



Worker representation through Health and Safety Representatives and Health and Safety Committees

**Explaining the requirements under the Health and Safety at Work Act 2015
and the Health and Safety at Work (Worker Engagement, Participation,
and Representation) Regulations 2016**

April 2016

Guidelines to the requirements for workplaces with Health and Safety Representatives and Health and Safety Committees

ACKNOWLEDGEMENTS

WorkSafe New Zealand would like to acknowledge and thank the stakeholders who have contributed to the development of these guidelines.

WORKER REPRESENTATION THROUGH HEALTH AND SAFETY REPRESENTATIVES AND HEALTH AND SAFETY COMMITTEES KEY POINTS:

A PCBU – whether its business or undertaking is small or large – must engage with its workers on health and safety matters that affect workers.

Worker representation means that workers choose one or more people to speak or act about health and safety matters on their behalf.

There are legislative requirements for workplaces with Health and Safety Representatives, and Health and Safety Committees.

START HERE...

Worker participation is essential to keeping workplaces healthy and safe¹

Kia ora and welcome,

Workplaces are safer when workers know how to protect themselves and their workmates, and can actively contribute to health and safety arrangements at their work.

Health and Safety Representatives and Health and Safety Committees are well-established methods of representation that support worker engagement and participation.

These Interpretive Guidelines outline the legislative requirements for workplaces that have Health and Safety Representatives and Health and Safety Committees, under the Health and Safety at Work Act 2015 (HSWA) and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (the Regulations). The guidelines explain how WorkSafe New Zealand (WorkSafe) interprets the regulatory requirements. This interpretation is not legal advice.

The Regulations support HSWA. The intent of HSWA is for everyone to work together on improving health and safety.

If you would like to know more about worker engagement, participation and representation, WorkSafe's Good Practice Guidelines *Worker Engagement, Participation and Representation* describe what WorkSafe New Zealand considers 'good' to look like.

WorkSafe has a number of optional forms that make it easy for you to ask us to help or review a health and safety matter.

You can find our request forms on the WorkSafe website www.worksafe.govt.nz.

HOW TO READ THESE GUIDELINES

These guidelines have two parts:

- > Part A covers Health and Safety Representatives (HSRs)
- > Part B covers Health and Safety Committees (HSCs).

When reading these guidelines you will also need to refer to [HSWA](#) and [the Regulations](#).

The guidelines include links to the relevant clauses and sections (and page numbers for people reading a PDF version of the legislation).

HSWA	Identifies the relevant law in HSWA
REGULATIONS	Identifies the relevant law in the Regulations
GUIDANCE	How WorkSafe New Zealand (WorkSafe) interprets the legislation

Table 1: Layout of guidelines

¹ Royal Commission on the Pike River Coal Mine Tragedy, Volume 2 - Part 2, 2012, p.332
<http://pikeriver.royalcommission.govt.nz>.

KEY TERMS AND CONCEPTS TO UNDERSTAND BEFORE READING THESE GUIDELINES

TERM/CONCEPT	BRIEF EXPLANATION
Business or undertaking	<p>The usual meanings of these terms are:</p> <ul style="list-style-type: none"> > 'business': an activity carried out with the intention of making a profit or gain > 'undertaking': an activity that is non-commercial in nature (eg certain activities of a local authority).
Engagement	<p>A PCBU (person conducting a business or undertaking – see later definition) has to engage with its workers on health and safety matters.</p> <p>A PCBU engages by:</p> <ul style="list-style-type: none"> > sharing information about health and safety matters so that workers are well-informed, know what is going on and can have a real say in decision-making > giving workers reasonable opportunities to have a say about health and safety matters > listening to and considering what workers have to say > giving workers opportunities to contribute to the decision-making process relating to a health and safety matter > considering workers' views when decisions are being made > updating workers about what decisions have been made. <p>If workers are represented by Health and Safety Representatives, engagement must involve those representatives.</p>
Employment Relations Act 2000 (ERA)	<p>The Employment Relations Act 2000 (ERA) sets out rules about employment relations between employers and employees.</p> <p>ERA's objective is to build productive relationships between employers and their employees. It achieves this by promoting 'good faith' employment relations (see below).</p>
Good faith	<p>Acting in good faith is an important legal concept. Employers, employees and unions have a duty of good faith under ERA. This includes the need to be active and constructive in maintaining an employment relationship that is honest and communicative. Treating each other with mutual respect reduces the risk of conflict and problems.</p>
Good Practice Guidelines	<p>WorkSafe's Good Practice Guidelines <i>Worker Engagement, Participation and Representation</i> describe what WorkSafe considers good practice in relation to worker engagement, participation and representation.</p>
Health and Safety at Work Act 2015 (HSWA)	<p>HSWA is the key work health and safety legislation in New Zealand. All work and workplaces are covered by HSWA unless specifically excluded. Part 3 of HSWA covers worker engagement, participation and representation.</p>
Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 (the Regulations)	<p>The Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 outline additional requirements for businesses or undertakings with Health and Safety Committees (HSCs) and Health and Safety Representatives (HSRs).</p> <p>The Regulations prescribe matters relating to work groups, HSRs and HSCs.</p>

TERM/CONCEPT	BRIEF EXPLANATION
Health and Safety Committee (HSC)	<p>A Health and Safety Committee (HSC) supports the ongoing improvement of health and safety at work. An HSC enables PCBU representatives, workers and other HSC members to meet regularly and work co-operatively to ensure workers' health and safety.</p> <p>One of an HSC's main functions is to assist in developing standards, rules, and policies or procedures relating to work health and safety. An HSC can also perform other functions that are agreed between the PCBU and the HSC, or specified by the Regulations.</p>
Health and Safety Representative (HSR)	<p>A Health and Safety Representative (HSR) is a worker elected by the members of their work group to represent them in health and safety matters, in accordance with subpart 2 of Part 3 of HSWA. Throughout these guidelines, the term HSR means an elected representative who meets the requirements of HSWA and the Regulations. It does not apply to people who are referred to as HSRs under other arrangements, but who are not elected under HSWA. See 'Worker Representative'.</p>
High-risk sectors and industries	<p>The Regulations identify high-risk industries and sectors (see Appendix 1). These definitions apply only to whether or not a PCBU is required to respond to a worker's request for an HSR or HSC.</p>
Issue resolution	<p>If a work health and safety issue comes up at a workplace, the parties involved in the issue (including their representatives) must make reasonable efforts to reach a timely, final and effective solution.</p> <p>What is reasonable will depend on the circumstances.</p> <p>A PCBU should:</p> <ul style="list-style-type: none"> > make sure that workers are aware of the business's issue resolution procedures (if any) > make sure that workers know who to approach if a health and safety issue needs to be resolved > make a reasonable effort to resolve an issue with effective, timely and lasting solutions by: <ul style="list-style-type: none"> - considering input from workers and worker representatives - following the business's issue resolution procedures (if any). <p>If a work health and safety issue has not been resolved after reasonable efforts have been made to resolve it, then:</p> <ul style="list-style-type: none"> > a party to the issue may ask the regulator to appoint an inspector to help the parties to reach a solution > if the regulator agrees to appoint an inspector, the inspector may - after providing assistance - make a decision about the issue if the issue is to do with membership of an HSC.
Officer	<p>An officer is a person who has the ability to significantly influence the management of a PCBU. This includes, for example, company directors and chief executives.</p> <p>Officers must exercise due diligence to ensure the PCBU meets its health and safety obligations.</p> <p>WorkSafe's Special Guide <i>Introduction to the Health and Safety at Work Act 2015</i> has a detailed explanation of an officer's role and duties.</p>

TERM/CONCEPT	BRIEF EXPLANATION
Other persons at workplaces	<p>Other persons include workplace visitors and casual volunteers (who are not volunteer workers).</p> <p>Other persons at workplaces have their own health and safety duties to take reasonable care to keep themselves safe and to not harm others at a workplace.</p>
Participation	See 'Worker Participation Practices'.
PCBU	<p>PCBU stands for 'Person Conducting a Business or Undertaking'. In most cases a PCBU will be a business entity, such as a company. However, an individual carrying out business as a sole trader or self-employed person is also a PCBU.</p> <p>A PCBU does not include workers or officers of a PCBU, volunteer associations with no employees, or home occupiers that employ or engage a tradesperson to carry out residential work.</p>
Regulator	WorkSafe New Zealand or the relevant designated agency.
So far as is reasonably practicable	<p>When considering what is 'reasonably practicable' for worker engagement, participation and representation duties, consider the:</p> <ul style="list-style-type: none"> > nature of the work that is carried out > nature and severity of a particular hazard or risk > ease of reaching workers who will be affected by a health and safety matter > work arrangements, such as shift work and remote work, temporary workers > languages workers speak, and their reading and writing skills > availability of HSRs or other worker representatives > nature of the decision or action required, including how urgent it is to make a decision or take action > size and structure of the business or undertaking <p>(Note: In relation to worker engagement, participation and representation duties in this document 'reasonably practicable' has the meaning outlined above, rather than the meaning in section 22 of HSWA.)</p>
The Regulations	See Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016.
Toolbox talk	A toolbox talk is a short informal group meeting or discussion about a specific health or safety issue or topic. It's a good way to provide information to workers and to start health and safety conversations.
Union	<p>A union is an organisation that supports its membership by advocating on their behalf. ERA gives employees the freedom to join unions and bargain collectively without discrimination. Workers can choose whether or not to join a union.</p> <p>A union is entitled to represent members' employment interests, including health and safety matters.</p> <p>Unions can access a workplace to deal with matters concerning the health and safety of union members. Union representatives must seek permission beforehand, which an employer cannot unreasonably withhold.</p>

TERM/CONCEPT	BRIEF EXPLANATION
Volunteer workers	<p>Certain volunteers are classed as volunteer workers. A volunteer is a 'volunteer worker' when:</p> <ul style="list-style-type: none"> > they work for a PCBU who knows they are doing that work or has given consent for it to be done and > the volunteer does the work on an ongoing and regular basis and > the work is an integral part of the business or undertaking and the work is not: <ul style="list-style-type: none"> - participating in fundraising - assisting with sports or recreation for an educational institute, sports club or recreation club - assisting with activities for an educational institute outside its premises or - providing care for another person in the volunteer's home (eg foster care). <p>A PCBU owes the same duties to volunteer workers as it does for its own workers – except for worker engagement, representation and participation duties. Although volunteer workers are not covered by these duties, they can still raise health and safety concerns with the PCBU.</p>
Work group	<p>Work groups are formed to enable workers to elect HSRs to represent them on health and safety matters.</p> <p>A work group includes all the workers in a business or undertaking, unless the PCBU determines otherwise.</p>
Worker	<p>A worker is an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. Workers can be at any level (eg managers are workers too).</p> <p>Although workers don't have specific duties for worker participation or engagement, they do have duties to keep themselves and others safe. HSWA requires workers to:</p> <ul style="list-style-type: none"> > take reasonable care of their own health and safety > take reasonable care that anything they do – or don't do – does not negatively affect the health and safety of other people > comply, as far as they can, with any reasonable instruction given by the PCBU to allow the PCBU to comply with their duties under the legislation > cooperate with any reasonable policy or procedure relating to work health and safety that workers have been told about. Common policies and procedures cover reporting hazards, injuries and incidents, and the wearing of personal protective equipment (PPE). The PCBU must engage with workers and their representatives when these policies are being developed. <p>Note:</p> <ol style="list-style-type: none"> 1. The worker engagement, participation and representation part of HSWA does not apply to: <ul style="list-style-type: none"> > a volunteer worker > a worker who is a prisoner carrying out work inside a prison. 2. Certain sections of the worker engagement, participation and representation part of HSWA do not apply to members of the Armed Forces. These relate to requests for the election of HSRs (section 62(1)), the establishment of an HSC (section 66(1)(b)), and the worker's right to cease unsafe work or for an HSR to direct unsafe work to cease (sections 83 and 84).

TERM/CONCEPT	BRIEF EXPLANATION
Worker participation practices	Worker participation practices are what the PCBU puts in place so that workers can help to improve work health and safety on an ongoing basis. These practices make it possible for workers to share ideas and information, raise issues, and contribute to decision-making on an ongoing basis.
Worker representative	<p>In relation to a worker, means:</p> <ul style="list-style-type: none"> (a) the Health and Safety Representative for the worker; or (b) a union representing the worker; or (c) any other person the worker authorises to represent them (eg community or church leaders, lawyers, occupational physicians, nurses, respected members of ethnic communities). <p>Workers can ask a worker representative to raise health and safety issues with a PCBU on their behalf.</p>
Workplace	<p>A workplace is any place where a worker goes or is likely to be while at work, or where work is being carried out or is customarily carried out.</p> <p>Most duties under HSWA relate to the conduct of work. However some duties are linked to workplaces.</p>
WorkSafe New Zealand (WorkSafe)	<p>WorkSafe is the government agency that is the work health and safety regulator. WorkSafe collaborates with PCBUs, workers and other duty holders to embed and promote good work health and safety practices, and enforce health and safety law.</p> <p>Other government agencies can be designated to carry out certain health and safety functions, for example, Maritime New Zealand and the Civil Aviation Authority.</p>

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WORKER REPRESENTATION AT A GLANCE

The Health and Safety at Work Act 2015 (HSWA) is the key work health and safety legislation in New Zealand. All work and workplaces are covered by HSWA unless specifically excluded. Part 3 of HSWA covers worker engagement, participation and representation and is supported by the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 (the Regulations).

A person conducting a business or undertaking (PCBU) must engage with its workers and have worker participation practices regardless of the size, level of risk or the type of work carried out by the business or undertaking. See WorkSafe's Good Practice Guidelines *Worker Engagement, Participation and Representation* for more information. Worker representation is a form of participation.

Health and Safety Representatives and Health and Safety Committees are two well-established methods of worker representation.

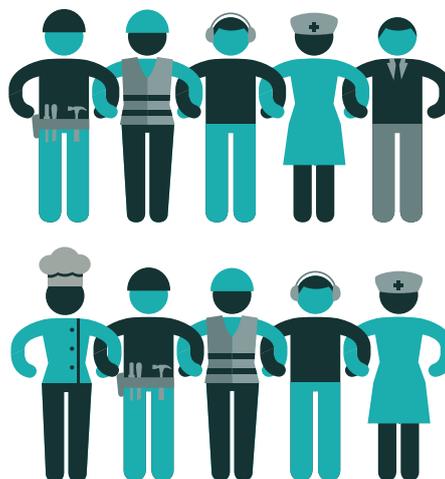
HEALTH AND SAFETY REPRESENTATIVES

A Health and Safety Representative (HSR) is a worker who has been elected by the members of their work group to represent them in health and safety matters.



