



GETTING OHS REPRESENTATION RIGHT

**A WORKERS' GUIDE TO
OCCUPATIONAL HEALTH & SAFETY**

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ACKNOWLEDGEMENT OF COUNTRY

Victorian Trades Hall Council acknowledges the Wurundjeri Woi Wurrung of the mighty Kulin nation as the traditional owners of the land on which we live, meet and work. This land was stolen and never ceded, always was and always will be Aboriginal land.

ABOUT VICTORIAN TRADES HALL COUNCIL (VTHC)

VTHC is the peak body representing workers and unions across Victoria. We represent over 430,000 workers and 40 affiliated unions, covering all sectors of the economy, both public and private.



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INTRODUCTION

The Victorian Trades Hall Council (VTHC) is the peak body for unions in Victoria, representing 40 affiliated unions and over 430,000 union members. Union members can be found in every industry across the state. Almost every campaign for workers' rights in Australia has been fought for, and won, by union members.

Occupational health and safety (OHS) is at the heart of what unions do. Unions were integral to the first OHS legislation passed nationally. VTHC were the first trainers of health and safety representatives in Victoria (even before the legislation came out!). We started OHS training in 1983 and we're still going strong.

The union movement campaigns tirelessly for the rights, entitlements and protections of all workers. Regardless of your age, sex, whether you're permanent, casual or labour hire, visa status, or any other consideration, you have a right to work in a safe and secure environment. No worker should be injured at work.

VTHC has a long history of supporting Victorian workers. This guide was created to help workers understand the fundamentals of our OHS laws. You can also get more information and tools from our website ohsrep.org.au or send our OHS team a question through our online advice service - ohsrep.org.au/ask_renata

If you're a member of your union, they can help you resolve issues in your workplace. Your union is a great bank of knowledge for any OHS issue. Many unions employ OHS Officials, Organisers or Industrial Officers who have OHS training and expertise. Some are even issued permits under the OHS Act, to conduct site inspections of suspected breaches of OHS laws.

Unions have a lot of experience in dealing with health and safety issues. Evidence shows that having union members in the workplace increases health and safety awareness by up to 70%. Having the protection of union membership helps if individuals feel too intimidated to speak up about workplace health and safety.

If you're not already a union member, you should join at australianunions.org.au/join



ohsrep.org.au



Ask Renata



Join a union

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OHS COMPLIANCE FRAMEWORK

The Act/OHS Act

The Victorian Occupational Health and Safety Act 2004 (The OHS Act) sets out the key principles, duties and rights in relation to occupational health and safety.

It is impossible to write a list of every single workplace hazard, so don't go to the OHS Act looking for one! Instead, the OHS Act is what's called 'performance-based legislation'. It provides a framework enabling workers and employers to work together to create health and safety measures specific to their particular workplace.

This is important because it ensures your voice is heard.

The Regulations/OHS Regulations

The Victorian Occupational Health and Safety Regulations 2017 (The OHS Regulations) work together with the OHS Act to outline how duty holders must fulfil their obligations and duties. The OHS Regulations cover high-risk areas of health and safety, but do not cover all hazards. The Regulations tell you what can be done to be compliant with the Act.

Compliance Codes

Compliance Codes provide a practical guide to employers and supervisors on how to comply with the OHS Act and Regulations. Unlike the OHS Act and the OHS Regulations, your employer does not legally have to follow the compliance codes. But it's a good idea if they do. It's a simple way to make sure that they are complying with the OHS laws.

Guidance Materials

Guidance Material is published by WorkSafe Victoria to help build people's knowledge and awareness of OHS issues, risks to health and safety, and how to manage and control workplace risks. Following the guidance material is not mandatory, nor does it mean your employer or supervisor is complying with the OHS Regulations. This guidance does, however, form part of the state of knowledge about that particular hazard and is one good way to comply with the Act and Regulations.



The OHS Act
(in force as of 30/03/22)



OHS regulations
(in force as of 15/11/21)

GLOSSARY

Designated Work Group (DWG)

A group of workers who are grouped together for the purpose of electing at least one Health and Safety Representative. These workers may share similar health and safety concerns, location, shift times, type of work or employer. The DWGs must be negotiated and agreed between employees and the employer. Multiple-business Designated Work Groups can also be established and may cover two or more employers at one or more workplaces.

