

BULLETIN

Information for Health and Safety Representatives

Overview of your rights, functions and powers in relation to work health and safety.

The Work Health and Safety Laws aims to provide all workers with a healthy and safe workplace. It also recognises the important role you, as a health and safety representative (HSR), play in representing the health and safety interests of workers.

This information bulletin is for HSRs and deputy HSRs.

Establishing work groups

Representation arrangements are initiated by workers. Any worker who carries out work for a business or undertaking may ask for an election of one or more HSRs. Work groups must first be formed to enable workers to elect a HSR to represent them on health and safety matters.

A person conducting a business or undertaking (PCBU) must start negotiations with workers, or their representatives, within 14 days of a request to determine the:

- number and composition of work groups to be represented by HSRs
- number of HSRs and deputy HSRs (if any) to be elected
- workplace(s) covered by the work groups
- businesses or undertakings covered by the work groups.

The following factors must be taken into account during negotiations:

- number of workers
- views of workers in relation to the determination of the work group
- nature and type of work carried out
- number and groupings of workers doing similar work

- area or place where each type of work is carried out
- whether workers move from place-to-place while at work
- diversity of workers and their work
- nature of hazards and risks to health and safety at the workplace
- nature of engagement of each worker (e.g. contractor)
- pattern of work carried out by workers (e.g. full time, part time, casual)
- times work is carried out
- any arrangements at the workplace(s) relating to overtime or shift work.

Workers must be informed of the outcome of negotiations and the work groups agreed.

These same processes apply to changes to work groups, which can be negotiated at any time.

If the work groups are not agreed (or varied) within a reasonable time, or if negotiations do not start within 14 days, any of the parties to the negotiation may ask [the regulator] to appoint an inspector to decide the work groups.

What is a 'PCBU' and who is a 'worker'?

'PCBU' is a new term in the WHS law that replaces 'employer' in the Northern Territory old health and safety legislation. If you previously had duties as an employer, you are now a PCBU under the WHS laws.

In many cases PCBU still refers to an employer but it's also used to describe others such as contractors, designers, manufacturers, suppliers, importer, persons who install, construct or commission plant or structures, franchisees and self-employed people. It's a broad concept that aims to capture all types of working arrangements.

A PCBU may be an individual person or legal entity, working for profit or not-for-profit.

The term 'employee' has also been broadened to 'worker'. This means all who work for a PCBU have rights and responsibilities under the WHS Act, including workers, contractors or subcontractors, workers of a contractor or subcontractor, labour hire workers, outworkers, apprentices or trainees, work experience students and volunteers.

Workplaces with multiple PCBUs

Work groups can also be established to support representation of workers in workplaces where there is more than one PCBU (e.g. a construction site, shopping centre or manufacturing firm with workers, contractors and labour hire workers).

There are some differences in the process for determining work groups if there are two or more PCBUs. Importantly, work groups are voluntary and built on the commitment of the various PCBUs to collaborate in addressing health and safety matters.

A party involved in negotiating multiple-PCBU work groups may withdraw from negotiations or an agreement at any time. If this happens and two or more PCBUs remain, the agreement can be varied to accommodate fewer parties. If an inspector is requested, they will assist the parties to reach an agreement rather than make a decision on the work groups.

Election of HSRs

The members of a work group elect the HSR for their group. To be eligible for election you must be a member of the group and not be disqualified from acting as an HSR.

If there are an equal number of vacancies for HSRs as there are candidates, an election is not needed.

Members of the work group decide how to conduct the election, but must follow any procedures set out in the Work Health and Safety Regulations 2012 (WHS Regulations). The work group may call in a union or another individual or organisation (e.g. the Australian Electoral Commission) to conduct the election if a majority of the work group members agree. All members of the work group are entitled to vote.

The PCBU must provide any resources, facilities and assistance (e.g. ballot box, voting area, releasing work group members to vote) reasonably necessary to enable the election to be conducted.

Your term of office cannot exceed three years, although you can stand for re-election.

Your term will cease if you resign from the position in writing, are no longer a worker, are disqualified from being an HSR, or are removed from office by a majority of the work group members in accordance with the WHS Regulations.