HEALTH AND SAFETY COMMITTEES

A Health and Safety Committee (HSC) is set up to support the ongoing improvement of health and safety at work.



WHO CAN REQUEST AN HSR?

Any worker can request an HSR.

Even without a request from a worker, a PCBU can decide on its own to hold an election for one or more HSRs.

WHO CAN REQUEST AN HSC?

Five or more workers, or an HSR, can request an HSC.

Even without a request from workers or an HSR, a PCBU can decide on its own to set up an HSC.

Figure 1: Worker representation at a glance

01/

INTRODUCTION

IN THIS SECTION:

- 1.1 What these interpretive guidelines cover
- 1.2 Key concepts
- 1.3 Offences and penalties

This section outlines what these guidelines cover.

1.1 What these interpretive guidelines cover

These guidelines outline the legislative requirements for workplaces with Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs) under the Health and Safety at Work Act 2015 (HSWA) and the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 (the Regulations).

The guidelines will help a person conducting a business or undertaking (PCBU) to comply with HSWA and the Regulations. For further information for workers, HSCs and HSRs see the WorkSafe website www.worksafe.govt.nz.

If a PCBU has HSRs and/or HSCs, HSWA and the Regulations specify how they are elected or established, their functions and powers, and the PCBU's obligation to provide support.

1.2 Key concepts

ENGAGING WITH WORKERS

A PCBU – whether its business or undertaking is small or large – must engage with its workers on matters of health and safety that will, or are likely to, affect workers – so far as is reasonably practicable. HSWA specifies the situations when a PCBU must engage.

A PCBU engages with workers so that workers have opportunities to influence health and safety at work – including how their work is done and their working conditions. Worker engagement can be direct (eg by individual workers talking directly to the PCBU) or through worker representation, including HSRs and HSCs.

WHO IS A WORKER?

A worker is broadly defined to mean an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. Part 3 of HSWA does not apply to volunteer workers. Workers can be at any level (eg managers are workers too).

WHAT IS WORKER REPRESENTATION?

Worker representation means that workers choose one or more people to speak or act about health and safety matters on their behalf. Workers can share health and safety questions, concerns and suggestions with HSRs, HSCs, unions or other worker representatives who can then raise issues with the PCBU.

Any PCBU can choose to have HSRs and/or an HSC to support worker engagement and participation. However, only those businesses or undertakings with 20 or more workers **or** who are in one of the industries listed in the Regulations must:

- > initiate the election of one or more HSRs **if requested** by a worker, and
- > consider whether existing worker participation practices are sufficiently effective and whether to establish an HSC, **if one is requested** by an HSR or by five or more workers.

HSRs and HSCs are two well-established methods of representation that support worker engagement and participation. These guidelines cover both methods.

WHAT IS A HEALTH AND SAFETY REPRESENTATIVE (HSR)?

A Health and Safety Representative (HSR) is a worker who has been elected by the members of their work group to represent them in health and safety matters. An HSR is another way for workers – through their representatives – to have a say.

WHAT IS A HEALTH AND SAFETY COMMITTEE?

A Health and Safety Committee (HSC) supports the ongoing improvement of health and safety at work. Its members represent the PCBU and workers. An HSC enables PCBU representatives and workers to meet regularly and work co-operatively to ensure workers' health and safety. An HSC is another way for workers – through their representatives – to have a say.

1.3 Offences and penalties

There are a range of offences and penalties under HSWA and the Regulations. Imprisonment is reserved for the most serious offences.

Penalties depend on the offence and what type of duty holder the offender is:

- > an individual who is not a PCBU (eg a worker or other person at the workplace)
- > an individual who is a PCBU (eg self-employed) or an officer of a PCBU or
- > any other person, such as an organisation that is a PCBU (eg a company, government department or non-profit organisation).

In addition to court-imposed penalties, infringement notices can be issued by a regulator for specified offences against HSWA or the Regulations. The person receiving the infringement notice is required to pay an infringement fee or may dispute against the notice, which means that the matter turns into a criminal proceeding against that person heard in the District Court.

The Regulations specify offences and the associated fines. For example, [Regulation 17](#) (Prohibition on unreasonable delay of election and interfering with or influencing workers voting in election):

- (1) No person may unreasonably delay the progress of an election for a health and safety representative.
- (2) No person may interfere with or influence any worker who votes in an election for a health and safety representative.
- (3) A person who fails to comply with this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

WorkSafe's Special Guide *Introduction to the Health and Safety at Work Act 2015* summarises offences and penalties under HSWA and provides answers to common questions about prosecutions.

For additional information about offences and penalties see WorkSafe's fact sheet *Offences and penalties under the Health and Safety at Work Act 2015*.

PART

A

HEALTH AND SAFETY REPRESENTATIVES

IN THIS PART:

Section 2: Introduction to Health and Safety Representatives (HSRs)

Section 3: Requests for an HSR to be elected

Section 4: Electing HSRs

Section 5: HSR functions and powers

Section 6: PCBU's duties towards HSRs

Section 7: HSR terms of office and circumstances of removal

02/

INTRODUCTION TO HEALTH AND SAFETY REPRESENTATIVES (HSRs)

IN THIS SECTION:

- 2.1 What is a Health and Safety Representative (HSR)?**
- 2.2 Benefits of having HSRs**
- 2.3 HSRs elected under the HSE Act 1992**

This section describes what a Health and Safety Representative (HSR) is and how worker representation benefits a workplace

2.1 What is a Health and Safety Representative (HSR)?

Under HSWA and the Regulations, a Health and Safety Representative (HSR) is a worker who has been formally elected (following the legislative requirements) by the members of their work group to represent them on health and safety matters. Section 4.2 of these guidelines describes what a work group is and how work groups are determined.

2.2 Benefits of having HSRs

HSRs can be an effective way:

- > to ensure workers can be involved in health and safety
- > to improve work health and safety.

For example, HSRs can:

- > identify hazards and work with a PCBU to manage them
- > provide a link between workers and management
- > provide a voice for workers who would not otherwise speak up about health and safety matters
- > help in situations where it is not practical for a PCBU to talk one-to-one with its entire workforce
- > provide a different perspective on the workplace if they are involved in the day-to-day activities of a business or undertaking, rather than in upper management.

HSR training ensures that HSRs are knowledgeable about health and safety legislation and aware of the rights and responsibilities of everyone in the workplace.

2.3 HSRs elected under the HSE Act 1992

HSRs elected under the Health and Safety in Employment (HSE) Act 1992 can continue in their roles under HSWA.

HSRs who do not attend transition training (see Section 6 of these guidelines) can still be HSRs but they cannot issue Provisional Improvement Notices (PINs) or direct workers to cease work.

03/

REQUESTS FOR AN HSR TO BE ELECTED

IN THIS SECTION:

- 3.1 A PCBU can decide to elect one or more HSRs**
- 3.2 Who can ask for an HSR to be elected?**
- 3.3 Which PCBUs must get an election for an HSR underway if a worker requests one?**
- 3.4 What must a PCBU do if it declines a request for an HSR to be elected?**

This section describes what a PCBU must do if someone asks for an HSR to be elected.

A worker can request that an HSR be elected, or a PCBU can decide to elect HSRs on their own initiative. HSWA and the Regulations specify what must happen next.

3.1 A PCBU can decide to elect one or more HSRs

HSWA	<i>Election of health and safety representatives</i> Section 62 (3), page 48
GUIDANCE	Any PCBU can decide to run an election for HSRs, even if it is not required by law to have HSRs. If a PCBU decides to do this, the legislative requirements for electing HSRs still apply (see Section 4 of these guidelines).

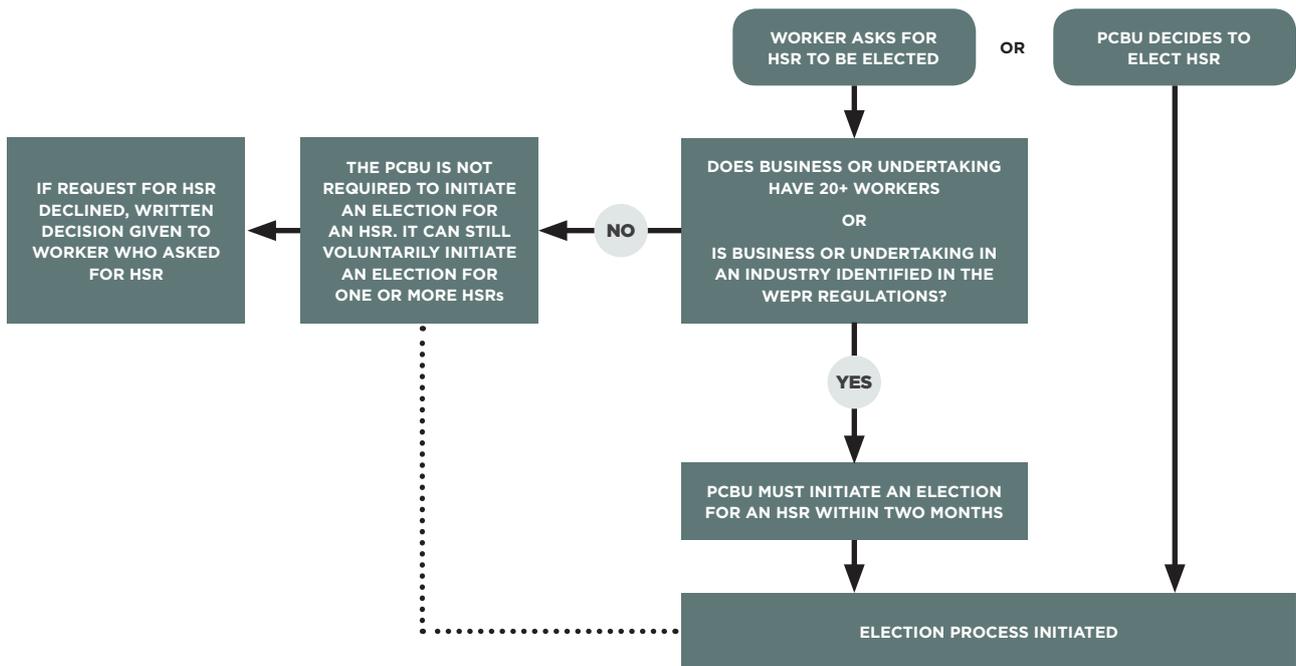


Figure 2: Requesting a Health and Safety Representative

A PCBU must follow certain requirements if they receive a worker’s request for an HSR.

3.2 Who can ask for an HSR to be elected?

HSWA	<p><i>Election of health and safety representatives</i> Section 62 (1), page 48</p>
GUIDANCE	<p>Any worker can ask a PCBU for one or more HSR(s) to be elected to represent workers at that business or undertaking.</p> <p>Workers can be at any level. A request could come from an apprentice, an employee, a contractor, a manager or any other worker. They can ask the PCBU in person, electronically (eg by email or text), or by phone.</p> <p>It is good practice to keep a record of the date when the request was made.</p>

3.3 Which PCBUs must get an election for an HSR underway if a worker requests one?

HSWA	<p><i>Election of health and safety representatives</i> Section 62 (2; 4), page 48</p>
REGULATIONS	<p><i>Duty in relation to timing of election requested by worker</i> Regulation 12, page 7</p>
GUIDANCE	<p>If a worker requests HSR(s), the following businesses or undertakings must get an election for HSR(s) underway:</p> <ul style="list-style-type: none"> (a) All businesses or undertakings with 20 or more workers (regardless of risk) (b) Small businesses or undertakings (fewer than 20 workers) that are in industries set out in the Regulations (see Appendix 1). <p>The election process must be initiated within two months of the date the PCBU receives the request.</p> <p>HOW SHOULD A PCBU COUNT WORKERS?</p> <p>Count the number of actual workers, rather than full-time equivalents. The count is done to help to support the participation and involvement of the entire workforce, including part-time workers.</p> <p>When counting workers a PCBU does not have to include volunteer workers as Part 3 of HSWA does not apply to them.</p> <p>Count workers at the time when a worker requests an HSR. This number is the final count, even if during the election process the number of workers dips below 20.</p>

Example:

Bunyan's Avocado Orchard has five permanent workers most of the year, but takes on another 22 workers during the avocado picking season between August and March.

Avocado farming is not in an industry set out in the Regulations (see Appendix 1).

If a request for an HSR is made during June when Bunyan's has only five workers, then Bunyan's does not have to initiate the election of HSR(s). (Although Bunyan's could still decide to have HSRs.)

However, if the request is made during September (with 27 workers in the business) then elections of HSR(s) must be initiated.

3.4 What must a PCBU do if it declines a request for an HSR to be elected?**HSWA***Election of health and safety representatives*

[Section 62 \(5\), page 49](#)

GUIDANCE

A PCBU can decline a worker's request to initiate the election of an HSR if the law does not require it to have one.

The PCBU must then write to the worker who put in the request within a reasonable time.

The PCBU must explain why it is saying no to the worker's request.

While a 'reasonable time' is not defined, this should happen as soon as is practicable.

04/

ELECTING HSRs

IN THIS SECTION:

- 4.1 What must happen before HSRs are elected?**
- 4.2 Setting up work groups**
- 4.3 Withdrawal from and variation of agreements concerning multiple PCBU work group arrangements**
- 4.4 Determining the number of HSRs needed for each work group**
- 4.5 Decide who will run the election, if an election is needed**
- 4.6 Nominating candidates**
- 4.7 Determine whether an election needs to be held**
- 4.8 If there are more candidates than vacancies an election must be held**
- 4.9 Who can vote in the election?**
- 4.10 Interfering with an election**
- 4.11 Notify work group of election outcome**
- 4.12 Share names and contact details of elected HSRs with workers**

This section explains the HSR election process.

4.1 What must happen before HSRs are elected?

These are the steps involved in electing one or more HSRs. The election process must be initiated within two months of a worker's request. (Note that an election may not need to be held if the number of candidates nominated is equal to – or fewer than – the number of vacancies.)

1. The PCBU must engage with workers to determine one or more work groups.
2. The PCBU must decide how many HSRs are needed.
3. The PCBU must inform workers (and their representatives, if any):
 - a. which work group they are in
 - b. the number of HSRs to be elected for the work group that the worker requesting the HSR belongs to.
4. A decision must be made about who will hold the election (if an election is needed) for the work group that the worker requesting the HSR belongs to. The PCBU must provide 'reasonably necessary' resources, facilities and assistance to the person conducting the election.
5. The person conducting the election must call for nominations.
6. A decision must be made about whether or not an election needs to be held. This will depend on the number of nominations received. If the number of candidates nominated is equal to – or fewer than – the number of vacancies, then all the candidates will be elected unopposed and there is no need to hold an election.
7. If the number of candidates nominated is greater than the number of vacancies an election is then held so that workers can choose who they would like to represent them.

