their own workers to determine work groups for a single PCBU.



Powers and functions of a HSR

The primary responsibility for providing a healthy and safe workplace rests with the PCBU. The HSR has a role in representing members of their work group and bringing WHS matters to the attention of the PCBU. Powers and functions given to HSRs under the WHS Act enable them to effectively represent the interests of workers in their work group and to contribute to WHS matters.

HSRs have the following powers and functions:

- represent the workers in their work group in relation to WHS matters
- monitor the PCBU's compliance with the WHS Act
- investigate WHS complaints from members of the work group
- inquire into WHS risks to workers
- accompanying an inspector during an inspection that affects their work group.

The types of WHS matters a HSR may encounter and be consulted on can include, but are not limited to:

- asbestos
- bullying and harassment
- electrical safety
- fatigue
- hazardous chemicals
- hazardous manual tasks (e.g. lifting, pushing and pulling)
- noise and vibrations
- plant and equipment
- psychosocial hazards
- slips, trips, and falls
- working at heights
- working in heat and other environmental conditions.

It is up to the HSR to decide when they will exercise their powers and perform their functions. There are no mandatory obligations on HSRs to do so. HSRs can:

- accompany an inspector during an inspection of any part of the workplace where a worker in the work group works
- seek and receive information concerning the work health and safety of workers in a work group
- inspect the workplace where their workgroup works at any time after giving reasonable notice to the PCBU, or without notice in the event of an incident or any situation involving a serious risk to health or safety
- attend interviews between a work group member or members with their consent, and an inspector or the PCBU, e.g. after an incident has occurred, for return-to-work purposes or as part of issue resolution
- direct a work group member to cease unsafe work or issue a Provisional Improvement Notice (PIN), providing the HSR has completed their initial 5 day training.
- Employers must allow HSRs to access information relating to hazards that may affect the health and safety of any work group.
- The powers and functions of a HSR are limited to the work group they have been elected to represent unless a HSR from another work group is unavailable and:
- there is a serious risk to health and safety from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group
- a member of another work group asks for assistance
- the work group seeking assistance relate to that of the HSR.

HSRs are not personally liable for actions or omissions when done in good faith whilst exercising powers or functions reasonably believed to be authorised under the WHS Act. There is no legal duty or obligation for a HSR to perform functions or use the powers set out in the WHS Act.

Deputy HSRs can only represent the workers in the absence of the elected HSR. The election process, term of office, training and other provisions for a Deputy HSR are the same as for HSRs.

HSRs are automatically members of the HSC, if there is one, unless they do not wish to participate.

Training entitlements

To help develop the skills needed to effectively represent workers in their work group, HSRs are entitled to at least the prescribed number of days per year off work to attend approved HSR training and should do so as soon as possible after being elected.

All HSRs and deputy HSRs are entitled to attend approved training during each year of their term of office.

Employers must allow the HSR to attend HSR training up to the prescribed training entitlement, within 3 months of making a request. Employers must pay the course fees and any other reasonable costs associated with the training including providing paid time off work at the worker's usual pay rate, regardless of any pre-existing procurement arrangements at the organisation. Negotiation about anticipated accrued costs should occur prior to the HSR attending the training course.

Whilst training is not mandatory to perform most of the functions of a HSR, a HSR will not be able to exercise the power to issue Provisional Improvement Notices (PINs) or direct the cessation of unsafe work unless they have completed the initial 5 day Level 1 training. However, a worker may still cease unsafe work without a HSR doing so on their behalf.

While the choice of training course remains with the HSR, they must consult and reach agreement with the PCBU about the timing for attendance and the reasonable costs of attending the training course.

Training entitlements during a 3-year term of office are:

- First year – 5 days
- Second year – 3 days
- Third year – 2 days.

If re-elected for another 3 year term, a HSR will have the same training entitlements, however a range of other approved WHS training courses are also offered and may be undertaken by the HSR as an alternative to repeating the level 1, 2 or 3 training.

When choosing an approved training course, factors that may be considered include:

- timing of attendance—the sooner the HSR attends training after being elected, the more effective they will be in performing the HSR role
- cost of courses, where prices differ substantially
- costs of attendance for remotely located workplaces including travel and accommodation expenses. A Remote Area Subsidy is available to those who meet the eligibility criteria.
- the relevance of any hazard-specific or industry-based course to the work group
- the total number of workers requiring training.

If the HSR or the PCBU cannot come to a timely agreement about time off for the HSR to attend HSR training or the payment of fees and other reasonable attendance costs, then either party may ask SafeWork SA to appoint an inspector to decide the matter.

If the HSR or the PCBU do not agree with the inspector's decision, either party can request SafeWork SA to review the decision within 14 days after the day on which the decision first came to the eligible person's notice. Refer to Sections 223 – 224 of the WHS Act.

There are additional training, workshops, HSR forums organised by SafeWork SA, seminars and/or relevant conferences held throughout the year which are outside the HSR training entitlement days. HSRs will need to negotiate attendance at these with their employer.

The SafeWork SA HSR Forum provides an opportunity for Health and Safety Representatives to engage face-to-face with SafeWork SA and peers from across the state, with sessions focused on relevant WHS topics to help build their knowledge and capability in their roles.

Approved training courses

A HSR is entitled to attend a training course that has been approved by the regulator.

The training calendar is updated when dates are announced by an approved training provider. SafeWork SA do not sponsor or endorse, nor can we recommend, any particular training provider.

The courses cover the following content:

5-Day Course (first year initial training/Level 1 training):

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

3-Day Course (second year training/Level 2 training):

- participating in, and contributing to, the formation of risk management processes and controls for multiple hazards, complex risks and concepts of reasonably practicable undertaken by the PCBU
- participating in, and contributing to, the gathering of hazard and risk-related statistical data and information for identifying and controlling multiple hazards and complex risks
- representing members in the formation of WHS action plans for multiple hazards and complex risks.



2-Day Course (third year training/Level 3 training):

aims to add and extend to the range of skills and knowledge acquired in the 5 day and 3 day initial courses. An important feature of the course design is the flexibility of topics to enable participants to select areas directly relevant to their workplace management structure and own experience.