Deputy HSRs

Deputy HSRs, are elected the same way as HSRs. They can take on HSR powers and functions if an HSR ceases to hold office or are unable to exercise their powers and functions (e.g. because of absence from work). Deputy HSRs have the same terms of office and training entitlements as HSRs.

Health and safety committees

A health and safety committee (HSC) facilitates the development and implementation of measures to ensure health and safety at work, including standards, rules and procedures for the workplace. It also provides a forum for consultation and cooperation in planning and carrying out activities to improve work health and safety.

A PCBU must set up an HSC within two months of being requested to do so by you, or five or more workers in a workplace, or when required by the WHS Regulations. At least half of the members of an HSC must be workers that have not been nominated by the PCBU. You can also be a member of an HSC.

Your powers, functions and entitlements

Your role is to represent your work group members on health and safety matters. As an HSR, you can monitor the work health and safety actions of the PCBU, investigate complaints from work group members and inquire into anything that may pose a risk to workers' health and safety.

You have a range of powers to enable you to effectively represent work group members' interests. These powers and functions generally relate to your own work group, although you may act for another work group if that group's HSR or deputy HSR is not available.

Your powers and functions	Your rights
Inspect the workplace at any time after giving reasonable notice to the PCBU	<p>You can carry out inspections following a complaint or issue raised by a work group member. This may also include inspections that can be planned in advance with your PCBU, such as:</p> <ul style="list-style-type: none"> • regular general inspections • regular inspections of particular processes • inspections of activities or areas • inspections following workplace change (e.g. to plant or work processes). <p>Health and safety issues identified should be discussed with work group members and reported to your PCBU for action.</p>
Inspect the workplace immediately if there is an incident or serious risk	<p>You can inspect the workplace as soon as you hear about a serious incident or risk to someone's health and safety. The purpose of the inspection should be to investigate the incident and ensure appropriate remedial action is taken. The PCBU is responsible for taking action and must do so in consultation with you.</p> <p>You can also report any 'near misses' to your PCBU so action can be taken to control the risk.</p>
Accompany an inspector during an inspection	<p>You can go with an inspector who is looking into an area or an issue related to where you or a member of your work group works.</p> <p>The inspector will try to notify you as soon as they arrive. If the inspector cannot make contact with you they will let you know the outcome of the inspection by providing you with a copy of their report.</p>
Accompany or represent a work group member	<p>You can, when requested, accompany a member of your work group to an interview or represent the work group member in a meeting with your PCBU or inspector.</p>
Attend a health and safety interview	<p>You can attend an interview about health and safety between your PCBU and groups of workers, provided one or more work group members requests your involvement and the person making the request attends.</p>
Request an HSC be set up	<p>You can ask for a health and safety committee (HSC) to be established and your PCBU must do so within two months of your request.</p> <p>If there is more than one HSR, the HSRs may agree among themselves who will sit on the committee. To allow members to make an effective contribution, committee members must be given all relevant information and (paid) time to attend meetings and do their committee work.</p>
Receive information on health and safety of workers in the work group	<p>You can access information on the health and safety of work group members (eg records of injuries and workplace monitoring). However, the workers concerned must agree to the release of any personal or medical information, or the information must be in a form that does not identify the worker.</p>
Request the assistance of any person	<p>You have the ability to request the assistance of any person (e.g. union official). Your PCBU must allow this person access to the workplace or have reasonable</p>

	<p>grounds for refusal. If access is refused, you may request an inspector to attend to help resolve the matter.</p>
<p>Issue a provisional improvement notice (PIN)</p>	<p>You can issue a PIN to a person you reasonably believe has breached, or is breaching, the WHS Act or Regulations. The PIN must allow at least eight days for the breach to be remedied. The person to whom the notice is issued must display it prominently in the workplace. Within seven days, the PIN must be complied with or appealed.</p> <p>You must have completed approved HSR training in order to issue a PIN. Also before issuing a PIN you must try and remedy the health and safety breach through consultation with your PCBU.</p> <p>A review by an inspector may result in the notice being confirmed, confirmed with modifications, or cancelled. A confirmed PIN is the equivalent of an inspector's improvement notice. You can't issue a PIN if an inspector's notice has already been issued on the same matter.</p>
<p>Direct work to stop</p>	<p>If you have a reasonable concern that carrying out work will expose a work group member to a serious risk, and the serious risk comes from an immediate or imminent exposure to a hazard, you may direct that worker to cease work.</p> <p>You must have completed approved HSR training in order to give a direction to stop work.</p> <p>Before giving such a direction, you must consult and attempt to resolve the issue with your PCBU. However, if the issue is regarded as so serious and immediate or imminent that urgent action is required, your PCBU may be consulted after a cease work direction. During a cease work, workers may be allocated suitable alternative work at the same or another workplace and will be paid as if at work. An inspector may be called in to assist the parties resolve issues relating to the cease work.</p>