4.2 Setting up work groups

HSWA	<i>Determination of work groups</i> Section 64, pages 49-50
	<i>When engagement is required</i> Section 60 (g), page 47
REGULATIONS	<i>Duty in relation to timing of election requested by worker</i> Regulation 12, page 7
	<i>Duty in relation to determination of work groups and number of health and safety representatives if work group does not comprise all workers in business or undertaking</i> Regulation 7, pages 5-6
GUIDANCE	<p>Before an election is held, the PCBU must set up one or more work groups. Each work group is a clearly defined group of workers.</p> <p>The PCBU makes the decision about how a work group should be defined. It must engage with workers when one or more work groups are being set up. See 'Engagement' in the Key Terms and Concepts section at the front of these guidelines.</p>

ONE WORK GROUP FOR ALL WORKERS IN THE BUSINESS OR UNDERTAKING

The default option is one work group for all workers in the business or undertaking.

ONE OR MORE INDIVIDUAL WORK GROUPS FOR CLUSTERS OF WORKERS

A PCBU can decide that having only one work group for the whole business is not appropriate. It can then set up one or more individual work groups for clusters of workers.

The PCBU must ensure that:

- > these work groups are set up to allow the most effective representation of workers' health and safety interests, and
- > HSRs are easily reached by the workers they represent. Workers could be grouped by work areas, occupations, work sites or other arrangements.

When setting up work groups up, the PCBU must consider—

- (a) the number of workers
- (b) workers' views about—
 - (i) the determination or variation of work groups
 - (ii) the number of HSRs to be elected
- (c) the number of different places of work for the workers and the distances between those places
- (d) the number and grouping of workers who carry out the same or similar types of work
- (e) the nature of the areas or places where each type of work is carried out
- (f) the extent to which any worker must move from place to place while at work (eg a construction worker who moves from floor to floor on a building site; a doctor who works in different wards or hospitals; a cycle courier)
- (g) the diversity of workers and their work
 - (i) the pattern of work carried out by workers (eg whether the work is full-time, part-time, casual, or fixed-term)
 - (j) the times at which work is carried out
 - (k) any overtime or shift work arrangements at the workplace/s.

DECIDING HOW WORK GROUPS WILL BE ORGANISED

How work groups are organised will depend on what works for the PCBU and the workers, and the nature and size of the business. For example, a work group could consist of:

- > workers in one or more workplaces operated by a single PCBU
- > workers of multiple PCBUs at one or more workplaces (eg workers on a construction site who are working together either for a principal contractor or for one of many sub-contractors on the same site)
- > workers in a shared work area (eg all the workers on a particular floor in an office building)
- > workers who share a work site (eg all workers at a forestry site)
- > workers with a shared occupation (eg all workers who are physiotherapists, or electricians)
- > workers who share a shift (eg all night-shift workers).

It is possible that some workers might belong to more than one work group.

TEMPORARY WORK GROUPS

Temporary work groups may be effective on a complex site where workers from different PCBUs are together for a period of time (eg during a large construction project).

MULTIPLE PCBU WORK GROUP ARRANGEMENTS

Two or more PCBUs can form a multiple PCBU work group arrangement. Work group(s) can be formed from the workers that work for these PCBUs. This means that clusters of workers working on the same site can be in one work group, although the workers may work for different PCBUs.

Example:

At a large hospital, there are permanent medical staff working alongside contracted doctors and nurses, there are laundry and kitchen workers, administrative workers, support staff, people employed in several onsite cafeterias and people who work for a florist. Many of these workers are working in similar conditions, using similar work practices. They are exposed to similar hazards. Workers from a mix of businesses located at the hospital could belong to a multiple PCBU work group. For example, all the people who work with food could belong to one work group and all medical staff could belong to one work group, whether they are permanent or contract staff.

4.3 Withdrawal from and variation of agreements concerning multiple PCBU work group arrangements

REGULATIONS

Withdrawal from and variation of agreements concerning multiple PCBU work group arrangements

[Regulation 8, page 6](#)

GUIDANCE

A PCBU in a multiple PCBU work group may withdraw from an agreement or negotiations for an agreement concerning a work group at any time by giving reasonable notice to the other parties.

If a PCBU withdraws from an agreement (or negotiations for an agreement) concerning a work group, their leaving does not affect the validity of any agreement reached between the original or remaining parties.

A PCBU must give reasonable notice to the other parties. Reasonable notice may depend on factors such as the industry involved, how many PCBUs are in the arrangement, how many HSRs there are, reasons for the PCBU withdrawing, and perhaps the number and spread of workplaces to which the agreement applies. For example, if there are multiple sites spread throughout New Zealand, communicating the change might take some time.

If a PCBU withdraws from a multiple PCBU work group arrangement, it must still meet its worker engagement and participation duties towards workers. The remaining PCBUs can carry on with the original arrangement that was put in place.

4.4 Determining the number of HSRs needed for each work group

HSWA	<p><i>Determination of numbers of health and safety representatives for work groups</i></p> <p><u>Section 65, page 50</u></p>														
REGULATIONS	<p><i>Default ratio of health and safety representatives to workers in work group</i></p> <p><u>Regulation 6, page 5</u></p> <p><i>Duty in relation to determination of work groups and number of health and safety representatives if work group does not comprise all workers in business or undertaking</i></p> <p><u>Regulation 7, pages 5-6</u></p>														
GUIDANCE	<p>After the PCBU has determined the number of work groups, it can figure out how many HSRs are needed.</p> <p>IF THE WORK GROUP IS MADE UP OF ALL THE WORKERS IN THE BUSINESS (THE DEFAULT OPTION)</p> <p>If the PCBU decides that one work group consisting of all workers is appropriate, the minimum ratio of HSRs to workers for this work group is 1:19. This means that there must be at least one HSR for every 19 workers. This is the minimum number – the PCBU can have more HSRs.</p> <p>If the number of workers divided by 19 does not equal a whole number, the number of HSRs to be elected is increased to the next whole number.</p> <p>For example, if a PCBU has 33 workers, it will need at least two HSRs. See the table below.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #2C3E50; color: white;">NUMBER OF WORKERS IN A WORK GROUP</th> <th style="background-color: #2C3E50; color: white;">MINIMUM NUMBER OF HSRs NEEDED</th> </tr> </thead> <tbody> <tr> <td style="background-color: #A9C9C9;">1-19</td> <td style="background-color: #A9C9C9;">1</td> </tr> <tr> <td style="background-color: #A9C9C9;">20-38</td> <td style="background-color: #A9C9C9;">2</td> </tr> <tr> <td style="background-color: #A9C9C9;">39-57</td> <td style="background-color: #A9C9C9;">3</td> </tr> <tr> <td style="background-color: #A9C9C9;">58-76</td> <td style="background-color: #A9C9C9;">4</td> </tr> <tr> <td style="background-color: #A9C9C9;">77-95</td> <td style="background-color: #A9C9C9;">5</td> </tr> <tr> <td style="background-color: #A9C9C9;">.. and so on</td> <td style="background-color: #A9C9C9;">... and so on</td> </tr> </tbody> </table> <p>Table 2: How many HSRs are needed?</p> <p>IF THERE ARE ONE OR MORE WORK GROUPS MADE UP OF CLUSTERS OF INDIVIDUAL WORKERS</p> <p>If there are one or more work groups made up of clusters of individual workers then the PCBU (taking workers’ views into account) can decide how many HSRs are needed.</p> <p>PCBU INFORMS WORKERS</p> <p>The PCBU must tell workers (and their representatives, if any):</p> <ol style="list-style-type: none"> (a) which work group they are in, and (b) the number of HSRs for that work group. 	NUMBER OF WORKERS IN A WORK GROUP	MINIMUM NUMBER OF HSRs NEEDED	1-19	1	20-38	2	39-57	3	58-76	4	77-95	5	.. and so on	... and so on
NUMBER OF WORKERS IN A WORK GROUP	MINIMUM NUMBER OF HSRs NEEDED														
1-19	1														
20-38	2														
39-57	3														
58-76	4														
77-95	5														
.. and so on	... and so on														

HSWA	<i>Election of health and safety representatives</i> Section 62 (6), page 49
GUIDANCE	When a worker requests an HSR, the PCBU is only obliged to hold an election for the work group that this worker belongs to.

4.5 Decide who will run the election, if an election is needed

REGULATIONS	<i>Duty in relation to election</i> Regulation 16, pages 8-9
GUIDANCE	<p>WHO CAN RUN AN ELECTION FOR AN HSR?</p> <p>Any person can run an election, other than a candidate. Although a PCBU must support the election process, they do not have to run the election themselves.</p> <p>However, a PCBU must:</p> <ul style="list-style-type: none"> > provide resources, facilities and assistance reasonably needed to conduct the election (eg reasonable access to computers and printers so that election notices can be produced, a meeting room or other suitable place for the election to be held) > tell workers (and their representatives, if any) what work group they are in and the number of HSRs to be elected (as noted above). <p>The PCBU must also pay any costs associated with the election (eg costs for providing information about candidates to workers).</p> <p>If the work group has more than one PCBU, the PCBUs must consult with each other to ensure the legislative requirements for holding an election are met.</p>

4.6 Nominating candidates

REGULATIONS	<i>Eligibility to nominate candidates</i> Regulation 9, pages 6-7
REGULATIONS	<i>Elections</i> Regulation 13 (2), page 7
GUIDANCE	<p>Anyone in a work group can nominate any other eligible worker in their work group for election as an HSR.</p> <p>Workers must be given a reasonable time frame to provide the names of potential candidates. For example, an email could be sent out asking workers to nominate candidates within two weeks.</p> <p>A worker can also nominate themselves.</p>

The person running the election should provide information about candidates to workers so that they know who they are voting for to represent them.

REGULATIONS	<p><i>Eligibility to stand for election</i> Regulation 10, page 7</p>
GUIDANCE	<p>ELIGIBILITY FOR ELECTION To be eligible for election, a worker must:</p> <ul style="list-style-type: none"> > be a member of the work group that they would represent > be willing to be an HSR > be working regularly enough and long enough to be able to be an effective HSR.

The person who is running the election needs to make sure that any worker who is nominated is willing to be put forward as a potential HSR. If a worker is not willing to be an HSR, they are not eligible to be elected.

4.7 Determine whether an election needs to be held

Based on the number of nominations received, the person conducting the election must determine whether an election needs to be held. They must then let workers and the PCBU know whether or not an election will be held.

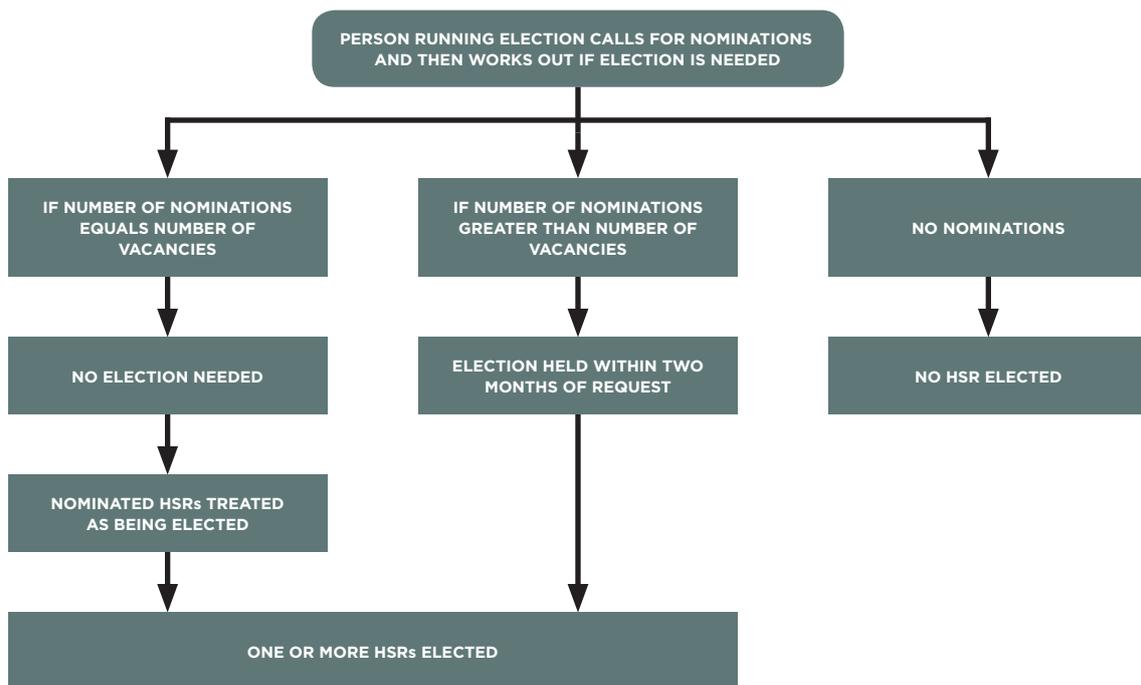


Figure 3: Does an election for an HSR need to be held?

REGULATIONS	<p><i>Candidates elected if nominations fewer than or equal to vacancies</i> Regulation 15, page 8</p>
GUIDANCE	<p>WHAT HAPPENS WHEN THE NUMBER OF VACANCIES IS THE SAME AS THE NUMBER OF CANDIDATES? If the number of vacancies is the same as the number of candidates, the PCBU does not need to hold an election. Each of the candidates can become an HSR. Each person is treated as having been elected as an HSR for the work group.</p>

Example:

There are three vacant HSR roles.

Izzy, Blue and Sefulu are the only three people who have been nominated.

Izzy, Blue and Sefulu all become HSRs because there are no other candidates.

Although there was no need to hold an election, Izzy, Blue and Sefulu are treated as elected HSRs.

WHAT HAPPENS WHEN THERE ARE MORE VACANCIES THAN CANDIDATES?

If there are more vacancies than candidates, the PCBU does not need to hold an election.

Each of the candidates can become an HSR. Each candidate is treated as having been elected as an HSR for the work group.

The PCBU can decide whether to make a second call for nominations or leave the role(s) vacant. It could encourage workers to put themselves forwards as candidates for election, by outlining the personal benefits of being an HSR (eg opportunities to attend training) and the benefits to the workplace of having HSRs as a form of worker representation. It could also go ahead with the HSRs who are elected and ask them in a few months whether they believe more HSRs are needed.

IF THERE ARE NO CANDIDATES

If there are no candidates (that is, no one has been nominated or offered to stand for election as an HSR for their work group), a PCBU does not need to hold an election. The PCBU could look into the reasons why no-one has offered to stand for election. For example, are workers concerned that the PCBU will not provide enough support for HSRs? Do workers understand what an HSR's role involves? Do workers understand the benefits of having an HSR?