1-Day Refresher and topic-specific options:

- WHS refresher, aimed at providing a brief overview of the learning outcomes covered during a HSR's first term of office, with particular attention to amendments to WHS legislation and supporting resources
- consultation processes
- contributing to workplace health and wellbeing
- fatigue management
- inappropriate behaviours
- inspections and incident investigation
- policy and procedures.

If re-elected for another 3 year term, a HSR will have the same training entitlements. However, a range of 1-day training courses are also offered and may be undertaken by the HSR if they choose, as an alternative to repeating the level 1, 2 or 3 training.

For a list of current Approved Training Providers and courses, please visit the [**SafeWork SA website**](#).

Remote Area Subsidy

The HSR Remote Area Subsidy is intended to make a contribution towards additional travel, accommodation and meal expenses for participants who meet the eligibility criteria.

There are eligibility criteria that must be met before SafeWork SA can approve the subsidy for applicants. Please visit SafeWork SA's website for more information regarding the Remote Area Subsidy.

Sufficient time to perform the role

The amount of time necessary for a HSR to effectively perform their role will vary between workplaces. HSRs must be given such time as is reasonably necessary during work hours to exercise their powers and perform their functions. Any time a HSR spends exercising their powers and performing their functions at work must be paid time, paid at the rate the HSR would receive had they not been exercising their powers or performing their functions. Any underpayment of wages may be recovered under the applicable industrial laws.

HSRs should consult with the PCBU and agree to how much time may be needed to undertake the HSR role. When agreeing to how much time may be needed, the HSR and the PCBU should consider:

- the type of work or proposed work in the workplace
- the level of risk involved in the work
- the effectiveness of the risk controls
- the individual needs of workers in the work group relevant to their health and safety, for example, people who are living with disability or who communicate in a language other than English
- attendance at meetings, for example, HSC meetings, work group meetings and meetings with people providing assistance to the HSR
- the size and complexity of the work group
- the size and complexity of the workplace
- the number of HSRs in the workplace and in the work group
- the complexity of the PCBU's WHS management system
- the immediacy of the risk or issue.

Confidentiality obligations

Confidentiality provisions in the WHS Act require that if HSRs obtain information or gain access to a document in exercising the powers or functions of the HSR, they must not disclose the information or give access to the document or any information in the document to anyone else, or use the information or document for any purpose, unless the disclosure, access, or use:

- is necessary for the exercise of their powers and functions as a HSR, or
- is about a person with the person's consent, or
- is required by any court or tribunal, or
- is under some other lawful authority that requires the HSR to produce documents or answer questions.

Workplace inspections

After giving reasonable notice to the PCBU, HSRs may inspect any part of the workplace where members of the work group work. What is 'reasonable notice' will depend on the circumstances in any given case and on what the PCBU and HSR jointly consider to be reasonable. In many cases, notice should be provided 24 hours prior to an inspection.

Where a schedule of HSR workplace inspections has been agreed to with the PCBU, HSRs should confirm with the person in charge of the area to be inspected that arrangements are in place for their inspections.

HSRs may immediately inspect the workplace without providing notice in the event of any incident or situation that involves:

- a serious risk to the health or safety of any person
- because of an immediate or imminent exposure to a hazard
- in any part of a workplace where members of their work group work.

As part of a PCBU's duty to ensure health and safety, the PCBU must provide and maintain a safe working environment, safe plant and structures, and safe systems of work. To do this, the PCBU needs to conduct regular workplace inspections and testing of plant and equipment by assigning this responsibility to a supervisor, manager, or other competent person in the workplace. It is not the role or responsibility as the HSR to undertake workplace inspections on behalf of the PCBU. However, there may be circumstances where a HSR's position in the organisation, e.g. as a supervisor or manager, has that responsibility, in which case the PCBU's inspection would be done under that position, not as a HSR.

HSRs may choose to conduct inspections as a HSR on their own, or in company with a management representative.

HSRs may also request the assistance of another person, for example, a representative from their union.

Workplace inspections by the HSR can take various forms, including:

- regular inspections of the workplace
- regular inspections of plant, structures, substances, activities or processes
- specific inspections arising from complaints or concerns about matters that affect workers in their work group
- inspections before and after a substantial change to the workplace, e.g. changes to plant or work processes
- inspections after an incident or injury.

The circumstances, risks and requirements of each workplace will determine what type of inspection should be carried out. More frequent inspections may be needed in high-risk industries and workplaces that are subject to frequent change.

During inspections, a HSR is entitled to discuss health and safety matters with anyone involved in anything that appears to be a risk to the physical or psychological health and safety of workers in their work group that arises from the conduct of the business or undertaking.

Immediately after an incident which is notifiable to SafeWork SA under the WHS Act, the person with management or control of the workplace (PWMC) must ensure that the site where the incident occurred is not disturbed until an inspector arrives at the site, or any time earlier as an inspector directs. (Refer to Section 20 of the WHS Act for the definition of 'person with management or control of the workplace'.) This may restrict any inspection HSRs would like to undertake at the incident site. An incident site must be preserved by the PWMC and can include any plant, substance, structure, or thing associated with the notifiable incident.

As soon as practicable after entering a workplace, inspectors must take reasonable steps to notify the relevant PCBU as well as any HSRs, of the entry and its purpose. HSRs are entitled to accompany the inspector during an inspection of any part of the workplace where their work group works.

Accessing information

The PCBU must allow their HSR to have access to information the PCBU has relating to hazards and risks affecting the physical and psychological health and safety of the workers in the work group, and information about the health and safety of the work group workers. The information a HSR may require access to may differ between workplaces, but broadly, they may request access to any relevant information, which may include:

- 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 is readily available
- 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 workplace occupational hygiene measurements, such as for dust levels, noise levels or chemical fumes
- reports on WHS matters, including reports prepared by consultants for the PCBU
- minutes of HSC meetings
- information provided by manufacturers and suppliers about plant, equipment or substances at the workplace
- health monitoring information that does not contain personal or medical information about a worker
- physical and psychosocial hazards, including associated risks, at the workplace affecting workers in the work group and the health and safety of the workers in the work group.

HSRs may choose to exercise their power to obtain documents in order to inquire into a matter that appears to be a risk to the physical or psychological health and safety of workers in their work group. For example, they may inspect the PCBU's systems which should be in place to ensure that only licensed forklift drivers are permitted to operate forklifts in the workplace. However, the PCBU may not be required to provide the HSR with copies of individual forklift licences.

