HEALTH AND SAFETY REPRESENTATIVE TRAINING COURSE

One-day Refresher Training Course

Participant workbook

Version 1.6 2015

THIS WORKBOOK WAS DEVELOPED BY WORKCOVER NSW
# Health and Safety Representative Training Course – One-day Refresher Training Course Participant Workbook

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Course Overview

Welcome as a participant in the one day Refresher Training course for Health and Safety Representatives (HSRs) under the NSW Work Health and Safety (WHS) legislation. The course meets the requirements of the WHS Regulations for HSRs elected under the WHS Act.

The WHS Act commenced on 1 January 2012. The WHS Act and WHS Regulation provide a National WHS legal framework from which the states, territories and the Commonwealth are required to implement their own WHS legislation.

Course Objectives

This course will refresh the information and skills attained under the initial five day training course and assist HSRs to carry out their role and functions under the WHS legislation including:

- an understanding of the Work Health and Safety (WHS) legislation;
- an understanding of how it applies to their role as elected Health and Safety Representatives (HSR); and
- the additional knowledge and skills regarding their powers under the WHS legislation to issue Provisional Improvement Notices (PINs) and direct unsafe work to cease.

The course is intended to assist HSRs and deputy HSRs understand their roles and functions as to how the WHS legislation will influence health and safety outcomes in their workplace. The course aims to inform participants of the knowledge and skills necessary to fulfil their role as Health and Safety Representatives (HSR).

Course Target Audience

The target audience of this course includes all elected HSRs under the WHS Act who have previously completed the approved initial five day training course (or the equivalent training approved under the transitional provision of the WHS Regulation). Participants will refresh their understanding of their roles, powers and functions in the representation, monitoring, investigation and enquiry into work health and safety management at their workplace under the WHS law.
Course Aims

The aims of this course are to provide HSRs with a refresh of key information and knowledge from the approved initial training including:

- WHS Act legislative framework
- The role and functions of WorkCover NSW and their interaction with HSRs
- Duties and responsibilities of PCBU, officers, workers and other parties under the legislation
- The nature of the consultation process with workers as required of the primary PCBU by the Act
- The purpose and formation of a work group (or work groups) within the workplace
- Election process for HSRs / Deputy HSRs and disqualification provisions
- Health and Safety Committees (HSCs)
- The entitlements, rights and protections of an elected HSR/Deputy HSR
- Using negotiation, communication and problem solving skills and strategies as a HSR to represent a work group and to resolve work health and safety issues
- Risk management and the use of risk controls, including the duties and responsibilities of various PCBUs under the legislation
- How HSRs can use their functions and powers to contribute to risk management activities in the workplace
- Provisional Improvement Notices and the right to cease, or direct the cessation of, unsafe work

Pre-requisites and Co-requisites

Persons eligible for the WorkCover NSW HSR refresher training course are elected HSRs who have completed the approved five day initial training course.

In addition Schedule 18B of the WHS Regulation provided transitional arrangement for an elected OHS representative or elected member of an OHS committee under the OHS Act to be deemed HSRs if they were elected no earlier than 2 years before the repeal of the OHS Act (no earlier than 01 Jan 09). Deemed HSRs who had previously completed the consultation training prescribed by the OHS Regulation 2001 and then completed the gap training approved under the WHS Regulation are taken to have met the requirements of Section 85(6) and Section 90(4) of the WHS Act and are also entitled to complete annual refresher training.

Recognition of Prior Learning (RPL)

There are no provisions for RPL within the context of this approved training course.

Participants’ Needs

Participants’ needs should be established prior to the commencements of training. Facilitators should consider the literacy and numeracy or other learning difficulties of participants, so that
training may be customised appropriately. Training should be provided face to face in a learning environment and in a manner that is accessible and suitable to all training participants.

Learning Aims, Outcomes and Assessment Criteria

The learning aims, outcomes and assessment criteria for this course are specified in at the commencement of each session.

Course Assessment

This course is non-competency based and has no formal assessment. Informal assessment of participant attendance and learner engagement only has been chosen as the most appropriate option for this course. The facilitator will act as the assessor in this process.

Assessment Decision

Facilitators will make a decision about the attendance and engagement of participants relevant to the learning outcomes / expected learner applications to determine whether an attendance certificate should be issued to the participant.

Course timing

The normal delivery time allocated for this course is a 7 hour day (not including breaks). However, given the participatory nature of the course additional time may be required.

Materials Required

The following resources will be made available to participants:

- Each participant to be provided with a copy of the Participant Notes and a full copy of the Work Health and Safety Act 2011
- As classroom resources:
  - Interpretive Guidelines for:
    (1) “the health and safety duty of an officer under Section 27”
    (2) The meaning of reasonably practicable
  - Relevant extracts or access to the Work Health and Safety Regulation 2011 (WHS Regulation), Code of Practice Work Health and safety consultation, cooperation and co-ordination
  - Copies of or access to relevant approved codes of practice as classroom resources
  - Copies of or access to the National Compliance and Enforcement Policy
Symbols used throughout the participant workbook

![Important Note](image)

**Important Note**

![Activity](image)

**Activity**

![Group Discussion/Brainstorm](image)

**Group Discussion/Brainstorm**

![Remember](image)

**Remember**

![Taken directly from the legislation](image)

**Taken directly from the legislation**

![Indicative time](image)

**Indicative time**

![Presentation](image)

**Presentation**
# Course Timetable

*Note: Times are approximate only*

<table>
<thead>
<tr>
<th>TIME</th>
<th>SESSION</th>
<th>OUTLINE</th>
<th>ACTIVITY</th>
<th>RESOURCES</th>
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</table>
| 8.30 – 9.00 am | Introduction                                 | • General introduction  
• Course objectives  
• Learning outcomes | • Group introductions  
• Pre-start discussion  
• Answers recorded on paper/board for follow up | • Facilitator’s Guide  
• PPP slides and notes  
• Copies of the WHS Act, relevant sections of WHS Reg, Codes of Practice |
| 9.00 – 10.15 am | Session 1: WHS legislation                   | • WHS framework  
• Terminology, duty holders and duties  
• Role and Function of the regulator  
• Enforcement under the WHS Act | • Group discussion  
• Activity - WHS terminology table | • PPP slides and notes |
| 10.15 – 10.30 am | MORNING TEA                                 |                                                                          |                                                                          |                                                                            |
| 10.30-11.30 am | Session 2 Consultation, Representation & participation under WHS Act | • Consultation  
• Work groups  
• Elections and role of HSRs and deputy HSRs  
• Role of HSC  
• Role of PCBU in consultation | • Group discussion  
• Activity - Consultation arrangements | • PPP slides and notes |
| 11.30 – 12.30 pm | Session 3 Participating in consultation and issue resolution as a HSR | • Role of the HSR in consultation  
• Investigation complaints, sharing information and record keeping  
• Issue resolution  
• Assistance and support services. | • Group discussion  
• Activity 1 – Investigations  
• Activity 2 - Issue Resolution | • PPP slides and notes |
| 12.30 – 1.00 pm | LUNCH                                       |                                                                          |                                                                          |                                                                            |
| 1.00 – 2.30 pm  | Session 4 Monitoring PCBU’s management of WHS Risks and notifiable incidents | • Managing risk and related duties  
• Monitoring and review of risk controls  
• Notifiable incidents - roles and duties | • Group discussion  
• Activity 1 – managing risks to health and safety  
• Activity 2 - Reviewing controls | • PPP slides and notes  
• WorkCover NSW information |

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Easy HR Safety Training : Phone 1300 6676 331 : www.easyhr.com.au
## Course Timetable

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<th>Session 5 Provisional Improvement notices (PINs) and ceasing unsafe work</th>
<th>AFTERNOON TEA</th>
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<td>2.30 – 2.45 pm</td>
<td>• PINs</td>
<td>• Group discussion</td>
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<td>• Ceasing unsafe work</td>
<td>• Activity 1 - Issuing of PINs</td>
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<td>2.45 – 4.30</td>
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<td>• Activity 2 - Ceasing unsafe work</td>
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<td>• Group discussion</td>
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<td>• PPP slides and notes</td>
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<td>• WorkCover NSW sample PIN</td>
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<td></td>
<td>Summary and Review</td>
<td>• Review of key changes in WHS legislation</td>
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<tr>
<td>4.30 – 5.00 pm</td>
<td>• Review of key changes in WHS legislation</td>
<td>• Group discussion</td>
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<tr>
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<td>• Summary of changes for HSRs and HSCs</td>
<td>• Summary</td>
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<td>• Course Evaluation</td>
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<td>• PPP slides &amp; notes</td>
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COURSE INTRODUCTION
Course Introduction

Welcome to this refresher training course. As a Health and Safety Representative (HSR) or Deputy HSR for your work group under the WHS legislation in NSW, you are entitled to request training which includes a five day initial training course and then on completion of the initial training, annual refresher training.

This course aims to reinforce your knowledge and skills attained in the initial training course.

The WHS Act and WHS Regulation provide a national WHS framework from which the states, territories and the Commonwealth harmonise the WHS legislation in Australia. The WHS legislation NSW commenced on 1 January 2012.

Course Objectives

The course will refresh and reinforce relevant information for HSRs relating to:

- the requirements of the Work Health and Safety (WHS) legislation including the functions and powers of HSRs;
- how the WHS legislation applies to the role of a HSR; and
- the additional knowledge and skills necessary to use HSR powers under the WHS legislation in issuing Provisional Improvement Notices (PINs) and directing unsafe work to cease.

HSRs’ will increase their understanding of how the WHS legislation will influence health and safety outcomes in their workplace, including the principles that apply to health and safety duties. Upon completion of the course, participants will enhance the knowledge and skills necessary to continue to apply the principles of workplace consultation on health and safety matters.

Course Aims

Learning outcomes of this course are that participants will have the knowledge and skills to describe and discuss:

- The WHS legislative framework and its relationship to the HSR role;
- Identifying key parties and their legislative obligations and duties;
- Representation in the workplace;
- Participating in consultation and issue resolution;
- Representing work group members in the WHS risk management processes;
- Issuing a provisional improvement notice and directing unsafe work to cease.
Course Outline

The course is divided into five sessions with a review at the end of the day.

Introduction

Session 1: Work Health and Safety (WHS) legislation
- WHS safety legislative framework in Australia
- Work Health and safety: terminology, duty holders and their duties
- Role and function of the Regulator
- Enforcement under the WHS Act

Session 2: Consultation, Representation and Participation under the WHS Act
- Consultation under the WHS legislation
- Work groups and multiple business workgroups
- Election and Roles of HSRs and deputy HSRs
- The role of Health and Safety Committees (HSC) and other mechanisms; and
- Role of PCBU in workplace consultation

Session 3: Participating in consultation and Issue Resolution as a HSR
- Role of HSRs in consultation
- Investigating complaints – the role of HSR, sharing information & record keeping
- Issue resolution
- Assistance and support services available for HSRs

Session 4: Monitoring PCBU's management of work health and safety risks and Notifiable Incidents
- Key requirements of health and safety duties and risk management
- Monitoring and review of risk control measures; and
- Notifiable incidents – roles and duties.
Session 5: Provisional Improvement Notices (PINs) and ceasing unsafe work

- Provisional Improvement Notices (PINs);
- Ceasing unsafe work

Summary and Review
Session 1

WORK HEALTH AND SAFETY (WHS) LEGISLATION

Terminology,
Duties and Functions of Stakeholders
Session 1

Work Health and Safety (WHS) legislation: Terminology and duties and functions of stakeholders

Learning Aim

This session aims to provide participants with an understanding of the WHS framework and the obligations and duties under the WHS Act for effective management of health and safety and consultation.

Learning Outcomes

After completing this, session participants should be able to:

- Understand the objectives and principles of the WHS Act
- Identify various elements of the legislative framework
- Understand the role and functions of WorkCover NSW and their interaction with HSRs
- Summarise the duties and responsibilities of the PCBU’s under the legislation
- Describe the nature of the consultation process with workers
- Identify the duties and responsibilities of officers, workers and other parties
- Identify and discuss the range of enforcement options

Assessment Method

Successful attendance and engagement of face-to-face learning activities and activities as set out in this session.

Session Duration

The nominal duration of this session is 75 minutes.
## Session 1: Learning Outcomes and Expected Learner Application

<table>
<thead>
<tr>
<th>Learning outcome</th>
<th>Expected Learner Application</th>
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| After completing this session participants should be able to:                  | * Identify the key objects and principles of the WHS Act and their significance*  
|                                                                                 | * Identify and use key terms contained within the Act, relating to the HSR role*  
|                                                                                 | * Draw links between the role of the HSR and the WHS Act objectives*  
| 1. **Understand the objects and principles of the WHS Act**                     | * Identify WHS legislation (Act and Regulation); codes of practice, relevant standards and guidance material and explain their legal status and purpose*  
|                                                                                 | * Provide examples of the regulator's functions and powers and how these are used to facilitate compliance with WHS legislation*  
| 2. **Identify various elements of the legislative framework**                   | * Explain how to access services and resources for HSRs*  
|                                                                                 | * Outline the role of a WorkCover NSW Inspector and how they can assist HSRs*  
| 3. **Understand the role and functions of the regulator and their interaction with HSRs** | * Identify when a HSR may have contact with or seek assistance from an Inspector*  
|                                                                                 | * Explain and use the term PCBU*  
|                                                                                 | * Identify PCBUs relevance to the HSR's work group and workplace and summarise their duties*  
| 4. **Summarise the duties and responsibilities of the PCBU under the legislation** | * Discuss what is meant by “reasonably practicable”*  
|                                                                                 | * Discuss the duties and responsibilities of PCBUs under the WHS legislation*  
| 5. **Describe the nature of the consultation process with workers**             | * Compare the duties and responsibilities of an “officer” and those of the “PCBU”*  
|                                                                                 | * Explain what is meant by “due diligence” in connection with the duties of an officer*  
| 6. **Identify the duties and responsibilities of officers, workers and other parties** | * Explain the duties of workers in relation to WHS*  
|                                                                                 | * Identify officers, workers and other parties within the work group / workplace with duties under the Act*  
| 7. **Identify and discuss the range of enforcement options**                    | * Describe the range of enforcement options available to WorkCover NSW*  
|                                                                                 | * Identify relevant offences and penalties*  

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Session 1 Topic 1

Work Health and Safety Legislative Framework in Australia

What do you know about the model work health and safety regulatory framework?

Allow 10 minutes

Key points from discussion

- What do you currently know about the work health and safety laws.
- Answers will be recorded on butchers paper or a whiteboard for review at the end of the course.
- At the end of the course, we will review the list as a group, and gauge the difference in knowledge regarding work health and safety law at the end of the course, compared to the beginning.

WHS Law Framework in Australia

Discuss an outline of the model work health and safety framework. Participants are to refer to the information in the following pages.
Harmonisation

Harmonisation of work health and safety legislation was introduced in 2012 ‘to provide a balanced and nationally consistent framework to secure the health safety and welfare of workers and workplaces’.

Benefits of these arrangements include:

- consistency in regulatory and compliance requirements for businesses operating in multiple jurisdictions in Australia,
- less red tape,
- lowering compliance costs of businesses that operate across borders, and
- help to promote national economic growth.

See Safe Work Australia and additional reference material at the back of these notes for further information.

Work Health and Safety Legal Framework

Understanding the legislative framework

An Act is essentially a legal rule that lays down what ought to be the conduct of parties to which the law applies. The Acts usually establish broad principles of the object of the law while subordinate legislation will contain the necessary details to ensure that the Act will operate to achieve its stated objective.

Subordinate legislation such as regulation is made by the executive branch of government with the authorisation of Parliament. The executive branch of government is headed by Cabinet Ministers and their respective government agency. Legislation consists of Acts and subordinate legislation made by Parliament and there are penalty provisions associated with breach of the Act and Regulation.

Industry codes of practice are usually developed through consultation with industry, employers and worker representatives. The codes of practice provide practical guidance on how to achieve a standard required to comply with the law. Codes of practice must be approved by the Minister and published in the Gazette.
The Work Health and Safety Act

The WHS Act sets out the intended purpose of the law (the objects) made by Parliament and also specify broad principles on how the law is to operate. It states the health and safety duties of duty holders with the capacity to influence or direct the manner in which work is done at the workplace. The Act also contains enforcement and compliance provisions including the role and functions of the regulator, WorkCover Authority of NSW.

The WHS Regulation

The WHS Regulation provides details on the standard of health and safety management of specific health and safety matters that duty holders are required to meet. Some of the health and safety matters are as risk management, construction, hazardous work, high risk work, hazardous chemicals, asbestos management and major hazard facilities.

Approved Codes of Practice

Codes or practice are legislative instruments which:

- assist duty holders to comply with the provisions of the WHS Act and WHS Regulations; and
- are admissible in evidence as an example of what reasonable practicable measures could have been adopted to avoid a specific risk.

Codes of Practice are developed nationally by Safe Work Australia to provide practical guidance on how to comply with the requirements of the WHS Act. They can provide evidence as to whether the duties of the WHS legislation were complied with.
However duty holders do not have to comply with a code of practice if they can achieve the same or equal standard of safety in a different way.

**Guidance**

Guidance material does not have any legal status under the WHS regulatory framework. Guidance can be developed by regulators or Safe Work Australia. The information provided is designed to assist duty holders to meet the requirements as set out in the WHS Act and WHS Regulation. There are a variety of booklets, fact sheets and web pages produced by regulators to assist duty holders on health and safety matters.

**Other guidance material**

Other guidance material may also assist duty holders to meet their obligations for example guides fact sheets and Australian Standards (AS). If the Australian Standard is referred in the WHS Regulation, then, duty holders must comply with the safety management standards specified in the particular Australian Standard. However, national and industry standards do not replace the general duties and specific obligations imposed by the WHS Act and WHS Regulation.

**Objectives of the WHS Act**

The WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or minimising workplace risks;
- ensure fair effective representation, consultation and cooperation in relation to health and safety issues in the workplace;
- encourage unions and employer organisations to take a constructive role in improving health and safety practices;
- provide advice and promote information, education and training on health and safety;
- provide effective compliance and enforcement measures;
- deliver continuous improvement and progressively higher standards of health and safety.

Throughout the WHS Act, the meaning of health includes psychological health as well as physical health.

What activities might occur in your workplace to ensure the objectives of the WHS Act are achieved?
**ACTIVITY: Locating sections of the WHS Act and WHS Regulation**

**Indicative time ~10 minutes**

**Purpose:** To have participants become familiar with the layout and content of the WHS Act and WHS Regulation.

1. The group will be broken into pairs / small groups to perform this activity.
2. Participants are to practice locating different sections / clauses of the WHS Act and WHS Regulations.
3. The activity will look at those topics relevant to the group’s requirements in terms of hazard profile, but include locating definitions of generic terms such as: workplace, health, substance, plant and worker.
4. Participants are to start by look up sections of the WHS Act, and then move on to find particular regulations as requested by the facilitator.
5. Participants are to record the location of some key areas related to their work place, noting the section of the WHS Act or the regulation from the WHS Regulations for future reference.