4.8 If there are more candidates than vacancies an election must be held

If there are more candidates than vacancies, an election must be held. It must then be decided how the election will be run.

REGULATIONS*Elections*

[Regulation 13 \(1\), page 7](#)

Secret ballots

[Regulation 14, page 8](#)

GUIDANCE

An election for an HSR can be carried out in whatever way best suits the PCBU and workers. The Regulations allow for an election to use any form of voting (eg an electronic vote, a show of hands, a ballot box, a secret ballot).

IF A SECRET BALLOT IS REQUESTED

An election for HSRs must be conducted by secret ballot if a secret ballot is requested by—

- (a) a member of the work group; or
- (b) a candidate for election; or
- (c) the PCBU or PCBUs.

A secret ballot means that the voter's choice is anonymous – no-one else knows who the voter has chosen. For example, a voter indicates their choice on a ballot paper that is put into a box.

After all votes have been put into the box, the box is emptied and the votes are counted.

RUN THE ELECTION

After sharing information about the nominated candidates, run the election following the process decided on. For example, a show of hands, an electronic vote, or a secret ballot.

4.9 Who can vote in the election?

REGULATIONS	<i>Eligibility to vote at election</i> Regulation 11, page 7
GUIDANCE	A person can vote in an election for an HSR if that person is: <ul style="list-style-type: none"> > a worker; and > a member of the work group that the election is being conducted for

4.10 Interfering with an election

REGULATIONS	<i>Prohibition on unreasonable delay of election and interfering with or influencing workers voting in election</i> Regulation 17, page 9
GUIDANCE	<p>No one can unreasonably delay the election, or interfere with or influence a worker who is voting for an HSR.</p> <p>Once an election process is underway, no one can ask for the election to be delayed unless there is an extremely good reason. For example, a power cut that would prevent workers from voting electronically, or bad weather preventing people attending work on the day of the election.</p> <p>A person who unreasonably delays an election for an HSR, or interferes with or influences workers voting in an election for an HSR, is committing an offence.</p> <p>People must not bother or attempt to influence a worker who is voting in an election. For example, by pressuring them to vote for a particular candidate, by looking over someone’s shoulder when a secret ballot is taking place to see who that worker is voting for, by removing votes from a ballot box, or by not allowing workers time off to vote.</p>

4.11 Notify work group of election outcome

It is likely that the person conducting the election would count the votes and then let workers know the results.

4.12 Share names and contact details of elected HSRs with workers

REGULATIONS	<i>Duty to maintain list of health and safety representatives</i> Regulation 20, page 10
GUIDANCE	<p>The PCBU must make sure that a list of the names and contact details of HSRs for each work group is:</p> <ul style="list-style-type: none"> > easy for workers to access (for example, kept somewhere obvious in the workplace); and > is provided to the regulator if the regulator asks for it; and > updated whenever there is a change in HSRs for that work group. <p>‘Easy to access’ means that workers can easily get to the list whether it is in hard copy, electronic form, or some other form. For example, the list could be put up on a notice-board in a lunch room and also made available on the intranet. Some workplaces share photos of HSRs (with their names underneath) to help workers get to know who their HSRs are.</p>

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HSR FUNCTIONS AND POWERS

IN THIS SECTION:

- 5.1 Functions of an HSR**
- 5.2 Powers of an HSR**
- 5.3 Additional powers of trained HSRs**
- 5.4 Ceasing (stopping) unsafe work**
- 5.5 HSR may direct unsafe work to cease**
- 5.6 Resolving issues related to cessation of work**
- 5.7 Limits on HSR's functions and powers**
- 5.8 Legal responsibility and protections**

This section describes the functions and powers of an HSR and the additional powers of a trained HSR.

HSRs provide workers with a formal, visible way to have a say. They are a voice for workers who might not otherwise speak up about health and safety matters.

An HSR is not expected to carry out their HSR role on top of their normal workload. An HSR is paid for the time that they spend carrying out their role. A PCBU must give an HSR a reasonable amount of time to carry out activities associated with their HSR role within the time allowed for their existing paid work commitments.

5.1 Functions of an HSR

HSWA	<p><i>Functions of health and safety representatives</i> Schedule 2, Part 1, 1, page 135</p>
GUIDANCE	<p>An HSR's functions for a work group involve representing individual workers (on request) and work group workers (as a group) in health and safety matters, investigating workers' health and safety complaints, monitoring health and safety measures, inquiring into health and safety risks, making work health and safety recommendations, providing feedback to the PCBU about whether the requirements of HSWA or the regulations are being complied with, and promoting the interests of workers who have been harmed at work (including arrangements for rehabilitation and return to work).</p> <p>Whether an HSR exercises their functions or carries out their powers is up to them.</p>
HSWA	<p><i>Functions and powers of health and safety representative generally limited to particular work group</i> Schedule 2, Part 1 (9) page 138</p>
GUIDANCE	<p>WHO AN HSR ACTS FOR</p> <p>Typically an HSR only performs their functions and exercises their powers on health and safety matters that affect, or may affect, their work group.</p> <p>However, an HSR can act as an HSR for another work group if:</p> <ul style="list-style-type: none"> (a) there is a serious risk to health or safety arising from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group (b) they are assisting, or acting in the capacity of, an HSR in another work group, <p style="margin-left: 20px;">Another work group in this case means:</p> <ul style="list-style-type: none"> (i) another work group carrying out work for a business or undertaking that relates to the work group that the HSR represents, or (ii) for a multiple PCBU work group arrangement, another work group within that arrangement.

5.2 Powers of an HSR

ATTENDING AN INTERVIEW

HSWA	<i>Health and safety representative may attend interview</i> Schedule 2, Part 1 (2), pages 135-136
GUIDANCE	<p>With the consent of the worker(s) concerned, an HSR may attend an interview concerning work health and safety between a worker – or group of workers – whom the HSR represents and (a) an inspector; or (b) the PCBU or the PCBU's representative. This might be after an incident or during an investigation.</p> <p>An inspector may refuse to allow an HSR to be present if:</p> <ul style="list-style-type: none"> > personal information may be disclosed (unless the person whose information may be disclosed has expressly consented to having an HSR present). > Personal information could include health information (such as medical records, sick leave records), age, or sensitive information such as whether a worker belongs to a union, has a criminal record, or a worker's religious beliefs or affiliations. > The inspector believes that there is a real risk that the HSR's presence would get in the way, including of a potential investigation or prosecution.

ENTER AND INSPECT THE WORKPLACE

HSWA	<i>Health and safety representative may enter and inspect workplace</i> Schedule 2, Part 1 (3), page 136
GUIDANCE	<p>An HSR may at any reasonable time enter and inspect any area of a workplace to perform HSR functions or exercise HSR powers.</p> <p>The HSR must first give reasonable notice to the PCBU at that workplace including letting the PCBU know if the HSR will be accompanied by another person. The HSR must comply with reasonable work health and safety procedures and requirements during the visit (eg wearing personal protective equipment if required).</p> <p>An HSR can enter and inspect a workplace at any time and without notice (including when they are accompanied by another person) if there is:</p> <ul style="list-style-type: none"> > an incident (eg an incident that resulted in someone being hurt, or very nearly being hurt), or > a situation involving a serious risk to health and safety arising from an immediate or imminent exposure to a hazard. <p>For example, if a worker is injured at a workplace, an HSR can go to that part of the workplace right away. They may need to support workers involved in the incident or other workers who witnessed the incident. The HSR can help to make sure that the injured worker gets appropriate treatment, as well as assisting the worker to report and record the injury or incident (eg on an accident/incident form).</p>

REQUEST INFORMATION NEEDED TO PERFORM HSR FUNCTIONS OR POWERS

HSWA	<p><i>Health and safety representative may request information</i></p> <p><u>Schedule 2, Part 1 (4), page 136</u></p>
GUIDANCE	<p>PCBUs are expected to manage workplace risks; risks arise from people being exposed to a hazard. A hazard is anything that can cause harm. HSWA clarifies that ‘hazard’ includes behaviour that has the potential to cause death, injury or illness (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock or another temporary condition that affects behaviour).</p> <p>Because HSRs should know about the hazards and risks that could affect workers in their work group, they have a right to ask the PCBU for information about these hazards and associated risks. The HSR may keep and copy any document containing information that the PCBU provides in response to such a request.</p> <p>This could include information about exposure to hazards that can kill or injure workers or make them ill, such as:</p> <ul style="list-style-type: none"> > airborne contaminants, including dusts, fibres, fumes > chemicals that can make people ill after breathing in, getting on their skin, or eating or drinking them > biological hazards such as bacteria, viruses or fungi > physical hazards such as noise, vibrations, UV radiation, heat > ergonomic hazards such as repetitive motions, eye strain. <p>An HSR can also ask for information about the health and safety of workers in the work group. However, a PCBU cannot allow an HSR to have access to any personal information about a worker (eg medical or sick leave records) without that worker’s consent – unless the information is in a form that does not identify the worker and could not reasonably be expected to identify the worker. This might mean, for example, making sure that any records shared do not include names, positions, addresses, dates of birth, length of employment or any other information that could identify an individual worker.</p>

AN HSR CAN BE ACCOMPANIED OR ASSISTED BY ANOTHER PERSON

HSWA	<p><i>Health and safety representative may be assisted by another person</i></p> <p><u>Schedule 2, Part 1 (5), page 137</u></p>
GUIDANCE	<p>An HSR may be accompanied and assisted by another person so that the HSR can perform or exercise their functions or powers. For example, in some circumstances an HSR might ask for the PCBU’s health and safety manager, a hearing specialist, or an occupational health nurse to be present to give advice on technical health or safety matters. A PCBU is not required to give financial assistance to anyone who accompanies or assists an HSR.</p> <p>A person accompanying or assisting an HSR must comply with any reasonable work health and safety procedures and requirements. They must understand that the HSR’s functions and powers, and any information gathered, are for health and safety purposes only.</p>

ASSIST ANOTHER HSR

HSWA	<p><i>Health and safety representative in one work group may assist, or act in the capacity of, health and safety representative in another work group</i></p> <p><u>Schedule 2, Part 1 (6), page 137</u></p>
GUIDANCE	<p>One HSR may accompany or assist another HSR, or act for that HSR, if:</p> <ul style="list-style-type: none"> > the workers in their respective work groups work for the same business or undertaking, or > the work groups are within the same multiple PCBU work group arrangement <p>One HSR may accompany or assist another HSR in the following circumstances:</p> <ul style="list-style-type: none"> > One HSR accompanies and assists the other, on their request, to perform or exercise their HSR functions or powers > One HSR can act for another: <ul style="list-style-type: none"> - if worker assistance is requested and the worker's usual HSR is not available (after a reasonable check on their availability) - if one HSR requests that the other HSR act for them while they are away or unavailable <p>Example:</p> <p>An HSR may be accompanied and assisted by another HSR who works for the same PCBU:</p> <ul style="list-style-type: none"> > Harriet and Matiu work for Greenies' Growers and Packers > Harriet represents workers on the day shift > Matiu represents workers on the night shift <p>Harriet asks Matiu to help her to handle a complex and challenging health and safety matter about the return to work of an injured worker. Matiu supports Harriet by drawing on his experience of supporting a night shift worker who had a phased return to work following a work-related injury. He also helps Harriet to find out what medical clearance is needed before the worker can return.</p>

ACCOMPANY AN INSPECTOR

HSWA	<p><i>Health and safety representative may accompany inspector</i></p> <p><u>Schedule 2, Part 1 (7), page 138</u></p>
GUIDANCE	<p>An HSR may accompany an inspector who has entered a workplace using their powers of entry and inspection.</p> <p>However, an inspector may refuse to allow an HSR to be present if:</p> <ul style="list-style-type: none"> > during a discussion personal information may be disclosed (unless the person whose information may be disclosed has expressly consented to having an HSR present) > The inspector believes that there is a real risk that the HSR's presence would get in the way, including in the way of a potential investigation or prosecution.

Example:

Following an incident at a large organization, WorkSafe carried out an investigation. An HSR who was also a union delegate attended meetings during the investigation. The HSR provided support to workers who were interviewed as part of the investigation. The HSR also helped to identify systemic problems related to the incident that were occurring within the organisation. For example, workers often had no access to personal protective equipment (PPE). The HSR made sure that access to PPE was put on the agenda for the HSC so that this (as well as other issues) could be addressed.

CONSULT THE REGULATOR OR AN INSPECTOR ON A HEALTH AND SAFETY ISSUE

HSWA

Health and safety representative may consult regulator or inspector

Schedule 2, Part 1 (8), page 138

GUIDANCE

An HSR may consult the regulator or an inspector about any work health and safety issue. Phone WorkSafe on 0800 030 040.

5.3 Additional powers of trained HSRs

GUIDANCE

Only HSRs who have attended the health and safety training outlined in the Regulations can:

- > issue Provisional Improvement Notices (PINs) (see below)
- > direct unsafe work to cease.

These are HSRs who have:

- > attended approved training under the HSE Act and completed transition training, or
- > completed initial training to NZQA unit standard 29315 (or previously completed that training when acting as an HSR for another work group).

ISSUING PROVISIONAL IMPROVEMENT NOTICES (PINs)

GUIDANCE

A Provisional Improvement Notice (PIN) is a written notice that is issued to a person telling the person to address a health and safety matter that is contravening, or is likely to contravene, 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).

WHO CAN ISSUE A PIN?

An HSR can issue a PIN only if the HSR has completed the appropriate training. (See Section 6.3 of these guidelines.)

WHEN CAN A PIN BE ISSUED?

An HSR can issue a PIN to a person if the HSR reasonably believes that person is contravening, or is likely to contravene, a provision of HSWA or the regulations. ‘Contravene’ means that there has been a breach of legal obligation or duty.

