

Why the Health and Safety at Work Act (HSW Act) is an organiser's friend

Health and safety representatives (who are elected by the workers) have powers under the HSW Act to insist that the PCBU respond to health and safety issues. In order for health and safety representatives to understand and use these powers they need training in the HSW Act. The purpose of this paper is to explain the rights of HSRs' and workers and to clarify what workers and HSRs' can do to resolve health and safety issues in the workplace.

Powers of the Health Safety Representative (HSR) and the worker:

Workers can cease or refuse to carry out unsafe work;

A trained HSR can direct unsafe work to cease;

HSRs' or the Health and Safety Committee can write a recommendation to the PCBU (PCBU must adopt the recommendation or provide a written statement giving reasons for not adopting the recommendation),

A trained HSR can issue a Provisional Improvement Notice (PIN) to the PCBU.

HSW Act Definitions

Officer

CEO, partner, or any other person occupying a position that allows the person to exercise significant influence over the management of the business or undertaking.

PCBU

Person conducting a business or undertaking – A PCBU will be an entity unless it is a self-employed person or sole trader.

Worker

An individual who carries out work in any capacity – includes an employee contractor, outworker, apprentice, trainee person gaining work experience or a volunteer worker.

Health and Safety Representative (HSR)

Is a worker elected to represent the workers in the workgroup.

Workplace

Means a place where work is being carried out.

Workgroup

Is the group of workers that the HSR is elected to represent.

Health and Safety at Work Act (HSW Act)

Duties of the PCBU – Section 36 HSW Act

The PCBU has a duty to provide a healthy and safe workplace for all workers

Please note:

HSR's do not have any legal duties under the HSW Act therefore can not be held liable for any health and safety issues in the workplace.

PCBU's duty to engage with workers

Section 58 of the HSW Act states that the PCBU must, so far as is reasonably practicable, engage with workers.

The nature of the engagement (section 59 HSW Act) requires relevant information about health and safety matters to be shared with workers. Workers must be given a reasonable opportunity to: express their views and; to contribute to the decision making process.

Section 60 When engagement is required

The PCBU must engage with workers.

- When identifying hazards and assessing risks;
- When making decisions about ways to eliminate or minimise those risks and when making changes to procedures;
- When proposing changes that may affect the health and safety of workers;
- When making decisions about the procedures;
- When developing worker participation practices.

Section 61 Duty to have worker participation practices

A PCBU must have practices that provide reasonable opportunities for workers to participate effectively in improving work health and safety.

Reasonable opportunities includes taking into account:

- The number of workers;
- The number of different workplaces;
- The likely risks and the level of those risks;
- The nature of the work;
- The nature of the employment arrangements or contracting arrangements including the extent and regularity of employment or engagement of temporary workers;
- The willingness of workers and their representatives to develop participation practices and;
- The duty to act in good faith.

Section 62 HSW Act Who needs to have HSR's

All organisations that have more than 20 workers must have HSRs if a worker asks for it. Low risk organisations that have less than 20 workers are not required to have HSRs even if a worker requests it. In either scenario, a PCBU may initiate an election for HSRs if it wishes to implement HSRs as a way of engaging with its workers.

Schedule 2 HSW Act

Functions of the HSR

- To represent the workers;
- To investigate complaints;
- To monitor the measures taken by the PCBU;
- To inquire into anything that appears to be a risk;
- To make recommendations to the PCBU
- To promote the interests of workers who have been harmed at work including arrangements in relation to rehabilitation and return to work.

PCBU obligations to the HSR

- Consult;
- Confer;
- Allow a HSR to spend as much time as is reasonably necessary to perform their functions;
- Provide the HSR with information;
- Allow the HSR to be present at interviews relating to health and safety;
- Provide the HSR with resources, facilities and assistance;
- Allow a person assisting the HSR access to the workplace;
- Permit the HSR to accompany an inspector during a workplace inspection.

Worker Participation Engagement and Representative Regulations

Election of HSR's

PCBU is required to initiate the election of HSR's within 2 months of the PCBU being notified of the worker's wish for HSR's to be elected. Elections are to be held by secret ballot if requested by one worker or the candidate or the PCBU.

Term of office for HSR's

A term not exceeding 3 years unless the PCBU and the workers agree otherwise. However, there is no limit on the number of terms that an HSR may serve if they continue to be re-elected.

Training for HSR's

A HSR must complete initial training (2 days) in order to exercise some of the powers under the HSW Act (and achieve Unit Standard 29315).

HSR's may choose the training provider in consultation with the PCBU.

PCBU must pay the training fees, any reasonable expenses incurred (including travel and accommodation) and pay the HSR at normal pay rates.

HSR's are entitled to 2 paid days training per year. However, the total number of paid days leave a PCBU is obligated to provide to its workers is capped by the HSW Act. It is based on the number of workers in the business at a specified date in the year.

(Please see the Worker Engagement Participation and Representation Regulations Clause 26(2) for the entire calculation).

