On 18 June 2017, the Occupational Health and Safety Regulations 2017 (OHS Regulations 2017) replaced the Occupational Health and Safety Regulations 2007 (OHS Regulations 2007), which expired on this date. This publication has not yet been updated to reflect the changes introduced by the OHS Regulations 2017 and should not be relied upon as a substitute for legal advice.

Information on the key changes introduced by the OHS 2017 Regulations can be found in the guidance titled Occupational Health and Safety Regulations 2017: Summary of changes - available at https://www.worksafe.vic.gov.au/__data/assets/pdf_file/0011/207659/ISBN-OHS-regulations-summary-of-changes-2017-04.pdf. However, this guidance document contains material of a general nature only and is not to be used as a substitute for obtaining legal advice.
Definitions

Agreed issue resolution procedure – An agreed process or outline of the steps involved in resolving health and safety issues in a workplace.

Designated work group (DWG) – A DWG is a negotiated and agreed grouping of workers who share similar workplace health and safety interests and conditions. One of the main functions of a DWG is to elect health and safety representatives (HSRs).

Employer – A person who employs one or more people under contracts of employment or contracts of training.

Health and safety committee (HSC) – A cooperative forum for employers and workers to work together on OHS issues. HSCs are involved in the development, review and communication of OHS standards, rules and procedures in the workplace.

Health and safety representative (HSR) – A member of a designated work group elected to represent that DWG on matters relating to occupational health and safety.

Person – A person can be an organisation (such as a company), a body corporate, an unincorporated body, association or an individual natural person.

Reasonably practicable – In relation to consultation, this means that employers must consult with workers to the extent that is reasonable in all the circumstances. What is reasonably practicable will depend on a range of factors, for example, the size and structure of the business, the nature of the work, work arrangements (shift work), and characteristics of workers (language or literacy).

Worker – A person employed under a contract of employment or contract of training. Please note that the word ‘worker’ as used in this publication, is taken to have the same meaning as ‘employee’ as defined in the Occupational Health and Safety Act 2004.
Introduction

This guide is for health and safety representatives (HSRs) and deputy HSRs. It explains your rights and powers, what to expect from your employer and where to go for help.

The guide is based on the Victorian Occupational Health and Safety Act 2004 (the Act). The Act includes principles on how health and safety issues should be managed and requires the highest practicable level of protection against risks to health and safety at work.

The Act recognises the importance of representation in protecting the health and safety of workers. HSRs have been an important feature of OHS for many years and it is widely acknowledged that they can make a real difference in having OHS issues addressed and achieving better health and safety outcomes.

Workers are entitled, and should be encouraged, to be represented in relation to health and safety issues. Employers and workers should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.

The Act and the Occupational Health and Safety Regulations 2007 (the Regulations) support these principles and encourage workers to be represented on OHS issues by:

- offering options for how workers can be represented by HSRs
- providing for the involvement of workers and their representatives in health and safety decisions
- outlining a process for how health and safety issues must be resolved.
Representing workers

Workers have the right to ask their employer to set up designated work groups (DWGs) of workers so HSRs can be elected. Workers or employers can start negotiations to set up DWGs. Only workers can decide how to elect HSRs and only workers can vote.

If workers ask for a DWG to be set up, the employer must do everything reasonable to start negotiations within 14 days of the request. Workers can be represented by anyone they choose in negotiations about DWGs and decide how the election will be conducted.

To encourage more workers to be represented and more involvement of HSRs, the Act gives a number of options for how workers can be represented by HSRs. The Act allows for:

- more than one HSR for a DWG
- deputy HSRs (who can act as the HSR when the HSR is not able to)
- HSRs to represent workers at different locations
- HSRs to be authorised to represent independent contractors and their workers.

These representative arrangements must be negotiated and agreed between workers and their employer, although each DWG must have at least one HSR. If agreement can't be reached within a reasonable time, anyone involved in the negotiations may ask WorkSafe to arrange for an Inspector to visit and determine any unresolved matters.