<p>HSWA</p>	<p><i>Provisional improvement notices</i> Section 69, pages 51-52</p> <hr/> <p><i>Training requirements relating to issue of provisional improvement notice</i> Section 70, page 52</p>
<p>GUIDANCE</p>	<p>CONSULT FIRST The HSR must not issue a PIN to a person unless they have first consulted that person.</p> <p>IS THERE AN EXISTING IMPROVEMENT NOTICE OR PROHIBITION NOTICE? An HSR must not issue a PIN if an inspector has already issued an improvement notice or a prohibition notice about the same matter.</p>
<p>WHAT MUST BE IN A PIN AND HOW MUST IT BE ISSUED?</p>	
<p>HSWA</p>	<p><i>Requirements relating to provisional improvement notices</i> Section 71, page 52</p> <hr/> <p><i>Provisional improvement notice may include recommendations to remedy contravention</i> Section 72, pages 52-53</p>
<p>GUIDANCE</p>	<p>A PIN must be in writing. There is no requirement to use any particular form. HSRs can design their own form, provided that it states:</p> <ul style="list-style-type: none"> (a) that the HSR believes the person is contravening, or is likely to contravene, a provision of HSWA or the regulations (as the case may be); and (b) the provision the HSR believes is being, or is likely to be, contravened; and (c) briefly, how the provision is being, or is likely to be, contravened; and (d) the day, at least eight days after the notice is issued, by which the person is required to remedy the contravention or likely contravention. <p>OPTIONAL PIN TEMPLATE WorkSafe will make an optional PIN template available to assist HSRs in performing their role. You will find the form on the WorkSafe website www.worksafe.govt.nz.</p> <p>PINs CAN INCLUDE RECOMMENDATIONS A PIN may recommend different ways for fixing or preventing the problem that the PIN deals with. A recommendation included in a PIN may refer to a WorkSafe approved code of practice (ACOP). An ACOP is a practical guide on how to comply with legal duties. It can be used in legal proceedings as evidence of whether or not a legal duty or obligation has been complied with.</p>
<p>HSWA</p>	<p><i>Issue of provisional improvement notice</i> Section 74, page 53</p> <hr/> <p><i>Issue of notice</i> Section 116, page 69</p>

GUIDANCE

HOW A PIN MUST BE ISSUED

A PIN must be issued in one of the following ways:

- (a) by delivering it personally to the person; or
- (b) by sending it to the person—
 - (i) by post to the person’s usual or last known place of residence or business; or
 - (ii) by electronic transmission (such as email); or
- (c) by leaving it for the person at the person’s usual or last known place of residence or business with a person who appears to be 16 years or over and who appears to reside or work there; or
- (d) by leaving it for the person at the workplace to which the PIN relates, with a person who is or appears to be in charge of the workplace.

A PIN that is mailed by post is to be treated as having been received on the seventh day after the date on which it was mailed. For example, if the PIN was put into the mail on December 13, it will be treated as having been received on December 20.

If the HSR keeps a copy of a PIN, or has someone else with them when the PIN is issued, this can help if there is any question later about when the PIN was issued.

COPIES OF PINs

An HSR must give a copy of any PIN they issue to the PCBU of the work group that the HSR represents. The copy must be given as soon as practicable. It is good practice for the HSR to keep a copy of the PIN.

AN HSR MAY MAKE MINOR CHANGES TO A PIN

HSWA	<i>Minor changes to provisional improvement notice</i> <u>Section 73, page 53</u>
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GUIDANCE	<p>An HSR may make minor changes to a PIN to:</p> <ul style="list-style-type: none"> > clarify a point; or > correct mistakes or references; or > update an address or reflect other changed circumstances. <p>Changes could include, for example, making it clear exactly which machine needs a guard, correcting the spelling of a worker’s or business’s name, or adding additional details to make it clear which branch of a business the PIN is directed at.</p>
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HSWA	<i>Irregularities or defects in notice</i> <u>Section 77, pages 53-54</u>
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GUIDANCE	<p>A PIN is not invalid just because:</p> <ul style="list-style-type: none"> > it has a mistake or something was left out, unless the mistake or omission is likely to cause substantial injustice (that is, be very unfair) > it has been issued using an incorrect name, but only if the PIN still identifies the person well enough.
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CANCELLATION OF PINs

HSWA	<p><i>Cancellation of provisional improvement notice</i> Section 75, page 53</p>
GUIDANCE	<p>An HSR may, at any time, cancel a PIN. The cancellation must be in writing and given to the same person that the PIN was issued to.</p> <p>A cancellation must be notified in the same way that the PIN was issued. For example, if the PIN was delivered in person then the cancellation must be given in person too.</p>

DISPLAY OF PINs

HSWA	<p><i>Display of provisional improvement notice</i> Section 76, page 53</p>
GUIDANCE	<p>The person that the PIN is issued to must display it as soon as possible. The PIN must be displayed in an obvious place at or near the workplace, or the part of the workplace, where the work affected by the PIN is being carried out. For example, if the PIN covers work being carried out by a machine in a factory, the PIN must be displayed either on the machine itself (if this is possible), or on a wall either by the machine or somewhere very close by where it can be clearly seen.</p> <p>While the PIN is in force (active) and on display, a person must not intentionally remove, destroy, damage or deface it.</p>

PERSON MUST COMPLY WITH PIN WITHIN A SPECIFIED TIMEFRAME

HSWA	<p><i>Offence relating to breach of provisional improvement notice</i> Section 78, page 54</p>
GUIDANCE	<p>If a PIN has been issued to a person and that person has not asked WorkSafe to appoint an inspector to review the notice, the person must:</p> <ul style="list-style-type: none"> > do what the PIN says to: <ul style="list-style-type: none"> - fix the problem, or - prevent the problem from happening > do this within the timeframe spelled out in the PIN <p>Although the HSR may have recommended that the problem should be fixed a particular way, the person may fix the problem in a different way as long as they still manage to fix it and comply with the PIN.</p> <p>Example:</p> <p>MDKH Design has a very noisy printing press; the noise has been measured at 105 decibels. Workers tell the HSR that the noise is above an acceptable level and they have concerns about their hearing. The HSR talks to the PCBU who promises to do something about the noise, but does not. A week later, the HSR consults with the PCBU again, this time asking if they need help to identify suitable measures to decrease the noise level. Again, the PCBU indicates that they will soon take action, but nothing happens.</p>

The HSR then issues a PIN that includes all the required details about the problem and the relevant section of the Act that is being contravened. The PIN also recommends that anti-vibration rubber mounts are used under the printing press to reduce noise levels and vibration.

MDKH Design first considers whether they can afford to buy a quieter machine. Because there is not enough money in the budget for a replacement, MDKH Design addresses the problem by isolating the printing press in its own room so that the noise from the press cannot be heard in other quieter areas of the business. They also place sound-absorbing panels above the printing press and around the walls.

Workers don't often have to use the printing press and when they do they wear hearing protectors to decrease the residual noise. Workers are satisfied with this solution.

Managers used an alternative solution rather than what the PIN recommended. They have still complied with the PIN because their solution remedied the contravention to the Act.

REQUESTING A PIN REVIEW BY AN INSPECTOR

<p>HSWA</p>	<p><i>Review of provisional improvement notice</i> Section 79, page 54</p> <p><i>Regulator must ensure inspector reviews notice</i> Section 80, page 55</p> <p><i>Decision of inspector on review of provisional improvement notice</i> Section 81, page 55</p>
<p>GUIDANCE</p>	<p>The following people may – within seven days after the PIN has been issued to them – ask WorkSafe to appoint an inspector to review the PIN:</p> <ul style="list-style-type: none"> > the person to whom the PIN was issued; and > if the person is a worker, the PCBU at the worker's workplace. <p>This means that either the worker, or the worker's PCBU, can ask for the PIN to be reviewed.</p> <p>WorkSafe has a form to make it easy to contact WorkSafe with a request for a PIN to be reviewed. You can use the form on the WorkSafe website www.worksafe.govt.nz.</p> <p>If a request is made for an inspector to review a PIN, the PIN is put on hold while it is being reviewed.</p> <p>The regulator (WorkSafe, or a designated agency) must ensure that, as soon as practicable after a request is made for a PIN to be reviewed, an inspector—</p> <ul style="list-style-type: none"> (a) reviews the PIN; and (b) looks into the circumstances that are the subject of the PIN <p>An inspector may review a PIN even if the period for compliance with the notice has expired.</p> <p>WHEN MIGHT AN INSPECTOR NEED TO REVIEW A PIN?</p> <p>An inspector might need to review a PIN if:</p> <ul style="list-style-type: none"> > a PCBU disagrees with a recommendation included in a PIN > a PCBU believes that they are already complying with the law.

WHAT HAPPENS AFTER AN INSPECTOR REVIEWS A PIN?

After reviewing a PIN, the inspector must—

- (a) confirm the PIN (ie agree that the problem specified in the PIN must be addressed); or
- (b) confirm the PIN with changes (agree that the problem specified in the PIN must be addressed, but with some changes); or
- (c) cancel the PIN.

If the inspector confirms the PIN (with or without changes):

- > the PCBU must fix the problem within a specified timeframe
- > the PIN must be treated as an improvement notice issued by the inspector under HSWA.

The inspector must give a copy of their decision (either in person or some other way, in accordance with [section 116](#)) to—

- (a) the person who asked for the PIN to be reviewed; and
- (b) the HSR who issued the PIN.

5.4 Ceasing (stopping) unsafe work

HSWA	<p><i>Meaning of cease work</i> Section 82, page 55</p> <p><i>Right of worker to cease or refuse to carry out unsafe work</i> Section 83, page 56</p>
GUIDANCE	<p>Cease work means to stop or refuse to carry out unsafe work.</p> <ul style="list-style-type: none"> > An individual worker can decide to cease work > An HSR can also direct workers to cease work. <p>A worker can refuse to carry out work or stop the work they are doing if they believe that carrying out the work would expose them or someone else to a serious health and safety risk:</p> <ul style="list-style-type: none"> > caused by immediate exposure to a hazard, or > because they will very soon be exposed to a hazard. <p>However, this does not authorise a worker to refuse to do work that, because of its nature, inherently or usually carries an understood risk to the worker's health and safety, unless that risk has materially increased beyond the understood risk.</p> <p>See WorkSafe's Special Guide Introduction to the Health and Safety at Work Act 2015 for more information.</p>

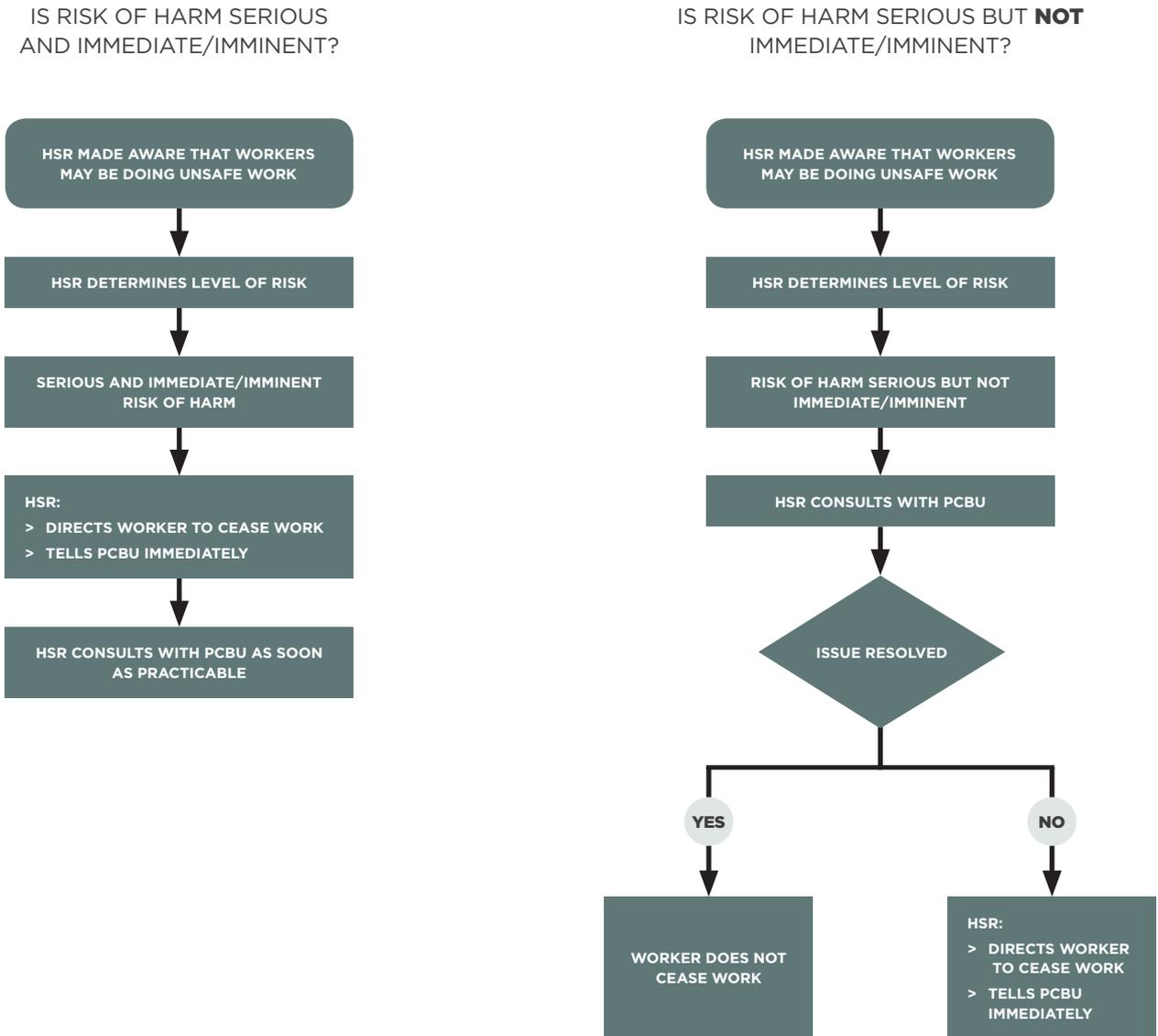


Figure 4: What HSR considers when deciding whether to direct workers to cease unsafe work

5.5 HSR may direct unsafe work to cease

HSWA	<p><i>Health and safety representative may direct unsafe work to cease</i> Section 84, page 56</p> <p><i>Training requirements relating to giving direction to cease work</i> Section 85, pages 56-57</p>
GUIDANCE	<p>As shown in Figure 4, a trained HSR may direct a worker in a work group that they represent to cease unsafe work if the HSR has a reasonable belief that:</p> <ul style="list-style-type: none"> > carrying out the work would expose the worker to a serious risk to their health or safety arising from an immediate or imminent (about to happen) exposure to a hazard, or > carrying out the work would expose anyone else to a serious risk to their health or safety arising from an immediate or imminent (about to happen) exposure to a hazard. <p>An HSR can only direct that unsafe work cease if:</p> <ul style="list-style-type: none"> > the HSR has completed a training course specified in the Regulations, or > the HSR has previously completed that training when acting as an HSR for another work group. <p>Before directing work to cease, the HSR must first attempt to resolve the matter by consulting the PCBU.</p> <p>If the matter hasn't been resolved in a reasonable amount of time then the HSR can direct unsafe work to stop. The HSR must inform the PCBU of any directions given to workers to cease unsafe work.</p> <p>However, the HSR need not consult with the PCBU first if the risk is so serious and immediate or imminent (about to happen) that there is no time to consult before giving the direction. In that case, the HSR must consult the PCBU as soon as possible after giving the direction to cease work.</p> <p>If the work is inherently risky, an HSR can't direct a worker to cease work unless the risk has materially increased.</p>