Health and Safety Committee (HSC)

A committee made up of at least half employees (so far as practicable, HSRs or deputies) and employer representatives that facilitates cooperation between an employer and workers to provide a safe place of work.

The Health and Safety Committee is the forum to look at wider workplace issues, such as development of policies, training programs, review of the maintenance schedule, employment of consultants, and so on. It does not replace the role of the HSR.

Health & Safety Representative (HSR)

A worker, elected by the Designated Work Group (an agreed grouping of workers), to represent the DWG on health and safety issues. HSRs have rights and powers above and beyond what other workers in the workplace have.

Hierarchy of Hazard Control

A step-by-step approach to eliminating or reducing risks. It ranks risk controls from the highest level of protection and reliability through to the lowest and least reliable protection.

Eliminating the hazard and risk is the highest, most effective control in the hierarchy, followed by reducing the risk through substitution, isolation and engineering controls, then reducing the risk through administrative controls. Reducing the risk through the use of protective personal equipment (PPE) is the lowest level of control. Effective control of workplace hazards will often require a combination of controls.

Occupational Health and Safety (OHS)

In Victoria we talk about Occupational Health and Safety (OHS). Other states of Australia use Workplace Health and Safety (WHS). Practically these terms mean the same thing.

Provisional Improvement Notices (PINs)

If attempts to address suspected breaches of the Act or Regulations are unsuccessful HSRs can issue a PIN to the employer. From there the employer must either comply or dispute the notice by calling in a WorkSafe Inspector

Reasonably practicable

Many duties throughout the OHS Act are qualified by the words 'so far as is reasonably practicable'. Section 20 of the OHS Act requires that regard be given to the following when determining what is 'reasonably practicable':

- The likelihood of the hazard or the risk concerned eventuating
- The degree of harm that would result if the hazard or risk eventuated
- What the person concerned knows, or should reasonably know, about the hazard or risk and ways of eliminating or reducing the hazard or risk
- The availability of suitable ways to eliminate or reduce the hazard or risk.
- The cost of eliminating or minimising the hazard or risk considered.

Workplace

Means a place, whether or not in a building or structure, where employees or self-employed person's work. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water such as offshore units and platforms. It even includes wherever the workplace takes you like work trips, the side of the road, and even the pavement!

WorkSafe Victoria

The name of the Government body charged with regulating and administering workplace health and safety. It is also the body that oversees the workers' compensation framework.

OHS: THE BASICS

Occupational Health and Safety is all about keeping workers safe and healthy at work. Every single worker has a right to a safe working environment without risks to health – no matter who they are, where or how they work.

WHAT MAKES A SAFE WORKPLACE?

A safe workplace is one that is free from hazards. Your employer has the primary legal duty to provide a working environment that is safe and without risks to health. This is because your employer makes the decisions that determine conditions at your workplace. This means that employers must identify hazards and risks and put in controls to eliminate or minimise the likelihood and severity of harm. The hierarchy of control gives employers a framework to fulfill their duties under the OHS Act. It is a step-by-step approach to eliminating, minimising and monitoring hazards and risks in the workplace.

Manufacturers and suppliers of plant and chemicals have a duty to provide the necessary information to ensure their products are used and stored safely. Workers also have a duty to take reasonable care for the health and safety of others who may be affected by their actions, or failure to act.

In the event of an incident in the workplace employers sometimes try to blame individual workers seeking to shift responsibility and ignore multiple other factors that may have contributed to the incident. This in turn means the underlying hazards and the risk of future injury remain, undermining safety. To combat this, the Act empowers worker voices.



EMPLOYEE REPRESENTATION

Victorian OHS Law recognises the importance of workers and employers exchanging information and ideas on how to improve OHS conditions in the workplace. The OHS Act clearly states that workers are entitled, and should be encouraged, to be represented in relation to health and safety issues – both through elected HSRs and unions.

The best way to make sure worker's voices are heard is to set DWGs and elect HSRs. HSRs play a crucial role in achieving healthy and safe workplaces, indeed it's very difficult for workers to make progress on safety issues without having elected HSRs. The OHS Act gives elected HSRs significant powers and rights that employers are required to respect and support.

HSRs have a maximum term of 3 years. After they have spent 3 years in the role they need to be re-elected. Our next chapter takes you through the process of setting up OHS structures.