If agreed between the workers and the employers involved, the Act also allows for workers from different employers to be part of the same DWG. These could be workers from two or more employers who work at the same workplace, for example a shopping centre, market, construction site or workplaces with contractors or labour hire workers. Or it could be workers from two or more employers who work at different locations, such as a DWG involving teachers and after school care providers who work across a number of school campuses.
Powers of HSRs

The Act sets out the powers of HSRs. These powers may also be exercised by a deputy HSR (where there is one) in the absence of a HSR.

HSRs have an important role to play in representing members of their DWG, including bringing issues to the attention of employers, attempting to resolve these issues and taking information on health and safety back to the DWG.

A HSRs powers enable them to:

- speak up and act on behalf of the workers they represent on OHS issues
- monitor the health and safety actions taken by employers
- look into anything that might be a risk to the health and safety of the workers represented
- attempt to resolve with their employer any health and safety issue that could affect members of their DWG
- issue a Provisional Improvement Notice if an issue cannot be resolved in a satisfactory or timely manner
- in the case of an immediate threat to the health or safety of any person, direct work to cease where the issue has arisen.

Note: HSR powers generally can only be used within their DWG.

Inspect any part of the workplace where a member of their DWG works

HSRs have the right to inspect any part of the workplace after giving reasonable notice to their employer. In addition to any inspections they may carry out in response to issues raised by a member of their DWG, it is a good idea for HSRs and their employers to agree on the number and type of inspections to be carried out. High risk industries or workplaces that change often may require more frequent inspections.

Health and safety issues identified during inspections should be reported to employers and members of the DWG.

Inspect the workplace immediately if there is an incident or a serious risk

HSRs have the right to inspect the workplace immediately if there is an incident or an immediate risk to someone's health and safety. They can help prevent future injuries by reporting any 'near misses' to their employer, so quick action can be taken to control the risk. The employer should notify the HSRs when such a situation arises.
Powers of HSRs

Accompany a WorkSafe Inspector during an inspection

HSRs have the right to accompany a WorkSafe Inspector who is looking into an area or an issue related to where the HSR or a member of their DWG works.

The Inspector must take all reasonable steps to notify a HSR as soon as they arrive and let them know what the outcome of the inspection is by providing the HSR with a copy of their Entry Report.

Request that a health and safety committee (HSC) be set up

While employers have the responsibility for managing health and safety, HSCs are a good way for employers and workers to work together on OHS. They can play a valuable role in facilitating cooperation and enabling workers and their HSRs to participate in developing, reviewing and communicating OHS standards, rules and procedures.

HSRs have the right to ask for an HSC to be set up, and employers must do so within three months. Employers must also consult HSRs about the membership of the committee. At least half of the members must be workers. HSRs or deputy HSRs must fill the worker positions on the committee unless it is not feasible for them to do so.

Attend a health and safety interview

HSRs have the right to attend an interview about health and safety between a member of their DWG and a WorkSafe Inspector, or that member and their employer, if the member agrees to, or requests, your attendance. This includes contractors the HSR is authorised to represent.

Ask for help

HSRs have the right to ask for advice or assistance from anyone within their workplace, such as another HSR, or anyone outside the workplace.

Represent workers outside your DWG

HSRs can represent workers outside of their DWG if there is an immediate health and safety risk, or if a member of another DWG asks for help, and it isn’t feasible to ask the elected HSR for that group. This might be because the other HSR is not available or does not speak the language of the person asking for assistance.
Powers of HSRs

Issue a Provisional Improvement Notice

HSRs have the right to issue a Provisional Improvement Notice (PIN) if they reasonably believe that there is, or has been, a breach of the Act or Regulations. They must first consult with the person responsible about fixing the breach. If it is not resolved, they can then issue a PIN. The PIN must give at least eight days (after the day on which the notice is issued) for action to be taken and can include directions on how to fix the problem.

The person who receives the PIN can comply with the PIN or, within seven days after the PIN is issued, request WorkSafe send an Inspector to enquire into the circumstances of the PIN. If they don’t request an Inspector within seven days and don’t comply with the notice, they may be guilty of an offence and may be prosecuted.