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Session 1 Topic 2

Work Health and Safety: Terminology, Duty Holders and Duties

Key terminology

The WHS legislation was introduced in 2012 and included changes to a number of key terms and definitions. Before we discuss duties of various stakeholders under the WHS legislation let’s look at some key terminology and then we can apply them to those persons with duties.
One of the key changes in the WHS legislation has been broadening of the employer/employee relationship to the much wider definition of a Person Conducting a Business or Undertaking (PCBU) and a worker.

- Who do you think PCBUs might be?
- Who might be workers in a workplace?

**Officer of a PCBU**

An officer is a person within the PCBU that makes or participates in making decisions that affect the whole or a significant part of the organisation. Examples include a director or secretary of a company.

The full definition of an ‘officer’ can be found in Section 9 of the Corporations Act 2001 except that a partner in a partnership is specifically excluded as they are a PCBU.

People within the Crown or a public authority who make decisions that affect the whole or a significant part of the Crown or public authority are also considered officers.

A PCBU may not be an actual person. For example check your payslip for the PCBU i.e. ABC Pty Ltd. An officer may be a senior representative of the PCBU.

The interpretive Guideline on “the health and safety duty of an officer under Section 27” provides further clarifications on who is considered an officer and the duties owed by officers.
Worker

A worker defined in Section 7 of the WHS Act is anyone carrying out work, in any capacity, for a PCBU. This includes:

- employees;
- Contractors and subcontractors, and their employees;
- Labour hire employees engaged to work in the business or undertaking;
- Outworkers;
- Apprentices, trainees and students on work experience; and
- Volunteers.

Principles of WHS duties and Reasonably Practicable

While the main object of the WHS Act is to provide a balanced and nationally consistent framework to secure the health and safety of workers, the WHS Act also states the principles that apply to the duties of the WHS Act are:

- A person can have more than one WHS duty
- More than one person can have the same duty concurrently
- Duties are not transferable to another person
- Duty to ensure health and safety requires the duty holder to eliminate the risks to health and safety so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to health and safety, then duty holder is required to minimise the health and safety risks so far as reasonably practicable.

Determining what is reasonably practicable

What is reasonably practicable in ensuring health and safety is defined in Section 18 of the WHS Act to mean 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 reasonably to know, about the hazard or risk and ways of eliminating or minimising it;
- the availability and suitability of ways to eliminate or minimise the hazard or risk; and
- after assessing all of the above, the cost of eliminating or minimising the hazard or risk.

Ordinarily, cost will not be the key factor in determining what it is reasonable for a duty holder to do unless it can be shown to be ‘grossly disproportionate’ to the risk. If the risk is particularly severe, a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively eliminate or minimise the hazard or risk to health and safety.
The Interpretive guideline “The meaning of reasonably practicable” published by Safe Work Australia provides information of this term within the context of work health and safety.

**Due Diligence**

Officers have a duty to exercise ‘due diligence’ to ensure the PCBU complies with its’ duties under the WHS Act. They are expected to take reasonable steps to:

- gain and update **knowledge** of work health and safety;
- gain an **understanding** of the operations and the general hazards/risks of the business or undertaking;
- ensure appropriate **resources are available for use** to eliminate/minimise risks;
- ensure the management of **information** about incidents, hazards and risks in a timely manner;
- ensure implemented **processes** comply with the duties (e.g. reporting notifiable incidents, consultation, provision of training); and
- **verify** that resources and processes have been provided, and their use.

**Workplace**

A **workplace** is 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. The definition includes a vehicle, vessel, aircraft or mobile structure, and any water and installation on land, floating on any waters or bed of waters.

**Structure**

*Structure* means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and any component or part of a structure. Section 290 of the WHS Regulation provides further examples and clarification on the meaning of structure.

**Plant:**

*Plant* includes:

- any machinery, equipment, appliance, container, implement and tool; and
- any component of any of those things; and
- anything fitted or connected to any of those things.

Clause 5 of the WHS Regulation states that the meaning of plant in Part 5.2 & Part 5.3, includes a structure.
Substance

*Substance* means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapor.

Clause 5 of the WHS Regulation provides further clarification on the meaning of substance in Part 7.1.

Provisional Improvement Notice (PIN)

A *Provisional Improvement Notice (PIN)* is a written notice from a Health and Safety Representative to a PCBU, advising after consultation that there has been a breach of the Act that is likely to be repeated, or there is a current breach of the Act. The PIN is issued to require the PCBU to remedy the contravention or prevent a re-occurrence.

Notifiable incident

*Notifiable incident* as described under the WHS Act means:

(a) the death of a person; or

(b) a serious injury or illness of a person; or

(c) a dangerous incident.

Further notes in slide 23 and covered in more details in Session 4.

Enforceable undertaking

An *enforceable (WHS) undertaking* is a legally binding agreement given by a person in relation to a contravention (or alleged contravention) of the WHS Act and has been accepted by WorkCover NSW.

- WHS undertaking may be accepted where a breach of the WHS Act has occurred that is not a Category 1 offence. If the WHS undertaking has not been complied with, a court order may be obtained to enforce the compliance. The financial penalty for failure to comply with the WHS undertaking is $50,000 for an individual and $250,000 for a body corporate.

- The purpose of the undertaking is to allow businesses to implement effective initiatives and commitment to ongoing improvement to the work health and management systems to deliver tangible health and safety benefits to the workplace, industry and the community.

The court may also accept an enforceable undertaking.
ACTIVITY: Key terminology of the WHS Act

**Indicative time – 5 minutes**

**Purpose:** To have participants familiarise themselves with key terminology of the WHS Act and WHS Regulation.

Complete the terminology exercise on the next page by connecting the terms with the correct description using the course information if required.
## WHS Act Terminology

<table>
<thead>
<tr>
<th>WHS Term</th>
<th>Description</th>
</tr>
</thead>
</table>
| Person conducting a business or undertaking (PCBU)            | Taking all steps a duty holder was reasonably able to, taking into account:  
  - Likelihood of the hazard or risk happening;  
  - Consequences (or degree of harm) if it does occur;  
  - What the person knows, or should know about the hazard/risk and ways of eliminating or minimising it;  
  - Availability and suitability of ways to eliminate or minimise the risk;  
  - The cost of eliminating or minimising the risk, and whether this cost far exceeds the level of reduction of risk. |
| Worker                                                        | A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking.                                                                                                                                                                                                 |
| ‘Reasonably Practicable’                                      | A person who conducts the business or undertaking alone or with others whether or not the business or undertaking is conducted for profit or gain.                                                                                                                                                                                                 |
| Health and Safety Representative (HSR)                        | A written notice from a Health and Safety Representative to a PCBU, advising there either has been a breach of the Act that is likely to be repeated, or there is a current breach of the Act.                                                                                                                                                                |
| Provisional Improvement Notice (PIN)                          | Anyone carrying out work, in any capacity, for a PCBU including direct employees; contractors and subcontractors, and their employees; labour hire employees engaged to work in the business or undertaking; outworkers; apprentices, trainees and students on work experience; and volunteers.                                                                                               |
| Officer                                                       | The person elected by members of a work group within the PCBU, or across a number of businesses (e.g. multiple PCBUs) to represent that work group during consultation on work health and safety matters.                                                                                                                                |
Terminology in relation to consultation

Work group

A work group is a grouping of workers that has been determined through consultation (between the PCBU/s and those workers or their representative) for the purpose of enabling those workers’ health and safety interests to be represented by an elected HSR. For example, this could be a specific department, shift (e.g. day/night), location or type of worker.

Section 17 of the WHS Regulation requires matters such as the number, diversity, type of engagement (contractors, labour hire) and variation of the work force, the nature, place and type of work and their associated risks and hazards together with the time and work patterns to be taken into consideration.

Health and Safety Representative (HSR)

A Health and Safety Representative (HSR) is the person elected by members of a work group within the PCBU, or across a number of businesses (e.g. multiple PCBU/s) to represent that work group during consultation on work health and safety issues.

The functions of HSRs are to:

- Represent workers in relation to work health and safety
- Monitor the measures taken by the PCBU to meet their duties
- Investigate complaints from members of the work group
- Inquire into risk to the health and safety of relevant workers
- Inspect the workplace
- Accompany an inspector

Additional powers and functions after meeting the training requirements of Clause 21 of the WHS Regulation:

- Directing unsafe work to cease under certain circumstances
- Issuing of provisional improvement notices under certain circumstances (as described later in this course).
Health and Safety Committee (HSC)

A PCBU must establish a HSC where requested to do so by the HSR, or a minimum of 5 or more workers at the workplace or at the PCBU’s own initiative. The HSR can be a member of the HSC if they consent.

A Health and Safety Committee under the WHS Act will:

- facilitate cooperation between the PCBU and workers in instigating, developing and carrying out measures designed to ensure workers health and safety;
- assist in developing health and safety standards, rules and procedures to be followed or complied with in the workplace;
- assist and support the HSR in their role and represent all workers at the workplace, not just the work group the HSR represents e.g. workplace policy and safety systems development.

WHS Entry Permit Holder

A WHS entry permit holder is an official of a relevant union of the workers who has satisfactorily completed the prescribed training and holds an entry permit under the Fair Work Act or an industrial officer authority and has been issued with a WHS entry permit.

As a WHS entry permit holder, the union representative is entitled to:

- Inquire into a suspected contravention of the WHS Act that relates to relevant workers (as defined);
- Right of entry to the workplace for the purpose to attend work health and safety matters;
- Inspect any work, plant, substances, structure or relevant thing at the workplace in relation to the contravention;
- Inspect and copy any document directly related to the suspected breach;
- Consult with and advise the relevant workers on work health and safety;
- Consult with the PCBU about the suspected contravention;
- Warn any person who may be exposed to a serious and immediate health and safety risk.

Union representatives of workers may also assist:

- in negotiations for agreements of work groups with the PCBU and for multiple businesses, including negotiating a variation of an agreement if a worker requests it. They may also request the assistance of an inspector where these negotiations fail.
• in HSR elections if the majority of workers so decide.
• the HSR in their role when requested by the HSR.

Duty Holders and their duties

The WHS legislation aims to protect workers and others at a workplace against harm to their health and safety by eliminating risks to health and safety, so far as is reasonably practical. As a duty holder, the person conducting business and undertaking has a primary duty under the WHS Act.

Primary Duty (WHS Act s19)

A person conducting a business or undertaking (PCBU) has the primary duty to ensure the health and safety of workers while they are at work in the business or undertaking.

This duty extends to all workers engaged or caused to be engaged by the person or workers whose activities they influence or direct.

A PCBU is also responsible for ensuring work activities carried out do not pose any risks to the health and safety of others.

Duties of Persons Conducting a Business or Undertaking (PCBU)

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

• providing and maintaining a working environment that is without risks to health and safety, including the entering and exiting of the workplace

• providing and maintaining plant, structure and systems of work that and do not present risks to health and safety (e.g. providing effective guards on machines and monitoring the pace and frequency of work to prevent excessive workplace stress and ‘burn out’)

• ensuring the safe, 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 their workers and the conditions of the workplace under their management and control to prevent injury or illness
- maintaining any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

In addition there are other PCBUs with duties and those duties are described below:

**Duties of a PCBU - involved in the management of or control of workplaces (WHS Act s20)**

A PCBU with management or control of a workplace must ensure, so far as is reasonably practical that the workplace, the means of entering and exiting the workplace and anything arising from the workplace do not pose a risk to the health and safety of any person.

**Duties of PCBU – involved in the management of or control of fixtures, fittings or plant at a workplace (WHS Act s21)**

Similarly, a PCBU with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practical, that the fixtures, fittings and plant do not pose a risk to the health and safety of any person.

**Duty to consult (WHS Act s46 - 49)**

A PCBU has a duty to consult with workers and HSRs about 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.

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, coordinate and cooperate with all other people with the same or overlapping duties. Each duty holder must share information and cooperate in a timely manner to meet health and safety responsibilities.

**Duty of Officers (of a PCBU) WHS Act s27**

Where a PCBU has a health and safety duty, an officer of the PCBU e.g. director of a company is required to exercise ‘due diligence’ to ensure the PCBU meets that duty. (see Key Terminology at the start of Session 1 Topic 2 – Officer of a “PCBU” and “Due Diligence”)

**Duties of Workers (WHS Act s28)**

Under the WHS Act workers have a duty to:
- Take reasonable care for your own safety;
- Take reasonable care to ensure your acts or omissions do not adversely affect the health and safety of others;
- Comply with reasonable instructions from the PCBU to assist them in complying with the WHS Act; and
• Co-operate with policies or procedures relating to health and safety that the workers have been notified of.

**Duties of Self Employed Persons (WHS Act s19 (5))**

Self employed persons must ensure their own health and safety (as far as reasonably practicable) while at work. It should be noted that a self-employed person is also a PCBU and therefore also has the primary duty of Section 19.

**Duties of Others (WHS Act s29)**

Others at a workplace e.g. visitors also have duties under the WHS Act that include:

- Take reasonable care for their own safety;
- Take reasonable care to ensure their acts or omissions do not adversely affect the health and safety of other persons; and
- Comply with any reasonable instructions from a PCBU.

**Health and safety duties – key concepts**

A duty holder under the WHS Act cannot transfer those responsibilities. For example, a PCBU cannot transfer their duty to ensure safe work activities are being conducted to a supervisor but they can demonstrate their compliance by providing support to a supervisor in undertaking activities related to those duties.

A PCBU cannot engage a contractor to undertake work in the belief that in so doing they have transferred their duties. The PCBU retains responsibility for those matters over which they have control and must meet these duties. Provisions have been put in place for consultation between duty holders to assist in this process.

**Duties may apply to a person acting in a variety of roles** e.g. as controller of work premises, as the employer of persons and as a manufacturer.

At any given workplace, several people may have a primary duty to ensure work health and safety, for example, the building owner, contractors, PCBU etc.

- Each duty holder must comply even if another duty holder has the same duties.

Where **more than one person** has a duty for the same matter **each** person:

- retains responsibility of that matter
- must fulfil that duty to the extent that has the ability to influence and control the matter except where it has been agreed otherwise.
ACTIVITY: Health and Safety Duties

Brainstorm the following scenario. Responses can be recorded on flip chart paper

Indicative time – 10 minutes

Consider a commercial building in the city with tenants such as legal firms, advertising agencies, financial agents and brokers some of whom use labour hire and who have clients regularly visiting the building. A sports association also has an office which volunteers visit. The property manager engages a variety of contractors, such as cleaners, tradesmen and security to maintain the building.

Under the WHS legislation in this scenario:

- Who has duties and to whom?
- Who are workers what are their duties and to whom do they owe them?
- Who are ‘others’ in the workplace and what are their duties?
Session 1 Topic 3

Role and function of WorkCover NSW (the NSW regulator) and support services

Role and function of the regulator

WorkCover NSW has several functions under the Work Health and Safety Act (Section 152), including:

- Providing advice and information about work health and safety, both to duty-holders under the WHS Act and the community generally;
- Promoting and supporting training and education on work health and safety;
- Fostering cooperation and consultation on work health and safety matters between duty holders and the persons to whom they owe those duties and their representatives (e.g. union representatives);
- Collecting, analysing and publishing statistics on work health and safety;
- Promoting and co-ordinating the sharing of information to achieve the objectives of the WHS legislation including information from corresponding regulators; and
- Monitoring and enforcing compliance, including conducting prosecutions.

WorkCover NSW website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) provides information on work health and safety.
Functions and Powers of Inspectors (WHS Act s160-190)

Under the Work Health and Safety Act, inspectors may:

- Provide advice and information;
- Investigate breaches of the WHS Act, issue notices to require compliance and assist in prosecutions;
- Review Provisional Improvement Notices (PINs) issued by HSRs in the event of a dispute;
- Assist in resolving work health and safety issues and those relating to access and entry rights at a workplace.

To help inspectors perform these functions, they are given powers to:

- Enter a workplace, or somewhere suspected to be a workplace, at any time, with or without the consent of the manager or controller of the workplace.
- Once at a workplace, inspectors are entitled to:
  - Inspect and examine the workplace and any item or document at the workplace;
  - Bring to, and use equipment or other materials at the workplace;
  - Take measurements and samples, conduct tests, and make recordings or sketches (including photos, video and audio recordings); and
  - Require any person at the workplace to assist them to carry out their enquiries.

Inspectors may require a person at a workplace to answer questions, produce documents or provide other information. The person is required to comply with the request, even if this means the person will incriminate themselves or expose them to a penalty. The information can’t be used against them and documents protected by ‘legal privilege’ are exempt from this requirement.

Compliance Tools Available

The tools that are available to the regulators include:

- giving advice on compliance and seeking voluntary compliance
- resolving or assisting parties resolve certain work health and safety disputes
- seeking an injunction
- accepting an enforceable undertaking
- commencing a criminal prosecution, and
- Publicising enforcement actions and outcomes.
The pyramid diagram below shows the escalating approach that regulators may adopt in relation to a work health and safety issue.

The lowest level of the pyramid involves an approach which is employed most frequently by regulators, often in combination with other tools; to assist duty holders achieve compliance. Sanctions (such as criminal penalties) are at the top of the pyramid and are applied less frequently.

This does not mean that regulators will always commence with the provision of information and advice, and only use other tools in an escalated manner.

Regulators will use the tools that are most appropriate in the particular circumstances. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.
ACTIVITY: Sources of information /assistance for the HSR

Identify who may be a useful source of information for a HSR in the workplace.

Indicative time – 5 minutes
When performing the HSR role, you may require assistance or more information. There are many sources of information and assistance out there which may be of use to you when performing your function.

Some of these are:

**Your PCBU and workplace** – your management team and corporate area may be a valuable source of information about your organisation and relevant hazards. Information that they may have could range from past incident/injury data, environmental and health monitoring data, information on risks related to your industry and information on any plant, chemicals etc in the workplace.

Remember that the PCBU has an obligation to provide certain information relating to health and safety to the HSR upon request (WHS Act s70).

**WorkCover NSW** – is a valuable source of information for HSRs. The WorkCover NSW website is where you could find the legislation, guidance material and there is a general inquiries number where you can speak to WorkCover NSW about any issues you have. WorkCover NSW may also run seminars or conferences where HSRs could learn more about WHS and meet contacts who could provide a support mechanism.

