

## Health and Safety Representatives (HSRs)

Health and Safety Representatives (HSRs) are a well-established example of worker participation and can also support worker engagement. HSRs provide workers with a formal, visible way to have a say in work health and safety.

HSRs also provide:

- a voice for workers who might not otherwise speak up about work health and safety matters
- a mechanism for workers to speak to management about work health and safety matters
- help in situations where it is not practical for a business to engage one-on-one with its entire workforce.

While HSRs aren't necessarily experts in health and safety, trained HSRs are knowledgeable about health and safety matters, how the Health and Safety at Work Act 2015 (HSWA) works, and are aware of the rights and responsibilities of everyone in the workplace.

Trained HSRs also have powers that enable them to take action on behalf of their work group.

### Functions & Powers

HSRs have a number of functions and powers such as representing workers on health and safety matters, making recommendations on health and safety, investigating complaints and risks to worker health and safety, monitoring health and safety measures taken by the business, and giving feedback to the business about the business meeting its duty.

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- Representing workers on health and safety matters
- Making recommendations on health and safety
- Investigating complaints and risks to worker health and safety
- Monitoring health and safety measures taken by the business

Giving feedback to the business about the business meeting its duty.

The Health and Safety at Work Act 2015 (HSWA) gives **HSRs powers** such as:

#### 1. Requesting relevant information from the business

An HSR may request that the business provide any information necessary that helps the HSR perform their functions or exercise their powers, including information related to:

- hazards at the workplace and their associated risks
- the health and safety of workers (except personal information unless consent is given).

## 2. Entering and inspecting a workplace

An HSR may, at any reasonable time, enter and inspect any area of a workplace to perform the role of an HSR.

The HSR must give notice of an intended inspection unless the HSR is inspecting the workplace in the event of an incident or any situation involving serious risk to the health of a worker.

## 3. Attend interviews

With the consent of the workers involved, an HSR may attend an interview concerning work health and safety between a worker (or group of workers) that they represent and an inspector or business.

The inspector may refuse to allow the HSR to be present if they believe that their presence would prejudice the maintenance of the law.

## 4. Attend training

HSRs are given an annual training entitlement to attend training. An HSR may choose what training to go on (in consultation with the business), but the business may decline that training due to the cost or disruption of business.

Businesses must fund the HSR training and allow access to the training as soon as is practicable, but must respond no later than three months from receipt of the request.

Initial HSR training must be completed before an HSR can issue a provisional improvement notice (PIN) or directing a worker to cease unsafe work. They must first achieve the New Zealand Qualifications Authority (NZQA) unit standard or have successfully completed HSR transition training.

The Worker Engagement, Participation and Representation Regulations set the maximum number of annual paid leave days that a business is required to give. This is based on the number of workers it has.

HSWA gives additional powers to HSRs only after they have completed initial or additional HSR health and safety training specified in the Regulations for *Worker Engagement, Participation and Representation*. These **powers** include:

## 5. Issue a Provisional Improvement Notice (PIN)

An HSR may issue a provisional improvement notice (PIN) if they believe that a person is breaking the law, or is likely to break the law, a provision of HSWA, or of the Regulations.

The PIN can be issued to any person, including the business the HSR works for, a worker or another business.

A PIN gives direction to a duty holder (the business) to remedy a specific aspect of their work activity or workplace that is non-compliant. It advises what needs to be changed and sets a timeframe for the change to be made.

## 6. Direct a worker to cease unsafe work

An HSR may direct a worker (who is in their work group) to cease work if they reasonably believe that carrying out the work would expose the worker, or any other person, to a serious risk arising from an immediate or imminent exposure to a hazard.

The HSR should consult with the business about the matter before giving the direction. If, after a reasonable time, the business does not act appropriately, they can then give the direction.

However if the risk is serious enough, the HSR may direct the worker to cease work immediately without consulting the business. The HSR must notify the businesses that a direction has been given.

This power supports the general right of all workers to cease work in this situation. They don't need to wait for a direction from an HSR.

## Work Groups

Before an HSR is elected, the business must determine work groups (groups of workers) for the HSR to represent.

The business can have a single work group to cover all people who do work for it, or can decide to have more groups. Additional groups may be useful for larger businesses or those with multiple places or work activities.

If the business decides to have more than one work group, then it must ensure that workers are grouped in a way that enables:

- effective representation of workers, and
- workers to have access to an HSR.

You could consider grouping by task, risk, location, or shift, in addition to considering the views of your workers.

For complex sites where workers from different businesses are together for a period of time, temporary work groups for the site may also be effective.

## The HSR election Process

This information relates to businesses that are required by law to have an HSR if requested by a worker; or who choose to have an HSR as part of their worker participation practices even if they are not required by law to.