SETTING UP OHS STRUCTURES

Strength in numbers is a union fact. When we work together, we are greater than the sum of our parts. Workers can band together to make their workplace safer.

Step 1: Talk to your coworkers

The first step to electing HSRs in any workplace is identifying workers' OHS issues and the kind of hazards they face in the workplace. Talk to them about HSRs and why it would be good for your workplace to elect one (or more). If you are a union member, go to your union for advice. They have conversations like these every day and they can give you practical advice on how to have these kinds of conversations.

Step 2: Map your workplace

HSRs are elected to represent a Designated Work Group (DWG). A good way to find out how many DWGs you need is to map the workplace. Write down who you work with, where people work, and the roles people do, shifts worked and so on. It is important to get workers involved in the mapping to get their ideas and support because consensus about DWGs should be agreed by workers before you begin negotiations with your employer.

Consideration should be given to:

- the nature of the work performed
- the number of workers
- whether groups of workers perform the same sort of work under similar arrangements
- areas where each type of work is performed
- the nature of any hazards encountered by workers
- when work is performed (shift arrangements and overtime)
- languages spoken at the workplace.

Step 3: Decide on DWGs

Section 44 of the Act sets out some rules about how to decide DWGs. Before deciding how many and where the DWGs will be, it is important to consider the best way to make sure that all workers can have their health and safety interests represented and that HSRs are accessible to each member of the DWG.

Things to think about when coming up with your DWGs include:

- **Type of work** - how many different types of work are there in your workplace and what hazards and risks are associated with each type of work?
- **Hours of work** - do people work a standard day or do they work part time, do shift work, or a mixture of different working hours?

- **Where people are working** - is the workplace spread over several locations or is everybody working on the same site?
- **Languages** - do people speak a language other than English?
- **Employees or contractors** - are there independent contractors, agency staff or people working for contractors (like cleaners or catering staff) in the workplace? These people are also entitled to representation
- **Number of HSRs/Deputy HSRs** - each DWG must have at least one HSR, however, it may be better to have more than one HSR (and/or Deputy HSRs) as well. This must be negotiated and agreed when the DWGs are established.

Step 4: Establish DWGs

Once you and your co-workers have decided on how many DWGs you think you need to have, approach the employer to begin negotiations. The employees can nominate someone to represent them in the negotiations, such as a union organiser. Your employer has 14 days to commence discussions on the specifics of DWGs. The OHS Act specifically states your employer must not coerce you or your co-workers into agreeing with their demands. If you are not able to reach agreement, either party is able to call in WorkSafe to help resolve outstanding issues.

Once everyone has agreed on the number and location of DWGs, workers can discuss the number of HSRs for each DWG. In some DWGs, one representative may be enough, other DWGs may require multiple HSRs.

Some things to consider are how often the HSR will be on leave or off site before deciding the number of HSRs for each DWG and how other types of workers like casuals, contractors, and labour hire will be represented.

Step 5: Elect a HSR

Once the DWGs have been established, each DWG can now elect an HSR (or more than one if this was agreed). It is up to the workers to decide the best way to elect the HSR. If you are a member of a union, the union can advise on how to conduct an election if more persons nominate for the position of HSR/s than there are vacancies.

People interested in standing for election should:

- be employees (including labour hire workers) - contractors can be represented but they cannot be nominated to become HSRs
- be a member of the DWG
- not be a supervisor or manager - managing or supervising staff within a DWG can create a conflict of interest between the role of independent representative of a group of workers and the person responsible for workload and safety.

Don't leave it to chance who gets elected. Where possible have an honest discussion amongst the work group about the qualities required and who might be a good fit. Make it understood that whoever is elected will not be on their own, that the role is one of representation and consultation, that decisions will be made collectively, and expert technical knowledge is in no way a requirement of the role. Nor does the role come with any duties or responsibilities. HSRs can and should expect the support and co-operation of their employer, the inspectorate, their DWG, their deputy HSR, Union and the significant network of HSRs throughout Victoria, and around the country.