If a worker receives a PIN, they must bring it to the attention of their employer. Employers must bring a PIN to the attention of everyone whose work is affected by it and must display a copy in that work area somewhere where it will be seen.

Direct work to stop

HSRs have the right to direct work to stop if there is an immediate health and safety threat, after they have consulted with their employer and for whatever reason it is not appropriate to follow an agreed issue resolution procedure or the procedures in the Regulations.

At any time, a HSR or their employer can ask WorkSafe to arrange for an Inspector to come to a workplace to enquire into the issue.

Everyone has the right to stop work if there is an unreasonable risk to their health or safety.

HSRs must be part of consultation on health and safety matters

An important part of a HSRs role is to talk to the people they work with (members of their DWG) and their employer about health and safety issues. HSRs must be involved in any OHS consultation affecting the workers they represent.
An employer must:

- provide HSRs with access to information they have about actual or potential hazards in the workplace and the health and safety of workers they represent
- allow HSRs to attend an interview about health and safety between a member of their DWG and an Inspector, or that member and their employer, if the member agrees or requests it. This also applies to contractors and their workers the HSR is authorised to represent
- give HSRs time off work with pay so that they can exercise their powers or take part in training approved by WorkSafe.
- provide facilities and assistance to help HSRs carry out their role as an HSR (for example access to a telephone, the internet and somewhere to meet)
- allow someone who is assisting a HSR into the workplace, unless the employer thinks they are not suitable because they do not know enough about health and safety
- display a current list of HSRs and deputies for each DWG, or ensure it is readily accessible to all workers.

**HSR training**

HSRs are entitled to:

- an initial five day training course
- refresher training at least once a year after completing the initial course
- other training approved or conducted by WorkSafe.

HSRs have the right to choose the initial and refresher training course in consultation with their employer, provided it is approved by WorkSafe and is relevant to the work of the DWG or their role as an HSR. HSRs must make the request at least 14 days before the course starts. If their employer refuses to allow them to attend a course or both parties cannot agree on which course to attend, HSRs can ask WorkSafe to determine an appropriate course.

Employers cannot refuse without a reasonable excuse to allow HSRs to attend a course determined by WorkSafe.

Deputy HSRs are also entitled to attend initial and refresher training.

HSRs should not be disadvantaged in any way for taking on the role of HSR. Employers must meet the costs of the initial and refresher training and pay HSRs the same amount as if they were at work, including shift or other allowances. Costs may include course fees, travel, accommodation, meals, car parking.

HSRs are entitled to take part in other training related to OHS that is approved or conducted by WorkSafe (training that is not an initial or refresher HSR training course). The HSR must give 14 days notice to their employer before the course is to start. HSRs are entitled to time off with pay for this additional training. Deputy HSRs are not entitled to this additional training.
Consultation with HSRs

The Act requires employers to consult with HSRs, with or without the direct involvement of the workers they represent. The Regulations (Regulation 2.1.5), set out the process for involving HSRs in consultation.

The involvement of HSRs and other workers should lead to better decisions being made and better health and safety outcomes. Their experience and knowledge of the job can help to identify hazards, assess risks and develop workable solutions.

Employers need to consult as far as is reasonably practicable. For consultation this means what is feasible in the circumstances. Some of the things that should be considered are the:

- size and structure of the business
- type of work
- type and urgency of the situation
- work arrangements (for example shift work and workers in remote locations)
- workers involved (for example the languages they speak, how well they read and write, or any disabilities they may have).

For example, it would not be reasonably practicable for employers to consult with workers who are on extended leave, although they should be informed about the consultation process and any outcomes on their return to work.

Employers are expected to take a sensible and proactive approach to consultation. In almost all circumstances it will be reasonably practicable for employers to consult.

Who must be consulted?

Employers must consult with workers who are, or are likely to be, ‘directly affected’. This means the OHS matter must be having, or is likely to have, an impact on the health and safety of the worker or an impact on their work. As the workers’ representative, HSRs have an important part to play in consultation, and employers must involve them in any OHS consultations (whether or not workers are consulted directly).