**Unions** – also represent worker interests and often have officials who are experienced in WHS and may be able to provide assistance. Trade unions are also likely to have access to various documents, standards and guidance materials relating to WHS in the relevant industry. The union may be able to assist in your discussions with your PCBU. They are also a way to access a WHS entry permit holder.

**Industry bodies** – Industry bodies may have valuable information relating to your particular industry. It may be useful to contact your industry body to find out how you may address a hazard which is common or particular to your industry.

**Safe Work Australia** – Safe Work Australia is an Australian Government statutory agency established in 2009, with the primary responsibility of improving work health and safety and workers’ compensation arrangements across Australia. On the Safe Work Australia website you will find details of Australia wide WHS initiatives, programs and national guidance material. Visit [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)

**Manufacturers and suppliers** – these organisations have a duty to provide relevant information on particular products within the workplace, or possible safer alternatives to the products you currently have.
Session 1 Topic 4

Enforcement under the WHS Act

The WHS Act sets out a range of enforcement options. These are aimed at ensuring duty holders comply with their obligations, while avoiding prosecution, which is considered a last resort in most cases. A system of escalating enforcement measures is available under the WHS Act to achieve the best outcome for work health and safety at the earliest opportunity.

Early intervention measures that either failed, or were not appropriate) may result in various types of orders being imposed.

<table>
<thead>
<tr>
<th>Provisional Improvement Notices (PIN)</th>
<th>A notice issued by a trained HSR to address a contravention of a provision of the WHS Act. The notice may be reviewed by an inspector and can be applied, altered or removed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improvement Notices</td>
<td>A notice issued by an inspector to address a contravention of a provision of the WHS Act.</td>
</tr>
<tr>
<td>Direct a Worker to Cease Work</td>
<td>A direction from a trained HSR for a worker to cease unsafe work.</td>
</tr>
<tr>
<td>Prohibition Notices</td>
<td>A direction from an inspector prohibiting the person in control from carrying on an activity until the risk to health and safety is remedied.</td>
</tr>
<tr>
<td>Non-disturbance notices</td>
<td>A notice issued by an inspector to the manager or person in control of a workplace to facilitate the exercising of the inspector’s compliance powers.</td>
</tr>
</tbody>
</table>
Provisional Improvement Notices

A PIN is to be issued where a HSR has firstly consulted with the PCBU and reasonably believes a contravention of the WHS Act is occurring; or has occurred and is likely to be continued or repeated.

In a situation where an inspector has already reviewed the issue and has either decided to:

- issue an improvement or prohibition notice or proceed to another form of enforcement available under the WHS Act; or
- has decided to take no further action;
- the HSR cannot issue a PIN for the same matter.

Where a PIN has been issued and the regulator decides that an inspector is not required to attend the workplace, the person issued the PIN must comply with the notice within the timeframe specified. A person may request a review of the PIN within 7 days. The HSR cannot issue a PIN unless the HSR has consulted with the person first to try to resolve the matter.

Improvement Notices

Issued by an inspector to:

- Require the person to remedy the risk to health and safety, by fixing the things or operations causing the breach or prevent a likely breach from happening.
- Will include details of the risk to health and safety and the date this needs to be remedied by. An improvement notice may also include directions on what measures the person needs to take to correct the risk to health and safety. Fines of up to $50,000 for an individual and $250,000 for a body corporate can be imposed for failing to comply with an improvement notice in the time specified.
HSR Direction to Cease Work

A HSR may direct members of the HSR’s work group to cease work if they believe unsafe work is being carried out where:

- they have a reasonable concern that doing the work would expose workers to a serious risk to their health and safety from immediate or imminent exposure to a hazard; and
- only after attempting to consult and resolve the matter with the PCBU, unless there is a serious risk to a worker’s health and safety emanating from an immediate or imminent exposure to a hazard (in which case consultation must occur as soon as practicable after the unsafe work has ceased).

- The HSR must inform the PCBU of any direction to cease unsafe work.

Note: If there is an immediate or imminent serious risk to health or safety that may affect worker(s) of another work group or a member of another work group asks an HSR for assistance when their HSR is unavailable, Section 69 of the WHS Act enables a HSR to exercise their power to this other work group.

Prohibition Notices

- Issued by an inspector if they believe an activity is either happening, or may happen at a workplace that will involve a serious risk to the health and safety of a person from exposure to risks to health and safety.

- A prohibition notice may specify the workplace (or part of) where the activity is not to be carried out; any item not to be used (e.g. machinery); and/or any procedure that is not to be followed, and may also include directions on what measures are to be taken to eliminate or minimise the risk to health and safety.

Non-disturbance Notices

- A direction to the person with management or control of a workplace requiring them to preserve the site where a notifiable incident has taken place, or to prevent any disturbance of a particular site. This includes preventing plant from operating. These can be issued for a maximum of seven days, although subsequent notices can be issued if required.

- Non-disturbance notices do not prevent assisting an injured person, removing a deceased person or making the site safe and preventing further incidents.
Potential outcomes of legal proceedings

Court ordered WHS undertakings and injunctions are the subject of different enforcement measures.

A court ordered WHS undertaking provides an opportunity for an offender to comply over a maximum two year period and, the conditions specified must be adhered to.

An injunction is a court order requiring a person to carry out or cease carrying out particular action(s) and breach of the requirements set out under the injunction may result in severe penalties.

The regulator may accept an enforceable undertaking in relation to an offence or alleged offence. If a matter proceeds to court the person may be found guilty and face a significant fine.

There are a range of possible outcomes from proceedings that are set out below.

<table>
<thead>
<tr>
<th>Outcomes</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforceable (WHS) undertakings</td>
<td>A written undertaking given by a person in relation to a contravention (or alleged contravention) of the WHS Act that is not a Category 1 offence.</td>
</tr>
<tr>
<td>Adverse publicity orders</td>
<td>Publicising the offence, its consequences, the penalty and any other related matter.</td>
</tr>
<tr>
<td>Orders for Restoration</td>
<td>Actions are required by the offender to remedy any matter caused by the offence that is within the offender’s power to remedy.</td>
</tr>
<tr>
<td>Work Health and Safety (WHS) project orders</td>
<td>A specified project for the general improvement of health and safety that the offender is required to undertake within the specified period.</td>
</tr>
<tr>
<td>Court ordered WHS undertakings</td>
<td>The court may adjourn proceedings for up to two (2) years and make an order for the release of an offender on the basis the offender gives an undertaking with specified conditions.</td>
</tr>
<tr>
<td>Injunction</td>
<td>A court order requiring a person to carry out or cease carrying out particular action(s).</td>
</tr>
<tr>
<td>Training Order</td>
<td>The person guilty of an offence is required to undertake or arrange for workers to undertake a specified training course.</td>
</tr>
</tbody>
</table>
OFFENCES AND PENALTIES

The WHS Act sets out three categories of offences against the health and safety duties. The categories of offences from Category 1 to Category 3 are as follows:

Category 1 - Reckless conduct

A person commits a Category 1 offence if they:

- have a health and safety duty; and
- without reasonable excuse, the conduct exposes a person to whom they owe a duty to a risk of death, serious injury or illness; and
- are reckless as to the risk of the individual of death or serious injury or illness.

Category 2 - Failure to comply with health and safety duty

A person commits a Category 2 offence if:

- the person has a duty, fails to comply with the duty and the failure led to exposing a person to a risk of death or serious injury or illness.

Category 3 - Failure to comply with health and safety duty

A person commits a Category 3 offence if:

- the person has a health and safety duty and they fail to comply with that duty.

<table>
<thead>
<tr>
<th>Failure to comply with Health and Safety duty</th>
<th>Individual</th>
<th>Individual as a PCBU or Officer of a PCBU</th>
<th>Body Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>$300,000 or$600,000 or $3,000,000</td>
<td>5 years imprisonment or both</td>
<td>5 years imprisonment or both</td>
</tr>
<tr>
<td>Category 2</td>
<td>$150,000</td>
<td>$300,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Category 3</td>
<td>$50,000</td>
<td>$100,000</td>
<td>$500,000</td>
</tr>
</tbody>
</table>
Session 2

CONSULTATION, REPRESENTATION AND PARTICIPATION

Role and functions of Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs)
Session 2

Consultation, Representation and Participation under the WHS Act

Learning Aim

This topic provides an outline of consultation under the WHS framework and the roles and functions under consultation arrangements.

Learning Outcomes

After completing this session participants should be able to:

- Outline the purpose and formation of a work group (or work groups) within the workplace
- Understand the election process for HSRs and deputy HSRs
- Understand the provisions relating to the disqualification of HSRs
- Understand the function of a Health and Safety Committee (HSC)
- Understand and explain the entitlements, rights and protections of an elected HSR/deputy HSR.

Assessment Method

Successful attendance and engagement of face-to-face learning activities and activities as set out in this session.

Session Duration

The nominal duration is 60 minutes.
<table>
<thead>
<tr>
<th>Learning outcome</th>
<th>Expected Learner Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>After completing this session participants should be able to:</td>
<td>• Define work group and describe its purpose</td>
</tr>
<tr>
<td>1. Outline the purpose and formation of a work group (or work groups) within the workplace</td>
<td>• Identify PCBU responsibilities in formation of work groups</td>
</tr>
<tr>
<td>2. Understand the election process for HSRs and deputy HSRs</td>
<td>• Identify the matters that need to be taken into account when work groups are formed</td>
</tr>
<tr>
<td>3. Understand the provisions relating to disqualification of HSRs</td>
<td>• Identify and explain when existing work groups could change, and require new negotiations to occur</td>
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<tr>
<td>4. Understand the function of a Health and Safety Committee (HSC)</td>
<td>• Identify the options available to parties, if negotiations regarding the establishment of a work group fail</td>
</tr>
<tr>
<td>5. Understand and explain the entitlements, rights and protections of an elected HSR/deputy HSR</td>
<td>• Explain issues with the establishment of multiple work groups, possible impacts on the negotiation of work groups and how a HSR could represent multiple work groups</td>
</tr>
<tr>
<td>• Define work group and describe its purpose</td>
<td>• Explain the election processes and roles/obligations of relevant parties in the process</td>
</tr>
<tr>
<td>• Identify PCBU responsibilities in formation of work groups</td>
<td>• Identify the term of office for a HSR or Deputy HSR</td>
</tr>
<tr>
<td>• Identify the matters that need to be taken into account when work groups are formed</td>
<td>• Identify circumstances that would result in a HSR no longer being able to represent their work group or hold office</td>
</tr>
<tr>
<td>• Identify and explain when existing work groups could change, and require new negotiations to occur</td>
<td>• Describe the disqualification of HSR provisions</td>
</tr>
<tr>
<td>• Identify the options available to parties, if negotiations regarding the establishment of a work group fail</td>
<td>• Explain the reasons why the PCBU is obliged to display and maintain lists of HSRs</td>
</tr>
<tr>
<td>• Understand the election process for HSRs and deputy HSRs</td>
<td>• Outline the legislative basis for establishing an HSC</td>
</tr>
<tr>
<td>• Understand the function of a Health and Safety Committee (HSC)</td>
<td>• Describe the role, composition and functions of an HSC</td>
</tr>
<tr>
<td>• Understand the provisions relating to disqualification of HSRs</td>
<td>• Describe the obligations and duties of the PCBU to a HSC</td>
</tr>
<tr>
<td>• Define work group and describe its purpose</td>
<td>• Describe the role of a HSC and how this relates to the role of a HSR</td>
</tr>
<tr>
<td>• Identify PCBU responsibilities in formation of work groups</td>
<td>• Explain the HSR powers and functions as defined by the legislation</td>
</tr>
<tr>
<td>• Identify the matters that need to be taken into account when work groups are formed</td>
<td>• State the entitlements to training of an elected HSR and identify any legislative restrictions on the functions of a HSR, if initial HSR training (i.e. 5-Day course) is not undertaken</td>
</tr>
<tr>
<td>• Identify and explain when existing work groups could change, and require new negotiations to occur</td>
<td>• Explain the legislative protections for HSRs, including protection against discrimination</td>
</tr>
<tr>
<td>• Identify the options available to parties, if negotiations regarding the establishment of a work group fail</td>
<td>• Explain how a HSR is a key link between the work group and management in matters relating to work health and safety</td>
</tr>
<tr>
<td>• Explain issues with the establishment of multiple work groups, possible impacts on the negotiation of work groups and how a HSR could represent multiple work groups</td>
<td>• Explain the PCBUs obligations towards HSRs and the exceptions to these obligations</td>
</tr>
<tr>
<td>• Identify the election processes and roles/obligations of relevant parties in the process</td>
<td>• Identify any confidentiality requirements pertaining to information collected from, or provided to HSRs, and have a basic understanding of the importance of record keeping.</td>
</tr>
</tbody>
</table>
Session 2 Topic 1

“Consultation” under the WHS legislation

Consultation presentation. Refer to the information in the following pages.

Wider duties for consultation and greater powers are given under consultation arrangements in the WHS Act.

Key points include:

- **Health and Safety Representatives** (HSRs) and deputy HSRs with their role focused on monitoring, investigating, enquiring and representing workers’ work health and safety issues for their work group;

- **Health and Safety Committees** – having role as the forum for consultation which will facilitate and assist in developing standards, rules and procedures relating to health and safety for the workplace;

- Consultation, co-operation and co-ordination between duty holders;

- Consultation involving multiple-business work groups;

- The role of **WHS entry permit holders** (union representatives);

- **Issue Resolution process** requirements;

- **Issuing of Provisional Improvement Notices (PINs)** and directing unsafe work to cease by trained HSRs;

- The right of workers to **cease unsafe work** being clearly stated; and

- **Terms of office and training** for HSRs, HSC members and WHS entry permit holders.

Consultation under the WHS Act between duty holders is designed to ensure that all persons who may impact on work health and safety contribute to the management of health and safety e.g. suppliers, persons in control of the workplace, other PCBUs.
Consultation is required when:

- identifying and assessing risks to health and safety
- deciding ways to eliminate or minimise those risks
- deciding on the adequacy of facilities for worker welfare
- proposing changes that may affect the health and safety of workers e.g. Consultation to be included in purchasing procedures
- when deciding on procedures for:
  - consulting with workers
  - resolving work health and safety issues
  - monitoring workers’ health
  - monitoring conditions at any workplace under the management or control of the PCBU
  - providing information or training for workers
  - other activities as described under the regulations.

How can workers be involved in identifying and assessing risks and the ways in which they are to be eliminated or minimised?

The WHS Act requires that the views of workers and Health and Safety Representatives must be taken into account before making a decision on a health and safety issue.

The WHS legislation changed the focus from the employer-employee relationship to that between PCBUs and workers (both terms having much broader definitions). This requires wide consultation to occur, helping prevent gaps in the management of work health and safety.
Duty to consult with other duty holders (WHS Act Sections 46-47)

If more than one person has a duty under the WHS Act, each person with the duty must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter.

All duty holders that may impact on work health and safety are required to consult with each other in a cooperative and coordinated manner so that consultation in the workplace occurs where multiple businesses operate e.g. building managers, business owners, contractors negotiate and agree to standards, rules and procedures relating to health and safety.

Duty holders are required to exchange information in an open manner to ensure that all areas of health and safety are addressed in a workplace.

As shown in the diagram, each PCBU is required to consult with their workers and each other in matters affecting work standards, rules and procedures that affects the health and safety of workers. HSRs can be shared between PCBUs, for example a labour hire company and the host employer in a way that effectively enables the health and safety of workers to be taken into consideration. PCBUs are required to consult with their workers and those workers who are or likely to be affected by a work health and safety matter. In our example, the labour hire company and the host employer are required to consult with the HSR on work health and safety issues that may impact on workers in the work group and that the views of the workers are taken into account when making decisions on ways to eliminate or minimise risks to health and safety. Consultation involves sharing of relevant information about hazards of the work environment and work activities such as plant movements, work arrangements, substances used and how the associated risks are to be eliminated and if it is not reasonably practicable, the risks minimised.
**Cooperation and coordination** could involve the planning and coordination of activities to minimise the risks associated with planned and unplanned interactions. It could, for example, be a planned and coordinated approach to managing emergency situations or standards, rules and procedures to carry out the work safely.

PCBUAs are not expected to do the impossible, but are required to take a proactive and sensible approach to consultation. For example, an urgent response to an immediate risk may necessarily limit the extent of consultation in some circumstances.

It may also not be reasonably practicable to consult with workers who are on extended leave. However, it would be appropriate to ensure that these workers are kept informed about any matters that may affect their health and safety when they return to work.

**Factors which will affect how consultation is undertaken** could include:
- nature of the decision or action, including the urgency to make a decision or take action;
- availability of the relevant workers and any health and safety representatives;
- work arrangements, such as shift work and remote work; and
- characteristics of the workers, including languages spoken and literacy levels.

Below is an example as to how consultation may occur between duty holders that are present or have workers present at a particular workplace.
Each PCBU is required to consult with their workers. In situations where more than one person has a duty, each person is required to consult with other duty holders to ensure that they meet those duties.

**Consultation** between duty holders could involve sharing of information about hazards of the work environment and work activities such as plant movements, work arrangements, substances used and how the associated risk are to be minimised.

**Cooperation and coordination** could involve the planning and coordination of activities to firstly eliminate the risks to health and safety and, if it is not reasonably practicable to minimise the risks associated with planned and unplanned interactions. It could, for example, be a planned and coordinated approach to managing emergency situations.

### Arrangements for Consultation

Under the Occupational Health and Safety (OHS) Act 2000, the functions of OHS representative and OHS committee under section 18 were the same. OHS representatives and committee members had to keep under review the health and safety measures, to investigate health and safety matters and to attempt to resolve health and safety matter. Under the WHS Act, the functions of health and safety representatives and committee are differentiated.

- **Health and Safety Representatives (HSRs) and Deputy HSRs**

  The main provisions of the WHS Act on consultation are for HSR to represent the workers on health and safety matters by monitoring the health and safety measures implemented, investigating health and safety complaints and to inquire into anything that may pose a risk to the health and safety of workers in the work group. Deputy HSRs also have the same entitlements to training as HSRs.

  A HSR can represent a work group across a number of PCBUs e.g. a labour hire and the host employer. Both PCBUs have the respective duties to work with the HSR on any work health and safety issues that may affect the labour hire workers. The PCBUs must consult cooperate and coordinate with each other in relation to their respective duties.

- **Health and Safety Committees (HSCs)** – Under the WHS Act, the functions of the HSC is different from that of the HSRs. HSC members are not required to monitor the health and safety measures implemented in the workplace, to investigate health and safety complaints or to inquire into anything that may pose a risk to the health and safety of workers in the work group.