POWERS OF HSRs

Once HSRs are elected their rights and powers include to:

- be trained up in OHS
- inspect any part of the workplace where a member of their DWG works
- collect evidence – including by taking photos, measurements, sketches and recordings (in most workplaces)
- accompany an inspector on a site visit
- be consulted regarding OHS Issues
- issue PINs or a Cease Work if they feel there is a breach of OHS laws (see below)

OHS COMMITTEES

Workplaces must also establish OHS committees to deal with OHS issues within 3 months of a request from an HSR. Committees have a broad role to play regarding OHS issues, looking at wider workplace issues such as development of policies, training programs, review of the maintenance schedule, employment of consultants, and so on. Committee members cannot exercise the same powers as the HSR when dealing with hazards.

Under the requirements of the OHS Act, at least half of the members of the Committee must be employees, and so far as is practicable, they should be HSRs. This makes sense as the HSR already has a good working knowledge of workplace hazards and ways of dealing with them and already represents their DWG. If there is an OHS Committee at your workplace check the membership of your Committee to find out whether its composition complies with the Act, and whether the HSRs are already members.



RESOLVING OHS ISSUES

Every worker's contract of employment is underpinned by some basic legal rights, no matter what is written down. An example is the employer must take reasonable care for employee safety and the employee must work in a competent and careful way and obey the employer's lawful order. This means all workers have the legal right to refuse unsafe work.

If your boss asks you to do a dangerous job you're not trained to do, you can say no.

If your boss tells you to keep working in heat without adequate protection, you can say no.

If your boss doesn't provide proper personal protective equipment, you can say no.

This does not mean that saying 'no' will be easy. The employment relationship can be one-sided, especially if there is no union to help raise issues collectively. If your employer decides to treat an individual badly because they raised an OHS problem or an issue, sometimes it's hard to prove they did so unlawfully.

But bad employers still need to be held to account. Unsafe workplaces need to be made safe. The best way to achieve change is with the support of your fellow workers in a union and through establishing the OHS structures outlined above. Unions exist to support workers in acting collectively to resolve workplace issues. Get active!

Below are ways some of the ways that the OHS Act supports workers in making their workplaces safer.

CONSULTATION

The OHS Act stresses the importance of the employer talking to the people who actually do the work and listening to what they have to say as part of the decision-making process. The list of things the OHS Act places a legal duty on employers to consult includes:

- When changes that may affect the health and safety of employees are proposed, including changes to the workplace, the plant, substances or other things used at the workplace or the way work is performed.
- Identifying and assessing hazards or risks to health and safety at a workplace
- The measures to be taken to control risks
- The adequacy of facilities for the welfare of workers
- How to resolve health and safety issues
- How to monitor the health of workers
- Information and training in safe working practices for workers.

The definition of consultation makes it clear that employers need to do much more than just tell workers a decision has been made. Consultation requires that the employer:

1. Share with the employees information about the matter on which the employer is required to consult; and
2. Give the employees a reasonable opportunity to express their views about the matter; and
3. Take into account those views.

A failure to meet these 3 steps means that the duty to consult has not been met and the employer is guilty of an offence.

The OHS Regulations state that where reasonably practicable the HSR must be notified first, and where there is no HSR the employer must consult with employees.

RESOLUTION OF HEALTH AND SAFETY ISSUES

If there is an issue concerning health and safety that workers and their HSR wish to resolve the Act requires they attempt to resolve the issue using a Safety Issue Resolution Procedure. Usually this will involve meeting with the employer's nominated representative to discuss how to fix the problem.

The employer's nominated representative cannot be a HSR themselves. They must be competent and high up enough in the organisation to act as the employer's representative and to make decisions.