If your business receives a request for an HSR, is not legally required to have an HSR, and makes a decision that other worker participation practices are better suited to that business, then this process doesn't apply.

The HSE election process goes as follows:

### 1. Who can stand for election?

Anyone who is:

- a worker and a member of the work group electing an HSR
- is willing to act as an HSR, and
- who works regularly and for enough hours to act effectively as an HSR can stand for election

### 2. Why an HSR must come from the same workgroup

HSRs need to be familiar with the health and safety issues that arise from a work group and be readily accessible to represent workers' interests. This is the main reason for forming work groups in the first place.

### 3. Who can vote in an election?

Anyone who is a worker and is a member of the work group having the election can vote in the election. The only restriction is that the candidates for the election cannot be involved.

#### **4. When should an election be held?**

A business is required to initiate the election within two months or receiving a request for an HSR.

#### **5. How does the election process work?**

Unless a candidate, a member of the work group or management requests to have a secret ballot, an election can take any form that is agreed with your workers (eg a show of hands). This process is flexible and will depend on what works best for your business.

The election can be run by management, a worker or groups of workers, a worker representative like a union representative, or any combination of these people. The only restriction is that the candidates for the election cannot be involved.

The business is required to provide information and financial assistance regardless of who runs the election. This includes:

- paying to conduct the election,
- providing candidate information, and
- working out the results.

The business must also let workers know about the work groups being formed and how many HSRs are going to be elected.

If there aren't enough candidates to fill all of the HSR vacancies, each candidate will automatically be elected.

If you don't have any candidates, then you should consider whether the work group is grouped correctly.

#### **6. What happens once the HSR is elected?**

Once the HSR is elected, the business must ensure that the names and contact details of HSRs for each work group are made available to workers. This should be done in an easily accessible, public location (eg using posters or intranet pages).

Making this information available ensures workers are aware of who to contact if necessary, and also provides important information to health and safety inspectors when visiting a workplace. WorkSafe can also request these details.

The details must be readily accessible and updated whenever there is a change in HSRs for that work group.

#### **7. Term of office**

Once elected, an HSR's term of office is for a maximum of three years, or less if agreed with the businesses and members of the work group.

However, HSRs can be re-elected multiple times after their term is complete.

An HSR ceases to hold office if they are not re-elected or resign.

## **Training Requirements**

Under HSWA, training requirements for Health and Safety Representatives (HSRs) are changing. Below are some examples of how both existing and new HSRs can become trained under HSWA.

## 1. Do I need to have training?

If you want to be able to use the new functions and powers available to HSRs, such as provisional improvement notices (PINs) and cease unsafe work, you need to be trained.

Training is really useful to learn about the HSR role and teaches HSRs how to be effective in their workplaces.

If you do not get new training, you can still be an HSR but you cannot use these new functions and powers.

## 2. What's my entitlement for paid HSR training leave?

The Health and Safety at Work Act 2015 (HSWA) requires a person conducting a business or undertaking (PCBU) to allow each Health and Safety Representative (HSR) up to two days' paid leave a year to undertake health and safety training.

The total number of days' leave that a PCBU is required to allow for health and safety training is capped by HSWA.

## 3. Who pays for training?

The PCBU must pay training fees and reasonable costs associated with attending training.

## 4. I am a new HSR - how do I become trained? Or, I am a HSR but I have never received training and want to be trained.

The Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 say that to be considered trained a new HSR will need to do initial training.

*Initial training* for a new HSR means achieving unit standard 29315: Describe the role and functions of the Health and Safety Representative. Training providers with approval from the New Zealand Qualification's Authority (NZQA) can teach this unit standard. You need to choose this training in consultation with your business (about time, costs and the date of training for example).

Once you have achieved this unit standard, you will be considered trained and able to issue a PIN and cease unsafe work.

Once you have completed the unit standard or *initial training*, you can then undertake *additional training*, using your annual training entitlement as an HSR.

This annual entitlement allows you to do training about work health and safety, or an aspect of work health and safety that comes under the occupational health and safety subfield of the *New Zealand Qualifications Framework (NZQF)* or other training, that you agree to with the business and which is relevant to your role as an HSR.

## 5. I am already an HSR and was trained under the old Health and Safety in Employment Act – what do I need to do?

If you have already been trained under the Health and Safety in Employment Act 1992 and want to be considered trained under HSWA you will still need to update your training.

Available options are:

- you may be eligible to undertake free HSR transition training (add link). This training is recognised in the Regulations as one way to achieve initial training and offered by Safety-N Action Limited and called Health and Safety Representative Transition Training; or
- you will need to achieve the new unit standard 29315 like all new HSRs.