HSRs are not allowed access to any personal or medical information concerning a worker without the worker's consent, unless the information:

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

In the WHS Act, 'personal information' has the same meaning as it has in the *Privacy Act 1988* (Cth). 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not.

For example, a copy of a worker's forklift licence identifies the worker and would contain personal information concerning the worker. Unless the PCBU has the worker's consent, they should not provide a copy of a worker's forklift licence to a HSR. However, a PCBU can provide a HSR with de-identified information confirming that all workers undertaking this work are appropriately licensed, and how many workers hold the relevant licence.

Personal liability

A HSR is not personally liable and cannot be prosecuted for anything done or omitted to be done in good faith when exercising a power or performing a function of a HSR under the WHS Act, or in the reasonable belief that their actions were authorised under the WHS Act.

Acting in good faith involves carrying out their HSR powers and functions with honest and sincere intentions and beliefs.



PCBU responsibilities

General obligations to HSRs

Section 70 of the WHS Act includes general obligations PCBUs have to HSRs, which are to:

- consult, so far as is reasonably practicable, with a HSR on WHS matters at the workplace
- confer with a HSR whenever reasonably requested by the representative, to ensure the physical or psychological health and safety of the workers in the work group
- allow a HSR access to information that the PCBU has relating to:
 - hazards and risks affecting the physical or psychological health and safety of the workers in the work group, and
 - the physical or psychological health and safety of the work group workers
- with the consent of relevant workers, allow a HSR to be present at any interview concerning work health and safety between a worker or a group of workers and:
 - an inspector
 - the PCBU or their representative
- provide a HSR with the resources, facilities and assistance that are reasonably necessary or prescribed by the WHS Regulations, to enable the HSR to exercise their powers and perform their functions under the WHS Act
- allow a person assisting a HSR to have access to the workplace if it is necessary to enable the assistance to be provided
- permit a HSR to accompany an inspector during an inspection of any part of the workplace where a worker in the HSR's work group works
- allow a HSR to spend as much time as is reasonably necessary to exercise their powers and perform their functions under the WHS Act
- pay a HSR the same amount they would be entitled to receive for performing their normal duties during any time they spend exercising their powers or performing their functions under the WHS Act.

Resources, facilities and assistance

A PCBU must provide any resources, facilities and assistance that are reasonably necessary to enable the HSR to carry out their functions and exercise powers as the HSR.

What is reasonable in the particular circumstances will depend on a range of factors including the nature of the work and the working environment, workplace hazards and the composition of the work group. Resources, facilities and assistance may include:

- access to a private room, desk and chairs for discussions or interviews
- facilities for filing, including a lockable filing cabinet and shelves
- access to a telephone, internet and email
- access to photocopying facilities
- access to a room for work group meetings
- the use of notice boards
- if required, transport or travel expenses to commute between workplaces.

The HSR should not be disadvantaged for taking on this important health and safety role. When the HSR is exercising their powers or performing any of the functions the WHS Act sets out, the PCBU must ensure that they are paid the same amount that they would be entitled to receive for performing their normal duties. Payment should include any allowances to which they are otherwise entitled such as shift work, overtime, higher duties allowance or penalty rates.

This requirement also includes paid time off to attend HSR training. Training is part of normal work-related activity and as such they are entitled to receive their normal/expected earnings during course attendance.

Keeping a list of HSRs

A PCBU must ensure that:

- a list of each HSR and deputy HSR if any, is prepared and kept up to date
- a current copy of the list is displayed at a principal place of business and at any other workplace that is appropriate to the constitution of the relevant work group or workgroups.

The PCBU must also ensure that the up to date list is provided to SafeWork SA as soon as practicable after the list is prepared.

Discrimination

The WHS Act prohibits a PCBU from engaging in discriminatory conduct for a prohibited reason. For example, dismissing a worker or treating a worker less favourably because the worker is, has been, or will be, a HSR, a deputy HSR or a member of an HSC.

Examples of discriminatory conduct can include:

- firing a worker
- terminating a contract for services with a worker
- changing a worker's position to their detriment, e.g. by decreasing their salary or by demotion
- treating a worker differently from others
- not hiring someone
- offering a prospective worker less favourable terms and conditions
- terminating a commercial arrangement, e.g. a contract to supply materials to a workplace, or terminating a sub-contracting arrangement.

Organising, or threatening to organise or take any of the above action is also discriminatory conduct. In addition, a person must not request, instruct, induce, encourage, authorise or assist someone else to engage in discriminatory conduct.

Prohibited reasons include, but is not limited to:

- exercising or not exercising their powers of performing functions under the WHS Act, or exercising these powers in a particular way
- assisting or giving information to a person exercising or performing a function under the WHS Act
- raising an issue or concern about WHS with persons such as a PCBU, an inspector, another HSR, a member of a HSC, another worker, or any other duty holder or person exercising a power or performing a function under the WHS Act.

Refer to Part 6, Division 1, Sections 104 – 106 of the WHS Act for full information regarding the prohibition of discriminatory conduct and definitions.

The WHS Act also prohibits requesting, instructing, inducing, encouraging, authorising, or assisting another person to discriminate against a worker on these grounds.

Both criminal and civil penalties can be brought against a person who engages in discriminatory conduct in relation to WHS matters.

If the HSR feels discriminated against in their role as the HSR, they should contact SafeWork SA for advice and assistance.

It is important to note that other Acts not under SafeWork SA's jurisdiction may apply to matters of discrimination.

HSRs and Deputy HSRs

HSR Elections

A work group chooses how HSR elections will be held and the person conducting the election informs the employer accordingly. The election may be conducted with the assistance of a union or other person or organisation as agreed upon by the majority of the work group.

Employers must provide reasonable resources, facilities and support to facilitate the conduct of the election and display a list of elected HSRs at their workplace.

All work group members must be given the opportunity to vote, so elections may need to be conducted over an extended period.

The term of office for a HSR is 3 years, unless:

- they resign
- they leave the work group
- they are disqualified
- the majority of the work group sign a declaration that they should no longer represent them.

If there is concern about the election process that has been followed, contact a SafeWork SA HSR Advisor or other representative such as a union for advice.