ALTERNATIVE WORK

HSWA	<p><i>Alternative work</i> Section 86, page 57</p>
GUIDANCE	<p>If a worker ceases work or has been directed to cease work, the PCBU may direct the worker to carry out alternative work at the same or another workplace until they can get back to doing the work that they usually do.</p> <p>The alternative work must be safe and appropriate for the worker to carry out until they can resume their normal duties.</p> <p>A worker who has ceased work must remain available to carry out alternative work. The alternative work must be:</p> <ul style="list-style-type: none"> > safe and appropriate, and > within the scope of the worker's contract or employment agreement. <p>As well, a worker may agree (but cannot be directed) to do other work that is safe and appropriate for the worker.</p>

5.6 Resolving issues related to cessation of work

HSWA	<p><i>Regulator may assist to resolve issues relating to cessation of work</i></p> <p><u>Section 87, page 57</u></p>
GUIDANCE	<p>The HSR, the PCBU or the worker may ask the regulator for help to resolve the issue that has led to the direction being given for the worker to cease unsafe work.</p> <p>WorkSafe has a form to make it easy to contact WorkSafe with a request to resolve an issue relating to the cessation of work. You can find the form on the WorkSafe website www.worksafe.govt.nz.</p> <p>If the regulator agrees to help, the regulator must then provide help as soon as practicable.</p>

5.7 Limits on an HSR's functions and powers

HSWA	<p><i>Functions and powers of health and safety representative generally limited to particular work group</i></p> <p><u>Schedule 2, Part 1 (9), page 138</u></p>
HSWA	<p><i>Functions and powers for health and safety purposes only</i></p> <p><u>Schedule 2, Part 1 (13), page 141</u></p>
HSWA	<p><i>Information to be used by health and safety representative for health and safety purposes only</i></p> <p><u>Schedule 2, Part 1 (14), pages 141-142</u></p>
GUIDANCE	<p>There are limits to an HSR's functions and powers.</p> <p>An HSR for a work group can only perform a function or exercise a power under HSWA for matters that affect the health and safety of workers in the HSR's work group. Unless:</p> <ul style="list-style-type: none"> > there is a serious health and safety risk from exposure to a hazard that will affect a member of another work group; or > the circumstances outlined in Clause 6(3) apply (that is, when an HSR in one work group assists, or acts in the capacity of, an HSR in another work group) <p>An HSR can only perform a function or exercise a power under HSWA for a health and safety purpose, and not for any other reason.</p> <p>If an HSR obtains information through their position:</p> <ul style="list-style-type: none"> > they may only disclose or use information about someone with that person's consent; and > they may only disclose or use information that is needed to carry out their HSR role > they may only disclose information to the regulator if the HSR reasonably believes the disclosure is necessary to comply with the relevant health and safety law, and only if the disclosure is authorized or required by law <p>Note that 'disclose' includes giving any person access to information.</p> <p>An HSR can only use any information they obtain through their position for a health and safety purpose.</p>

5.8 Legal responsibility and protections

HSWA	<p><i>No duty on health and safety representative</i></p> <p>Schedule 2, Part 1 (15), page 142</p>
GUIDANCE	<p>Although HSWA gives HSRs certain functions and powers, HSRs do not have to use them.</p> <p>However as workers, they still have the duty to:</p> <ul style="list-style-type: none"> > take reasonable care of their own health and safety > take reasonable care that what they do, or do not do, does not adversely affect the health and safety of other persons > co-operate with any reasonable workplace health and safety policy or procedure that has been notified to workers > comply, so far as reasonably able, with any reasonable instruction given by the PCBU, so the PCBU can comply with HSWA and regulations. <p>An HSR is not expected to know everything about workplace health and safety issues, or to have overall responsibility for health and safety in their workplace.</p>

IMMUNITY

HSWA	<p><i>Immunity of health and safety representatives</i></p> <p>Schedule 2, Part 1 (16), page 142</p>
GUIDANCE	<p>HSWA protects HSRs from civil and criminal liability for any action they take (or do not take) in good faith when acting in their role as an HSR.</p> <p>When PCBUs, HSRs and other workers communicate well and treat each other with mutual respect, this reduces the risk of conflict and problems.</p>

ADVERSE, COERCIVE OR MISLEADING CONDUCT

HSWA	<p><i>Prohibition of adverse, coercive, or misleading conduct</i></p> <p>Subpart 5, pages 57-63</p>
GUIDANCE	<p>All current or prospective workers are protected from discrimination and dismissal from a PCBU for carrying out health and safety-related activities or raising health and safety issues or concerns.</p> <p>Adverse conduct means behaving in a way that discriminates against a worker or other person. It is an offence under HSWA for a person to engage in adverse conduct for a prohibited health and safety reason. It is also an offence to influence another person to engage in this type of conduct, for example by requesting, encouraging or assisting them to engage in it.</p> <p>Adverse conduct includes dismissing an employee, forcing a worker to retire or resign, or denying a person a role that is available and that they are qualified to do.</p> <p>Adverse conduct for a prohibited health and safety reason involves engaging in adverse conduct because a worker or other person is, has been, or intends to be:</p> <ul style="list-style-type: none"> > an HSR at a workplace, or a member of an HSC > involved in resolving a work health and safety issue under HSWA.

Section 89 of HSWA lists further examples of adverse conduct engaged in for prohibited health and safety reasons.

A person who has been affected by adverse conduct may apply to the District Court for an appropriate order (eg to restrain someone from engaging in adverse conduct). However, an employee who wishes to take action against an employer (or former employer) in respect of adverse conduct for a prohibited health and safety reason may only bring a personal grievance under the Employment Relations Act 2000. They cannot use the District Court process.

HSWA also prohibits a person from taking or organising (or threatening to take or organise) action that is intended to coerce or induce another person to perform or exercise, or not to perform or exercise, powers or functions under HSWA, or to hold back from seeking or undertaking a HSWA-related role (such as being an HSR).

A person must also not knowingly or recklessly make a false or misleading representation to another about that person's rights or obligations under HSWA, their ability to make a complaint or an inquiry to a person who can seek compliance with HSWA (such as the regulator), or their ability to initiate or participate in a process or proceedings under HSWA.

See WorkSafe's Special Guide [*Introduction to the Health and Safety at Work Act 2015*](#) for further details about adverse, coercive or misleading conduct.

06/

PCBU'S DUTIES TOWARDS HSRs

IN THIS SECTION:

- 6.1 What are a PCBU's duties towards HSRs?**
- 6.2 Paid leave to attend HSR training**
- 6.3 Types of training**
- 6.4 Access to training**

This section describes the PCBU’s duties towards HSRs.

6.1 What are a PCBU’s duties towards HSRs?

HSWA	<p><i>Obligations of PCBU to health and safety representative</i></p> <p>Schedule 2, Part 1 (10), pages 138-140</p> <p>Note: this is subject to clause 11, page 140</p>	
GUIDANCE	OBLIGATIONS OF PCBU TO HSR	EXPLANATION (BASED ON SCHEDULE 2 – PART 1, HSWA)
	Consult with HSR	Consult, so far as is reasonably practicable, with an HSR on workplace health and safety matters to do with a particular work group.
	Talk with HSR	Talk with an HSR to ensure the health and safety of the work group workers, whenever reasonably requested by the HSR.
	Allow HSR time to perform their powers and functions	Allow the HSR as much time as is reasonably necessary to perform their powers and exercise their functions under HSWA.
	Provide information about hazards and risks	Provide an HSR for a work group with any information that they need to carry out their role, including information about hazards and risks affecting the workers in that work group and the health and safety of those workers.
	Allow HSR to attend interviews with inspector or PCBU	<p>With worker consent, allow an HSR to attend interviews concerning work health and safety between one or more workers and an inspector or the PCBU at the workplace (or the PCBU’s representative).</p> <p>The HSR should be told about any such interview.</p> <p>The HSR and the worker may wish to consult before, during and/or after the interview.</p>
	Provide resources and facilities	Provide an HSR with resources, facilities and assistance that are reasonably necessary or prescribed by regulations to enable the HSR to exercise their powers and perform their functions under HSWA.
	Provide access to workplace for anyone assisting HSR	Allow a person assisting an HSR to have access to the workplace – if that person needs access so that they can assist. (Note: An HSR may at any reasonable time enter and inspect any area of a workplace to perform HSR functions or exercise HSR powers. See Section 5.2 of these guidelines.)
	Allow HSR to accompany inspector	Permit an HSR to accompany an inspector during an inspection of any part of the workplace where a member of the HSR’s work group works.
	Respond to recommendations	<p>If an HSR makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time:</p> <ul style="list-style-type: none"> > adopt the recommendation; or > write to the HSR setting out the reasons why the recommendations are not being adopted.
	Pay HSR for time spent on role	An HSR must be paid for any time that they spend performing or exercising their functions or powers under HSWA. This must be with the pay that they would otherwise be entitled to receive for carrying out their normal work during that time.

Table 3: PCBU’s duties towards HSRs

A PCBU must not allow an HSR to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that:

- > does not identify the worker
- > could not reasonably be expected to identify the worker.

This may mean that the PCBU needs to appropriately anonymise the information (eg by removing a unique job title that could identify an individual worker) or seek the worker's or workers' consent to release the information.

A PCBU is not required to give financial assistance to anyone who accompanies or assists an HSR (such as a lawyer, or health and safety consultant).

A PCBU can refuse on reasonable grounds to grant access to the workplace to a person assisting an HSR.

6.2 Paid leave to attend HSR training

HSWA

Requirement to allow health and safety representatives to attend certain training

Schedule 2, Part 1 (12), page 140

GUIDANCE

A PCBU must give an elected HSR:

- > two days' paid leave each year to attend health and safety training; or
- > the number of days' paid leave each year (to attend health and safety training) specified in the Regulations

There is a cap on the number of days that a PCBU has to allow for paid training leave. The maximum total number of days' paid leave for HSR training that a PCBU is required to allow in a year is capped (as specified in the Regulations). The calculation is based on the number of workers who work for the business or undertaking on April 1 that year. See Table 4 of these guidelines.

ATTENDANCE AT HSR TRAINING IS PART OF NORMAL PAID WORK

Attendance at HSR training is considered part of normal work-related activity. HSRs are entitled to receive their normal/expected earnings while they are on a course. This includes pay entitlements relating to shift work, regular overtime, higher duties allowances or penalty rates that would have applied had the HSR been at work. A PCBU must pay an HSR for every day, or part of a day, that the HSR is given time off work to attend training.

- (a) if an HSR is a PCBU's employee, the HSR receives their relevant daily pay, or average daily pay
- (b) if an HSR is not a PCBU's employee, the HSR receives the pay that they would otherwise be entitled to receive for performing the HSR's normal duties during that time.

These payments do not apply for any day for which the eligible HSR is paid weekly compensation under the Accident Compensation Act 2001.

A year in this case means a period starting on 1 April of a given year and ending on 31 March of the following year.

Health and safety duties (including training) should generally be carried out within a worker’s usual hours of work. Workers should not usually have to use their leisure or family time to do this work. In some situations however, particularly where the training involves a particular event or conference, it may not be possible to undertake it in work time.

If training takes place outside usual working hours, PCBUs and workers should discuss and agree arrangements for payment or time off in lieu for attending the training. Arrangements may involve employees being paid an amount equal to their relevant daily pay or average daily pay for the time taken or, for contractors, payment based on what they would usually receive if they were undertaking their normal duties.

PAID TRAINING LEAVE IS IN ADDITION TO ANNUAL LEAVE

An HSR’s two day annual paid training entitlement is in addition to their entitlement to annual leave. Paid training leave is for the purposes of attending health and safety-related training. The HSR is allowed to have time away from their normal work to attend training because it is relevant to their role as an HSR. Annual leave is not used for attending HSR training.

6.3 Types of training

REGULATIONS	<p><i>Training required for purposes of sections 70(a) and 85(a) of Act</i> Regulation 21, page 10</p> <p><i>Types of health and safety representative training</i> Regulation 22, page 10</p> <p><i>Choice of training</i> Regulation 23, pages 10-11</p> <p><i>Transitional provision regarding training</i> Schedule 1, Part 1, pages 13-14</p>
GUIDANCE	<p>An HSR may use their annual training entitlement to attend either initial training or additional training. Training helps an HSR to become more effective and builds on what they already do well.</p> <p>INITIAL TRAINING</p> <p>An HSR has completed initial training when they are assessed as having achieved the New Zealand Qualifications Authority unit standard 29315.</p> <p>For HSRs appointed under the HSE Act, transition training² is also considered initial training. This means that an HSR must be treated as having completed initial training if:</p> <ul style="list-style-type: none"> > immediately before the Regulations commenced on April 4, 2016 they were a trained HSR (under section 46A(1) of the HSE Act 1992); and > before, on, or after April 4, 2016, the HSR has completed transition training.

² The ‘Health and Safety Representative Transition Training’ course provided for a limited period of time by Safety-N Action Limited.

ADDITIONAL TRAINING

Additional training is training beyond initial training. It covers work health and safety or an aspect of work health and safety:

- a) that is within the [occupational health and safety subfield](#)³ of the New Zealand Qualifications Framework, or
- b) that the PCBU and the HSR agree is relevant to the HSR's role.

CHOOSING TRAINING

An HSR may choose a training opportunity (whether initial or additional training) in consultation with the PCBU about the time, date, location and costs (including training fees). Consultation means that the HSR must:

- > inform the PCBU of the proposed course
- > give the PCBU the opportunity to offer their views about whether or not the proposed course is appropriate and suggest alternatives if necessary
- > take those views and suggested alternatives into account when deciding which course to attend.

When deciding which course an HSR should attend, the following points could be considered:

- > timing of attendance – the sooner HSRs attend training after being elected, the more effective they will be in their role
- > cost of courses, where prices differ substantially
- > where the courses are held
- > costs of attendance for workers at remote workplaces, including travel and accommodation expenses
- > the relevance of any hazard-specific course to the HSR's work group
- > the total number of workers requiring training.

HSWA requires the PCBU to allow the HSR two days' paid leave each year for the purpose of attending health and safety training, subject to the cap described below. There may be some negotiation and compromise between the HSR and the PCBU when decisions are being made about which course an HSR attends.

6.4 Access to training

REGULATIONS	<i>Duty in relation to access to training for health and safety representatives</i> Regulation 24, page 11
	<i>Sharing of costs for training in multiple PCBU arrangements</i> Regulation 25, page 11
GUIDANCE	A PCBU must decide as soon as practicable whether an HSR can use their annual training entitlement to attend initial or additional training.

