**Health and Safety Representative Guide**

1. **Purpose:**

To provide guidance for elected Health and Safety Representatives (HSR) in Department of Education and Training (the Department) workplaces perform their functions and powers.

1. Scope:

These guidelines apply to all Department workplaces, including schools, central and regional offices.

1. Procedure
	1. What is a Health and Safety Representative?

A HSR is an employee who has been elected by the members of their [Designated Work Group](http://www.education.vic.gov.au/hrweb/safetyhw/Pages/definedohsterms.aspx) (DWG) to represent their health and safety views in any formal discussions with management. Every school is considered a DWG in its own right. Multi campus schools, or large schools, may decide to have more than one DWG

The Occupational Health and Safety (OHS) Act 2004 enables a HSR to raise issues to management that require resolution and provides them with a mechanism to take unresolved issues further, if necessary.

* 1. What is a Deputy Health and Safety Representative

A Deputy Health and Safety Representative (DHSR) can be elected to support the HSR carry out their functions. The DHSR can also perform the role of HSR if the primary HSR leaves the workplace, or is unable to perform their functions and powers.

* 1. Why should workplaces have a HSR?

Employee representation through an elected HSR assists in facilitating consultation between management and employees. The OHS Act 2004 recognises that workplaces have better OHS performance outcomes when employees have input before decisions are made about OHS matters that could affect them**.**

* 1. Election of HSR and DHSR

HSR and Deputy HSR elections should occur:

* after the establishment or change to a DWG
* when a HSR or DHSR ceases to hold office
* when the term of office expires
* when there is more than one candidate for each HSR or DHSR.

To be eligible for election as a HSR for a DWG, the employee must be a member of the DWG and not have been previously disqualified. All members of the DWG are entitled to nominate themselves and to vote, and may determine how an election is to be conducted. A DHSR for a DWG is to be elected in the same way and may exercise the same powers in the absence of a HSR.



* 1. Calling for Nominations for HSR/DHSR

In consultation with the DWG, the workplace is to determine the process for employees to nominate themselves for consideration for a HSR or DHSR position (e.g. verbal, written, etc.).

The workplace is to display, distribute, or communicate this process at least two weeks prior to calling for nominations. An example nomination form is attached at the end of this guide.

* 1. Election of a HSR when there is more than one DWG

If there is more than one DWG in the workplace, separate elections should be held to elect one or more HSRs using the above process.

* 1. What if there are no nominations for a HSR?

If no nominations for HSRs are received, the Workplace Manager and/or Management OHS Nominee should:

* record that no nominations were received
* communicate to all employees that no nominations were received
* schedule another call for nominations in twelve months, or within an agreed timeframe.

In the absence of a HSR, the Workplace Manager will need to ensure that:

* information about alternative avenues of support is provided to all employees (e.g. WorkSafe, EAP, OHS Advisory Service etc.)
* employees are fully aware of the OHS Issue Resolution Flowchart and processes
* internal communication processes are in place, and utilised, in relation to the ongoing identification and management of hazards and risks and their associated controls.
	1. What if there is a challenge to the election process after election?

In the event there is a challenged election result, a decision to accept the current election results or conduct another election should be made by a majority DWG decision. This can be informal e.g. show of hands, or via a formal ballot. Alternatively, contact WorkSafe Victoria to assist in the election.

* 1. Functions and powers of a HSR/DHSR

The OHS Act 2004 does not impose any responsibility or duty on a HSR. However, a HSR for a DWG may:

* inspect any part of a workplace in which a member of their DWG works, on reasonable notice, or without delay if there is an incident or immediate risk to health or safety
* request a health and safety committee to be established
* if a member of their DWG consents, attend interviews on health or safety matters between that person and an inspector or employer
* if the HSR is authorised to represent an independent contractor and they consent, attend interviews on health and safety matters between that person an inspector or employer
* attempt to resolve health and safety issues within in their DWG
* issue a Provisional Improvement Notice, if they reasonably believe there has been a contravention to the OHS Act 2004, and the issue cannot be resolved using the agreed issue resolution procedure.

Note: HSR powers can only be used to represent members within their represented DWG. Exceptions exist where there is an immediate risk to a member of another DWG, or when a person in another DWG asks for assistance and the matter cannot be referred to their own HSR.

The following is a summary of the powers of a HSR and Deputy:

| **A HSR Cannot:** | * be a **Workplace Manager**
* be a **Management OHS Nominee**
* be a Volunteer
* be a Contractor
* be an external union representative (an employee that is also a union representative is allowable)
* be made to implement or manage the workplaces OHS Management System in place of the **Workplace Manager** or the **Management OHS Nominee** (they can agree to work with the management team as long as they receive appropriate time allocation)
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| --- | --- |
| **A HSR must be given the opportunity to:** | * attend the WorkSafe Approved five day Health and Safety Training and annual one-day refresher
* participate in health and safety training relevant to their role and as per their entitlements under OHS legislation
* represent their DWG in local health and safety communication and consultation processes
* assist in resolving local health, safety issues using the OHS issue resolution process
* assist in participating in workplace inspections, including visits by WorkSafe Victoria inspectors and inspections following a, near miss or identification of an immediate risk
* be present at interviews concerning OHS matters between DWG members and employer or inspector, if the member consents
* be a member of the Health and Safety Committee (where applicable)
* assist in complying with the requirements of OHS legal notices (e.g. Provisional Improvement Notices (PIN), Improvement Notices and Prohibition Notices)
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* 1. HSR and Deputy HSR Training

The Workplace Manager is to ensure that the newly elected HSR/DHSR is provided with information about attending the WorkSafe approved five day HSR training event and subsequent annual HSR refresher training. Records are to be maintained about the provision of this information to the HSR/DHSR.