For breaches of procedures as set out in the WHS Act or WHS Regulations, SafeWork SA must be notified.

The following is a general guide to conducting a HSR election. This is a similar process for conducting subsequent elections:

Step 1: Request a HSR

Under Section 50 of the WHS Act, any worker can ask for the election of a HSR to take place.

Step 2: Negotiate the work groups

The work group must be agreed between the PCBU and the workers who will form the work group. The worker can initiate the process and use a representative if they so choose to negotiate the work group.

Refer to the **'What is a work group?'** section of this handbook for more information about work group formation.

The employer must advise workers of the outcome of the work group negotiations as soon as reasonably practicable.

Step 3: Call for nominations

All workers are eligible to nominate a member from their work group or themselves to stand for election as a HSR or a deputy HSR. Workers may nominate a worker who has management responsibilities, as long as that person is a member of that work group.

When calling for nominations, it is a good idea to place notices in prominently displayed locations with reasonable closing dates and ensure equitable access if electronically distributing.

Step 4: Conduct an election

After calling for nominations, conduct the election following the process chosen by the work group. The process may be informal via a show of hands, or more formal using ballots. If the majority of workers agree, a union, organisation or other person may assist with the election.

Inform all work group members of the place, day and time for the election. Each member of the work group is eligible to vote in the election.

Work groups do not need to hold an election where there is the same number of nominees as vacancies. In this case, nominees are automatically elected as the HSR for the work group.

Step 5: Notify workers of the election outcome

The person who conducted the election advises the employer and the members of the work group of the election results.

SafeWork SA must also be notified of the elected HSR as soon as possible via the prescribed manner by the regulator. Visit SafeWork SA's website for more information regarding HSR election notifications.

Request for election

A worker (or group of workers) may request their employer to facilitate the conduct of an election of one or more HSRs, and the employer must then take all reasonable steps to commence negotiations within 14 days to determine work group(s).



Negotiate work groups

Work groups must be negotiated and agreed between the PCBU and the workers (or their representatives). As soon as practicable after agreement, the employer must notify workers of the outcome (number/composition of work groups/number of HSRs, deputies/the workplaces they cover). If negotiations fail, any party may ask the regulator to appoint an inspector to assist or decide.



Determine election process

Majority of Workers may decide how the HSR election is conducted, whether through an informal show of hands or a more formal ballot. The PCBU does not determine or approve the election method, but must provide any resources, facilities, or assistance reasonably necessary for the election. If a majority of workers agree, a union, organisation, or another person may assist with the process.



Call for nominations

Nominations should be open to all members of the work group (workers may nominate themselves or another eligible worker in the work group). Provide clear, accessible notices and allow a reasonable timeframe so all workers can participate in the election process.



Conduct the election

Run the election in line with the worker-decided procedure (ballot, show of hands, or another agreed method). Ensure all workers in the work group are given adequate opportunity to vote. However, if the number of candidates equals the number of vacancies, an election is not required, and each candidate is taken to be elected as an HSR.



Notify workers of outcome

The person who conducted the election must advise the employer and the work group of the result as soon as practicable.



Term of office begins

A HSR term is for 3 years. This generally starts from the day they were elected unless otherwise determined by the workers, employer and elected HSR - such as a HSR being re-elected for a consecutive term in an election held prior to the end of their current term or the election being held at the end of a working week.



Register HSR with SafeWork SA

As soon as practicable, the employer (or a representative) should register the elected HSR via the SafeWork SA Customer Portal.

Disqualification or removal of a HSR

A court or tribunal may disqualify a HSR if it is satisfied that the HSR exercised a power or performed a function for an improper purpose, or used or disclosed information acquired in the role for a purpose other than in connection with their role as a HSR.

For example, a regulator, a person conducting a business, or a person adversely affected by the alleged behaviour can progress an application for disqualification to the court or tribunal.

The court or tribunal at its discretion may decide to disqualify the HSR indefinitely or for a specified period of time.

HSRs can be removed from their HSR role if the majority of the members of their work group sign a written declaration that the person should no longer represent the work group. Refer to Section 64 of the WHS Act and Regulation 20 of the WHS Regulations.

Powers and functions of a deputy HSR

It will not always be possible for the HSR of a particular work group to be present and available to represent the work group when needed. For example, the HSR may be away from work through illness, on leave, working an irregular shift, temporarily out of the office, or at a meeting. In the HSR's absence, a deputy HSR effectively becomes the HSR and therefore has the powers and functions of that role.

In line with the requirements for HSRs, a deputy HSR would not be able to issue a Provisional Improvement Notice (PIN) or direct a work group member to cease unsafe work unless they have completed an approved HSR training course.



Multiple HSRs in disagreement – what happens?

Where agreement about a WHS matter or issue cannot be reached by multiple HSRs in a single work group, consultation needs to take place between the HSRs and the workers in the work group. Where a majority of the work group indicates preference for a particular course of action, the HSRs should collectively adopt and advocate for that course of action. Regardless of the number of HSRs this reflects good practice, as a HSR is there to represent the workers in the work group. During this process, any HSR may call on the assistance of any person, including a union official, to assist the HSRs to arrive at an agreed position.