³ **Note:** this subfield may change over time.

If this decision has not been made within three months of receiving the HSR's request for training this is a breach of the Regulations.

Attendance at training is subject to the maximum total number of days' paid leave specified in Regulation 26 (below).

The PCBU must—

- (a) pay the HSR's training fees; and
- (b) pay for any other reasonable expenses that the HSR may incur, or has incurred, in attending training (including the cost of travel and accommodation that may be booked or paid for in advance, or both).

If the work group for an HSR relates to more than one PCBU, the PCBUs concerned must pay and equally share the costs associated with training, unless they agree otherwise.

A PCBU risks being in breach of HSWA if they haven't allowed an HSR to take their annual paid training leave, subject to the cap described below.

REGULATIONS

Duty in relation to maximum total number of days' paid leave to be allowed to health and safety representatives for training

Regulation 26, pages 11-12

GUIDANCE

The maximum total number of days' paid leave for HSR training that a PCBU is required to allow in a year is capped and based on the number of workers who work for the business or undertaking on April 1 that year.

CALCULATING PAID TRAINING LEAVE ALLOWANCES FOR HSRs

Use the following table to work out how much paid HSR training leave a PCBU must allow.

NUMBER OF WORKERS ON APRIL 1 OF CURRENT YEAR	MAXIMUM TOTAL NUMBER OF DAYS' PAID HSR TRAINING LEAVE A PCBU MUST ALLOW TO BE TAKEN
1-5	2
6-50	6
51-280	1 day for every 8 workers or part of that
281 or more	35 days, plus 5 days for every 100 workers, or part of that number

Table 4: Calculating paid training leave allowances for HSRs

Example 1:

Deemilton Landscaping Ltd has 37 workers on 1 April 2017.

Deemilton Landscaping Ltd must allow up to 6 days paid leave for HSR training.

Example 2:

Kawenga Ltd has 3000 workers. Kawenga Ltd must allow up to 185 days paid leave for HSR training. This is based on the 35 day maximum, plus 150 days (5 days for every 100 workers).

A PCBU can decide that they want to allow more paid leave than the Regulations specify for HSRs to attend training. However, that is a decision to be made by individual businesses.

07/

HSR TERMS OF OFFICE AND CIRCUMSTANCES OF REMOVAL

IN THIS SECTION:

- 7.1 How long may an HSR hold office?**
- 7.2 Resignation of HSR**
- 7.3 When an HSR's role ends**
- 7.4 Removal of an HSR**

This section describes how long an HSR can hold their position and removal of an HSR.

7.1 How long may an HSR hold office?

REGULATIONS	<p><i>Term of office for health and safety representatives</i></p> <p>Regulation 18, page 9</p>
GUIDANCE	<p>A worker can be an elected HSR for a term of three years, or for a period less than three years agreed between the PCBU and the members of the relevant work group. HSRs can be elected for less than three years so that more workers have opportunities to take on an HSR role over time.</p> <p>An HSR may be re-elected for any number of terms.</p> <p>If the PCBU agrees, the HSR remains in office after their term has expired until their successor is elected. This means that the business will always have at least one worker who is an HSR.</p> <p>This Regulation takes into account that sometimes an HSR will choose to, or need to, resign. These circumstances are covered below.</p>

7.2 Resignation of HSR

REGULATIONS	<p><i>Resignation and removal from office of health and safety representatives</i></p> <p>Regulation 19, pages 9-10</p>
GUIDANCE	<p>An HSR of a work group may resign from their HSR role at any time by giving notice to the PCBU for that work group.</p>

7.3 When an HSR's role ends

GUIDANCE	<p>An HSR stops being an HSR if—</p> <ul style="list-style-type: none"> (a) the HSR is no longer a member of the work group that they were elected to represent (eg if they move to a different job within the business, away from the others in their existing work group); or (b) a simple majority of the members of the work group decide that the HSR should no longer represent their work group. <p>Simple majority means that one more than half of the work group decides that the HSR should no longer represent them. For example, if the work group has 18 people, if at least ten people (nine plus one) decide that the HSR should no longer represent them, the HSR must step down.</p>
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7.4 Removal of an HSR

HSWA	<p><i>Regulator may remove health and safety representative</i></p> <p>Schedule 2, Part 1 (17), pages 142-143</p>
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Appeal against removal from office

Schedule 2, Part 1 (18), pages 142-143

GUIDANCE

The regulator can remove an HSR if they have not performed or exercised their functions or powers satisfactorily. This includes using their powers or functions for an improper purpose.

For example, the regulator may remove an HSR if it believes that an HSR issued a direction to cease work without having a reasonable concern that the work could pose a serious health and safety risk to a member of their work group.

The regulator could also remove an HSR if they believe that the HSR has used or disclosed health and safety information for inappropriate reasons, such as sharing confidential medical information.

The regulator must give written notice of its decision to remove an HSR from office to both the HSR and the HSR's PCBU.

The notice must state the reasons why the HSR is being removed and whether removal is for a specified period or indefinitely.

If the HSR believes that their removal is unfair, they can appeal to the District Court within 28 days of the date of the notice.

Removing an HSR from their HSR role does not affect their position within the business.

EXAMPLE:

Sarah is a database administrator who has been elected as an HSR.

When a manager comments that another team member will be away for a few days, Sarah tells the manager about that worker's medical history, without that worker's consent. She is removed from office (told to step down as an HSR) because she has used her HSR powers inappropriately by sharing information that she learned in her HSR role for non-HSR purposes.

Even though Sarah is no longer an HSR she still retains her job as a database administrator.

AT THE REQUEST OF THE PCBU**HSWA*****PCBU may request regulator to exercise discretion to remove health and safety representative***

Schedule 2, Part 1 (19), page 143

GUIDANCE

A PCBU may ask the regulator to remove one of its HSRs if the PCBU believes that the HSR has not performed or exercised their functions or powers satisfactorily. The PCBU can provide relevant information to support the request.

To contact WorkSafe with a request to remove an HSR, use the appropriate form on the WorkSafe website www.worksafe.govt.nz.

After receiving the request, the regulator must decide whether to remove the HSR.

If the regulator decides not to remove the HSR, the regulator must give written notice to the PCBU stating the reasons for its decision.

The PCBU may appeal to a District Court against the regulator's decision not to remove the HSR. An appeal must be brought within 28 days of the date of the notice that the PCBU gave to the regulator.

PART B

HEALTH AND SAFETY COMMITTEES

IN THIS PART:

Section 8: Introduction to Health and Safety Committees (HSCs)

Section 9: Requests for an HSC

Section 10: Membership and functions of an HSC

Section 11: Duties of PCBU's towards HSCs

08/

INTRODUCTION TO HEALTH AND SAFETY COMMITTEES (HSCs)

IN THIS SECTION:

- 8.1 What is a Health and Safety Committee (HSC)?**
- 8.2 Benefits of having an HSC**
- 8.3 HSCs established under the HSE Act 1992**

This section outlines what a Health and Safety Committee (HSC) is and the benefits of having an HSC.

8.1 What is a Health and Safety Committee (HSC)?

A Health and Safety Committee (HSC) enables a business and its worker representatives to meet regularly and work cooperatively to improve work health and safety. When HSCs are chosen or requested as a form of worker participation, HSWA and the Regulations outline specific requirements and processes that must take place.

8.2 Benefits of having an HSC

An HSC can help to develop policies and procedures for work health and safety, make recommendations and carry out other tasks that are agreed between the PCBU and the HSC or set down in Regulations.

An HSC can draw on workers' practical knowledge of how work is done as well as managers' knowledge about the broader context behind company policies and procedures.

An HSC can be an efficient participation practice in a workplace that has multiple PCBUs with overlapping duties, such as a construction site or university campus. Committee members can be drawn from each PCBU. This helps a PCBU who shares responsibility for health and safety with other PCBUs to meet the requirement to consult, co-operate with, and co-ordinate activities with other duty holders.

8.3 HSCs established under the HSE Act 1992

An HSC established under the Health and Safety in Employment (HSE) Act 1992 can continue under HSWA.

09/

REQUESTS FOR AN HSC

IN THIS SECTION:

- | | |
|--|---|
| 9.1 Who can make a request for an HSC? | 9.5 How long does a PCBU have to decide? |
| 9.2 A PCBU can decide to set up an HSC | 9.6 When can a PCBU refuse a request for an HSC? |
| 9.3 Which PCBUs must make a decision about whether to establish an HSC? | 9.7 When and how does the PCBU share its decision to accept or refuse the request? |
| 9.4 PCBU's written response if not required to make a decision | |

This section explains who can request an HSC and what happens next.

9.1 Who can make a request for an HSC?

HSWA	<i>Health and safety committees</i> <u>Section 66 (1), pages 50-51</u>
GUIDANCE	<p>The following people can request that a PCBU establish an HSC for part or all of the business or undertaking:</p> <ul style="list-style-type: none"> > an HSR for a work group at that workplace; or > 5 or more workers at that workplace.

9.2 A PCBU can decide to set up an HSC

HSWA	<i>Health and safety committees</i> <u>Section 66 (8), page 51</u>
GUIDANCE	<p>Even if the PCBU does not need to have an HSC (that is, it is exempt because of the size and nature of its business), it can still decide to set one up for the workplace or part of the workplace.</p>

9.3 Which PCBUs must make a decision about whether to establish an HSC?

HSWA	<i>Health and safety committees</i> <u>Section 66 (3), page 50</u>
GUIDANCE	<p>A PCBU must make a decision on the request for an HSC unless:</p> <ul style="list-style-type: none"> > the business or undertaking has fewer than 20 workers; and > is not in an industry set out in the Regulations (see Appendix 1). <p>The count should be based on the number of workers at the time that the request for an HSC is made.</p> <p>When counting workers a PCBU does not have to include volunteer workers as Part 3 of HSWA does not apply to volunteer workers.</p>

9.4 PCBU's written response if not required to make a decision

HSWA	<i>Health and safety committees</i> <u>Section 66 (4), page 50</u>
GUIDANCE	<p>If a PCBU is not required to decide whether to establish an HSC, they must write to the workers/HSRs who put in the request to explain this, within a reasonable time.</p> <p>While a 'reasonable time' is not defined, this should happen as soon as is practicable and no later than two months.</p>

9.5 How long does a PCBU have to decide?

HSWA	<i>Health and safety committees</i> <u>Section 66 (2), page 50</u>
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GUIDANCE

Within two months of receiving a request for an HSC the PCBU must decide whether to establish an HSC for the business or undertaking, or part of the business or undertaking.

9.6 When can a PCBU refuse a request for an HSC?**HSWA**

[Section 66 \(5\), page 50](#)

GUIDANCE

A PCBU can refuse a request for an HSC if the PCBU is satisfied that its existing worker participation practices are effective.

Worker participation practices must provide reasonable ongoing opportunities for workers to participate effectively in improving workplace health and safety.

Here are some key questions to ask when considering whether worker participation practices are effective:

- > Do workers know how to participate, and use opportunities to do so?
- > Does the PCBU act promptly when health and safety matters have been raised by workers?
- > Do decision-makers in the business or undertaking consider and respond to workers' suggestions for improving health and safety?
- > Does the PCBU use appropriate systems to document and track responses?

Appendix 2 (*Effective Engagement and Participation – What 'Good' Looks Like*) shows what else a PCBU could consider when determining whether its existing practices are effective.

9.7 When and how does the PCBU share its decision to accept or refuse the request?**HSWA**

[Health and safety committees](#)

[Section 66 \(6; 7\), pages 50-51](#)

REGULATIONS

[Duty to give notice of decision on health and safety committee](#)

[Regulation 27, page 12](#)

GUIDANCE

A PCBU must share, in writing, its decision about whether or not it will establish an HSC. The decision must be shared with workers who the PCBU considers to have an interest in the decision:

- > as soon as practicable, and
- > no later than 14 days (the time prescribed in the Regulations) after the date that the decision is made.

The PCBU could share its decision by:

- > announcing the decision on a noticeboard (eg in the lunchroom)
- > circulating the statement about the decision by email or text
- > sharing the decision on the intranet.

If a PCBU decides to refuse a request for an HSC, the written notice must include:

- > the reasons for the decision; and
- > a statement that workers may raise the refusal as an issue under Subpart 6 (Issue Resolution) of HSWA.

10/

MEMBERSHIP AND FUNCTIONS OF AN HSC

IN THIS SECTION:

- 10.1 Functions of an HSC**
- 10.2 Limits on an HSC's functions**
- 10.3 Membership of an HSC**
- 10.4 Resolving issues about HSC membership**
- 10.5 How often do HSCs have to meet?**

This section describes the membership and functions of a Health and Safety Committee (HSC).

The PCBU and its workers must agree on the membership of the HSC. Committee members (who are a mix of business and worker representatives) work co-operatively to ensure workers' health and safety.

10.1 Functions of an HSC

HSWA	<i>Functions of health and safety committee</i> Schedule 2, Part 2 (20), pages 143-144
GUIDANCE	<p>An HSC's main functions are:</p> <ul style="list-style-type: none"> > to make it easy for the PCBU and workers to cooperate on ways to ensure workers' health and safety at work > to help to develop standards, rules, and policies or procedures for work health and safety > to make recommendations on workplace health and safety > to carry out other tasks that are agreed between the PCBU and the HSC or set down in the Regulations.

10.2 Limits on an HSC's functions

HSWA	<i>Information to be used by health and safety committee for health and safety purposes only</i> Schedule 2, Part 2 (22), page 145
GUIDANCE	<p>This clause applies to any information obtained by a member of an HSC when they are carrying out the HSC's functions under HSWA.</p> <p>The HSC member can only disclose information if the disclosure is authorised or required by law. 'Disclosing' includes giving any person access to information.</p> <p>If the information is about a person, the HSC member:</p> <ul style="list-style-type: none"> > may disclose or use the information only with that person's consent > the information can only be disclosed or used to the extent necessary for the performance of the HSC's functions <p>The information can only be disclosed to the regulator, or a person authorised by the regulator, if the member reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with the relevant health and safety legislation.</p>

10.3 Membership of an HSC

The right mix of members means that the HSC will have the necessary level of decision-making, knowledge and expertise about company policy, production needs and technical matters. There should be representation for different types of work arrangements and work groups, work sites and work roles.

HSWA	<i>Membership of health and safety committees</i> Regulation 28, page 12
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GUIDANCE

The PCBU who establishes an HSC and the workers (or their representatives) must agree together on the membership of the HSC. If there is any issue about membership of an HSC, a party to the issue can ask the regulator to appoint an inspector to make a decision. See below.

Although there is no special process for appointing HSC members the Regulations outline who the members of the committee must be.