The HSR/DHSR request to attend training must be made at least fourteen days before the training is due to start and, if so requested, the Workplace Manager must allow the elected HSR and DHSR to attend the WorkSafe approved training.

Department workplaces must give the HSR paid time off work to attend the course and must cover the cost of the course.

* 1. Term of Office for HSR/DHSR

A HSR for a DWG holds office for a period of three years. After this period, the **Workplace Manager** is to instigate the election process again as per the Health and Safety Representative Election flowchart.However,an election may be held prior to the three-year period expiring if:

* the current HSR transfers to another DWG or leaves employment
* the HSR resigns from their position
* after a minimum of twelve months the majority of the members of the DWG resolve in writing that the HSR no longer represent them
* there is a variation or change to the composition of a DWG due to organisational change or restructure
* disqualification of a HSR under Section 56 of the OHS Act 2004.
	1. Providing HSR time to perform their functions and powers

The Workplace Manager is to allow a HSR to spend a reasonable amount of time as deemed necessary to carry out their HSR duties. The amount of time allocated for a HSR to perform their role will vary between workplaces.

The HSR and the Workplace Manager are to discuss and agree on the amount of time needed to perform any anticipated HSR functions. When agreeing on how much time is needed for a HSR to fulfil their role, parties should consider:

* the type of work or proposed work in the workplace
* the level of risk involved in the work
* the effectiveness of risk controls
* the individual needs of employees in the DWG, including:
	+ - employees with language barriers
		- employees with disabilities
* attendance at meetings, for example, Health and Safety Committee meetings, OHS working group meetings
* the size and complexity of the DWG
* the size and complexity of the workplace
* the number of HSRs in the workplace and in the DWG.
	1. HSR involvement in workplace inspections

Upon request, the workplace must allow a HSR to participate in workplace inspections. These inspections can take various forms, including:

* regular inspections of the workplace
* regular inspections of particular activities or processes
* specific inspections arising from complaints or concerns by members of the DWG
* inspections before and following substantial change to the workplace
* inspections after an incident, injury or near miss
* Inspections conducted by a WorkSafe Inspector.

A HSR may choose to conduct inspections on their own, or jointly, with a management representative. During the inspection, the HSR is entitled to discuss health and safety issues with the employees in their DWG.

* 1. Provisional Improvement Notices

A Provisional Improvement Notice (PIN) can only be issued by a HSR after consulting with the person responsible for a breach, or likely breach of the legislation. Breaches may include, but are not limited to:

* excessive noise levels in the workplace
* high levels of employee stress
* a requirement to manually lift heavy objects
* exposure to chemicals used in the workplace
* unguarded machines
* inadequate workplace amenities for and/or working environment.

The PIN must include:

* the HSR’s belief as to what the breach or likely breach is
* the section of theOHS Act 2004or OHS Regulations 2017 that has or is likely to be breached
* date by which the person is required to correct the breach or likely breach (at least eight days after the day the PIN is issued).

Note: the PIN may also contain directions about how to remedy the breach.

* 1. Resolving or Disputing a PIN

If a PIN is issued and not disputed, it should be displayed prominently in the workplace (e.g. on the OHS Notice Board) and resolved as per the process outlined in the OHS Issue Resolution Flowchart*.* If a PIN is disputed, the recipient of the notice (e.g. **Workplace Manager**, employee etc.) has seven days to contact a WorkSafe Victoria Inspector for a review.

For further information on WorkSafe Inspector Visit Guidelines.

* 1. Disqualification of a HSR

An application to the Magistrates Court is to be made to disqualify on the following grounds as per Section 56 of the OHS Act 2004:

* issuing a PIN where they could not have reasonably believed there were grounds for issuing the notice
* issuing a direction to cease work or exercising any other power causing harm to the employer
* using information from the employer for a purpose that is not connected with the exercise of their powers as a HSR.

The Workplace Manager is to contact the Department’s OHS Advisory Service ph. 1300 074 715 for advice.

**Call for HSR Nominations- Example template**

Under the OHS Act 2004 you are able to elect an employee in the Designated Work Group of **<Insert DWG Name<** to the position of Health and Safety Representative.

You can nominate yourself or a co-worker to be included by:

* Email to: **<Insert Email Address<**

**Or**

* Completing the Nomination Form below to be delivered to: **<Insert name of person or location<**

All nominations must be received by close of business: **<Insert Date<.** The election process will be conducted on **<Insert Date<.** All employees are encouraged to vote in the election.



**Nomination Form**

Please provide the full name(s) of the employee(s) you wish to nominate for HSR (note you can nominate yourself):

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Please tick your preferred preference to how the election should be conducted:

| Email vote | 🞎  |
| --- | --- |
| Show of hands  | 🞎  |

Thank-you for taking the time provide nominations for the position of HSR for **<Insert DWG Name<.**