Assistance for the role

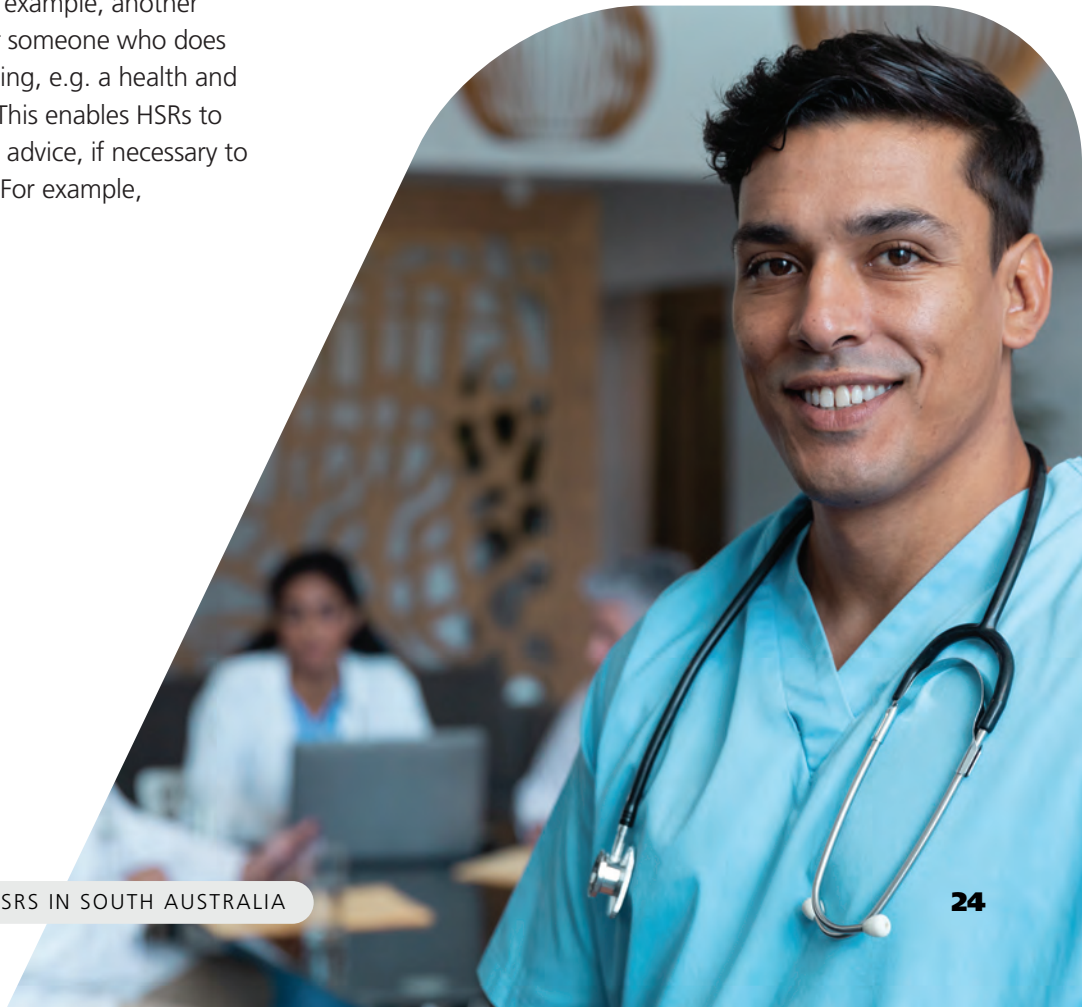
When exercising a power or function as a HSR, the HSR may request the assistance of any person whenever necessary. This may include a person with knowledge of WHS from within the workplace. For example, another HSR, a WHS adviser or a manager, or someone who does not work in the business or undertaking, e.g. a health and safety consultant or a union official. This enables HSRs to access advice, including independent advice, if necessary to assist HSRs in undertaking their role. For example, they may require:

- advice about how to perform inspections at the workplace
- technical advice about managing or controlling a particular hazard or issue
- advice about how to consult and resolve WHS issues
- assistance with writing and issuing a Provisional Improvement Notice (PIN).

The PCBU must allow any person they nominate to assist them to have access to the workplace if access is necessary to enable the assistance to be provided.

Any person assisting a HSR must comply with any reasonable instructions given by the PCBU about WHS matters at the workplace. For example, they must undergo visitor safety inductions and wear any required personal protective equipment.

A PCBU is not required to give a HSR financial assistance for the purpose of obtaining assistance and is not required to pay a HSR's assistant.



Provisional Improvement Notices (PINs)

Overview

A Provisional Improvement Notice (PIN) can only be issued by a HSR who has completed an approved Level 1 HSR training course (initial 5 day training course).

A PIN can be issued by a HSR to a person requiring them to address a health or safety contravention in the workplace. A 'person' may be a body corporate, an unincorporated association, a partnership, or an individual. The person does not necessarily have to be present at the HSR's workplace. For example, they may be a designer, a manufacturer, or a supplier of plant, substances, or structures.

A HSR may issue a PIN if they reasonably believe that a person is contravening the WHS Act or has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated. The HSR's reasonable belief must be supported by sufficient facts or evidence.

Examples of contraventions that could be likely to continue or likely to be repeated may include:

- an ongoing requirement to manually lift heavy objects
- machinery used in the workplace that has been found to exceed safe noise levels and no safe alternative has been arranged
- regular exposure to hazardous chemicals that are used in the workplace
- unguarded machines
- poor organisational change management
- a PCBU not consulting about a WHS matter when it is reasonably practicable to do so.
- If there is more than one contravention, a separate PIN must be written for each contravention.

A PIN may require a person to:

- remedy the contravention
- prevent a likely contravention from occurring
- remedy the things or operations causing the contravention or likely contravention.

A PIN cannot be issued for a matter where a SafeWork SA inspector has already issued, or decided not to issue, an Improvement Notice or Prohibition Notice in relation to the same matter. After a PIN has been issued, the HSR should continue to consult with the person to whom the PIN was issued, e.g. a relevant manager, to attempt to resolve the issue.

Consultation

Before issuing a PIN, a HSR must consult with the person they believe is contravening the WHS Act or WHS Regulations. This means that as part of consultation, the HSR should:

- provide information verbally or in writing to the person about the alleged contravention or the activities causing the contravention. This may include identifying a risk to health or safety that has not been eliminated or is not being minimised so far as is reasonably practicable
- allow the person adequate time to express their views, identify how best to address the matter, and to remedy the contravention

- consider the views of the person before issuing the PIN.
- consultation can be said to have occurred even if:
- the person does not respond to the HSR in a reasonable time or at all
- the person does not agree with the HSR, e.g. the person does not have to agree that there is, or is likely to be, a contravention or agree on how to fix the matter.

Issuing a Provisional Improvement Notice (PIN)

It is important that a Provisional Improvement Notice (PIN) is issued to the duty holder who has responsibility for the contravention specified in the PIN. The duty holder should be clearly identified in the PIN so that there can be no confusion about who the PIN is addressed to and who is expected to comply with its requirements. This may include:

- an employer, which can be either an organisation or an individual
- a person with management or control of the workplace.
- HSRs mainly deal with PCBU's as the primary duty holder. Therefore, PINs are often addressed to a corporate entity, e.g. a government agency or a company, and physically given to the management representative that the HSR has consulted with at the workplace.

