

BULLETIN

Worker Representation by Health and Safety Representatives

This bulletin provides guidance for Persons Conducting a Business or Undertaking (PCBU) and workers on the provisions of the [Work Health and Safety \(National Uniform Legislation\) Act](#) (WHS Act) that relate to worker representation on health and safety matters. For additional information, refer to Part 5 of the WHS Act, Chapter 2 of the [Work Health and Safety \(National Uniform Legislation\) Regulations](#) (WHS Regulations), the approved Code of Practice for [Work Health and Safety Consultation, Co-operation and Co-ordination](#) and the [Worker Representation and Participation Guide](#) which are available on the NT WorkSafe website.

Health and Safety Representatives

Part 5 of the WHS Act provides for representation of workers by a Health and Safety Representative (HSR). The WHS Act allows for workers within a business or undertaking to be grouped into work groups for the purpose of electing a member of that group to represent them. The number of work groups and the workers who are to form part of the work group are to be determined by negotiation and agreement between the PCBU and the workers.

A HSR may also represent workers across multiple businesses or undertakings by agreement between all relevant parties.

How is a Health and Safety Representative elected?

Step One: Request for a HSR

Any worker may ask a person conducting the business or undertaking for whom they carry out work to facilitate elections for one or more HSRs.



Step Two: A PCBU must commence negotiations for work groups within 14 days

HSRs represent work groups, therefore work groups must be determined before a HSR can be elected.

Within 14 days of receiving a request from a worker, the PCBU must commence negotiations with workers about the number and composition of work groups that should be formed. If a worker requests that their representative, for example a union official, be involved in these negotiations, they must be included in the negotiations.

The negotiations must take into account a number of matters including:

- the number of workers within the business or undertaking;
- the number and grouping of workers who carry out the same or similar types of work, and
- the diversity of workers and their work.

If negotiations fail, including that the person conducting a business or undertaking has not commenced negotiations within 14 days of a request from a worker, anyone who is or would be a party to the negotiations may request that an inspector be called in to determine work groups.





Step Three: Workers must be notified

As soon as reasonably practicable after the negotiations are completed, the PCBU must advise workers of the outcome of negotiations and of the work groups determined.



Step Four: Election of HSRs

The workers within each work group can determine the procedure by which a HSR will be elected, but must comply with any requirements set out in the regulations.

The PCBU must provide resources, facilities and assistance that are reasonably necessary to enable the election to be conducted.

The election may be conducted by the work group or, if a majority of members agree, with the assistance of another person or organisation such as a union.

Each work group member is entitled to one vote in the election. However, if the number of candidates is equal to the number of vacancies, each candidate is taken to be elected as a HSR for the work group without an election.



Step Five: Work group notified of election outcome

As soon as reasonably practicable after the election, the person who conducted it must advise the members of the work group and the person conducting a business or undertaking of the results.

Who can be a Health and Safety Representative?

Any worker who is a member of a work group is eligible to be elected as a HSR unless they have been disqualified from being a HSR.

How long is the appointment of a Health and Safety Representative?

A HSR will hold their office for three years unless during that period they:

- resign;
- cease to be a worker in the work group they represent;
- are disqualified as a HSR, or
- are removed from the position by the majority decision of the work group.

Can a Health and Safety Representative be disqualified?

A court or tribunal may disqualify a HSR if satisfied that the HSR exercised a power or performed a function for an improper purpose, or used or disclosed any information acquired by them for an improper purpose.

A person adversely affected by the alleged behaviour or the regulator may make an application for disqualification of a HSR.

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

HSRs are not personally liable for anything done or omitted to be done in good faith when exercising a power or performing a function under the WHS Act or for anything done that they reasonably believed was authorised under the WHS Act.

No obligation to perform the role

There is no legal duty or obligation for a HSR to perform any of the functions, or exercise any of the powers, of a HSR under the WHS Act.

Can a Health and Safety Representative represent workers outside their work group?

Generally the powers and functions of an HSR are limited to the work group that they are elected to represent. However, they may represent other work groups within the same business or undertaking if an HSR from that other work group is unavailable and:

- there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of that other work group, or
- a member of another work group asks for the representative's assistance.

What are the functions of a Health and Safety Representative?

The primary power and function of an HSR is to represent workers in their work group in relation to health and safety matters at work. An HSR may also:

- monitor the compliance of the PCBU;
- investigate complaints from work group members about work health and safety matters;
- inquire into anything arising from the conduct of the business or undertaking that appears to be a risk to the health or safety of work group members;
- inspect the workplace or any part of the workplace at which work group members work, after giving reasonable notice to the person conducting the business or undertaking;
 - (A HSR can inspect the workplace without giving notice, in the event of an incident or a situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.)
- accompany an inspector during an inspection of the workplace or part of the workplace at which a work group member works, and
- if they have completed the required training, direct a work group member to cease unsafe work and issue a Provisional Improvement Notice (PIN).

However, before directing a worker to cease work the HSR must consult with the PCBU, unless the risk is so serious and immediate that it is not reasonable to consult with the PCBU before giving the direction and attempting to resolve the issue through consultation. Likewise, a HSR must not issue a PIN unless they have consulted with the person to whom it is issued.

Under the WHS Act, the PCBU has corresponding obligations to ensure that a HSR can exercise their powers and perform their functions.

Is a Health and Safety Representative a member of a Health and Safety Committee?

If a Health and Safety Committee (HSC) is established at a workplace for which there is a HSR, the HSR is entitled to be a member of the HSC if they wish to be.

Can a Health and Safety Representative have somebody assist them?

Whenever necessary an HSR may request any person to assist them with their functions. However, a PCBU is not required to pay for any external assistants to help the HSR.

A PCBU is required to allow access to the workplace to the assistant unless that assistant has had a work health and safety entry permit suspended or revoked or they have other reasonable grounds for refusing entry.

Is a Health and Safety Representative paid for carrying out their role?

A HSR is entitled to spend as much paid work time as is reasonably necessary to exercise their powers and perform their functions under the WHS Act.

Can a Health and Safety Representative attend training?

If requested by a HSR, the PCBU must allow the representative to attend training that is:

- approved by the regulator, and
- which the HSR is entitled, under the WHS Regulations, to attend, and
- chosen by the HSR in consultation with the PCBU unless agreement cannot be reached, in which case either party may ask the regulator to appoint an inspector to decide.

Within three months of the HSR making the request the PCBU must allow the HSR time off work to attend the course.

The PCBU must pay the course fees and other reasonable costs associated with the HSRs attendance at that training. The PCBU must also pay the HSR what he or she would be entitled to if he or she performed his or her normal duties during that period.

If the HSR and PCBU cannot agree on the course, timing or reimbursement for reasonable costs within three months of the HSRs request, either party may request that an inspector be called to determine the matter.

What is the role of a deputy Health and Safety Representative?

Deputy HSRs may also be elected if that is the outcome of negotiations. Deputy HSRs are elected in the same way as HSRs and there may be more than one deputy HSR for a work group.

Provisions of the WHS Act that provide for the term of office, disqualification and immunity of HSRs will also apply to deputy HSRs and a deputy HSR is entitled to the same training as a HSR.

However, a deputy HSR may only represent the workers when the elected HSR is unavailable.

For further information contact NT WorkSafe on 1800 019 115 or go to www.worksafe.nt.gov.au