  The role and functions of the HSC under the WHS Act are to facilitate cooperation, to assist in developing standards, rules and procedures designed to ensure the workers’ health and safety and functions prescribed by the regulation or agreed between the PCBU and the committee. HSCs can be established at the request of a HSR or 5 or more workers and where workers and the PCBU agree. The PCBU can also choose to establish a HSC. HSCs must include HSRs if they agree.
The HSC could also be an effective mechanism to facilitate consultation, cooperation and coordination of activities between multiple PCBUs to develop a co-ordinated systematic management of health and safety of workers.

The focus of HSCs is more on being the forum for consultation on the business wide management of health and safety such as policies and monitoring systems.

- **Other arrangements** - If the PCBU and the workers have agreed to procedures for consultation, these procedures must be consistent with the provisions of Section 48. This will require that: (a) relevant information about the health and safety matter is shared with workers, and (b) workers are given a reasonable opportunity to express their views, raise health and safety issues, contribute to the decision-making process, views of workers are taken into account by PCBU and the outcome of the consultation is advised to workers in a timely manner. Section 48(2) also states that if workers are represented by an HSR, the consultation must involve the HSR.

**WHS entry permit holders** can assist in establishing consultation arrangements and consult with members/eligible members on health and safety issues.

Consultation in the workplace is to enable PCBU to harness workers’ knowledge and skills associated with the tasks carried out at work to inform decision-making on health and safety matters.
Session 2 Topic 2

Work Groups and Multiple Business Work Groups

Work groups (WHS Act s50-57)

A work group is a group of workers formed through consultation, negotiation, and agreement for the purpose of facilitating the representation of workers’ health and safety by a HSR. Once the work group is established, election for a HSR will enable the consultation of workers’ work health and safety matters to take place. Any worker or group of workers can ask the PCBU for whom they are carrying out work to set up a work group at one or more workplaces by requesting the election of an HSR.

Under the WHS Act, their powers are limited to the work group they represent. If agreed, workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers and apprentices.

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

- number and composition of the work group(s)
- number of HSRs and deputy HSRs
- workplace(s) to which the work group(s) apply.

The PCBU must also notify workers as soon as practicable of the outcome of the negotiations.

At any time if negotiations fail in establishing a work group, or discussing a variation to a work group agreement, any person who is a party to the negotiations can request an inspector to assist in deciding the matter (or, if the matter involves multiple businesses, to assist the negotiations).
During the process of consultation to seek information to determine work groups and variations of work groups, consideration has to be given to the:

- most effective and convenient grouping that enables the interests of the health and safety of workers to be represented; and
- need for a HSR for the work group to be readily accessible to each worker in the work group is considered.

The WHS Regulation specifies the following must be taken into consideration when seeking information from workers to determine work groups:

- the number of workers;
- the views of workers in relation to the determination and variation of work groups;
- the nature of each type of work carried out by the workers;
- the number and grouping of workers who carry out the same or similar types of work;
- the areas or places where each type of work is carried out;
- the extent to which any worker must move from place to place while at work;
- the diversity of workers (e.g. physical characteristics, language literacy, culture) and their work;
- the nature of any hazards at the workplace or workplaces;
- the nature of any risks to health and safety at the workplace or workplaces;
- the nature of the engagement of each worker, for example, as an employee or as a contractor;
- the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term;
- the times at which work is carried out;
- any arrangements at the workplace or workplaces relating to overtime or shift work.

Work groups are to be established so that they are inclusive of all workers in the workplace.

**Multiple Business Work Groups**

Work groups may be determined for workers who carry out work:

- for two or more PCBUs; or
- at one or more workplaces.

The diagram below depicts a situation where more than one PCBU has a duty to consult and their duty to consult, cooperate and coordinate with each other. Matters that may be covered could include site inductions, emergency training and incident reporting.

The determination of work groups is to be negotiated between each of the PCBUs and between PCBUs and the workers.

- These arrangements don’t affect any work groups already determined by the PCBU for their workers.
- A PCBU needs to identify all workplaces where their workers are likely to interact with workers of another PCBU and where workers are working at different workplaces.
- Workers of the PCBU could potentially become part of a work group working under a different PCBU and may have additional representation.
• In situations where there are multiple duty holders, PCBUs need to negotiate suitable arrangements for consultation. These arrangements don’t need to affect existing consultation arrangements.

• Variations to any agreement can be negotiated as required.
ACTIVITY: Consultation and representation

Brainstorm the following scenario. Responses can be recorded on flip chart paper

Indicative time – 5 minutes

A labour hire firm has its workers placed at a host PCBU.

1. Who has a duty to consult in the workplace?

2. Who do they need to consult with?

3. What consultation arrangements can be utilised under new WHS legislation?
Session 2 Topic 3

Election and Role of HSRs and deputy HSRs

Health and Safety representatives:

- are to be elected from the work group they are to represent
- are not personally liable for anything either done or omitted in their role as a HSR if done in ‘good faith’ (immunity) when undertaking their functions or powers or where they reasonably believe they are undertaking powers and functions under the legislation
- are eligible for re-election (unchanged)
- are entitled to receive training upon request - certain functions cannot be performed unless trained i.e. issuing of Provisional Improvement Notices (PINs) and directing unsafe work to cease.

Deputy Health and Safety Representatives

- Deputy HSRs can fulfil the HSR role when the HSR is unable due to absence or any other reason to fulfil their role.
- Provisions relating to election, term of office, training, immunity, disqualification and ceasing to be a HSR all apply to deputy HSRs.

HSR Lists

A PCBU must keep a current list of all HSRs and deputy HSRs and display a copy at the workplace. The list must also be submitted to the regulator.

The term of office for an HSR or deputy HSR is three (3) years. They cease to hold office if:

- they leave the work group
- they are disqualified from being an HSR. Any person adversely affected by a decision or action of an HSR can apply to the regulator to have them disqualified
- they resign as an HSR. The HSR must advise the PCBU in writing if they resign
- the majority of members of the group agree the person should no longer represent them. A HSR is removed from office when the majority of work group members sign a written declaration and when the HSR, the majority of work group members and any relevant PCBU have been informed of the decision.
HSRs may be disqualified if they have:

- Exercised a power or function for an improper use
- Used or disclosed information acquired through their role as a HSR for another purpose other than their HSR role
- A designated court or tribunal may disqualify the HSR
- Any person adversely affected by the HSRs actions (as above) or the regulator can apply to the designated court or tribunal to have a HSR disqualified.

**ACTIVITY: Powers and entitlements of HSRs**

In small groups or pairs and complete the activity described below. The facilitator will allocate a power and/or entitlement of the HSR for you to research.

**Indicative time –10 minutes**

1. Research and report back to the group:
   - the relevant section of the legislation,
   - the power/entitlement of the HSR,
   - a practical example of how that could be used, any restrictions on the use of that power/entitlement and
   - any dispute/appeal provisions.

2. Go over all of the powers and entitlements listed, except for PINS and cease work that will be discussed in detail in Session 5.
The responsibility for providing a healthy and safe workplace rests with the PCBU and its officers. A HSR has an important role to play in representing members of their work group, and bringing issues to the attention of the PCBU.

**What are the powers and functions of a HSR? (WHS Act Sections 68 and 69)**

The WHS Act sets out specific powers and functions that a HSR can perform in the interests of the workers they represent. The powers and functions are intended to enable HSRs to represent the interests of the members of their work group and to contribute to work health and safety matters.

Although a HSR has the ability to exercise certain powers and functions, HSRs can choose not to exercise them. The WHS Act does not impose a duty on HSRs to carry out the powers and functions of a HSR. However, the PCBU must take steps to meet the requirements of the duties to consult with workers under Part 5 Division 3 (Section 70) of the WHS Act by making sure that HSRs are able to carry out their functions effectively to represent the workers on health and safety matters.

**The powers and functions of HSRs** include:

- representing the workers in their work group for work health and safety matters;
- inquiring into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the business or undertaking;
- investigating complaints from work group members about work health and safety matters;
- monitoring health and safety measures taken to ensure compliance with the WHS Act in relation to their work group members;
- after giving reasonable notice to the PCBU, inspecting the workplace where their work group works;
- inspecting the workplace (where their work group works) at any time and without notice in the event of an incident or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard;
- accompanying an inspector during a workplace inspection where their work group works;
- attending interviews with one or more work group workers and an inspector or the PCBU. For example, interviews may be required after an incident has occurred, for return-to-work purposes or as part of issue resolution processes. A HSR can only attend interviews with the consent of the worker and the interview must be about work health and safety matters; and
- in certain circumstances, directing a work group member to cease unsafe work and issue a Provisional Improvement Notice (PIN).
HSRs can also:

- **Request** the establishment of a Health and Safety Committee.

- **Receive information** on the health and safety of workers
  - except personal or medical information (without the consent of the worker) unless the information cannot be used to identify the worker.

- **Request the assistance** of another person e.g. union representative and a WorkCover NSW Inspector.

When might a HSR request assistance from another person?

### Powers of Health & Safety Representatives

<table>
<thead>
<tr>
<th>Power / function / right</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>s68(1)</td>
<td></td>
</tr>
<tr>
<td>• Represent workers</td>
<td>WHS matters relating to workers in relevant work group (unless other HSR not available)</td>
</tr>
<tr>
<td>• Monitor compliance</td>
<td></td>
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<tr>
<td>• Investigate complaints</td>
<td></td>
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<tr>
<td>• Inquire into risks</td>
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<tr>
<td>s68(2)</td>
<td></td>
</tr>
<tr>
<td>• Inspect workplace</td>
<td>Of work group &amp; after notice</td>
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<tr>
<td>• Accompany inspector</td>
<td>In workplace of work group</td>
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<tr>
<td>• Attend worker interview</td>
<td>With consent of worker(s)</td>
</tr>
<tr>
<td>• Request HSC</td>
<td></td>
</tr>
<tr>
<td>• Receive information re WHS of workers in work group</td>
<td>Other than personal or medical information where identity apparent</td>
</tr>
<tr>
<td>• Request assistance</td>
<td>Whenever necessary</td>
</tr>
<tr>
<td>s81(2)</td>
<td>Meet the requirements Clause 23 “Default procedure”</td>
</tr>
<tr>
<td>s85</td>
<td>Direct worker to cease work</td>
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<td></td>
<td>Reasonable concern of serious risk</td>
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<td></td>
<td>HSR must be trained</td>
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<td></td>
<td>after consulting PCBU</td>
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</table>

Easy HR Safety Training : Phone 1300 6676 331 : www.easyhr.com.au
Training (WHS Act s72)

The WHS Act provides training entitlements for elected HSRs and deputy HSRs.

HSR training must be provided upon the request by the HSR. If requested, the PCBU must give HSRs paid time off to attend a course that is approved by WorkCover NSW and that is a course the HSR is entitled to attend under the WHS Regulation. The PCBU must also pay the course costs and reasonable expenses within three months of the request. A course must be selected in consultation with the PCBU. If agreement cannot be reached, an inspector may be called in to assist.

The WHS Regulation provides that for the purpose of section 72(1) of the WHS Act, a HSR is entitled to attend the following courses of training in work health and safety:

- An initial course of training of 5 days
- 1 day’s refresher training each year, with the entitlement to the first refresher training commencing 1 year after the initial training.

Limitations of HSRs’ Powers

The HSR’s powers are limited to matters and issues that affect/may affect workers they represent except:

- where there is a serious and immediate/imminent risk to the health and safety of members of another work group
- a member of another work group asks for assistance and the HSR for that work group (upon reasonable inquiry) is not available.

Discuss situations where a HSR might become aware of another worker being exposed to a serious and imminent threat to health and safety e.g. in a workplace where other work groups are present, an imminent danger exists and their HSR is not readily available. Inquiries must be made prior to any intervention being undertaken e.g. the relevant HSR might be elsewhere on site and could be called in.
ACTIVITY: Does a HSR have duties under the WHS Act?

Indicative time – 5 minutes

Is the HSR a duty holder under the WHS Act?

Can a Health and Safety Representative be personally responsible for mistakes?

What can I do if I feel my manager is discriminating against me because I’m a HSR?
Session 2 Topic 4

The Role of Health and Safety Committees (HSCs) and other mechanisms

The PCBU must establish a HSC within 2 months of a request by:

- a HSR for a work group carrying out work at the workplace; or
- 5 or more workers at the workplace; or
- as required by the regulation; or
- on their own initiative.

A Health and Safety Committee under the WHS Act can:

- facilitate cooperation to instigate, develop and carry out measures designed to ensure workers’ health and safety,
- assist in developing health and safety standards, rules and procedures that need to be followed and
- any other functions prescribed by the regulation or agreed between PCBU and the HSC.

While former OHS Committees may meet the requirements for HSCs under the WHS Act, the composition of a HSC can now be different. At least half the members must be workers and no training is required. No fixed term; can be temporary; can be developed to specifically look at an issue then be dissolved when the issue has been resolved. Formed by agreement and this could be via elections.

A HSC member, if not a HSR and is not entitled to carry out the functions of an HSR, be it trained or untrained.

HSC can be set up and dissolved e.g. to review and assist with the implementation of new work practices or be set up permanently.

How do the roles of a HSC member and a HSR differ, and the activities they may be involved in, in both roles.
WHS entry-permit holders and their role in consultation (WHS Act s149)

A WHS entry permit holder is an authorised union official who has completed an approved training course, and holds a valid and current entry permit issued by the regulator or authorising authority in the relevant jurisdiction.

A WHS entry permit holder may enter a workplace to consult or provide advice to workers on health and safety matters.

A WHS entry permit also allows the union official to enter a workplace during working hours to inquire into a suspected contravention of the WHS legislation.

After entering a workplace, a WHS entry permit holder may:
- inspect the workplace;
- talk to any worker who is entitled to be represented by the union; and
- warn anyone they believe is exposed to a serious health or safety risk.

A WHS entry permit holder may:
- consult with the PCBU about the matter;
- request to look at, and make copies of, relevant records or documents kept at the workplace in hard copy or on a computer; and
- inspect or make copies of relevant documents held by a person other than a PCBU, however, at least 24 hours’ notice of the proposed entry must be given to the person from whom the documents are requested as well as the relevant PCBU.

Prior to entering a workplace, a WHS entry permit holder must show their identification if they are requested to do so by a PCBU.

If they are entering the workplace to consult with or provide advice to workers on WHS matters, they must give the PCBU a minimum of 24 hours’ notice.

When entering the workplace to inquire into a suspected contravention of the WHS legislation, a WHS entry permit holder must advise the PCBU or person with management or control of the workplace of their entry as soon as reasonably possible.

This notice is not required where advising a PCBU or the person with control of the workplace would defeat the purpose of the entry, or cause unreasonable delay in an urgent case.
## Powers of WHS Entry Permit Holders

<table>
<thead>
<tr>
<th>Reason for entry</th>
<th>Pre-requisites add'l to permit</th>
<th>Notice</th>
<th>Rights on entry</th>
</tr>
</thead>
</table>
| To inquire into suspected contravention (s117) | reasonable suspicion of contravention relating to relevant worker | asap after entry (unless defeat purpose or cause unreasonable delay) | • Inspect any thing relevant to contravention  
• Consult with PCBU about suspected contravention  
• Consult relevant workers and PCBU  
• Inspect or copy any available document directly relevant  
• Warn any person of health & safety risk (s118) |
| To inspect documents held by another person (not kept at workplace or by PCBU) (s120) | reasonable suspicion of contravention relating to relevant worker | 24+ hours (but less than 14 days) | Inspect or copy any employee record or document held by 3rd party that is directly relevant to suspected contravention |
| To consult or advise workers (s121) | n/a | 24+ hours (but less than 14 days) | • Consult with or advise workers and may exercise rights under Division 2 or 3 of Part 7. |
ACTIVITY: Role of HSRs

In small groups discuss the following scenario and then report back to the larger group.

Indicative time –5 minutes

You are one of the Health and Safety Representatives for your organisation, a distribution warehouse. There have been several incidents in the loading area resulting in a minor back injury and sprains to members of your work group. There has also been similar incidents reported by contract drivers working in the area and they have asked for assistance. What activities would you undertake in your role as the Health and Safety Representative? What activities would they undertake if they are also a HSC member?
Session 2 Topic 5

The Role of the PCBU in workplace consultation

Options for consultation must be negotiated between PCBUs and workers. As already discussed, HSRs may be elected to consult workers on health and safety matters. They may agree to establish a HSC made up of workers and management. HSR and deputy HSRs can form part of this Committee if they consent to do so. The establishment of a HSC can be requested by a HSR or more than 5 workers. The PCBU can also choose to set up a HSC.

A PCBU can ensure that the best decision is made by taking the views of workers into consideration as part of the process.

PCBU obligations in consultation (Sections 47-49)

The PCBU is required to advise workers of the outcome of a decision within a relevant timeframe – this timeframe will be dependent on such things as the level of expertise required in making a decision, the level of risk associated with the matter etc.

The relevant HSR **must** be involved in consultation – this should occur through the agreed consultation procedures.

PCBUs are required to consult when (WHS Act s49):

- Identifying hazards and assessing WHS risks
- Making decisions about controlling risks
- Making decisions about adequate facilities for workers
- Proposing changes which may affect health and safety
- Making decisions about procedures for:
  - Consulting with workers
  - Resolving health and safety issues
  - Monitoring health of workers
  - Monitoring conditions of the workplace
  - Providing information / training for workers.
PCBU must consult with workers who are likely to be affected by a matter relating to work health and safety.

PCBU and workers can agree on procedures for consultation, which must be consistent with Section 48 of the WHS Act.

Consultation procedures are to be used:

- where they have been agreed to by a PCBU and the workers; and
- they are consistent with the required ‘nature’ of consultation.

A PCBU has the following obligations (s70) to HSRs, that is, to:

- consult, so far as is reasonably practicable, with HSRs on work health and safety matters at the workplace
- confer with a HSR, whenever reasonably requested by the representative, to ensure the health and safety of the work group workers
- allow a HSR access to information that the person has relating to work place hazards (including associated risks) affecting the health and safety of the workers in the work group
- allow a HSR access to information that the person has relating to the health and safety of the work group workers, except for personal and medical information concerning a worker
- allow HSRs to attend interviews concerning work health and safety between one or more consenting workers and an inspector or another PCBU at the workplace (or their representative). The HSR should be informed of any such interview and the HSR and worker may wish to consult before and/or after the interview
- provide their HSRs with resources, facilities and assistance that are reasonably necessary 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 the HSRs to accompany an inspector during an inspection of any part of the workplace where a member of the HSR’s work group works
- provide any assistance to the HSR required by the WHS Regulation
- allow the HSR as much time that is reasonably necessary to perform their powers and functions under the WHS Act, and
- pay HSRs performing their powers and duties as a HSR the same amount they are entitled to receive when performing their normal duties.
When the assistance of another has been requested by the HSR, the PCBU is not required to:

- Give financial assistance for this person;
- Allow access when the person’s entry permit has been revoked, suspended or if disqualified; and/or
- Allow access when there are reasonable grounds for refusal (the HSR may request the assistance of an inspector to resolve the matter).