Note that the WHS law does not impose duties on you as an HSR. You are not obliged to exercise the functions and powers outlined. Legally, you are in the same position as any other worker. You have no additional legal obligations and are not personally liable for anything done or not done in good faith. The duties of PCBUs can not be passed on to you.

Consultation

PCBUs must consult with you and workers, so far as is reasonably practicable, on health and safety matters. This includes identifying hazards and assessing risks arising from work, and proposing changes that may affect the health and safety of workers.

<p>PCBUs must also consult with you and workers and take their views into account when making decisions about:</p>	<ul style="list-style-type: none"> • ways to eliminate or minimise risks • the adequacy of facilities for workers' welfare • procedures for consulting workers • resolving health and safety issues • monitoring the health and safety of workers or workplace conditions • how to provide health and safety information and training to workers.
<p>Consultation must involve:</p>	<ul style="list-style-type: none"> • sharing relevant health and safety information with you and workers • giving you and workers a reasonable opportunity to express their views, raise health and safety issues and contribute to the decision making process • taking your views taken into account • providing information on the results of the consultation.
<p>Some things that should be considered are:</p>	<ul style="list-style-type: none"> • size and structure of the business • type of work • type and urgency of the health and safety matter • work arrangements (e.g. shift work) • access to workers other than direct workers (e.g. contractors and labour hire workers) • worker needs (e.g. relating to disability and ethnic or language background).
<p>To support effective consultation, the PCBU must:</p>	<ul style="list-style-type: none"> • share relevant information with you and workers on the health and safety matter • give you and workers a reasonable opportunity to express views, have their views taken into account and contribute to decision-making • provide information on the results of the consultation • ensure these points are reflected in any agreed procedure on consultation.

PCBU obligations and your entitlements

PCBUs have a range of obligations to support you. They must:

- consult with you on work health and safety, so far as is reasonably practicable
- respond to your reasonable requests to discuss health and safety matters
- provide access to information on the hazards and risks affecting the work group and the health and safety of members of the work group
- provide resources, facilities and assistance to you (e.g. access to an office, phone, computer, copier, printer, meeting rooms, notice boards)
- allow you (and the deputy HSR) to spend the time necessary, in paid time, to exercise powers and perform functions
- allow a person assisting you to have access to the workplace
- allow you to perform your functions (e.g. accompanying an inspector and attending interviews with work group members)
- prepare, maintain and display a current list of HSRs and deputy HSRs for each work group, to ensure it is readily accessible to all workers, and provide a copy to NT WorkSafe.

Approved HSR training

You (and deputy HSRs) are entitled to attend an approved training course, which can be of your choice in consultation with your PCBU.

Your PCBU must give you time off work to attend the agreed course within three months of your request. You are entitled to the pay you would have received had you not been attending the course. PCBUs are required to pay the course fees and reasonable costs associated with course attendance.

If there are multiple PCBUs, costs must be divided equally between the PCBUs unless agreed otherwise. If there is disagreement about the timing of attendance, the choice of course or payment of fees and costs, an inspector may be called in to decide these matters.

You must have completed an HSR training course to issue a PIN or give a direction to cease work.

Resolving work health and safety issues

Issues should be attempted to be resolved using agreed internal procedures or those outlined in the WHS Regulations. This process may involve you, workers and your PCBU.

If the PCBU delegates a representative, they must be sufficiently senior and competent. The HSR or worker is also entitled to have a representative, such as a union official.

If the issue can't be resolved in a reasonable time, an inspector may be called in to assist.