A PIN may be given to a person by:

- delivering it personally to the person or sending it by post, fax or email to the person's usual or last known home or place of business
- leaving it for the person at the person's usual or last known home or place of business with a person who appears over 16 years old and who appears to live or work there
- leaving it for the person at the workplace to which the notice relates with a person who is, or appears to be, a person with control or management of the workplace.

- For a PIN addressed to a PCBU, personally handing the PIN to a management representative at the workplace to which the PIN relates should satisfy the above requirements. A HSR should check with their organisation's Human Resources team or WHS team to determine the point of contact or email address for issuing the PIN.

PINs should:

- be in writing – it's not compulsory to use a specific form, although a HSR may wish to use the sample template, attached at Appendix 1
- state the reasons why the HSR considers the WHS Act and/or the WHS Regulations are being contravened, or the contravention is likely to continue or be repeated
- be given directly to the employer or their representative who has responsibility for the specified contravention
- specify a time limit of at least 8 days after the date of issue for the contravention to be remedied.

What information should be included in a Provisional Improvement Notice (PIN)?

A Provisional Improvement Notice (PIN) must contain information about the contravention and may also contain directions about measures to be taken by the person to remedy the contravention, or prevent the likely contravention to which the notice relates.

1. A PIN **must** identify the person who the HSR believes:
 - is contravening a provision in the WHS Act, or
 - has contravened a provision of the WHS Act and it is likely that the contravention will continue or be repeated.

2. A PIN **must** state the provision of the WHS Act or WHS Regulations the HSR believes is being, or has been, contravened. (Tip: only the relevant section of the WHS Act or the relevant regulation of the WHS Regulations is required.)
3. A PIN **must** contain a brief outline of how the provision is being, or has been, contravened. (Tip: specify what should be in place and what is missing.)
4. A PIN **must** state the date, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention. (Tip: compliance timeframes should be achievable. Be mindful if third parties are also required to assist.)
5. A PIN **may** include directions by the HSR concerning the measures to be taken to remedy the contravention or prevent a likely contravention. (Tip: don't forget to reference any relevant WHS Regulations.)
6. A direction in a PIN **may** refer to an approved code of practice and offer a choice of ways that the contravention can be remedied.

Directions in PINs should be reasonable and appropriate to the circumstances of the case and targeted towards addressing the contravention. Impractical directions are more likely to result in the person requesting SafeWork SA to review the PIN.

A recipient of a PIN does not have to follow the HSR's direction where they can take other steps or implement other reasonably practicable measures to ensure compliance with the WHS Act or WHS Regulations.

The HSR must issue a separate PIN for each contravention or likely contravention, rather than including multiple contraventions in the one PIN.

Displaying the Provisional Improvement Notice (PIN)

As soon as practicable after receiving the PIN, the person to whom the notice was issued must display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace, where work that is affected by the notice is being carried out. This is a location which is easily accessible where workers or other persons affected by the PIN will see it in the normal course of events and will be alerted to the issue.

A PIN which is displayed must not be intentionally removed, destroyed, damaged or defaced during the period that the PIN is in force.

Making changes to a Provisional Improvement Notice (PIN)

Once the HSR has issued a Provisional Improvement Notice (PIN), the HSR has the power to make minor changes to it for any of the following reasons:

- to clarify content such as simplifying language or removing jargon
- to correct errors or references
- to reflect changes of address or other circumstances.

It is not necessary to make changes to a PIN in order to correct mistakes where the meaning is clear, such as a minor spelling mistake. A PIN is not automatically invalid because of a formal defect or irregularity in the notice, unless that defect or irregularity causes, or is likely to cause, substantial injustice.

Examples of when a defect or irregularity could cause a substantial injustice include where:

- the PIN states the wrong provision has been contravened
- the wrong duty holder is identified
- the PIN requires a higher level of compliance than the legislation, e.g. requiring more than what is 'reasonably practicable'
- the information in the PIN is very unclear, e.g. insufficiently identifying the factual circumstances or the risk to be addressed
- the PIN refers to a matter that is not related to a potential or likely health and safety contravention.

It may be necessary to make minor amendments if there is confusion about the date the contravention must be remedied. For example, where the calendar date, e.g. Wednesday 1 February 2024 is different to the date the contravention is required to be remedied in the PIN, e.g. Thursday 1 February 2024.

The more accurate the information in the PIN, the less likely delays will be experienced when clarifying or making changes to a PIN. If the HSR becomes aware that the issued PIN might be invalid, the PIN should be cancelled and a new PIN issued.

The HSR may also cancel a PIN at any time by providing a written notice to the person the PIN was issued to. Once compliance has been met by the person, a valid PIN does not need to be cancelled or revoked.

Reviewing a Provisional Improvement Notice (PIN)

The person issued with a Provisional Improvement Notice (PIN), or if they are a worker, their PCBU, can ask SafeWork SA to appoint an inspector to review the PIN. The request must be made within 7 days after the PIN has been issued. SafeWork SA must ensure that an inspector attends the workplace as soon as practicable after a request has been made.

If a request for an inspector to review a PIN is made, the PIN is stayed (suspended) until the inspector determines the matter. The PCBU still has a duty to manage, by elimination or minimising, the risks whilst the matter is determined by an inspector.

The inspector must review the PIN following such a request and inquire into the circumstances surrounding the issue. An inspector can review a PIN even if the compliance period has expired. An inspector cannot review a PIN if there has not been a request for review by the recipient of the PIN. However, an inspector can choose to investigate the subject matter of the PIN at any time.

When reviewing a PIN, an inspector will seek information from the HSR who issued the PIN and from the person the PIN was issued to. The review will include finding out why a PIN was issued, whether the PIN was correctly issued and why it is being disputed.

After an inspector has reviewed the PIN, they will either:

- confirm the PIN, or
- confirm the PIN with changes, or
- cancel the PIN.

Confirming the PIN, with or without changes, is taken to be an Improvement Notice issued by the inspector under the WHS Act. An Improvement Notice still requires a person to remedy a contravention, but it is issued directly by the inspector.

Once an inspector has reached a decision, they must then give a copy of their decision to the person who requested the PIN be reviewed, and to the issuing HSR.