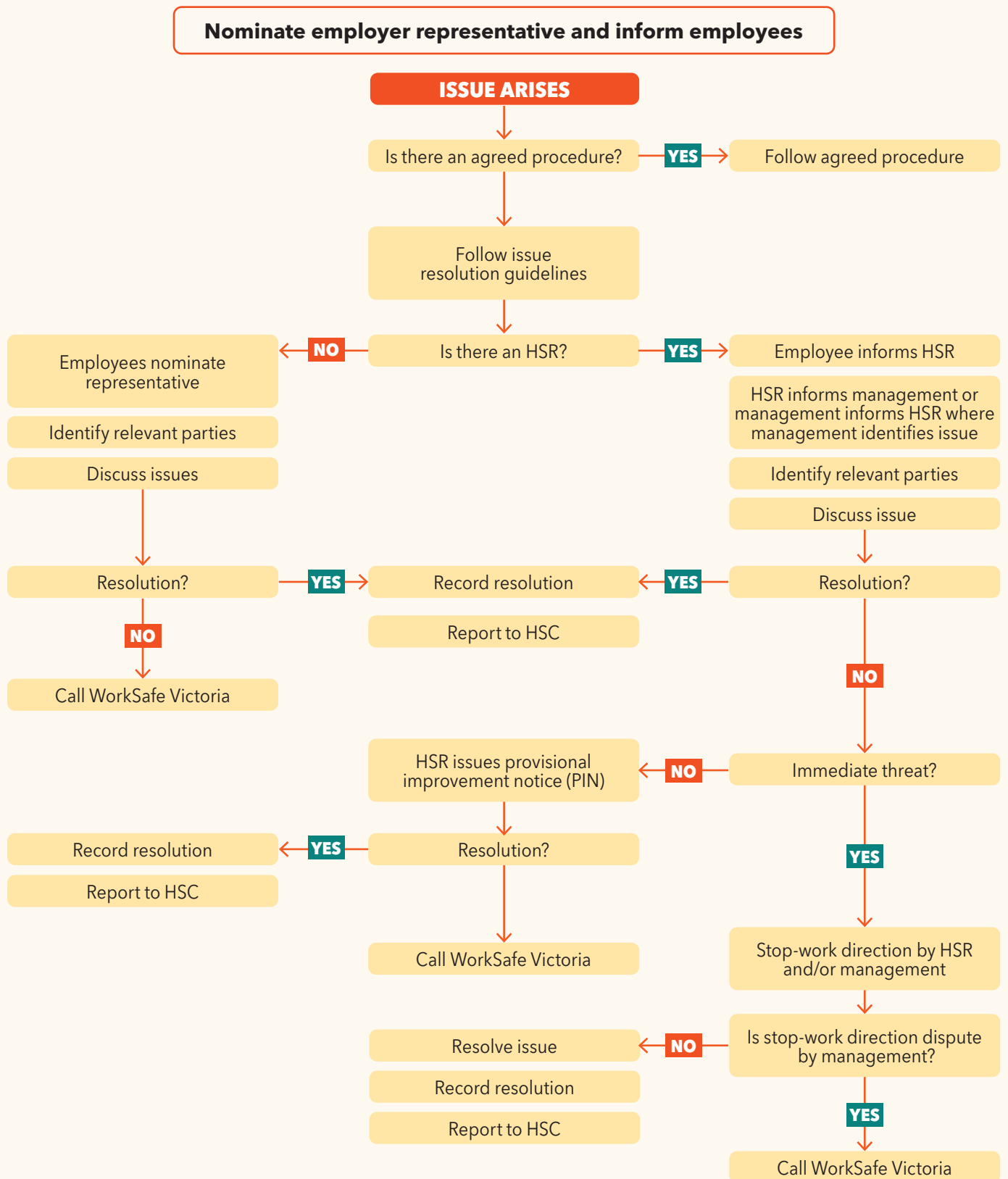
Some workplaces have an agreed safety issue resolution procedure but where there is no such agreed safety issue resolution procedure the default procedure in the OHS Regulations applies. These procedures require that parties meet as soon as reasonably practicable.

If agreement is reached the HSR can require the employer to summarise the issue and the agreed outcome. If no agreement is reached, then other avenues to address the concerns are available to the HSR.

At any stage of the process employees are entitled to seek the assistance of their union.

An Issue resolution procedure flowchart is shown over the page.

ISSUE RESOLUTION PROCEDURE FLOW CHART



PROVISIONAL IMPROVEMENT NOTICES (PINS)

If an HSR has concerns their employer is in breach of the OHS Act or Regulations, or they were breached in circumstances that are likely to occur again, then they may issue a PIN, provided they have consulted with their employer prior to issuing the PIN.

The PIN should state why the HSR thinks there is a breach of the OHS Act as well as the section or regulation being breached. It must also give a time period by which the employer must remedy the breach. WorkSafe provides a model PIN form, but it is not mandatory to use it provided that the notice meets all the requirements of the OHS Act.

Once the employer receives a PIN they must bring it to the attention of affected workers and display a copy in the workplace.

Once an employer has received a PIN, the employer cannot ignore it - the only two options are to either call an inspector within 7 days or remedy the breach. A failure to do either places the employer in breach of the OHS Act.



