

Relevant Parties	Process to Follow	Additional Information
HSR/Deputy HSR Other PCBU's, WHS entry permit holder, Workers, PCBU	<p><b>Immediate Risk</b> Where there is an immediate risk, a worker is to cease or can be directed to cease unsafe work by a HSR</p>	Cease work trained HSR issues PIN
	Unresolved health and safety issue exists after discussion with relevant 'parties' using the PCBU's own issue resolution procedures	PCBU's Issue Resolution Procedure
HSR/Deputy HSR Other PCBU's, WHS entry permit holder, Workers, PCBU	Parties <u>must</u> make a reasonable effort to achieve a timely, final and effective resolution.	How to Consult on work health & safety: Code of Practice
HSR, deputy HSR, workers, duty holders	Where there is no agreed issue resolution procedure 'parties' are to use the default procedure	Model WHS Regulation Part 2.2
Further consultation and advice may be sought from internal or external stakeholder(s).	If the issue remains unresolved after reasonable efforts, any of the involved 'parties' may make a request to the authority (WorkCover) for an inspector to assist.	Workers remain entitled to cease unsafe work or a HSR to direct cessation of unsafe work or issue a PIN
A representative of an involved party may enter a workplace to attend discussions to help resolve the issue e.g. union representative	The WorkCover inspector will assist in resolving the issue with the 'parties'. If necessary, the inspector may exercise their compliance powers to resolve the matter.	WHS Act Part 10
Feedback to workers and other duty holders where relevant	Any action/s undertaken should be monitored for effectiveness. Feedback on the outcome should be provided to all relevant 'parties'.	PCBU's issue resolution procedure

## Key Points of the Default Issue Resolution Procedure

### Model WHS Regulations: Part 2.2

The WHS Act refers to a requirement to utilise the default procedure prescribed in the WHS Regulations where a PCBU/s does not have a written agreed procedure for issue resolution.

Matters to be taken into account by parties to the health and safety issues include:

- the number and location of workers affected by the issue;
- any relevant accepted industry practice, if that practice is consistent with the WHS Act and the WHS Regulations;
- the requirements for the management of risks (WHS Act s17);
- what (if any) temporary measures are required;
- what (if any) further information is required;
- a method and timeline for resolution of the issue;
- whether any other persons may reasonably be required to assist the early resolution of the issue; and
- who is to be responsible for implementing the resolution of the issue on behalf of the PCBU.

**Other requirements** pertaining to the issue resolution procedure under the WHS Regulation include:

- If the issue is resolved, the details of the issue and the resolution must be set out in writing to the satisfaction of all the parties.
- As soon as reasonably practicable after the issue is resolved, the PCBU must ensure that:
  - the workers affected by the issue are informed of the details of the agreement between the parties
  - a copy of the agreement is forwarded to any relevant HSR.
- A copy of the agreement to the resolution of an issue may be forwarded by any of the parties to any union or employer organisation that represents the party.

### Workplace issue resolution procedure

- If an agreed procedure for issue resolution at a workplace does not include a step specified in the default procedure in WHS Regulation 2.2.1, as described above that step is automatically included in the workplace agreed procedure.
- The PCBU must ensure that the agreed procedure for issue resolution at the workplace is:
  - set out in writing; and
  - communicated to all workers engaged by the person.

## Discriminatory conduct

### WHS Act: s104-107

A person only commits an offence under the WHS Act if the dominant reason for the discriminatory behaviour is conduct by a person in relation to health and safety activities.

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

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

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

## Other prohibited conduct

### WHS Act: s108-109

#### Coercion or inducement:

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

#### Misrepresentation:

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

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