PCBU has a duty to maintain a list of HSR's that is readily accessible to the workers.

Health and Safety Committees (HSC)

A PCBU that has more than 20 workers, or is considered high risk, must consider whether to set up an HSC if a HSR requests it, or 5 or more workers request it. See the flow chart here:

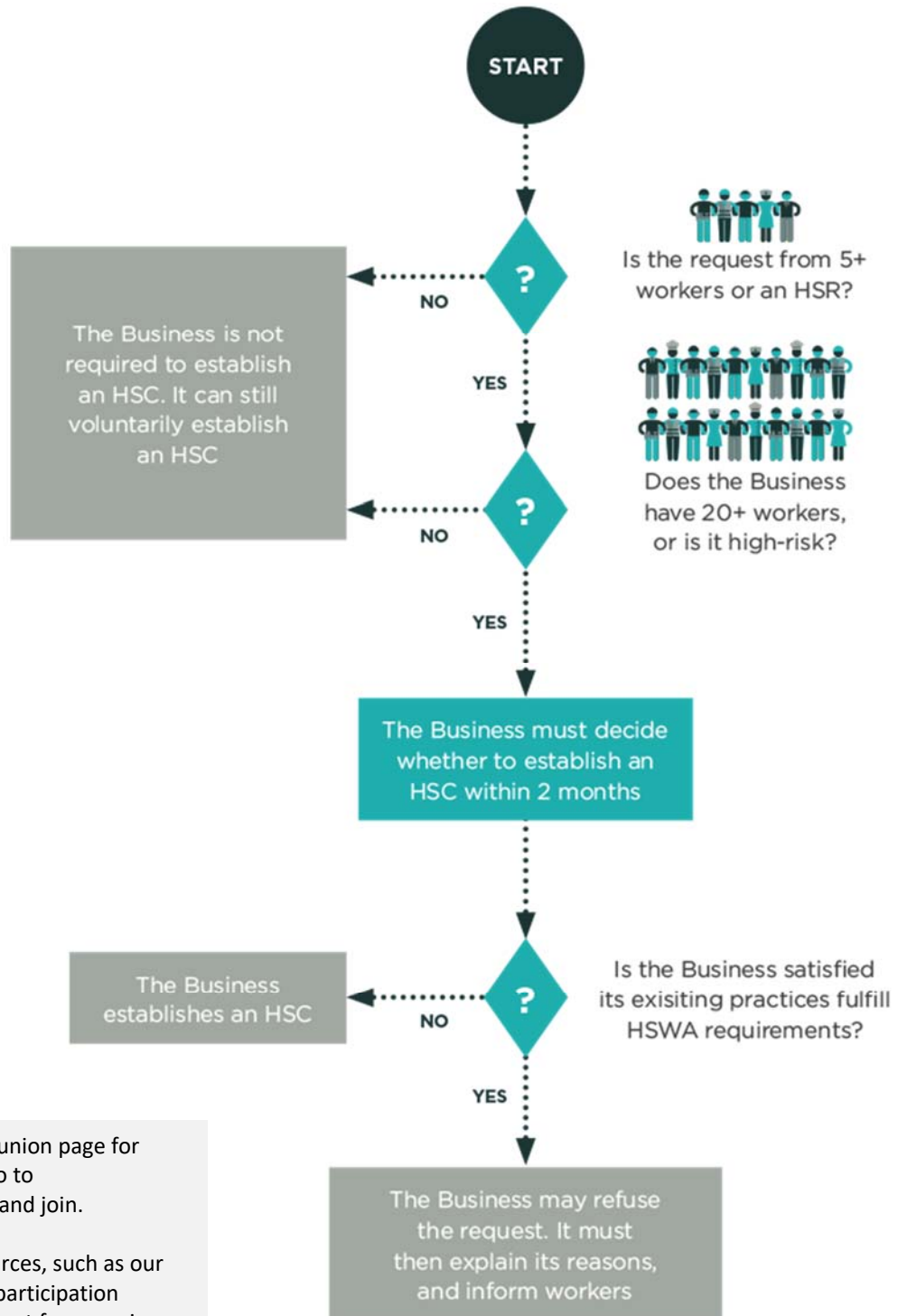
<https://worksafe.govt.nz/managing-health-and-safety/health-and-safety-representatives/health-and-safety-committees/>

One of the members of the HSC must be authorised by the PCBU to make decisions on behalf of the PCBU;

At least half of the members on the committee must be workers and must not have been nominated by the PCBU.

Each HSR is eligible to be a member of the HSC.

A HSC must meet at least once every 3 months and more regularly as agreed by the members of the committee.



To join the WorksafeReps private union page for organisers and delegates please go to www.worksafereps.org.nz/union and join.

Here you will have access to resources, such as our training calendar, sample worker participation agreements, FAQ sheet and factsheet for organisers and the ability to ask a question direct to the right person.

Flowchart sourced from Worksafe.govt.nz reproduced under Crown copyright protection