The assistance may be provided through a union representative or s the WHS entry permit holder

What resources, facilities and assistance does a HSR need?

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

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. Resources, facilities and assistance may include:

- access to a private room, desk and chair 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
- access to relevant technical equipment, for example, a noise meter
- the use of noticeboards, and
- if required, transport or travel expenses to commute between workplaces.
Session 3

PARTICIPATING IN CONSULTATION AND ISSUE RESOLUTION AS A HSR

Further duties and functions

Issue Resolution and Assistance and Support Services
Session 3

Participating in consultation and issue resolution as an HSR and HSC member

Learning Aim

This topic aims to provide details on the requirements for consultation and issue resolution for HSR and HSC members to fulfil their role effectively using process outlined in the legislation.

Learning Outcomes

Learning outcomes of Session 3 include being able:

- Identify a range of strategies that support the consultation process
- Use negotiation skills and strategies to resolve work health and safety
- Represent workers on health and safety issues in a range of circumstances
- Discuss the benefits of effective representation and constructive consultation between PCBU, other duty holders and workers.

Assessment Method

Successful completion of face-to-face learning activities and activities as set out in this session.

Session Duration

The nominal duration of this session is 60 minutes.
## Session 3: Learning Outcomes and Expected Learner Application

<table>
<thead>
<tr>
<th>Learning outcome</th>
<th>Expected Learner Application</th>
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<tbody>
<tr>
<td>After completing this session participants should be able to:</td>
<td>• Use effective communication skills as a HSR</td>
</tr>
<tr>
<td>1. Identify a range of strategies that support the consultation process;</td>
<td>• Identify key duty holders that a HSR may consult with</td>
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<tr>
<td>2. Use negotiation skills and strategies to resolve work health and safety</td>
<td>• Describe the benefits of building and maintaining constructive relationships with management, HSCs, members of work group and others</td>
</tr>
<tr>
<td>3. Represent workers on health and safety issues in a range of circumstances</td>
<td>• Discuss why a HSR might keep copies of records relating to their workplace’s work health and safety matters</td>
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<tr>
<td>4. Discuss the benefits of effective representation and constructive consultation between PCBU, other duty holders and workers</td>
<td>• Explain the issue resolution process</td>
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<td>• Describe that basic principles of negotiation and various strategies/tools a HSR could use to help resolve WHS issues</td>
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<td>• Identify and source resources available to a HSR when negotiating and resolving WHS issues</td>
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<td>• List the functions and powers of WorkCover NSW inspectors in resolving work health and safety issues</td>
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<td>• Identify ways a HSR can represent, monitor, investigate and inquire into issues raised by their work group to ensure these concerns are addressed</td>
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<td>• Describe the circumstances under which a HSR is may be present in an interview concerning work health and safety and the HSR’s role</td>
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<td>• Identify the ways a HSR could exercise their powers in relation to complaints concerning work health and safety</td>
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<td>• Identify the purpose of workplace inspections and identify the powers which allow a HSR to inspect the workplace</td>
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<td></td>
<td>• Discuss the general benefits of effective consultation between HSRs and PCBs and other duty holders to identify and solve WHS issues in their workplaces</td>
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<tr>
<td></td>
<td>• Understand the requirements and explore examples of consultation, cooperation and coordination between PCBs and other duty holders</td>
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Session 3 Topic 1

Role of the HSR in consultation in the workplace and in assisting their work group with workplace health and safety issues

One of the objectives of the Act is “to foster a cooperative, consultative relationship between employers and employees on the health, safety and welfare of such employees at work”. This objective is met through provisions in the act that emphasise consultation and cooperation between employer and employees. The WHS Act provides for a consultative framework that incorporates:

- Work Groups
- Health and Safety Representatives (HSRs) and deputy HSRs; and
- Health and Safety Committees (HSCs).

Role of the HSR in Consultation

A HSRs primary role is to represent the work group to management in relation to health and safety issues. They have a very important role in developing or maintaining a relationship between the PCBU and workers on all WHS matters in the workplace. The WHS Act prescribes functions and powers to ensure that they can represent the work group, which will allow them to actively participate in decisions about their health and safety at work.

Deputy HSRs can also be selected for work groups though they are not mandatory. Deputy HSRs can perform in the role of HSR if the HSR is absent from the worksite.

Whilst the HSR is an important role within the workplace, they are not expected to be an expert in health and safety, and are not responsible for health and safety in the workplace; the PCBU has the primary responsibility for the health and safety in the workplace.

The WHS Act gives HSRs powers so that they can represent their work group on health and safety matters, and HSRs need to demonstrate an active interest and commitment to the health and wellbeing of their fellow workers in order to be effective. The aim of an effective HSR is to represent their work group in order to improve or maintain a workplace that is safe for all.
As the HSR you may also need to consult and communicate with people outside of your work group. External consultants, WorkCover NSW inspectors, manufacturers and suppliers are some of the people you might come into contact with whilst performing the role. When representing your work group as a HSR, your role is to:

- Actively participate in workplace consultation arrangements
- Provide information to workers regarding management decisions on work health and safety
- Source required information on work health and safety
- Show commitment and passion to the improvement of health and safety
- Be a leader and a safety role model
- Be an effective communicator and listener
- Effectively represent work group members on matters concerning health and safety. A HSR must ensure they are accurately representing the views of the members of the work group. It is important that they do not use the position of HSR to promote their own interests. Promotion of health and safety issues and improved safety performance should be the only position taken.

Effective representation and participating in consultation regarding matters of health and safety will ensure that the work group members are being provided with every opportunity to work in a workplace that is committed to improving safety performance.

**Role of the Health and Safety Representative in Workers Compensation and Rehabilitation**

The HSR does not become directly involved in the details of workers’ compensation, nor should the HSR offer detailed advice on the subject. The workplace has other appointed individuals who have responsibility for the oversight and administration of workers’ compensation and rehabilitation as they affect employees. The HSR is essentially involved in the cause and effects of the particular incident or disease which led to workers’ compensation and rehabilitation being initiated.

The HSR should be familiar with the organisation’s workers’ compensation and rehabilitation policies, and understand the links between work health and safety, and workers’ compensation and rehabilitation as they apply to members of the designated work group.

The HSR is encouraged to know the persons responsible for rehabilitation and workers’ compensation within their own organisations.
Role of the HSR and as a member of a HSC

Unless they do not wish to participate, HSRs are automatically a member of the relevant HSC. If there is more than one HSR at the workplace, the HSRs may agree among themselves as to who will be on the HSC. More than one HSR may be a member of the HSC. There are no duties imposed by the WHS Act on worker members (including HSRs) of the HSC.

Representatives of the PCBU on the HSC should be persons involved at senior management levels in the organisation who are able to make or participate in making decisions about health and safety.

PCBUs must allow each member of the HSC to spend a reasonable amount of time that is necessary to attend HSC meetings or to carry out functions as a member of the HSC and pay HSR members same pay that they are entitled to if they were to perform their normal duties during that period.

There may be times when a HSC is busier than usual and will require more time to carry out the functions of a HSC. For example, when an organisation merges with another, the committee may require time to revise health and safety standards, rules and procedures.

A member of your work group has noticed that other workers in their work area are leaving the area untidy after their shift and they consider that there is potential for trips and falls in the area. It is an ongoing problem. They have come to you as their HSR for assistance.

How should you approach that matter?

How could you use their assistance?
Session 3 Topic 2

Investigating Complaints - the role of the HSR, sharing of information and record keeping

**ACTIVITY: HSR Complaint Investigation**

Brainstorm the following question. Responses can be recorded on flip chart paper.

Allow 5 minutes

What complaints are possible in relation to work health and safety issues for your work group that you as the HSR may need to investigate?
The HSR has broad powers for the purposes of promoting or ensuring the health and safety at work of the employees in the designated work group, including the investigation of complaints.

Benefits of HSR complaint investigation include:

- Identification of potential/actual hazards
  - Prevention of injury or illness
  - Improve work environment
  - Improve morale
- Increased consultation
- Identification of training needs
- Revision of outdated methods
- Encouraging involvement in safety performance
- Improving safety culture.

Investigation Process

Informal Approach

The HSR will need to speak with the person who raised the complaint directly and then consult on the issue with the PCBU.

If the issue cannot be resolved a formal process will need to be commenced.

Formal Approach

The formal approach needs to be planned outlining the objectives of the investigation. The HSR will need to speak with all persons concerned on the issue and document all findings. A workplace inspection may need to be undertaken.

Investigation Procedure

- Understand the complaint relating to work health and safety issues for your work group:
  - Talk with work group members and PCBU
- Research the complaint:
  - WHS Regulations, Code of Practice, Australian and industry standards
  - WorkCover NSW
  - Consultants or union representatives
- Analyse the information collected
- Develop a strategy to move forward with the complaint/issue.
Problem solving steps

When investigating issues it is important to gauge the feelings associated with the issue but to try and remain objective in the process. This will allow systems issue to be identified and addressed.

These basic problem solving steps can be used as a guide to get you started:

- Identify the problem
- Identify issues and investigate those issues
- Develop a plan
- Take action
- Monitor and evaluate.

Interviewing work group members

In order to obtain information in relation to a work health and safety issue or incident, the HSR may need to interview members of their work group. They may also be part of a larger investigation team and be asked to interview other people outside their work group. Key practices to successfully interview include:

- Put the person at ease
- Interview in a safe and secure neutral location at a suitable time
- Actively listen
- Explain the organisational consultation procedure
- Be open and honest
- Ask open questions.

Workplace Investigation Report and Record Keeping

Whilst there is no requirement for a HSR to write reports of any investigations they undertake, it is good practice as it provides the HSR with a formal record of their investigation and the outcomes.

The report gives information to management on the effectiveness of work health and safety systems in the workplace. It can also provide management with specific information on problems in the workplace, the extent of the problem and, where possible, the HSR’s view on what should be done about it.
The report should include the following:

- Why the investigation was undertaken
- Where and when the investigation took place
- Who was involved in the conduct of the investigation
- The hazards and hazardous situations encountered
- Assessment of the significance of the hazards identified
- Recommendation of how to control the hazards.

The order of writing and reviewing is important and should be as follows:

- Pre-write
- Draft the main body and appendixes
- Review the main body and appendixes
- Draft the conclusion, recommendations, introduction and summary
- Check and amend the report
- Issue the report.

Record keeping

As a HSR what records should you keep?  
What records should HSRs have access to?
Conflict resolution skills and strategies to represent a work group and consult with the PCBU

Factors that could contribute to a WHS issue not being resolved

Conflict can arise in the workplace from many factors. As we have seen previously when looking at investigating complaints, issues arise from the interaction of systems involving:

- Materials
- Environment
- Personnel
- Management
- Tasks

Key elements of conflict

What Types of Conflict Will Arise?

There are basically two types of conflict situations that may be encountered in a negotiation, which might present singularly, or as a combination of the two types. It is vital that the negotiator carefully analyse the conflict issues, either individually or collectively, to fully appreciate the unique challenges they present.

The first form of conflict might simply be called **agreement conflict**, where one person’s views or position conflict with another individual’s, or members of a group. This is a situation that takes into account their conflicting views relating to opinions, beliefs, values and ideology.

For example, two executives may have different views about whether a policy should be implemented. Another example is a trade dispute between two countries brought about by ideological or religious based differences. Or the conservative viewpoints of management might conflict with the more left wing approach of union leaders.

The second form of conflict involves the **allocation of resources** like money, quantity, production or put simply, things. Any physical commodity will fall into this category of conflict. Other issues might involve the allocation of resources as a separate segment of the trade dispute. Resource issues are more tangible as they comprise knowable items, or particular products.

By analysing the types of conflict into categories, negotiators can have a better understanding of the real measure of the disputes, and frame or focus their strategies more effectively.
Assess the situation

Each negotiation is going to be different, no matter how often we have addressed similar situations. We will always be negotiating with people who have different styles, goals and objectives and who are coming from different circumstances and who have different standards. So always take stock and view each negotiation as something unique.

Types of Negotiation

There are basically 3 circumstances to consider:

1. Is it a one-time negotiation where it will be unlikely to have interaction with the person or company again?
2. Is it a negotiation that is going to be repeating?
3. Is it a negotiation where we are going to form some kind of long-term relationship?

Most safety negotiations are likely to fall into the last two categories. HSRs will be handling a lot of repeat negotiations where they negotiate with on-site supervisors or managers, regular contractors, or engage in labour negotiations with the same union representatives. Or they will be seeking a long-term negotiated agreement such as a joint venture.

What Does This Negotiation Mean?

There are only two reasons why we enter into a negotiation. The first reason is out of necessity. I.e. we have to. This could be due to some immediate need, such as urgency to find a particular solution, or it could be that we face severe consequences if we cannot fix the problem.

The second reason is we are seeking out an opportunity. This situation may arise simply because an opportunity has arisen to increase our overall safety performance or culture at a convenient time. The reason for entering into a negotiation will affect both our approach and strategy, and also our relative negotiating power compared to our counterpart.

The Ripple Effect

We also need to ask ourselves whether the results of the negotiation we are conducting will affect other negotiations or agreements later. Many organisations today have interstate and international interests. It is vital that HSRs, consider the impact or consequences of an agreement in developing the strategy.
Does Agreement need to be made?

We either enter into negotiations because we have to, or because we want to. Part of our strategy will involve a careful analysis of our “Best Alternative to a Negotiated Agreement”. If an agreement is absolutely essential and we have few alternative options, our strategy will be affected if talks collapse. Or, if the negotiated agreement is not essential because we have a strong option and can walk away with confidence, this also influences the approach to our strategy.

Do Other Parties Need to Formally Approve the Agreement?

Most agreements made during the negotiation process require formal approval, or ratification, before an agreement is official. Staff members may vote before they accept an agreement or solution that was previously negotiated between management and the HSR. A Board of Directors, CEO, stakeholders, or other outside constituents may need to review and ratify an agreement before it comes into effect.

Are there time pressures?

Time has an impact on the course of negotiations from two perspectives. Firstly, there are deadlines that might be imposed to either make or break an agreement. Offers with expiry dates may be tendered.

Secondly, we all know that 'time is money'. Negotiations use up time, and if plant or equipment is shut down whilst the clock is ticking because of a PIN or an unresolved safety concern, then this is costing money. Or it could be due to some other resource issue, such as waiting for necessary components in order to resume production. The point to remember is that the longer the negotiations drag out, the more costly to the organisation.

Where negotiations should be held?

In much the same way as sports teams enjoy a 'home advantage', negotiators playing away from home need to adjust their game plan and strategies. There are three possibilities to consider when deciding where the talks will occur. We can either hold the talks in their offices, our offices or at a neutral domain. We might choose the latter so no one has the psychological and resource advantage of holding the negotiations on their premises. Often, workers or the HSR will feel uncomfortable in offices of management, so a neutral option such as the lunchroom or off-site would be advisable.
Will We Need a Third Party?

Third parties have many different functions and roles to play in developing a negotiation strategy. They may act as agents, intermediaries, translators, consultants, or other specialists who have an expertise that one or both parties require. There are occasions when a neutral third party will act as a facilitator or chairperson to manage the negotiations, such as in multiparty negotiations, inter-organisational negotiations, or even international negotiations.

There are other occasions when we hit a roadblock in negotiation. During these times we may use a neutral third party to act as a mediator or an arbitrator to either facilitate or impose an agreement, such as in a labour dispute. HSRs have powers to use consultants and will also be able to call on WorkCover NSW inspectors if need be.

Who is going to make the first move?

There are situations when we have to decide how a proposal or offer is to be presented, or who is going to go first. Will we make an informal proposal before we start the negotiations, or wait until we meet face to face? Will we be prepared to make an offer after listening to their proposal, or do we need more information? Will we respond right away, or refer the matter to our constituencies? Will it be to our advantage to be first in making an offer or proposal, to set an anchor around which the talks revolve? Or will it be better to hold our cards tight to our chest and let the other side go first? Of course, this will all relate to the issues, positions, goals and objectives that determine our approach. These are very serious questions that we need to address intelligently before we begin our talks.

Who Are the Decision Makers?

Before we enter into the negotiations, we must establish who is going to make the decisions. What is our authority and who do we report to in this issue? Similarly, what are the authority levels of our counterparts? Finally, can we make an agreement in principle, or an unofficial agreement that will likely stand the test of scrutiny?

Are we in the Stronger or Weaker position?

Two or more parties who are about to engage in a negotiation are seldom operating from an equal power base. If one party has something that we desperately need for our issues or the work group’s survival, and we have no alternatives, then we may find ourselves negotiating at a disadvantage. Size is not necessarily relevant. We have all heard the old biblical account of 'David versus Goliath', and how that conflict turned out. Weakness can be countered by strengthening our best alternative, or even by finding allies to support our position and add to our strength. Further, before we begin our negotiations, or even during the negotiation process itself, we should seek ways to diminish the power base of the opposing party where possible.
Problem Solving

Through the consultative process, and whilst exercising their powers, it is inevitable that HSRs will encounter problems and be forced to deal with conflict. As you represent other people in the workplace, you may encounter a wide range of problems that you are not familiar with, and you will need to research the issues in order to ‘understand’ the problem and effectively represent the members of the work group who have that problem.

It is no surprise that some people think about problem solving when they think about work, especially if they work in a demanding environment, which most of us do. However, problem solving is not just used at work by employees. It is used by everyone, every day.

One of the issues we encounter when attempting to understand problems is people’s emotions. If we look at solving problems in a logical and systematic manner we will overcome many of the emotional issues.

Problems can be large or small. Larger problems take more time and work to understand. There are some problems we may be able to investigate on our own, and there are some problems that may require assistance from another person (supervisor, manager, union representative), or from a group of people (work group, HSC).

There are also some problems that we cannot understand or deal with, even after trying our best, because these problems may be hard to understand, or just too big and out of our control. When facing a problem like this, it is important that you seek help and advice (union, WorkCover NSW).

Problem solving steps

Problem solving is not the responsibility of the HSR; however, you may be involved in the process as part of consultative forums or at the request of management or HSC if you are a member. Sometimes solving problems is easy; sometimes it can be a challenge that needs some thinking and determination. Whatever the problem, these steps are a good way of tackling them.

Step 1 – Identify the problem

You need to work out exactly what the problem is before we can start to solve it, so ask yourself, “What’s the problem?” Ensuring that everyone understands what the problem is will ensure that the focus is on solving the problem rather than any side issues. Investigating the issue will help identify the problem.