Model PIN form

Provisional Improvement Notice (PIN)

This notifies of an issue, or potential issue, under the *Occupational Health and Safety Act 2004* or *Occupational Health and Safety Regulations 2017*.

1. Health and Safety Representative (HSR)

| | | |
|-----------------------|-----------------------|----------------|
| Given name | Family name | Contact number |
| Designated work group | Email (if applicable) | |

2. Duty Holder: Person or Business

| | |
|-------------------------------|---------|
| Business or individual's name | Address |
|-------------------------------|---------|

3. I have consulted with the duty holder or their representative about fixing this contravention, or likely contravention, before serving this PIN. PLEASE TICK ☐

4. PIN given to

| | | |
|------------|-----------------------|----------------|
| Given name | Family name | Contact number |
| Position | Email (if applicable) | |

5. The provision of the OHS Act, or Regulations I believe has been (or may in future be) contravened is:

Section or regulation number (only 1 per PIN)

6. The issue is: (Give details of the contravention, or likely contravention, (including the location))

7. The suggested remedy is: (Note: This is optional)

8. Signature

| | | |
|------------------|------|--|
| Signature of HSR | Date | Compliance date |
| | | (must be at least 8 days after PIN date) |

CEASE WORKS

If an OHS issue involves an immediate threat to the health or safety of any person and there is therefore no time to follow normal dispute resolution processes the HSR can direct that work cease, provided that they first seek to consult with the employer.

The direction of the cease work may require the shutting down of an entire site or a particular task or plant. Some practical examples are:

- shutting down a site because workers have reported smelling ammonia
- turning off a machine with no guarding or a car with bald tyres
- saying no to unreasonable workloads
- refusing to work with a client with behaviours of concern without proper training.

Once work has stopped, the employer can redirect workers to perform other suitable duties if available. The direction to cease work can be addressed by fixing the issue to the satisfaction of the HSR. Alternatively, either party may call WorkSafe and request the assistance of a WorkSafe Inspector to attend the workplace.

THE ROLE OF WORKSAFE INSPECTORS

WorkSafe inspectors ensure employers and other duty holders comply with health and safety laws by:

- conducting strategically targeted inspections or inspections in response to reported health and safety issues
- providing practical, helpful information and guidance to duty holders about how to fulfil their duties and obligations
- enforcing Victoria's health and safety laws.

The OHS Act requires Inspectors to ask for the relevant HSR(s) of the areas of work they want to enter. If they are there to enquire into an alleged breach of the OHS Act inspectors should speak first to HSRs and do so separately from the employer. This is to encourage workers to speak freely. Any failure to properly engage with the relevant HSR should be promptly escalated within WorkSafe. HSRs should also let their union know.

Requesting the assistance of an inspector can be a useful circuit breaker for workers seeking to resolve an OHS issue. HSRs and workers should be aware however that if an Inspector disagrees with their concerns about a workplace hazard, or whether a risk is appropriately controlled, this could make addressing the issue more difficult with your employer in the future. In this situation seek the assistance of your Union.

MORE RESOURCES

Workplace health and safety is important in every workplace. There is a lot of information out there for you. Here is a list of resources we recommend checking out.

OHS REPS ohsrep.org.au

OHS Reps is our website. It is filled with information on your rights, different hazards, and how to seek help in your workplace.

ASK RENATA ohsrep.org.au/ask_renata

Ask Renata is an online advice resource for OHS matters in Victoria. If you have a question about your OHS rights, ask a question on Ask Renata.

YOUNG WORKERS CENTRE youngworkers.org.au

The Young Workers Centre provide advice and support to young workers across Victoria. They are experts in the issues young workers face.

MIGRANT WORKERS CENTRE migrantworkers.org.au

The Migrant Workers Centre provide advice and support to migrant workers across Victoria. They are experts in the issues migrant workers face.

AUSTRALIAN UNIONS australianunions.org.au

Australian Unions have a variety of resources for Australian workers.

WORKSAFE VICTORIA worksafe.vic.gov.au

WorkSafe Victoria is the OHS regulatory body. They have information for employers and employees on OHS in the workplace.

SAFE WORK AUSTRALIA safeworkaustralia.gov.au

Safe Work Australia is the OHS regulatory body in Australia. They have a variety of OHS information for workers across Australia.

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