

FREQUENTLY ASKED QUESTIONS

WORK HEALTH AND SAFETY LEGISLATION

HEALTH AND SAFETY REPRESENTATIVES (HSRs)

What is the difference between an occupational health and safety (OHS) representative and a health and safety representative (HSR)?

An HSR will have a few additional functions to an OHS representative.

The major difference involves an HSR undertaking a five-day HSR training course, which allows them to:

- direct a worker to cease work, if they have reasonable grounds to believe that the worker could be exposed to a serious risk to their health or safety by continuing that work
- issue a provisional improvement notice (PIN) to someone, if they have reasonable grounds to believe that the person is contravening the work health and safety (WHS) legislation.

Other differences include:

- an HSR is elected for three years, an OHS representative for two – an HSR can also be re-elected
- an HSR can request that a health and safety committee (HSC) be established
- an HSR can be disqualified under certain circumstances.

The similarities between an OHS representative and an HSR are:

- both represent a work group
- both investigate complaints about work health and safety matters
- both can accompany an inspector when inspecting a workplace.

How is an HSR selected?

An HSR is elected by members of a work group to represent that work group in WHS matters.

However, an election is not required if the number of candidates equals the number of vacant positions for HSRs in a work group – each candidate is taken to have been elected as an HSR (sections 60 to 63 of the model WHS Act).

What is a work group?

A work group is a group of workers who share similar WHS concerns and conditions.

When do you establish a work group?

Under section 50 of the model WHS Act, a work group must be established by the person conducting a business or undertaking (PCBU) when a worker, or workers, request that an HSR be elected. The work group is formed after consultation between the PCBU and the worker (or workers).

By aligning workers into work-related groups, the work group ensures that an HSR can appropriately represent its workers.

As an HSR, can I inspect the workplace without advising the PCBU?

No. If you inspect the workplace on behalf of your workgroup, you must give the PCBU reasonable notice. However, you do not need to provide notice if there has been a fatality, a serious injury or illness, or a dangerous incident.

What training is available to an HSR?

As an HSR, you are entitled to attend an HSR training course, provided the course is approved by WorkCover. You can attend a five-day training course in the first year and one-day refresher courses each year of the remaining two years of your term – and any other training agreed between you and the PCBU. The PCBU must allow you paid time off work within three months of your request, and pay the course fees.

Who will be responsible for delivering HSR training under the new legislation?

A national decision is pending. An evaluation of the arrangements within all jurisdictions is being conducted. In the interim, WorkCover NSW has extended the accreditation of all existing trainers and approved providers with no change or cost up to 31 December 2011, with the course extended to the same date by the Vocational Education and Training Accreditation Board (VETAB).

Who pays for the HSR training?

The PCBU is responsible for paying for the HSR training course and any other reasonable costs associated with attending the course (section 72 of the model WHS Act), which is the same requirement under the current OHS legislation.

How long can a HSR represent a work group?

An HSR holds office for three years (compared with the two year term of OHS representatives). An HSR can always be re-elected (section 64 of the model WHS Act).

Can a HSR be disqualified?

Yes, an HSR can be disqualified if they have acted inappropriately when exercising a power, function or in the disclosure of information (section 65 of the model WHS Act).

Does every workplace have to have an HSR?

No. A PCBU must facilitate the election of an HSR if one or more workers make a request for this type of representation under section 50 of the model WHS Act. Alternatively, the PCBU can propose that workers consider HSR representation. If there is no HSR, the PCBU must still meet its worker consultation obligations under Part 5 of the Act.

What happens if an HSR does not request to undertake the work health and safety training?

HSRs are entitled to choose and attend a work health and safety training course that has been approved by the regulator (section 72 of the model WHS Act). Irrespective of whether the HSR has undergone training, the PCBU must still provide resources, facilities and assistance to the HSR enabling them to carry out their functions. If the HSR chooses not to attend an approved training course, they cannot exercise their powers (to issue PINS or direct a person to cease unsafe work).

This provision is a shift from the current legislation where it is mandatory for OHS representatives and committee members to complete a four day WorkCover NSW course.

CONSULTATION

What is consultation under the model WHS Act?

Consultation is a two-way process between the PCBU and their workers where views and information on work health and safety are sought, shared and considered. Consultation with other duty holders is also required.

When and how should consultation take place?

The concept of consultation has not changed. Consultation is required for the following health and safety matters (section 49 of the model WHS Act):

- identifying hazards and assessing risks
- making decisions about ways to eliminate or minimise those risks
- making decisions about the adequacy of facilities
- when proposing changes that may affect health and safety
- when making any decisions about health and safety.

The three options for consultation are:

- health and safety representatives
- health and safety committees
- informal arrangements (eg tool box talks, WHS consultation may be a permanent agenda item at weekly meetings).

COMMITTEES

Will there be committees under the WHS Act?

Yes, health and safety committees (HSCs) may replace OHS committees.

What is the role of a HSC?

The role of HSCs is to provide a forum for consultation on the management of health and safety across the whole workforce (ie not just one work group). HSCs should:

- facilitate cooperation between the PCBU and the workers in instigating, developing and carrying out measures designed to ensure the health and safety of workers
- assist in developing standards, rules and procedures relating to WHS.

In a workplace that does not have HSRs, the HSC may (with the agreement of the PCBU) consider the issues that would normally be dealt with by an HSR.

When must a PCBU establish a health and safety committee?

Under section 75 of the model WHS Act, a PCBU must establish a HSC if:

- five or more workers request one be established
- the HSR requests one be established
- required to do so by the regulations.

Is there a timeframe in which a health and safety committee must be established?

Yes, the PCBU must establish a committee within two months of the request, or if required by the regulations, within the timeframe prescribed by the regulations (section 75 of the model WHS Act).

How often must a health and safety committee meet?

A HSC must meet once every three months or at a reasonable time requested by half of the members of the committee (section 78 of the model WHS Act).

Can a health and safety committee be made up of all workers or supervisors?

Half the members of the committee must be workers who are not nominated by the PCBU (section 76 of the model WHS Act). If there are two or more HSRs at the workplace, the HSRs may select one or more HSRs to be members of the Committee.

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