The decision made by the inspector is a 'reviewable decision' and the following persons may request a review:

- the person issued with the PIN
- the HSR who issued the PIN
- a worker whose interests are affected by the decision
- another HSR who represents a worker whose interests are affected by the decision
- a PCBU whose interests are affected by the decision.
- a representative of a worker whose interests are affected by the decision, such as a union representative, employer organisation, or any other person the worker authorises to represent them.

Complying with a Provisional Improvement Notice (PIN)

Unless SafeWork SA has appointed an Inspector to review a Provisional Improvement Notice (PIN), the person issued with the PIN must take all reasonable steps to remedy the identified contravention by the due date on the notice, or if no date has been specified, as soon as possible.

The person issued with a PIN must display the notice in a prominent place close to affected workers and/or parts of the workplace(s).

A PIN must not be intentionally removed, damaged or defaced while it is in force.

A PIN remains in force until the matter has been resolved, however, the HSR who issued the PIN may cancel it by written notice at any time.

Where an inspector has not been requested to undertake a review, the person to whom the HSR has issued a PIN may face court proceedings if they do not comply with the requirements of the PIN within the time specified in the notice.



Inspector cancelling a Provisional Improvement Notice (PIN)

An inspector will cancel a Provisional Improvement Notice (PIN) if they find it was not validly made because one of the essential requirements has not been met. For example:

- the HSR was not elected
- the HSR had not completed the required approved training
- the HSR did not consult with the relevant person before issuing the PIN
- the PIN does not state how the WHS Act or WHS Regulations is or has been contravened
- there is insufficient evidence to support a reasonable belief that a person is contravening a provision of the WHS Act or WHS Regulations, or has contravened a provision where it is likely that the contravention will continue or be repeated.

An inspector may also cancel a PIN if they consider that this is the correct or preferable decision having regard to all the circumstances.

A PIN will not be considered invalid if there is a formal defect or irregularity unless the defect or irregularity causes, is likely to cause, substantial injustice.

The inspector may also decide to make some changes to the PIN and then confirm it with these changes. For example, the inspector may adjust the compliance date, include more appropriate ways to remedy the issue, or correct the name of the duty holder. Such decisions by an inspector are 'reviewable decisions'.

WHS issue remains unresolved

There may be options available if a PIN has been cancelled by the inspector following a review and the HSR, or others, consider that the WHS issue that was the subject of the PIN remains unresolved.

A request may be made for SafeWork SA to review the inspector's decision to cancel the PIN. This request can be made by the person issued with the PIN, the HSR who issued the PIN, an affected worker, or another affected HSR or PCBU.

If a PIN is cancelled because it is considered invalid, the HSR may wish to issue a new PIN that corrects the error or omission. An inspector may encourage this to occur if they have been asked to review the PIN and a WHS issue is unresolved. If the inspector gives reasons for their decision to cancel the PIN, the HSR should take this into account in deciding whether a new and revised PIN may be validly issued.

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.

Ceasing unsafe work

A worker has the ability to cease unsafe work, while HSRs have the power to direct workers in their work group to cease work if they have reasonable concern that carrying out the work is exposing them, or would expose them, to a serious health and safety risk due to an immediate or imminent exposure to a hazard.

However, HSRs can only direct workers to cease work if they have completed an approved Level 1 HSR training course (initial 5 day training course).

The HSR must not give a worker a direction to cease work unless the matter is not resolved after:

- a. they have consulted with the relevant PCBU about the matter, and
- b. they have attempted to resolve the matter using the agreed issue resolution procedure, or if there is no agreed procedure, the default issue resolution procedures in the WHS Regulations.

However, if the matter is so serious and immediate or imminent that it is not reasonable to consult the PCBU before giving a cease work direction, the HSR may give the direction without consulting the PCBU or engaging in issue resolution procedures, and then consult with the PCBU as soon as practicable.

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

After a cease work direction, a PCBU can direct affected workers to carry out suitable alternative work until they can resume normal duties. The alternative work must be safe and appropriate for the workers and either at the same workplace they normally work at, or at another workplace.

For example, if a PCBU offers a worker alternative work that requires them to drive a forklift, the worker needs to be appropriately licensed to carry out that work.

The HSR, the PCBU or an affected worker, may ask SafeWork SA to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work. An agreed WHS issue resolution procedure, or the default issue resolution procedure set out in the WHS Regulations (see Regs 22 and 23), can also be used to resolve the issue.



Issue resolution

The issue resolution provisions in the WHS Act aim to resolve issues as soon as can reasonably be achieved, to avoid further dispute or a recurrence of the issue or a similar issue. The intention is that WHS issues should be resolved 'once and for all' to the extent that is possible in the circumstances.

The WHS Act encourages PCBUs to agree on issue resolution procedures with their workers.

What is an issue?

An 'issue' triggers significant obligations, disruptions and costs for the parties and requires the involvement of people other than the worker that is directly affected and their management.

A matter does not become a formal 'issue' until it has been discussed with relevant parties and remains unresolved after those discussions. For the purposes of the issue resolution requirements of the Act, it is not until the matter remains unresolved after discussion that it becomes an 'issue'.

Steps to resolve an issue

When a WHS issue arises, the parties to the issue must make reasonable efforts to achieve a timely, final and effective resolution of the issue according to the relevant agreed procedure or, if there is no agreed procedure, the default procedure set out in the WHS Regulations (see Regs 22 and 23). The default procedure includes the minimum requirements for any agreed procedures.

If an issue has not been resolved after reasonable efforts have been made to resolve the issue, a party to the issue may ask SafeWork SA to appoint an inspector to attend the workplace to assist in resolving the issue. A request for an inspector does not prevent a HSR from the right to cease or direct cessation of unsafe work or from issuing a PIN.

If an inspector has attended the workplace, they may exercise any compliance powers under the WHS Act in relation to the workplace. This may include the issuing of compliance notices.

If the dispute remains unresolved at least 24 hours after an inspector has been requested, then a party to the dispute may give written notice of the dispute to the South Australian Employment Tribunal (SAET).

A WHS matter for the purpose of bringing a dispute to the SAET comprises any of the following matters:

- access to information by a health and safety representative under section 70(1)(c);
- a request by a health and safety representative for an assistant to have access to the workplace under section 70(1)(g);
- a matter about work health and safety that is an issue to which Division 5 applies;
- an issue about cessation of work under Division 6.