One of the members that the PCBU appoints to the HSC must be authorised by the PCBU to make decisions on behalf of the PCBU on health and safety issues; and at least half of the members on the HSC:

- > must be workers and must represent the workers at the workplace; and
- > must not have been nominated by the PCBU.

Each HSR is eligible to be an HSC member.

10.4 Resolving issues about HSC membership

HSWA	<p><i>Resolution of work health and safety issues</i> Section 98, page 63</p> <p><i>Regulator may appoint inspector to assist parties in resolving issue</i> Section 99, page 63</p>
REGULATIONS	<p><i>Issue that inspector may decide under section 99(3) of Act</i> Regulation 30, page 13</p>
GUIDANCE	<p>If an issue about HSC membership comes up (eg disagreement about who should be on the HSC), the parties involved in the issue (including their representatives) must make reasonable efforts to reach a timely, final and effective solution. What is reasonable will depend on the circumstances.</p> <p>If an HSC membership issue has not been resolved after reasonable efforts have been made to resolve it, then:</p> <ul style="list-style-type: none"> > a party to the issue may ask the regulator to appoint an inspector to help the parties to reach a solution > if the regulator agrees to appoint an inspector, the inspector may, after providing assistance, make a decision about the issue. <p>WorkSafe has a form to make it easy to contact WorkSafe with a request for help deciding an issue to do with the membership of an HSC. You can find the form on the WorkSafe website www.worksafe.govt.nz.</p>

10.5 How often do HSCs have to meet?

REGULATIONS	<p><i>Meeting requirements for health and safety committees</i> Regulation 29, page 12-13</p>
GUIDANCE	<p>An HSC must meet at least every 3 months. However, HSC members may decide that the HSC should meet more often than this.</p> <p>HSC members can meet at any other reasonable time if more than 50% of the HSC members request a meeting.</p> <p>An HSC can come up with its own procedures for organising and conducting meetings.</p>

11/

DUTIES OF PCBUS TOWARDS HSCs

IN THIS SECTION:

- 11.1 A PCBU's duties towards an HSC**

This section describes a PCBU’s duties towards an HSC.

11.1 A PCBU’s duties towards an HSC

HSWA	<p><i>Obligations of PCBU in relation to health and safety committees</i></p> <p>Schedule 2, Part 2 (21), pages 144-145</p>
GUIDANCE	<p>A PCBU has duties towards HSCs. These help to ensure that the committee can support the ongoing improvement of health and safety at work.</p> <p>(1) The PCBU must—</p> <ul style="list-style-type: none"> (a) consult, so far as is reasonably practicable, about health and safety matters with an HSC; and (b) allow each member of an HSC to spend as much time as is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee; and (c) provide the HSC with any information that it needs to perform its functions, including information relating to— <ul style="list-style-type: none"> (i) hazards (including associated risks) at the workplace; and (ii) the health and safety of the workers at the workplace. <p>CONSIDER AND RESPOND IN WRITING TO HSC RECOMMENDATIONS</p> <p>If an HSC makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time,—</p> <ul style="list-style-type: none"> (a) adopt the recommendation; or (b) write to the HSC explaining the reasons for not adopting the recommendation. <p>HSC ROLE CARRIED OUT AS PAID WORK</p> <p>Any time that a member of an HSC spends attending committee meetings or carrying out HSC functions must be with the same pay that they are entitled to if they were doing their normal job during that time.</p> <p>RESTRICTED ACCESS TO PERSONAL INFORMATION</p> <p>The PCBU must not allow the HSC to have access to any personal information about a worker without that worker’s consent, unless the information is in a form that:</p> <ul style="list-style-type: none"> > does not identify the worker; and > could not reasonably be expected to identify the worker.

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APPENDICES

APPENDIX 1: HIGH-RISK INDUSTRIES AND SECTORS

Regulation 5 – Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016

5 High-risk sectors or industries for purposes of sections 62(4)(b) and 66(3)(b) of Act

- (1) For the purposes of sections 62(4)(b) and 66(3)(b) of the Act, the high-risk sectors or industries—
 - (a) include a business or undertaking that is subject to any of the following regulations:
 - (i) Health and Safety at Work (Adventure Activities) Regulations 2016;
 - (ii) Health and Safety at Work (Major Hazard Facilities) Regulations 2016;
 - (iii) Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016;
 - (iv) Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016; and
 - (b) include a business or undertaking that is subject to the Civil Aviation Rules Part 115; and
 - (c) include a business or undertaking—
 - (i) that is carrying out an activity for which a maritime document is required; and
 - (ii) that would, but for regulation 4(2)(a) of the Health and Safety at Work (Adventure Activities) Regulations 2016, have been subject to those regulations; and
 - (d) include a business or undertaking that is operating predominantly in a high-risk sector or industry specified in Schedule 2 (see page 69 of these guidelines); but
 - (e) exclude a business or undertaking that is carrying out work of a type or in a sector specified in the third column of Schedule 3 (see page 69 of these guidelines) (Schedule 3 work) if—
 - (i) the business or undertaking only carries out Schedule 3 work and no other type of work; or
 - (ii) the Schedule 3 work carried out by the business or undertaking is in conjunction with any other type of work and the Schedule 3 work is predominant, relative to all other work carried out by that business or undertaking.
- (2) This regulation and Schedules 2 and 3 are subject to review, by the Minister, as follows:
 - (a) a review must commence as soon as practicable after 4 April 2018 (the first review); and
 - (b) another review must be completed within 5 years from the date of completion of the first review; and
 - (c) subsequent reviews must be completed no less frequently than 5 years from the date of completion of the immediately preceding review.
- (3) However, nothing in subclause (2) prevents the Minister from reviewing this regulation and Schedules 2 and 3 at any other time.
- (4) In this regulation, maritime document has the same meaning as in section 2(1) of the Maritime Transport Act 1994.

Schedule 2: High-risk sectors or industries

ANZSIC CLASSIFICATION CODE	HIGH-RISK SECTORS OR INDUSTRIES
A02	Aquaculture
A03	Forestry and logging
A04	Fishing, hunting, and trapping
B06	Coal mining
C11	Food product manufacturing
D28	Water supply, sewerage, and drainage services
D29	Waste collection, treatment, and disposal services
E30	Building construction
E31	Heavy and civil engineering construction
E32	Construction services

Schedule 3: Types of work or sectors excluded from high-risk sectors or industries

ANZSIC CLASSIFICATION CODE	SECTOR OR INDUSTRY	WORK TYPE/SECTOR EXCLUDED
A02	Aquaculture	
A0203		Onshore aquaculture
A03	Forestry and logging	Forest product gathering, which comprises— Kauri gum digging Native orchid gathering Pine cone gathering Resin gathering Mushroom gathering
A04	Fishing, hunting, and trapping	Hunting or trapping of certain non-New Zealand species, which comprises— Turtle hunting Buffalo hunting Crocodile hunting Dingo hunting or trapping Kangaroo hunting Snake catching
C11	Food product manufacturing	
C117		Bakery product manufacturing when carried out in the home
C1174		Bakery product manufacturing (non-factory-based)
E32	Construction services	Curtain installation Fly wire screen installation

APPENDIX 2: EFFECTIVE ENGAGEMENT AND PARTICIPATION - WHAT 'GOOD' LOOKS LIKE

This table shows what a PCBU can look for when considering whether it is engaging well with workers and whether workers have reasonable opportunities to participate effectively. Most businesses or undertakings will not need to do everything on this list.

THINGS TO CONSIDER	WHAT THIS MIGHT LOOK LIKE WHEN THINGS ARE WORKING WELL
<p>Commitment and action from PCBU</p>	<p>The PCBU:</p> <ul style="list-style-type: none"> > is committed to engaging with workers and their representatives (if the workplace has them) about matters affecting workers' health and safety > gives workers regular opportunities to consider and report how their health is being affected by their work > encourages project managers, supervisors and others who control work to ensure workers are given real opportunities to: <ul style="list-style-type: none"> - request or suggest improvements to health and safety - share opinions, views or advice > ensures project managers build in time for consultation with workers on proposed changes that could impact health and safety > always lets workers know how it has considered workers' views when decisions are made about work health and safety > promptly lets workers know about the outcome from raising health and safety issues > positively reinforces workers' safe practices, for example by noticing when and how workers are working safely and letting them and others know > teams up with workers to try out, review and update a range of participation practices that are appropriate for everyone
<p>PCBU awareness and demonstration of its engagement and participation duties</p>	<p>The PCBU:</p> <ul style="list-style-type: none"> > knows and understands: <ul style="list-style-type: none"> - its duties to engage with workers and to have worker participation practices - how they should engage with workers - when they must engage with workers - a variety of ways for engaging with workers > has practices that allow workers to participate directly and/or through representation
<p>PCBU shares all relevant information</p>	<p>The PCBU gives workers and their representatives (if the workplace has them) information on all matters that will or are likely to affect health and safety so that they understand:</p> <ul style="list-style-type: none"> > > what the risks are in their work > > potential health and safety risks following changes to work practices > > how they can contribute to identifying, eliminating or minimising risks
<p>PCBU uses a combination of approaches to engagement</p>	<p>The PCBU:</p> <ul style="list-style-type: none"> > engages with workers by using a mix of formal and informal approaches > uses multiple communication channels to share health and safety information > has worker participation practices that provide many different ways for workers to participate > knows what methods workers prefer and uses appropriate approaches

THINGS TO CONSIDER	WHAT THIS MIGHT LOOK LIKE WHEN THINGS ARE WORKING WELL
Processes in place	<ul style="list-style-type: none"> > The PCBU and workers openly and supportively discuss anything that puts health and safety at risk > Everyone can influence how health and safety is managed and improved > Health and safety is a regular item at team/group meetings > The PCBU has processes for: <ul style="list-style-type: none"> - regularly updating and communicating health and safety information (eg noticeboard; intranet) - capturing and responding to health and safety issues and other matters raised by workers and worker representatives (if the workplace has them) in a timely manner - handling any potential disagreements between the PCBU and workers or their representatives > Key Performance Indicators (KPIs) set targets to ensure meaningful worker engagement has taken place > Time is built in for engagement when work is being planned > PCBU and workers openly and supportively discuss anything that puts health and safety at risk > The business keeps records (such as notes or minutes) about worker engagement
Worker involvement	<p>Workers can:</p> <ul style="list-style-type: none"> - explain how the PCBU engages with them - describe one or more ongoing participation practices in place at their workplace (eg toolbox talks, suggestion schemes, Opportunity For Improvement forms, open-door policies) - identify who their worker representative is (if the workplace has worker representatives in place) - easily access information about work health and safety matters <ul style="list-style-type: none"> > Workers are encouraged and supported by the PCBU to come up with new or better ways to do things that will make the workplace safer > Workers feel confident about approaching the appropriate person about a health and safety issue – and know who to approach > Workers regularly raise issues, make suggestions, ask questions and contribute ideas on matters relating to health and safety > Workers regularly take action to work more safely > Workers understand why health and safety decisions have been made (eg about changes to the workplace; moving to a different worksite) > Workers are aware that they can request an HSR or HSC
Workers contribute to decision-making on health and safety matters	<ul style="list-style-type: none"> > Workers are consulted with by the PCBU at appropriate stages (eg before new technology or equipment is chosen/introduced) > Workers' views are sought by the PCBU on how changes to work or working conditions might affect workers' health and safety > Workers' views about health and safety matters are heard business-wide, not just at the local level (for multi-site businesses or undertakings)

THINGS TO CONSIDER	WHAT THIS MIGHT LOOK LIKE WHEN THINGS ARE WORKING WELL
<p>Awareness and recognition of role of HSRs (if chosen as a participation practice)</p>	<ul style="list-style-type: none"> > Workers know who the elected HSRs are (if the workplace has them) > Workers understand the HSRs' role and responsibilities > HSRs are empowered to act - their functions and powers are recognised throughout the workplace > Performing the role of an HSR is seen as part of an HSR's overall job once they have been elected > The PCBU recognises the HSR's role by recording it in the HSR's job description, work objectives or performance agreement for the year > Health and Safety Committee (if chosen as a participation practice) > > The HSR has adequate time to carry out their role as part of their paid work > The HSR gets the training they need > The PCBU is aware of - and acknowledges - the contribution the HSR makes to the workplace > HSRs are involved in inspections, investigations, and risk assessments > There are always workers willing to be nominated for (re)election as an HSR
<p>Health and Safety Committee (if chosen as a participation practice)</p>	<ul style="list-style-type: none"> > HSC meets regularly > All workers have representation on the HSC (see workforce diversity, below) > HSC is involved in developing standards, rules, policies and procedures for improving work health and safety outcomes > HSC recommendations are given due consideration by the PCBU > Workers know who their representatives are on the HSC
<p>Time, resources and facilities</p>	<ul style="list-style-type: none"> > Worker representatives have adequate time, resources, and facilities to carry out their roles > Workers have enough time to have a say and participate before a decision has to be made about a work health and safety matter
<p>Results are tracked and visible</p>	<ul style="list-style-type: none"> > The PCBU can describe changes made as a direct result of worker participation (eg equipment purchased or adapted; practices changed) > Workers can describe changes made as a direct result of worker participation (eg equipment purchased or adapted; practices changed) > Workers are kept informed about the outcome of engagement - they know what will happen next and why
<p>PCBU acknowledges and responds to workforce diversity</p>	<ul style="list-style-type: none"> > All work areas and workers are included/represented in worker participation processes > The PCBU takes into account the needs of different groups when engaging with workers. For example: <ul style="list-style-type: none"> - developing worker-specific resources, processes and procedures - ensuring that worker participation practices include shift workers and remote workers - using practices that reflect workers' needs and preferences - respecting and being sensitive to workers' cultural values and beliefs

THINGS TO CONSIDER	WHAT THIS MIGHT LOOK LIKE WHEN THINGS ARE WORKING WELL
	<ul style="list-style-type: none"> > The PCBU has processes for engaging with vulnerable workers such as: <ul style="list-style-type: none"> - Young workers - Disabled workers - Workers who speak languages other than English - Migrant workers - Inexperienced workers - Workers who are vulnerable because of their conditions of employment (such as temporary or seasonal workers) - Workers who are at greater risk of poor health and safety outcomes, including Māori and Pacific workers, and workers who are new to the job - Workers who have difficulty reading and writing
<p>If multiple PCBUs at one workplace</p>	<ul style="list-style-type: none"> > If there are two or more PCBUs with workers at the same workplace, worker participation practices span multiple PCBUs > All workers have opportunities to be equally involved in health and safety at this workplace, no matter which PCBU they work for > Adequate documentation (eg notes or meeting minutes) shows how multiple PCBUs have consulted, co-operated and coordinated with each other on worker engagement and participation practices

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