Identifying the problem may involve talking to the people involved, researching external information (such as hazard information on exposure), calling in technical or specialist help, or comparing internal information such as injury data or processes.
Step 2 – Identify feelings and investigate the problem

There is a good chance that someone will have ‘distressed’ type feelings when you are dealing with a large problem. It is important that you identify these feelings and take them into account when dealing with the problem. Were there any contributing factors? Why is there a problem at all? This step will involve consultation with all parties. We will then need to look into the problem. What are the issues? What and who is involved in the issue?

Once we have identified the problem and the emotions, it is important that it is investigated completely and the information analysed in a manner that will allow us to see all the possible interventions.

Step 3 – Develop a plan

Think of different solutions to solve the problem. Will it make the problem bigger or smaller? It is important when generating solutions to consider all possibilities. Consider involving others during this step. Ensure that we have evaluated each solution that we are considering. Look at the advantages and disadvantages of each one.

While we are developing our plan, we will need to include the person or people that are involved in the issue, as it will be their opinions and feelings that will allow any agreed plan to work in the given situation.

Step 4 – Take action

Put our plan to work. Ensure that the solution will be effective. If it involves information, training or a change to procedures, make sure that all involved parties are aware of these factors (workers, PCBU, supervisor, union).

As a HSR you will not have the authority to implement any solution to problems, but through consultation methods you may be a part of any solution.

Step 5 – Monitor and evaluate

We must monitor and evaluate to ensure that our solution meets our objective. If the problem does not improve, do not give up, try another solution. HSRs play an important role in monitoring and evaluating safety performance within the workplace. Exercising powers, such as conducting workplace inspections, will allow HSRs to participate in the ongoing evaluation of any solutions implemented.

It is important that HSRs can identify and be able to represent problems to management correctly. HSRs need to ensure that within the workplace there is an effective method of safety communication, as this is how they will be able to fulfil their role of representing their work group.
ACTIVITY: Negotiation

Brainstorm the following scenario. Responses can be recorded in note books

Allow 15 minutes

This exercise is designed to provide participants with an understanding of the problem solving steps. Participants may be able to apply these steps to their own workplace situations.

You are the HSR of the warehousing staff. You have been hearing rumours that the cleaners are complaining of headaches when using the new floor cleaner that was recently introduced. You have also been talking with the manager of the floor and he has suggested that there is some paperwork regarding the products in the file.

In small groups, discuss the WHS issues and work through the problem, identifying the steps of problem solving and noting what authority HSRs have to take action (if any).

If you make assumptions regarding the workplace or the floor cleaner, identify those assumptions up front.

Responses to include:

- What are the issues?
- Identify the problem solving steps.
- What authority does the HSR have to act in this situation?
- How could this matter be raised and addressed with the PCBU?
Session 3 Topic 3
Issue Resolution

Requirements under the WHS Act and WHS Regulation

**Issue resolution** (WHS Act Sections 80-82)

An ‘issue’ is any concern about work health and safety at the workplace that remains unresolved after consultation between the worker or the HSR and the PCBU or their representative. An issue may arise when there is a difference in opinion on whether or not something is a risk to health and safety, or a whether a particular control measure is adequate.

The role of various parties including HSRs, PCBU’s and WorkCover NSW Inspectors

Under the WHS Act ‘parties’ involved in relation to an issue include:

- A PCBU or their representative;
- Where more than one business or undertaking is involved, the PCBU for each or their representative;
- Where workers of a work group are affected, their HSR or their representative;
- Where the worker/s are not in a work group, the worker/s or their representative (this can be a union representative).

The person representing the PCBU must:

- Have a level of seniority and competency to act as the PCBUs’ representative
- Not be a HSR.

Ideally, PCBU’s and workers/HSRs should be able to reach a resolution through consultation, but failing that, there are provisions for dispute resolution in the WHS Act if a resolution cannot be reached. The WHS Act requires the people involved in an issue to make a reasonable effort to resolve the issue.

Workers and the PCBU can agree on their own dispute resolutions procedure, provided that it includes the minimum requirements for dispute resolution as specified in the WHS Regulation. If there are no agreed procedures, the default procedure for issue resolution under the WHS Regulation must be followed.
The default procedure requires:

1. **All parties** to be informed there is an issue to be resolved and the nature and scope of the issue;
2. **The involved parties must** meet or communicate to resolve the issue;
3. **Certain matters** to be taken into account;
4. **Any party involved** in the issue to be **represented or assisted by a nominated person** if they choose to do so;
5. **The details** of the issue and **its resolution** to be **put in writing** to the satisfaction of all parties involved in the issue where requested;
6. **A copy of the written agreement** to be provided to:
   - parties to the issue (e.g. unions, employer organisations); and
   - if requested, the **workplace’s health and safety committee**.

The PCBU or their representative, workers, HSRs and a representative of the worker (if the worker requests that someone represent them) can be involved in the dispute resolution process.

Any person involved in an issue can begin the issue resolution procedure by informing the other people involved in that issue that there is an issue to be resolved and what the nature and scope of the issue is. Everyone involved must then work with each other to try and resolve the issue.
When working to resolve the issue, people must have regard to:

- the severity and immediacy of the risk e.g. the general public or contractors may be impacted by an issue that requires being addressed immediately such as exit in an emergency;
- the number and location of workers and other persons affected by the issue e.g. workers may be at a variety of locations or off site;
- the control measures (both short and long term) that are required to address the issue; and
- who will be responsible for implementing the control measures, for example, the person who is acting on behalf of the PCBU in implementing a solution.
# Process to Follow in Issue Resolution

<table>
<thead>
<tr>
<th>Relevant parties</th>
<th>Process to Follow</th>
<th>Additional information</th>
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<tbody>
<tr>
<td>• HSR/deputy HSRs&lt;br&gt;• Other PCBUs&lt;br&gt;• WHS entry permit holder&lt;br&gt;• Workers&lt;br&gt;• Workers’ representative (union representative)&lt;br&gt;• PCBU</td>
<td><strong>Immediate Risk</strong>&lt;br&gt;Where there is an immediate risk, a worker is to cease or can be directed to cease unsafe work by a HSR</td>
<td>Cease work&lt;br&gt;HSR consult with PCBU before issuing PIN</td>
</tr>
<tr>
<td><strong>Unresolved health and safety issue</strong> exists after discussion with relevant ‘parties’ using the PCBU’s own issue resolution procedures.</td>
<td>PCBUs’ Issue Resolution Procedure, if there is one. If not use the default procedure in the WHS Regulation.</td>
<td></td>
</tr>
<tr>
<td>As above</td>
<td>Where there is no agreed issue resolution procedure ‘parties’ are to use the default procedure</td>
<td>How to Consult on work health &amp; safety: Code of Practice</td>
</tr>
<tr>
<td>HSR, deputy HSR, workers, duty holders</td>
<td>Parties must make a reasonable effort to achieve a timely, final and effective resolution.</td>
<td>WHS Regulation Part 2.2</td>
</tr>
<tr>
<td></td>
<td><strong>If the issue remains unresolved</strong>&lt;br&gt;after reasonable efforts, any of the involved ‘parties’ may make a request to the authority (WorkCover NSW) for an inspector to assist.</td>
<td>Workers remain entitled to cease unsafe work or a HSR to direct cessation of unsafe work or issue a PIN</td>
</tr>
<tr>
<td>A representative of an involved party may enter a workplace to attend discussions to help resolve the issue e.g. union representative</td>
<td>The WorkCover NSW inspector will assist in resolving the issue with the ‘parties’. If necessary, the inspector may exercise their compliance powers to resolve the matter.</td>
<td>WHS Act Part 10</td>
</tr>
<tr>
<td>Feedback to workers and other duty holders where relevant</td>
<td>Any action/s undertaken should be monitored for effectiveness. Feedback on the outcome should be provided to all relevant ‘parties’. Agreement reached needs to be written up.</td>
<td>PCBUs’ issue resolution procedure</td>
</tr>
</tbody>
</table>
Conduct in relation to health and safety matters

With the new powers and duties of various persons under the WHS Act, provisions have been made to protect anyone acting in good faith for the purpose of ensuring health and safety in the workplace.

The conduct that is protected from discriminatory behaviour under the WHS Act includes the activities of persons who are undertaking their role under the WHS Act e.g. a HSR directing unsafe work to cease or a person who cooperates or assists with this direction; a worker providing information to a person who is undertaking activities permitted under their role.

Persons that are protected under the WHS Act (s104-115) include persons who are, have, or will:

- Act, perform/or not perform their functions or exercise their powers (where applicable) as HSRs, deputy HSR, HSC members, WHS entry permit holders or any other role in accordance with the WHS Act
- Assist or give information to persons using a power or performing a function under the WHS Act
- Raise an issue or concern about work health and safety with PCBU/s, other workers, persons with roles and function or an Inspector
- Be involved in resolving a work health and safety issue
- Take action to seek compliance with WHS duties and obligations.

Provisions are also in place to ensure that persons with powers do not abuse them (WHS Act Sections 104-115).

What type of behaviour may be considered as:

- Discriminatory? (record your examples)

- Coercive? (record your examples)

- Misleading? (record your examples)
A person only commits an offence under the WHS Act if the **dominant reason** for the discriminatory behaviour is conduct by a person in relation to health and safety activities.

**Discriminatory conduct** is considered to be if a person does, organises or threatens to:

- **In regards to a worker**
  - Dismiss or terminate a contract for services with a worker; or alter the position of a worker to the worker’s detriment; or
- **In regards to a prospective worker**
  - Refuse or fail to offer to engage a prospective worker; or
  - Treat a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement; or
  - Terminates, refuses or fails to enter into a commercial arrangement with another person.

The WHS Act also makes it clear that it is illegal for a person to request, instruct, induce, encourage, authorise or assist a person in discriminatory behaviour.

**Coercion or inducement:**

A person must not:

- organise or threaten to take actions against another person with the intent of coercing or inducing them in relation to:
  - performing (or not performing) their role;
  - exercising or not exercising their powers; or
  - taking or continuing in a role under the WHS Act e.g. a person attempting to persuade individuals not to take a role as a HSR or to cease unsafe work.

**Misrepresentation:**

To support the prohibition of coercion or inducement under the WHS Act, a person can be fined for knowingly or recklessly making false or misleading representation to another person about the other person’s:

- rights or responsibilities; or
- ability to initiate or participate in a process or proceedings e.g. request the election of a HSR or the establishment of a HSC, cease unsafe work; and/or
- ability to make a complaint or inquiry to a person or other body e.g. WorkCover NSW that has the power to seek compliance with the WHS Act.
Function of the regulator and the inspectorate in workplace consultation and resolving issues

The focus of the WHS legislation is to achieve desirable work health and safety outcomes within a reasonable timeframe. Enforcement measures are aimed at achieving this including where a prosecution proceeds to court.

NSW Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS) that oversees mines across NSW and WorkCover NSW are the regulators and both provide advice and assistance in work health and safety matters.

The role WorkCover NSW plays will continue along similar lines with an increased focus in assisting in issue resolution.

The functions of the regulator i.e. WorkCover NSW and DTIRIS in NSW are to:

- Provide advice to and share information with duty holders and the Minister on work health and safety
- Collect, analyse and publish statistics on work health and safety
- Foster cooperation and consultation between duty holders and persons owed a duty under the WHS legislation
- Promote and support education and training on work health and safety
- Monitor and enforce compliance, including conducting and defending proceedings.

Visit the WorkCover NSW website to examine the variety of information and activities being undertaken to meet the objectives of the WHS legislation. These include:

- advice and information – e.g. website, customer service centre 13 10 50, guidance material, seminar and workshops;
- supporting education and training programs;
- co-operation and consultation.

WorkCover NSW inspectors have a greater role under the WHS Act in advising and supporting workplaces and can:

- Assist in the negotiation of consultation arrangements;
- Assist in resolving work health and safety issues and relevant access/right of entry issues including anonymous complaints;
- Require compliance with the WHS Act through issuing notices;
- Review Provisional Improvement Notices (PINs); and
- Investigate breaches of the law and assist in prosecutions.

Inspectors are appointed by WorkCover NSW to provide advice to duty holders under the WHS Act, assist to resolve work health and safety issues and to monitor compliance.
WorkCover NSW inspectors are afforded protection under the legislation to be able to carry out their functions in the investigations of health and safety matters and in the provision of advice.

If reasonable efforts have been made to resolve an issue and it remains unresolved, any person involved in the issue, including the HSR, can ask WorkCover NSW to appoint an inspector to assist at the workplace.

An inspector can be requested regardless of whether there has been a reasonable effort made by all persons who are involved in resolving the issue.

If a request is made, this does not affect:

- the right of a worker to cease work that they believe to be unsafe, or
- a HSR from issuing a provisional improvement notice or
- a direction to cease unsafe work.

The inspector’s role is to assist in resolving the issue and they are able to exercise any of their powers available under the WHS Act to reach a resolution. This could include issuing notices, providing advice, inspecting the workplace, investigating breaches of the legislation.

**ACTIVITY: Role of HSR and investigation of complaints and issue resolution process**

In small groups, discuss the following scenario and then report back to the larger group.

**Indicative time 10 minutes**

An ongoing health and safety issue involving a chemical substance introduced to the workplace six months ago has arisen again. What process should occur to resolve this issue?
Session 3 Topic 4

Assistance and support services available

Discuss and list who may be a useful source of information to you as a HSR back in the workplace.

Allow 5 minutes
Assistance and support services

When performing the HSR role, you may require assistance or more information. There are many sources of information and assistance out there which may be of use to you when performing your function.

Some of these as previously discussed include:

- Your PCBU and workplace

Remember that the PCBU has an obligation to provide certain information relating to health and safety to the HSR upon request (Section 70).

- Workers
- Regulator e.g. WorkCover NSW
- Safe Work Australia
- Unions
- Industry
- Manufacturers and suppliers.
Session 4

MONITORING PCBU’s MANAGEMENT OF WORK HEALTH AND SAFETY RISKS AND NOTIFIABLE INCIDENTS
Session 4

Monitoring PCBU’s management of work health and safety risks and notifiable incidents

Learning Aim

This topic will detail the requirements to enable the HSR to fulfil their role effectively by giving them knowledge on how to observe, analyse, monitor and inquire into the effectiveness of the mechanisms implemented by the primary PCBU to ensure their work health and safety issues have been appropriately addressed.

Learning Outcomes

After completing this, session participants should be able to:

1. Understand the duties and responsibilities of various PCBUs under the legislation to manage risks to the health and safety of workers and other persons at the workplace
2. Understand how HSRs can use their functions and powers to contribute to risk management activities in the workplace
3. Understand basic risk management concepts
4. Identify the PCBU’s obligations in relation to incident notification.

Assessment Method

Successful completion of face-to-face learning activities and activities as set out in this session.

Session Duration

The nominal duration of this session is 90 minutes.
## Session 4: Learning Outcomes and Expected Learner Application

<table>
<thead>
<tr>
<th>Learning outcome</th>
<th>Assessment criteria</th>
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<tr>
<td>After completing this session participants should be able to:</td>
<td>• Discuss what is meant by “risk management” using examples to explore measures in the hierarchy of control</td>
</tr>
<tr>
<td>1. Understand the duties and responsibilities of various PCBUs under the legislation to manage risks to the health and safety of workers and other persons at the workplace</td>
<td>• Identify key risk management terms and definitions</td>
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<tr>
<td>2. Understand how HSRs can use their functions and powers to contribute to risk management activities in the workplace</td>
<td>• Explain why and when risk control measures should be revised and reviewed and when the HSR can request that this be done</td>
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<tr>
<td>3. Understand basic risk management concepts</td>
<td>• Identify a range of hazards found within various workplaces and their impact on workers</td>
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<td>4. Identify the PCBU’s obligations in relation to incident notification</td>
<td>• Explain basic risk assessment procedure</td>
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<td>• Identify different methods a PCBU may use to identify WHS hazards and ways the HSR could contribute to that process</td>
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<td>• Understand the HSRs role in participating in workplace inspections</td>
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<td>• Explain the entitlements of a HSR to participate in the review of risk control measures</td>
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<td>• Identify in legislation or guidance material control measures for identified risks / hazards</td>
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<td>• Explain how HSRs can contribute to the selection of control measures</td>
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<td>• Identify the duties placed on PCBU’s in relation to notifiable incidents</td>
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<td></td>
<td>• Describe why a HSR should be advised by the PCBU of a notifiable incident that has occurred in the workplace</td>
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<td>• Identify tools and techniques that could be used in investigating incidents using learning activities</td>
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Session 4 Topic 1

Key requirements of managing risks to health and safety in the workplace and the duties of parties in managing risks

Managing risk is a critical process to ensure that every workplace is as safe as reasonably practicable.

Under the WHS Act

A person who holds a duty under the WHS law must ensure the health and safety of workers, so far as reasonably practicable. The management of risks to health and safety requires the person:

(a) to eliminate risks to health and safety, so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

The emphasis is on the elimination of risks to health and safety if it is reasonably practicable and to minimise risks to health and safety if it is not reasonably practicable to ensure the health and safety of workers. The WHS Regulation provides more details on managing the risks to health and safety (Part 3.1 Managing risks to health and safety).

Under the WHS Regulation, a duty holder with an obligation must identify hazards and manage risks to health and safety. If it is not reasonably practicable to eliminate the risk to health and safety then the ‘hierarchy of controls’ and, a combination of control measures should be applied. The duty holder needs to ensure that the control measures are maintained, reviewed and revised to maintain a work environment that is without risks to health and safety.

Managing risks – Communication and Consultation

PCBUs should consult with employees, and/or their HSRs when:

- identifying hazards;
- assessing the risks;
- determining and implementing control measures;
- developing policy and procedures;
- deciding on the training requirements; and
- supervising and monitoring the risk control measures.

While the risk management process may vary from organisation to organisation, the HSR’s role and functions to represent the workers in their work group and monitor the measures taken by the PCBU results in a work environment that does not pose risks to the workers’ health and safety remain the same.
The role of workplace inspections

Regular and special inspections should be included as part of the systems for managing risks within an organisation. They can form part of the overall risk management strategy because as previously identified, workplace inspections are one method of identifying hazards. They can also be a method for enhancing and building on the safety management plan of an organisation. HSRs are given the power in the WHS Act to conduct workplace inspections but must give reasonable notice to the PCBU before carrying one out.

The purpose of any type of inspection is to identify hazards in the workplace so they can be assessed and controlled as per the company Risk Management procedure. Regular inspections also allow the HSR access to other employees on a regular basis to monitor that the workers’ work and environment do not pose a risk to health and safety. The monitoring and review of health and safety will also show employees that the HSR is performing an important role within the Risk Management process and the organisation is committed to good health and safety management.