When commencing an action in the SAET, written notice of the dispute must be given. The notice must state each of the following matters;

- the names of the parties to the dispute;
- the workplace where the dispute exists;
- the WHS matter the subject of the dispute;
- if an inspector has been appointed to assist in the dispute, and if the decision made by the inspector is currently under review.

Once a notice has been received SAET will publish the notice on a website.

If a relevant union for a worker affected by the WHS matter is not named as a party to the dispute, the union may notify SAET in writing that they want to participate in the resolution of the dispute.

The SAET will then deal with the dispute as it sees fit. This may include mediation, conciliation or arbitration. The SAET may also make a recommendation or make an order if the matter has been dealt with through arbitration. The SAET may also review a decision that was made by an inspector which either confirms, varies or sets aside the compliance decision made by the inspector.

The SAET may decide not to deal with the dispute as per section 102E of the WHS Act.

Can a HSR's representative enter the workplace for issue resolution?

A HSR's representative is a 'party to an issue' and is entitled to enter the workplace for the purpose of attending discussions with a view to resolving the issue. A representative can be any person nominated by the HSR, whether or not they are a worker at that workplace.

A union official assisting a HSR representative on request does not need to hold a valid and current Fair Work entry permit.

A PCBU can refuse workplace access to a representative if they have reasonable grounds to do so. For example, if the representative:

- refuses to participate in a normal visitor induction, or
- refuses to wear the required PPE, or
- does not hold an adequate security clearance for the workplace where this is legally required to which access is being sought, or
- does not comply with security protocols at the workplace, or
- fails to comply, so far as the person is reasonably able, with any reasonable instruction that is given with regards to work health and safety, or
- has previously acted improperly at the workplace by intentionally and unreasonably delaying, hindering, or obstructing any person, disrupting work, or otherwise acting in an improper manner.

If a representative is a person who is not a worker at the workplace, it may be reasonable for the PCBU to require the representative to be escorted, and depending on security concerns or protocols in the workplace, monitored at all times while on site where this is normal practice for visitors.

If the HSR representative has not been allowed to access the workplace, the HSR may request SafeWork SA to appoint an inspector to assist with resolving the matter in the first instance. In this situation, an inspector can provide advice or recommendations to help the parties reach agreement and ensure the parties understand their rights and obligations as set out in the WHS Act.

Failing that, if the HSR has a reasonable belief the WHS Act has been contravened and the PCBU does not have a reasonable excuse, following consultation, the HSR could issue a Provisional Improvement Notice (PIN) or request the regulator appoint an inspector to conduct an investigation of an alleged contravention. If the dispute remains unresolved at least 24 hours after an inspector has been appointed, then a party to the dispute may give written notice of the dispute to the South Australian Employment Tribunal (SAET) as per Division 7A of the WHS Act.

What happens when an issue is resolved?

If a WHS issue has been resolved, details of the issue and the resolution must be set out in a written agreement, if any party to the issue requests this.

If a written agreement is prepared:

- all parties to the issue must be satisfied that it accurately reflects the resolution
- the agreement must be provided to all people involved with the issue and if requested, to the HSC at the workplace. (Tip: always request the agreed outcome to be provided in writing.)

Workplace protection orders

From 4 May 2026, a health and safety representative (HSR) can apply for a workplace protection order under the *Workplace Protection (Personal Violence) Act 2025* (Workplace Protection Act).

What is a workplace protection order?

A workplace protection order (WPO) is designed to protect workers that require direct interaction with members of the public from individuals who have committed personal violence at a workplace and may engage in further personal violence if a WPO is not made.

A WPO may prohibit an individual from entering or being within a particular distance of a workplace, or place conditions around attending a workplace.

A WPO is made on application to the Magistrates Court (or Youth Court where the individual is under 18).

A Health and Safety Representative (HSR) can apply to the Magistrates Court or Youth Court for a WPO. A HSR can only apply for a WPO on behalf of the work group from which they were elected.

The Court will make a WPO if satisfied that the defendant:

- has engaged in personal violence in relation to a workplace; and
- may engage in personal violence in relation to a workplace during the time the order is proposed to operate, if the order is not made.

The Workplace Protection Act defines 'personal violence' as any of the following behaviour in relation to another person:

- physical violence or abuse
- sexual violence or abuse
- threatening behaviour
- stalking
- harassing, intimidating, or offensive behaviour
- damaging property.

The Court may, at any time during proceedings for an application for a WPO, make an interim WPO if satisfied that the interim order is necessary.

Is any training required before a HSR can apply for a workplace protection order?

No. The Workplace Protection Act does not set any training requirements for a HSR before they can apply for a WPO.

What workplaces may be subject to a workplace protection order?

Workplaces that require direct interaction with members of the public may be subject to WPOs. The interaction does not have to be 'in person' and can include electronic or telephone communication with the public.

Examples of workplaces are supermarkets, petrol stations, retail shops, and call centres.

Workplaces for which you cannot apply for a WPO include:

- commercial construction sites to which entry by members of the public is restricted
- commercial factories, offices, or other premises without access points for members of the public. That is, there is no reception area into or through which members of the public may enter; and where usual business does not involve electronic or telephone communication with members of the public.

Who enforces a workplace protection order?

South Australia Police are responsible for enforcing a WPO, and for investigating, charging, and prosecuting WPO breaches as criminal offences.

Where can I find more information?

Further information is available on the Attorney-General's Department's website at agd.sa.gov.au/law-and-justice/legislation/workplace-protection-laws

Reviewable decisions

Further information and resources

Various decisions made by SafeWork SA are reviewable through the internal review process or via the South Australian Employment Tribunal (SAET).

This process allows an eligible person to seek a review of a range of decisions made by SafeWork SA inspectors.

A HSR is classified as an 'eligible person' who can apply for review of a decision, as well as a union entitled to represent the industrial interests of a worker or any other person that the worker authorises to represent them.

A list of reviewable decisions can be found here:

[List-of-reviewable-decisions.pdf \(safework.sa.gov.au\)](#).

- *Work Health and Safety Act 2012 (SA)*
- *Work Health and Safety Regulations 2012 (SA)*
- Safe Work Australia's Worker Representation and Participation: **safeworkaustralia.gov.au**