Once you have met the *initial* training requirements (transition training or the unit standard) you are also eligible to undertake *additional* training, using your annual training entitlement as an HSR.

This entitlement allows you to do training about work health and safety, or an aspect of work health and safety that comes under the occupational health and safety subfield of the *New Zealand Qualifications Framework (NZQF)* or other training, that you agree to with the business that is relevant to your role as an HSR.

## Transition Training

Transition training is a bridging course for existing, trained HSRs, to ensure they can perform all their functions under the new law. HSRs working in high risk sectors and/or remote locations will be given priority. Only HSRs who have completed this training can issue PINs or cease unsafe work orders under the Health and Safety at Work Act 2015 (HSWA).

## Employer Obligations

Under HSWA, businesses have some legal requirements to support Health and Safety Representatives.

HSWA requires businesses to support HSRs by:

- Facilitating elections.
- Consulting with the HSR.
- Giving feedback on any recommendations made by HSRs.
- Providing information (not personal information unless consent is given).
- Providing time and resources for the HSR role.

Providing paid leave to attend training, and pay training fees and costs of attending training

## Provisional Improvement Notices (PINs)

A Provisional Improvement Notice (PIN) is a written notice issued by an HSR to a person or a business, telling them to address a health and safety concern in the workplace.

### 1. Who can issue a PIN?

A PIN can only be issued by an HSR who has completed initial or additional HSR health and safety training specified in the *Regulations for Worker Engagement, Participation and Representation*.

An HSR can issue a PIN to a person or business if the HSR reasonably believes that person is breaking the law, or is likely to break the law, a provision of HSWA, or the Regulations.

The PIN tells the person what the health and safety issue is and can include recommendations to resolve the issue (eg by fixing or preventing a problem) by a certain date. However, the HSR must not issue a PIN to a person or business unless they have first consulted that person or business.

## Protections – For HSR’s

A person or a business cannot discriminate or take other negative steps against you because of your involvement in work health and safety. Under HSWA, no one is allowed to pressure or mislead people around their roles, powers or entitlements.

HSWA protects your involvement in work health and safety when:

- raising an issue or concern about health and safety
- ceasing work because you believe it is unsafe or unhealthy
- taking part in resolving a health and safety issue
- taking action to seek compliance
- acting as an HSR, a member of an HSC, or other role under HSWA

using your lawful powers as an HSR or member of an HSC, for example directing a someone to cease unsafe work.

### 1. Examples of negative steps

Actions which could be considered negative steps include doing, or threatening to do, any of the following:

- dismissing or refusing the employment of a worker or contractor.
- terminating or refusing to enter an agreement with a worker or contractor.
- refusing to offer you or another worker the same work conditions available to similar workers eg, terms of employment, training, or promotion.
- treating you differently to similar workers in a way that negatively impacts your employment, job performance or satisfaction.

It is also against the law for if anyone:

- seeks to threaten someone so that they use (or don't use) a power under HSWA.
- seeks to threaten you or a workmate so they stop being an HSR or member of an HSC.
- deliberately tells you or a workmate false or misleading information about HSWA, including

your rights, obligations and ability to start a process and participate in a process, or make a complaint.

## Ceasing to be a HSR

There are a number of situations where a person can cease to be an HSR including resignation, completion of term, moving to a different work group, or by being removed by WorkSafe.

### 1. Resignation

An HSR can resign from their role at any time by giving written notice to the relevant business for that work group.

### 2. Completion of term

Once elected, an HSR's term of office is for a maximum of three years, or lesser if agreed with the businesses and members of the work group. However, HSRs can be re-elected multiple times after their term is complete. An HSR ceases to hold office if they are not re-elected.

### **3. Moving to a different work group**

To be eligible to be an HSR for a work group, the worker must be part of that work group. The HSR will cease to hold office if they are no longer a member of the work group they represent. For example they change teams, workplaces or positions

### **4. Majority Decision**

An HSR ceases to hold office if the majority of the workers in the work group no longer want that person to represent them

### **5. Worksafe removes the HSR**

WorkSafe has the power to remove an HSR from office if they believe that the HSR has not performed satisfactorily. For example, if the HSR:

- Performed an HSR function or power for an improper purpose eg directing a worker to cease work for a reason other than health or safety.
- Used or disclosed personal information they acquired as an HSR without that person's consent or outside their role as an HSR.

A business may request that WorkSafe remove an HSR, but WorkSafe will not proactively assess the performance of HSRs.

*The information presented in this document is intended for general use only. It should not be viewed as a definitive guide to the law, and should be read in conjunction with the Health and Safety at Work Act 2015 and associated regulations (where relevant).*