Health and Safety Duties of PCBUs

PCBUs have a ‘primary duty of care’ to ensure, as far as is reasonably practicable, the health and safety of:

- workers engaged directly or indirectly by the PCBU;
- workers whose work activities are influenced or directed by the PCBU; and
- other persons present where work activities are being conducted.

PCBUs involved in the management or control of workplaces – have a duty firstly to eliminate the risk; if it is not reasonably practicable, steps should be taken to minimise risks to health and safety (i.e. a primary duty of care) over the matters they control in relation to these workplaces, – including the means of entering and exiting the workplace and the management or control of fixtures, fittings or plant.

A PCBU has a duty under the WHS Regulation to manage risks to health and safety (e.g. manufacturer, person conducting a business or undertaking, supplier).

This includes complying with the management of risks to at least meet the standard outlined in the WHS Regulation such as:

- not exceeding an exposure standard (e.g. noise)
- implementing a specific control measure (e.g. fall protection)
- assessing a risk (e.g. risks associated with a confined space).
Where a hazard has been identified, the duty holder is to focus on the outcome of eliminating the risks posed by the hazard, and if this is not reasonably practicable, to minimise the risk as far as reasonably practicable. One way of minimising the risks to health and safety is to use a combination of the hierarchy of controls provided in the WHS Regulation and is shown as an example below.

In certain circumstances, the WHS Regulation imposes safety standards to manage the risk; for example, noise not being permitted to exceed the accepted exposure standards. A PCBU must meet the stated safety standards in the WHS legislation. It should be clarified that not meeting the specified safety standard does not mean a violation of the law. For example, a PCBU may provide a higher standard of safety by reducing the noise level by 10dB (A) below the 85dB (A) specified in the WHS Regulation.

In some chapters of the WHS Regulation, control measures are specified in a given order for implementation e.g. in regards to managing risk associated with falls.

In some areas where a risk assessment and management are specifically prescribed, the WHS Regulation may also stipulate the requirements for record keeping e.g. for confined spaces.

Source: Code of Practice: How to manage work health and safety risks.
Session 4 Topic 2

Monitoring and Review of Risk Control Measures

Where a duty holder has obligations under the WHS Regulation to manage health and safety risks, the duty holder is required to **review** and, as necessary, **revise** control measures when:

- a risk control measure fails to control the risk (e.g. as determined by monitoring or a notifiable incident occurs);
- a change in the workplace or work systems occurs that is likely to give rise to a new or different risk;
- consultation and monitoring indicate a review is required; or
- **a HSR requests a review** when:
  - any of the above occurs that affects/may affect a member of the HSR’s work group; and
  - the PCBU hasn’t adequately reviewed the measures in response to that circumstance.

The **HSR’s role in the managing risk to health and safety** may vary from organisation to organisation. However, it is important to understand that the HSR’s functions provided in s68 and s69 stays the same and will enable HSRs to monitor and review risk control measures, such as:

- Any process for risk assessment that is used (in many case no assessment will be required)
- Processes by which controls are determined
- Who is responsible for assessing and implementing controls.

One important source of health and safety information in the workplace comes from direct observation, what is actually going on. HSRs need their own source of information about what is happening in the workplace. As we have seen in previous sessions, the WHS Act gives HSRs powers to promote or ensure the health and safety of members of their work group.
ACTIVITY: Monitoring and Reviewing Risks to Health and Safety

Brainstorm the following.

Allow 20 minutes

From the information from the previous scenario discussions determine

- What controls are used for hazards

- How the controls are monitored; and

- When the HSR would request a review of controls.
Session 4 Topic 3

Outline of notifiable incidents under the WHS Act and reporting requirements, duties and role of PCBUs, the HSR and WHS entry permit holders

“Notifiable incident” (WHS Act s35)

In WHS Act as we have mentioned under new terminology, a notifiable incident means:
- the death of a person, or
- a serious injury or illness of a person, or
- a dangerous incident.

Serious injury or illness

Serious injury or illness of a person means an injury or illness requiring the person to have:

(a) immediate treatment as an in-patient in a hospital; or

(b) immediate treatment for:
   (i) the amputation of any part of his or her body; or
   (ii) a serious head injury; or
   (iii) a serious eye injury; or
   (iv) a serious burn; or
   (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
   (vi) a spinal injury; or
   (vii) the loss of a bodily function; or
   (viii) serious lacerations; or

(c) medical treatment within 48 hours of exposure to a substance, and any other injury or illness prescribed by the regulation but does not include an illness or injury of a prescribed kind.
**Dangerous incident**

A *dangerous incident* means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to:

(a) an uncontrolled escape, spillage or leakage of a substance; or

(b) an uncontrolled implosion, explosion or fire; or

(c) an uncontrolled escape of gas or steam; or

(d) an uncontrolled escape of a pressurised substance; or

(e) electric shock; or

(f) the fall or release from a height of any plant, substance or thing; or

(g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulation; or

(h) the collapse or partial collapse of a structure; or

(i) the collapse or failure of an excavation or of any shoring supporting an excavation; or

(j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or

(k) the interruption of the main system of ventilation in an underground excavation or tunnel; or

(l) any other event prescribed by the regulation, but does not include an incident of a prescribed kind.
Reporting requirements and duties of PCBUs

Duty to notify of notifiable incidents (WHS Act s38)

Notice of an incident must be given by the fastest possible means immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

The notice must be given by the fastest possible means:

- by telephone, or
- in writing.

If notice is given by telephone the regulator 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.

A person giving notice by telephone must:

- give the details of the incident requested by the regulator, and
- if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.

If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking:

- details of the information received, or
- an acknowledgement of receiving the notice.

A written notice must be in a form, or contain the details, approved by the regulator.

A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.

Maximum penalty:

(a) in the case of an individual—$5,000, or
(b) in the case of a body corporate—$25,000.

A person is required to give notice of an incident in accordance with Section 44(2) of the Workplace Injury Management and Workers Compensation Act 1998.

A person is not required to give notice of an incident that occurs at a mine to which the Work Health and Safety (Mines) Act 2013 applies or at a coal workplace.
**Duty to preserve incident sites (WHS Act s39)**

The person with management or control of a workplace at which a modifiable incident has occurred must ensure so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

A reference to a site includes any plant, substance, structure or thing associated with the modifiable incident.

This requirement does not prevent any action:

- to assist an injured person, or
- to remove a deceased person, or
- that is essential to make the site safe or to minimise the risk of a further modifiable incident, or
- that is associated with a police investigation, or
- for which an inspector or the regulator has given permission.

These requirements under the WHS Act do not apply to a mine to which the [Mine Health and Safety Act 2004](http://example.com) applies or to a coal workplace.

**Role of the HSR regarding notifiable incidents**

The HSR may inspect the workplace at any time (limited to matters relevant to their work group), without notice, *in the event of an incident*, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard *(WHS Act s68).*

The HSR, as described above, may also be involved in the incident investigation assisting members of the work group, accompanying an inspector and attending interviews.

The HSR through their activities can support the worker of the work group they represent, assist the PCBU by taking steps to inquire, investigate and monitor the measures taken enable the PCBU to ensure future occurrences are prevented so as to enable PCBU to fulfil the primary duty of ensuring the health and safety of workers.

In the event of a notifiable incident, when carrying out their functions, HSRs will also need to take into consideration that they are not exposed to health and safety risks.

The HSR can request the WHS entry permit holder to assist them in relation to notifiable incident involving workers of their work group that may be impacted by the event.
ACTIVITY: Role of the HSR

Why does a HSR need to know when there is a notifiable incident?

Brainstorm the following question. Responses can be recorded on flip chart paper

Allow 20 minutes

Why would a HSR need to be advised by the PCBU that a notifiable incident has occurred in the workplace, referring back to the HSR power to investigate workplaces after an incident and entitlement to accompany an inspector when they inspect the workplace.

What activities might the HSR be involved in?
Session 5

ISSUING PROVISIONAL IMPROVEMENT NOTICE (PINs) AND DIRECTING CESSATION OF UNSAFE WORK

Purpose, function and process of PINs and directions to cease unsafe work.
Session 5

Issuing a Provisional Improvement Notice (PIN) and directing the cessation of unsafe work

Learning Aim

This topic aims to provide an outline of how HSRs will be able to use their knowledge of the provisions in the legislation to inform their decision making when evaluating the risk (immediate or otherwise) to workers arising from a work health and safety issue.

Learning Outcomes

After completing this, session participants should be able to:

- Provide an overview of PINs
- Understand the features and contents of a PIN
- Identify the range of actions arising once a PIN is issued and identify who would take these actions
- Provide an overview of the right to cease, or direct the cessation of, unsafe work.

Assessment Method

Successful completion of face-to-face learning activities and activities as set out in this session.

Session Duration

The nominal duration of this session is 90 minutes.
## Session 5: Learning Outcomes and Expected Learner Application

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<thead>
<tr>
<th>Learning outcome</th>
<th>Expected Learner Application</th>
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<tr>
<td>After completing this session participants should be able to:</td>
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<tr>
<td>1. Provide an overview of PINs</td>
<td>• Explain the purpose and function of a PIN</td>
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<tr>
<td>2. Understand the features and contents of a PIN</td>
<td>• Identify the restrictions in the legislation that prevent a HSR from issuing a PIN</td>
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<tr>
<td>3. Identify the range of actions arising once a PIN is issued and identify who would take these actions</td>
<td>• Identify to whom a HSR can issue a PIN</td>
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<tr>
<td>4. Provide an overview of the right to cease, or direct the cessation of, unsafe work</td>
<td>• Describe the manner in which a person may be issued a PIN</td>
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<td>• Identify that a PIN must be in writing</td>
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<td>• Distinguish between what content must be included and what may be included in a PIN</td>
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<td>• Identify the extent of any changes a HSR can make to a PIN once it has been issued</td>
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<td>• Undertake an activity to complete a PIN</td>
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<td>• Identify the alternative courses of action that the person can take when issued with a PIN</td>
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<td>• Describe the role and powers of an Inspector when reviewing a disputed PIN</td>
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<td>• Explain the conditions or circumstances that would cause a worker/ workers to cease work or cause a HSR to direct the worker/ workers to cease work</td>
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<td>• Identify any legislative restrictions placed on HSRs that prevents a HSR from directing a worker to cease work</td>
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<td>• Outline the processes a HSR must follow after giving a direction to cease work to a worker / workers</td>
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<td>• Outline the employment conditions that apply to a worker / workers who have ceased work</td>
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<td>• Outline what the role and function of an Inspector would be following a request from either the PCBU or the worker to attend the workplace in these circumstances</td>
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Session 5 Topic 1

The purpose and functions of PINs and who a HSR can issue a PIN

A Provisional Improvement Notice (PIN) is a notice that a HSR can issue to a person, requiring them to address a safety or health concern in the workplace.

A PIN may be issued to any person who the HSR believes is contravening a provision of the WHS Act or regulation, for example, a PCBU. The PIN should be directed to the person who is best able to address the safety issue. HSR is not to issue a PIN unless the HSR has consulted with the person.

**A PIN must be in writing and state:**
- the HSR believes a person is in breach of the WHS Act, or is likely to continue or repeat the breach;
- what that provision is and how it is being breached; and
- a date as to when the breach is to be remedied.

**A PIN may also state:**
- directions on what is required to remedy or prevent the breach (this may include a reference to a Code of Practice);
- the cause or likely cause of the breach; and/or
- a choice of ways in which the breach could be remedied or prevent a likely contravention from occurring.

A health and safety representative cannot issue a provisional improvement notice unless the representative has:

(a) **completed initial training** prescribed by the regulations referred to in Section 72 (1) (b), or

(b) previously completed that training when acting as a health and safety representative for another work group, or

(c) completed training equivalent to that training under a corresponding WHS law.

A health and safety representative cannot issue a provisional improvement notice 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.
Review the information that MUST be included against the information that MAY be included in a PIN.

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<thead>
<tr>
<th>PIN information</th>
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<tbody>
<tr>
<td>1. A PIN <strong>must</strong> state that the HSR believes the person:</td>
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<tr>
<td>• is contravening a provision in the WHS Act, or</td>
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<tr>
<td>• has contravened a provision of the WHS Act and it is likely that the contravention will continue or be repeated.</td>
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<td>2. A PIN <strong>must</strong> state the provision the HSR believes is being, or has been, contravened</td>
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<td>3. A PIN <strong>must</strong> contain a brief outline how the provision is being, or has been contravened</td>
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<td>4. A PIN <strong>must</strong> state the date the contravention is required to remedy by. This date must be at least eight days after the contravention is issued.</td>
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<tr>
<td>5. A PIN <strong>may</strong> include directions about:</td>
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<tr>
<td>• how the contravention can be remedied</td>
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<td>• how to prevent a contravention</td>
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<td>• the matters or activities that are causing the contravention or likely contravention</td>
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<tr>
<td>6. A PIN <strong>may</strong> include directions that refer to a Code of Practice and offer a choice of ways the contravention can be remedied.</td>
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</table>
ACTIVITY: When might a provisional improvement notice be issued?

Discuss the following question. Responses can be recorded on flip chart paper

Allow 15 minutes

Discuss when it would and wouldn't be appropriate to issue a provisional improvement notice (PIN).

Provide a scenario where issuing of a PIN should be considered.
Possible reasons for issuing a PIN

- Serious activity or event is occurring or about to occur
- A contravention that continues or is being repeated e.g.
  - excessive noise levels in the workplace
  - an ongoing requirement to manually lift heavy objects
  - regular exposure to hazardous chemicals that are used in the workplace
  - unguarded machines or
  - lack of consultation on work health and safety matters.

Role and requirements for HSRs in issuing PINs, including alternatives to issuing of PINs

As mentioned earlier, the HSR must consult with the person who the HSR believes is contravening the provision in the WHS Act or regulation. The HSR should provide the person with an opportunity to express their views, with reasonable time to remedy the action and take into account their views before issuing the PIN.

If after consultation no resolution can be reached and the HSR still believes that the person is contravening or has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated, they may issue a PIN.

Remember: A PIN cannot be issued for a matter that an inspector has already addressed.

Issuing a PIN requires a HSR to take into consideration a number of things that must be done, and technical errors are common. It is important that a PIN is not automatically invalid because of a formal defect or irregularity in the notice (unless the error is likely to cause substantial injustice).

Examples of when an error may violate a sense of fairness include:
- where the PIN states the wrong provision has been contravened
- where the information in the PIN is very unclear, or
- where there is confusion surrounding the date by which the contravention must be remedied.
A HSR can make minor changes to a PIN after issuing it to a person for any of the following reasons:

- for clarification such as simplifying language or removing jargon
- to correct errors or references, or
- to reflect changes of address or other circumstances.

A HSR may also cancel a PIN at any time by providing a written notice to the person the PIN was issued to. A HSR may wish to cancel a PIN after receiving further information or advice relating to the legislative requirements surrounding the WHS issue, or more information about the issue becomes available.

**ACTIVITY: Issuing of Provisional Improvement Notices (PINs)**

In groups and complete a copy of a PIN

Indicative time 30 minutes

Use the Model template for provisional improvement notices (handout) to complete the PIN for one of the scenarios detailed on the following pages.
Scenario 1

A new metal press has been installed in a workplace where many of the workers have limited English skills and literacy levels in general are low. Training was provided in the form of a toolbox talk and workers provided with a Safe Work Method Statement (SWMS) written in English only.

Details required for PIN

The person responsible within the meaning of WHS Act Part 2 - Martha Smith.

HSR - Jack Langley elected as the Health and Safety Representative under s60-67 of the WHS Act for the night shift crew.

The breach is: The PCBU has failed to provide for the health and safety of workers by not providing training and instruction that is appropriate to their level of literacy in a format they can understand and use.

The breach is occurring at: 540 Ferntree Gully Road, Parramatta, NSW.

The reasons for the opinion are as follows: Instruction and training for testing of the new metal press were presented verbally at a toolbox meeting where not all workers were present at the time. The SWMS were printed in English using a new format and provided to workers at the meeting. No additional supervision was provided for the testing.

In accordance with s93 of the Act it is recommended that the following action should be taken: The testing of the metal press should be stopped until all workers in the area and required to use the equipment have had the appropriate training. All instructions, SWMS and associated materials should be provided in the appropriate languages using photos where applicable to assist understanding for workers on or near the machine. Training must be held so that all workers from all shifts can attend. Adequate supervision should be provided for the testing.

In accordance with Section 92 (d) Martha Smith is required to rectify the contravention or likely contravention by 11.4.13.
Scenario 2:

The machinery in the lab is aging and the noise being generated has increased significantly over the last couple of years. Workers now have to leave the area to have a conversation.

Details required for PIN

The person responsible within the meaning of WHS Act Part 2 - Matt Blanch.

HSR - Stephen House elected as the Health and Safety Representative under s60-67 of the WHS Act for Laboratory staff.

The breach is: Management has failed to take action regarding the noise emitted from the equipment used within the laboratory.

The breach is occurring at: 256 Young Street, Mayfield, NSW.

The reasons for the opinion are as follows: Attempted consultation with management regarding monitoring the noise level, providing audiometric testing for workers and the investigation of permanent measures including the replacement of equipment over time but to date no action has been taken. Further attempts at consultation have been rejected by management who clearly state that there is no provision in this year’s budget.

In accordance with Section 93 of the Act it is recommended that the following action should be taken: The noise level within the Lab should be tested and if found to exceed the recognised levels all efforts should be made to either eliminate or minimise the noise to acceptable levels. Audiometric testing of affected workers should also occur. Consultation with other relevant workers e.g. maintenance workers and contractors on other forms of minimisation could be initiated.

In accordance with Section 92 (d) Matt Blanch is required to rectify the contravention or likely contravention by 31.5.13.
Scenario 3:

A contract care-worker has been on overnight stays at an accommodation facility. There has been several incidents involving client violence and workers have asked for additional training in skills to deal with these types of situations. To date there has been no response from management and workers are becoming increasingly on edge.

Details required for PIN

The person responsible within the meaning of WHS Act Part 2 - Sue Fernley.

HSR - Bruce Goodman elected as the Health and Safety Representative under s60-67 of the WHS Act for the Contract care workers.

The breach is: Workers are being exposed to potentially violent situations without having received adequate training to respond. Other security measures have also not been put in place e.g. communication procedures. Workers also have limited understanding of assistance that is available to them after an incident has occurred (e.g. access to counseling).

The breach is occurring at: 57 Russell Street, Kiama NSW.