If independent contractors and their workers are performing work for an employer, they also need to be consulted.
How must HSRs be consulted?

There are a number of things that employers must do when consulting. They must:

- provide you with the information about the health and safety matter a reasonable time before providing it to workers
- give you a reasonable opportunity to ask questions and have your say by inviting you to meet or agreeing to your request to meet
- take your views into account.

This should happen before a final decision is made.

What must HSRs be consulted on?

Employers must consult HSRs when members of their DWG are, or are likely to be, directly affected by a range of OHS matters.

<table>
<thead>
<tr>
<th>OHS matters you must be consulted on</th>
<th>Some examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identifying or assessing hazards or risks</td>
<td>Includes things such as monitoring noise levels or the development of Safe Work Method Statements.</td>
</tr>
<tr>
<td>Deciding about how to control risks</td>
<td>Includes, but is not limited to, discussions and reviewing advice from technical experts such as engineers, hygienists or ergonomists.</td>
</tr>
<tr>
<td>Deciding about the adequacy of facilities for the welfare of employees</td>
<td>These include decisions to ensure that there are enough toilets or that first aid facilities are adequate.</td>
</tr>
<tr>
<td>Deciding about the procedures for: resolving OHS issues consulting with employees monitoring the health of employees and the conditions at the workplace providing information and training to employees</td>
<td>Consultation about whether to develop an agreed procedure or use the Issue Resolution Procedure in the Regulations as the way to resolve OHS issues. Although an agreed procedure is not mandatory, as the procedure prescribed in the Regulations 2007 can be used.</td>
</tr>
<tr>
<td>Determining the membership of any health and safety committee</td>
<td>Involving HSRs in discussions to decide who should be on the committee when it is being established.</td>
</tr>
<tr>
<td>Proposing changes, that may affect the health and safety of employees, to the following: the workplace the plant, substances or other things used at the workplace the conduct of the work performed</td>
<td>Examples of changes include introducing new equipment, or workplace layout, starting to use new chemicals, or changing the way work is performed.</td>
</tr>
<tr>
<td>Any other things prescribed by the Regulations</td>
<td>Some regulations have specific consultation requirements, for example asbestos</td>
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Your employer must not discriminate against you

Employers must not discriminate against HSRs, or any other worker or prospective worker, because of involvement in health and safety. This includes as a result of acting as an HSR, being a member of an HSC, assisting an Inspector, or raising OHS issues.

Employers must not threaten, dismiss or refuse to hire someone, or otherwise adversely affect their employment, because of their involvement in health and safety. If they do, it is an offence and they risk major penalties.

If legal action is taken against an employer on the basis that they allegedly discriminated against someone because of their involvement in OHS and the employer decides to defend the action, it is up to them to prove that the main reason for their actions was not related to the person's involvement in health and safety.
HSRs must be consulted about how consultation will take place at their workplace. A workplace may already have agreed procedures for OHS consultation. Though the Act doesn't require a workplace to have an agreed procedure for consultation; if one exists, it must be followed.

Agreed procedures for consultation must:
- be consistent with the Act – so that they enable employers to meet their obligation to consult and do not remove their powers as an HSR or the functions of a HSC
- be developed through consultation between employers, HSRs and workers
- be the result of genuine agreement – that is, agreed by a majority of workers.

Agreed procedures for consultation should be in writing and be made available to all workers so that the process is clear to everyone.

The Act requires HSRs and employers to attempt to resolve an OHS issue according to the agreed issue resolution procedure at the workplace. If there is no agreed procedure, the process in the Regulations (Part 2.2 – Issue Resolution Procedures) must be followed.

**Your right to have a WorkSafe Inspectors’ decisions reviewed**

If a HSR does not agree with certain decisions made by a WorkSafe Inspector, they have the right to apply for a review by WorkSafe of the decision. This includes circumstances when an inspector fails to make a decision. A HSR must apply for the review within 14 days of becoming aware of the decision. For more information on review of Inspectors’ decisions, contact WorkSafe.
Further information is available from

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