The reasons for the opinion are as follows: Workers have raised concerns for their safety and appear apprehensive in discussions. A number of small incidents have occurred involving different clients over a period of time. No training in response to potentially violent incidents has been provided to date and the training schedule for this year does not include any such training. Workers when asked had little knowledge that they were entitled to access counseling if they were having trouble coping or after an incident.

In accordance with s93 of the Act it is recommended that the following action should be taken: Appropriate training should be provided as soon as possible. A new risk assessment should be completed to determine if other measure can be taken to help minimise potential incidents occurring e.g. review of staffing levels, client behaviour management plans, communication and response procedures. Information on worker support should be included in induction to all workers and information be made readily accessible to existing workers (perhaps include an update in team meetings).

In accordance with Section 92 (d) Sue Fernley is required to rectify the contravention or likely contravention by 30.4.13.
Process for issuing of PINS, role of WorkCover NSW Inspectors, disputes and resolution

A PIN can be issued or given to a person:

- by delivering it personally to the recipient or sending it by post, facsimile or electronic transmission to the person’s usual or last known home or business
- by leaving it for the person at the person’s usual or last known home or business with a person who appears over 16 years old and who appears to work or reside there
- by 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 management or control of the workplace.

PINs are often issued by giving it to the management representative that the HSR has consulted with at the workplace on the WHS issue which has given rise to the PIN.

As soon as it is practicable, the person issued with a PIN must display a copy of the PIN in a prominent place at the workplace:

- A place that is prominent is easily accessible, noticeable and where workers or other persons affected by the PIN will come across it in the normal course of events and be able to examine it. An example may be the lunchroom, front door or other prominent place.

  Maximum penalty:
  (a) in the case of an individual—$5,000, or
  (b) in the case of a body corporate—$25,000.

The person who has been issued with a PIN must not intentionally remove, destroy, damage or deface a notice that is being displayed during the period that the notice is in force.

  Maximum penalty:
  (a) in the case of an individual—$5,000, or
  (b) in the case of a body corporate—$25,000.

NB: If an inspector has not been required to attend, the person must comply with the provisional improvement notice within the time specified in the notice.

  Maximum penalty:
  (a) in the case of an individual—$50,000, or
  (b) in the case of a body corporate—$250,000
Disputes and resolution

The person, who receives the PIN, must either comply with it or advise the regulator that the PIN is disputed within seven days of it being issued.

If within seven days of being issued with a PIN the person issued with the PIN asks the regulator to review the notice, an inspector will attend the workplace to review the PIN and inquire into the WHS matters which are the subject of PIN. The PIN is temporarily suspended until the inspector determines the matter.

Role of WorkCover NSW Inspectors

The regulator must ensure an inspector comes to the workplace as soon as practical after a request is made.

The inspector must review the PIN and inquire into the circumstances surrounding the PIN. This could involve finding out why a PIN was issued, the nature of the consultation that took place, whether the PIN was correctly issued and why it is being disputed.

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

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

If the PIN is confirmed or varied, it is taken to be an improvement notice that has been issued by the inspector under the WHS Act. An improvement notice still requires a person to remedy a contravention, but it is issued directly from the inspector. The inspector will give a copy of their decision to the person who applied for the review and the HSR who issued the notice. An inspector can review a PIN even if the compliance period has expired.

If the HSR who issued the PIN, the person issued with the PIN, an affected worker, another affected HSR or a PCBU does not agree with the inspector’s decision, they can request the regulator to review the inspector’s decision.
ACTIVITY: Disputes regarding Provisional Improvement Notices (PINs)

In groups complete a copy of a PIN

Indicative time – 20 minutes

Use the sample PIN for one of the scenarios from the previous activity, draw a flow chart or write the steps in a procedure that would be followed under the WHS legislation if the person issued with the PIN disputed it and describe how a resolution may occur.
Provisional Improvement Notice process summary

Issuing of PINs

<table>
<thead>
<tr>
<th>Additional information</th>
<th>Process to Follow</th>
<th>Additional information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Breach of a provision of the WHS Act</strong>&lt;br&gt;A HSR is to consult with the person in breach.</td>
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<tr>
<td><strong>Immediate Risk</strong>&lt;br&gt;Where an immediate risk exists, a worker is to cease unsafe work, or directed to cease unsafe work, by HSR.</td>
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<tr>
<td><strong>Provisional Improvement Notice (PIN) issued</strong>&lt;br&gt;in a written format with the required content.</td>
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<tr>
<td><strong>After the PIN is issued:</strong>&lt;br&gt;A WorkCover NSW inspector may review the matter and determine an inspector is not required to the workplace. The person must then comply with the PIN within the time specified on the PIN.</td>
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<tr>
<td>A request can be made by the person issued the PIN for a WorkCover NSW inspector to review the notice (within 7 days of issue of the PIN).</td>
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<tr>
<td>The WorkCover NSW inspector is required to review the PIN and must either:&lt;br&gt;• Confirm the PIN or&lt;br&gt;• Confirm the PIN with changes or&lt;br&gt;• Cancel the PIN.</td>
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<tr>
<td>A PIN that is confirmed (with or without changes) by an inspector is taken to be an IMPROVEMENT NOTICE issued by an inspector under the WHS Act and must be complied with.</td>
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</tbody>
</table>

- The PIN must be displayed in a prominent place at or near the workplace.
- A HSR may, at any time, cancel a PIN by issuing a written notice to the person.
- To issue a PIN:<br>• HSR to be trained<br>• Inspector must not have already reviewed and acted
- Minor changes of PINs are permitted for clarification, correctness or changed circumstances.
- Issue resolution procedures are to be followed
Session 5 Topic 2

Process and requirements for cessation of unsafe work including responsibilities of PCBU's, workers, HSRs and WorkCover Inspectors

Workers right to cease work

Right to cease work (WHS Act s83-89)

The WHS Act provides for workers to cease what they believe to be unsafe work under certain conditions and when doing so, are afforded the protection of the law.

If a worker has a reasonable concern about a serious and immediate risk to their health or safety related to their work, they may cease or refuse to carry out that work.

So long as a worker agrees to carry out suitable alternative work if directed to do so by an employer, the worker who exercised the right to cease unsafe work is still entitled to any benefits under their employment agreement such as:

- remuneration and promotion, as affected by seniority
- superannuation benefits
- authorised leave entitlements, and
- any entitlement to notice of termination of the engagement.

A HSR, PCBU, or effected worker can request an inspector to attend the workplace and assist in resolving an issue with the cessation of work.
Health and safety representative may direct that unsafe work cease

If a HSR has a reasonable concern that in carrying out work, workers in their work group would be exposed to a serious health and safety risk, the HSR can either:

- consult with the PCBU and then direct workers to cease the hazardous work, or
- if the risk is so serious and immediate that it is not reasonable to consult the PCBU first, the HSR can direct workers to cease work without consulting with the employer.

A HSR can only direct that work cease if the HSR has completed initial HSR training. If the HSR directs workers to cease work without consulting the HSR, they must advise the PCBU as soon as possible after giving the cease unsafe work direction.

If a worker disagrees with the direction to cease work, either party may contact Workplace Health and Safety NSW and request that an Inspector assist in resolving the matter.

Direction to cease work (WHS Act s85)

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

- consulting about the matter with the PCBU for whom the workers are carrying out work, and
- attempting to resolve the matter as an issue.

The HSR may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.

In this situation the HSR must carry out the consultation as soon as practicable after giving a direction under subsection.

A HSR cannot give a direction under this section unless the representative has:

- completed initial training prescribed by the regulation referred to in Section 72 (b), or
- previously completed that training when acting as a health and safety representative for another work group, or
- completed training equivalent to that training under a corresponding WHS law.

The HSR must inform the PCBU of any direction given by the HSR to workers to cease unsafe work.
Alternative work (WHS Act s87)

If a worker ceases unsafe work under the WHS Act, the PCBU may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.

Continuity of engagement of worker (WHS Act s88)

If a worker ceases work under the WHS Act, that action does not affect the continuity of engagement of the worker under the law, if the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work:

- at the same or another workplace, and
- that was safe and appropriate for the worker to carry out.
**ACTIVITY: Directing unsafe work to cease**

Review the following scenarios and discuss what would be the most appropriate actions to undertake in the circumstances.

Indicative time – 20 minutes

1. A contract worker enters a workplace to undertake work on behalf of their PCBU to find that the equipment that they have been given to work with is unsafe, with obvious damage, and could possibly cause an electric shock. What can you do as the HSR for this worker who is a member of your work group?

2. A worker in a factory finds guarding is continually being removed from some equipment that they regularly work with and is not being replaced. That matter has been reported to the supervisor but no actions appear to have been taken and it continues to happen.

3. A worker for a transporting company arrives at a distribution centre to find mobile equipment is being used in the loading area making it unsafe to unload. As the worker’s HSR you are called to the area. What actions can be taken?
Request to regulator to appoint an inspector to assist (WHS Act s89)

The HSR or the PCBU or the worker may ask the WorkCover NSW to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work.

Enforcement Measures

A system of escalating enforcement measures is available under the WHS Act to achieve the best outcome for work health and safety at the earliest opportunity.

Where early intervention measures either fail or are not appropriate (e.g. Category 1 offences), prosecutions may result in various types of orders being imposed and/or fines and/or imprisonment.

Inspectors are protected by the law in performing their functions.

A person must not:

- Intentionally hinder or obstruct (or encourage anyone else to do so) an inspector in exercising their powers.
  (Fines of up to $10,000 for an individual and $50,000 for a body corporate may apply)

- Directly/indirectly assault, threaten or intimidate or attempt to do so to an inspector or any person assisting an inspector.
  (Fines of up to $50,000; 2 years imprisonment or both may apply to an individual and fines of up to $250,000 may apply to a body corporate)

  Fines of up to $10,000 apply to any person falsely claiming to be an inspector
Course Review and Evaluation
## Course Review

### How do you feel about the following statements?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Work Health and Safety (WHS) laws</strong></td>
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<tr>
<td>1. I know what the new work health and safety law is and where to find information on them.</td>
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<tr>
<td>2. I understand my employers’ responsibilities under WHS laws.</td>
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<td>3. I understand my responsibilities as a worker under WHS laws.</td>
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<td><strong>Current involvement in safety in the workplace</strong></td>
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<tr>
<td>1. I know what the arrangements for consultation are in my workplace.</td>
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<td>2. I know how hazards and incidents are identified and reported in my workplace.</td>
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<tr>
<td>3. I understand how hazards are to be managed in my workplace.</td>
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<td><strong>Duties in the workplace under Model WHS legislation</strong></td>
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<tr>
<td>1. I understand what a duty holder in the workplace is and who they are.</td>
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<tr>
<td>2. I understand the new definition for workers.</td>
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<tr>
<td>3. I understand the responsibilities of workers and others.</td>
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<td>4. I understand the responsibilities of persons conducting a business or undertaking (PCBU).</td>
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<td>5. I understand who officers are and their responsibilities.</td>
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<td><strong>Representation and participation under model WHS laws.</strong></td>
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<tr>
<td>1. I understand the difference between the role of a HSR and a HSC.</td>
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<td>2. I understand who can issue a provisional improvement notice (PIN) and a direction to cease unsafe work.</td>
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<tr>
<td>3. I understand the process for issuing of a PIN</td>
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<td>4. I understand the issue resolution process.</td>
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SECTION 2

ADDITIONAL BACKGROUND INFORMATION
Harmonisation process

In July 2008, the Council of Australia Governments formally committed to the harmonisation of work health and safety laws by signing an Intergovernmental Agreement for Regulatory and Operational Reform in OHS (IGA). The IGA outlines the commitment of all states and territories and the Commonwealth to work together to develop and implement model work health and safety laws as the most effective way to achieve harmonisation in Australia.

The IGA also provided for the establishment of an independent body (Safe Work Australia) to drive the development and implementation of the model work health and safety laws.

An independent panel has reviewed work health and safety laws in each state, territory and the Commonwealth and advised the Workplace Relations Ministerial Council (WRMC) on the optimal structure and content of a Model Work Health and Safety Act that could be adopted in all jurisdictions.

The Model Work Health and Safety Regulatory Framework


WRMC made decisions in relation to the National Occupational Health and Safety Review recommendations and provided Safe Work Australia with directions on the scope and content of the
Model Work Health and Safety Act. These reports are available on the website of Safe Work Australia.

WRMC endorsed the model WHS Act, regulation, codes of practice and national compliance and enforcement policy.

Each jurisdiction was expected to enact the laws by the end of 2011 to commence on 1 January 2012.

The model WHS Act provides the example to be adopted as the common work health and safety legislation for harmonisation of work health and safety law in Australia. Like its predecessor, the Workplace Health and Safety Act 1995, the WHS Act takes a positive approach to resolving work health and safety related issues through a spirit of consultation and co-operation, but making more explicit the issue resolution processes.

The objectives of the model WHS Act in relation to consultation are to be achieved by:

- providing for fair and effective workplace representation (e.g. HSRs), consultation, co-operation and issue resolution on work health and safety;
- encouraging unions and employer organisations to take a constructive role to assist and promote improvements to achieve a healthier and safer work environment;
- promoting the provision of work health and safety advice, information, education and training; and securing compliance through effective and appropriate use of compliance and enforcement measures.

The WHS Regulation provides details on compliance standards to achieve the object of the WHS Act and contains information on the following:

- Definitions, administrative matters and general matters
- Representation and Participation
- General risk and workplace management
- Hazardous work
- Plant and Structures
- Construction
- Hazardous Chemicals
- Asbestos
- Major Hazards Facilities
- Specific requirements and Jurisdictional notes.
The WHS Regulation also imposes mandatory requirements for duty holders to comply with in managing work health and safety.

Some of the key features in the WHS Regulation compared to the previous NSW OHS Regulation 2001 include:

- Risk management being referenced both within a separate section and within chapters, with the focus on the outcome more than the process, so that a written risk assessment may not be required in all situations.
- Licensing of asbestos assessors
- Definitions and terminology e.g. confined spaces, falls, major incident at major hazards facility, safety data sheets
- Removal of licensing for some classes of equipment
- A new class of licence for reach stackers
- Changes in requirements for demolition work
- Expanded provisions for remote and isolated workers
- Changes in record keeping requirements
- Significant role of Codes of Practice in providing information to help determine what would be considered ‘reasonably practicable’ in eliminating or controlling hazards.

**Key terminology:**

*Work Health and Safety* - covers the concept of the health, safety and welfare of all persons who may be impacted by work activities.

*Workplace* - 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. A place includes a vehicle, vessel, aircraft or other mobile structure and any waters and installation on land, on the bed of any waters or floating on any waters. (s8 WHS Act).

*Person Conducting a Business or Undertaking (PCBU)* – the meaning of PCBU is given in s5 of WHS Act. PCBU includes corporations, partnerships, labour hire businesses, associations, and franchises. A PCBU does not need to employ workers.

*Worker* in (s7 of WHS Act) includes employees, contractors, volunteers, apprentices, outworkers, trainees and work experience persons.
“Officer” (s4 of WHS Act) of a corporation under the WHS Act (based on the definition in the Corporations Act (Cth) 2001 s9) means:

(a) a director or secretary of the corporation; or

(b) a person:

   (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

   (ii) who has the capacity to affect significantly the corporation’s financial standing; or

   (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the corporation); or

(c) a receiver, or receiver and manager, of the property of the corporation; or

(d) an administrator of the corporation; or

(e) an administrator of a deed of company arrangement executed by the corporation; or

(f) a liquidator of the corporation; or

(g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

This includes officers of the Crown and officers of public authorities. Examples include directors and senior managers of a company or organisation.

“Officer” of an entity that is neither an individual nor a corporation means:

(a) a partner in the partnership if the entity is a partnership; or

(b) an office holder of the unincorporated association if the entity is an unincorporated association; or

(c) a person:

   (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or

   (ii) who has the capacity to affect significantly the entity's financial standing.

A Notifiable Incident (WHS Act s35 ) means:

- the death of a person; or
- a serious injury or illness of a person; or
- a dangerous incident
A PCBU is required to notify WorkCover immediately after becoming aware that a notifiable incident arising from the business or undertaking has occurred by the fastest means possible. Records must be kept of each incident report for at least 5 years from the day the notice is given.

**Serious injury/illness** (WHS Act s36) is defined as:

- Immediate in-patient treatment
- Immediate treatment for:
  - Amputation
  - Serious head injury
  - Serious eye injury
  - Serious burn
  - Separation of skin from tissue
  - Spinal injury
  - Loss of bodily function
  - Serious lacerations
- Medical treatment within 48hrs of exposure to a substance
- Work infections where work is a significant contributing factor such as Occupational zoonoses – including Qfever, anthrax, leptospirosis, brucellosis, hendra virus, avian influenza, psittacosis.

**A Dangerous Incident** (s37) is an incident at a workplace that exposes a worker or any other person to a serious risk to a person's health and safety emanating from an immediate or imminent exposure to:

- uncontrolled spillage, leak, escape of a substance
- uncontrolled implosion, explosion or fire
- uncontrolled escape of gas/steam
- uncontrolled escape of pressurised substance
- electric shock
- fall from height of any plant, substance or thing
- collapse/overturning/partial collapse/failure/ damage to plant that is required to be authorised
- Collapse or partial collapses of structure
- Collapse or failure of an excavation or shoring supporting an excavation
- Inrush of water, mud, gas in an underground or tunnel or
- Other events prescribed under the WHS Regulation.

With the new powers and duties of HSRs under the WHS Act, provisions have been made to protect anyone acting in good faith for the purpose of ensuring health and safety in the workplace:

- WHS Act s104-115 As discussed previously, all persons having duties under the WHS Act, require the protection of the law to enable an open safety culture where people are not afraid to report or raise concerns with respect to health and safety in the workplace.

- The provisions of the WHS Act prohibit any conduct which will deter people from active involvement in various activities associated with the management of health and safety e.g. risk management, consultation, issue resolution, investigations, issuing of PINs.

- The WHS Act provides that a person who engages in unlawful discrimination towards another person for the prohibited reasons (i.e. for the purposes of ensuring health and safety in the workplace) can face significant penalties e.g. an individual $100,000 and a body corporate $500,000.

Again the broadening of duties to include all workers and PCBUs ensures that persons such as contractors are not penalised where they have taken actions to ensure work health and safety e.g. cease unsafe work, issuing of a PIN.

**Persons that are protected under the WHS Act include persons who are, have or will:**

- Act, perform/or not perform their functions or exercise their powers (where applicable) as HSRs, deputy HSR, HSC members, WHS entry permit holders or any other role in accordance with the WHS Act.

- Assist or give information to persons using a power or performing a function under the WHS Act.

- Raise an issue or concern about work health and safety with PCBU/s, other workers, persons with roles and function or an inspector.

- Be involved in resolving a work health and safety issue and take action to seek compliance with WHS duties and obligation.