Health and Safety Representatives (HSRs)

Work Health and Safety · https://www.aeuact.org.au/Docs/health-and-safety-representatives-hsrs/

Introduction

Health and safety representatives (HSRs) are one of the most powerful tools workers have to make their workplace safer. An HSR is a worker, elected by their colleagues, who represents them on work health and safety (WHS) matters. HSRs have real legal powers under the *Work Health and Safety Act 2011* (ACT) ('the WHS Act'), including some that no one else in the workplace holds.

This page explains what an HSR is, how HSRs are chosen, what they can do, and how they are protected and supported. It is written for two kinds of AEU members: those who want to understand and work with their HSR, and those thinking about nominating for the role themselves.

We strongly encourage AEU members to nominate as HSRs. When your HSR is an AEU member, the AEU office can support and advise them on using their powers, and your sub-branch can consult and work closely with them. An active, well-supported HSR who is also a union member makes the whole sub-branch stronger on safety.

The basics

What is a health and safety representative (HSR)?

An HSR is a worker who has been elected by a group of their co-workers (called a "work group") to represent them on health and safety matters. You do not need any special qualifications to be an HSR. You just need to be a member of the work group and be elected by your colleagues.

Being an HSR is a role with legal standing under the WHS Act. Once elected and trained, an HSR can do things that ordinary workers, sub-branch representatives and union officials cannot.

What does an HSR do?

An HSR represents the workers in their work group on health and safety. Under the WHS Act, an HSR's core functions are to:

- represent the workers in their work group on WHS matters
- monitor what the employer is doing to comply with WHS laws
- investigate health and safety complaints from members of the work group
- inquire into anything that appears to be a risk to the health or safety of workers in the group.

In practice, this means an HSR is a point of contact and advocate for safety. They raise concerns, keep an eye on hazards, help resolve issues, and make sure workers' voices are heard when decisions affect their safety.

What is a "work group," and which one am I in?

A work group is simply the group of workers that an HSR represents. Work groups are set up so that workers who share similar working conditions and risks can be represented effectively.

The size and shape of a work group is not fixed by law and is not for the employer to decide alone. It is worked out by negotiation and agreement between the employer and the workers (or their representatives, such as the AEU). The negotiation must take into account things like the number of workers, the views of the workers, the nature of the work, where it is carried out, and the hazards and risks involved.

Getting and becoming an HSR

How does my workplace get an HSR?

Any worker can ask their employer to facilitate the election of an HSR. Once that request is made, the employer must start the process of setting up one or more work groups so an election can happen. The employer must take all reasonable steps to begin negotiating with workers within 14 days of the request.

Can my workplace have more than one HSR?

Yes. Sometimes people believe each school can only have one HSR and one deputy. That is not correct.

There are two ways to have more than one HSR, and they can be combined:

- **A single work group can elect more than one HSR.** The law is clear that a work group exists to facilitate the representation of its workers by one or more HSRs. This suits a large group of workers who share the same conditions and risks but need more than one person to

represent them.

- **A workplace can have more than one work group, each with its own HSR.** This suits workers who fall into distinct groups with different work and different risks.

The number of HSRs and deputy HSRs, and the number and composition of work groups, is determined by negotiation and agreement between the employer and workers, not decided by the employer alone. Workers are entitled to have a say in how their work groups are structured, and their views must be taken into account. A work group can also cover more than one workplace, or be organised around a particular type of work.

Depending on your workplace, it may be appropriate to have, for example:

- **More than one HSR for a large group of staff** who share the same working conditions (for example, multiple HSRs covering a larger school)
- **One HSR for each site** (for example, in a multi-site school, or a school with an off-site preschool)
- **An HSR for a particular group of employees** whose work or risks are distinct (for example, those performing work in design and technology around heavy machinery could form a work group and elect their own HSR)
- **An educator HSR for teaching and learning support staff**, given that psychosocial hazards are tied closely to the type of work being done, so the risks facing educators are best represented by an educator.

If someone is telling you that only one HSR is allowed, contact the AEU. This is a matter for negotiation, and we can help you work out the right structure.

What is a deputy HSR?

A deputy HSR is elected in exactly the same way as an HSR, and steps in to exercise the HSR's powers and functions when the HSR is absent or otherwise unable to act. Think of the deputy as backup, so representation does not lapse when the HSR is away. A work group can elect one or more deputies.

How is an HSR elected?

The workers in a work group decide how their election is run. All workers in the work group are entitled to vote, and if the workers agree by majority, the election can be run with the assistance of a union. If there are exactly as many candidates as positions, no vote is needed and the

candidates are taken to be elected.

An HSR holds office for three years and can be re-elected.

What training does an HSR get, and who pays?

HSRs are entitled to paid training. Specifically, they are entitled to an initial course of five days, as well as one day of refresher training each year, starting a year after the initial course.

HSRs can choose the course (from approved training), and the employer must pay reasonable costs and give paid time off to attend. The training must occur within three months of being elected.

Common misconceptions about the HSR role

There are a few widespread misunderstandings about what HSRs are for. Clearing these up helps members feel confident about nominating and about what to expect from the role.

“The HSR’s main job is to champion or manage safety.”

The legal duty to ensure health and safety rests with the employer, not the HSR. Under the WHS Act, the person conducting the business or undertaking (in our case, the Education Directorate or CIT) has the primary duty of care to ensure, so far as is Reasonably practicable, the health and safety of workers.

The HSR’s job is to *represent* workers and to monitor, investigate and inquire, in other words, to hold the employer to account and make sure workers have a voice. Being an HSR imposes no WHS duty on you personally, and you are not the person responsible for fixing hazards or keeping the workplace safe. That responsibility stays with the employer.

“The HSR’s main job is to walk around and inspect the workplace.”

Inspecting the workplace is just one of an HSR’s powers, not the whole role. Many of the most serious risks in education workplaces are psychosocial, things like occupational violence, high workload, and exposure to distressing situations, and these do not show up in a walk-around. HSRs are just as empowered to monitor, investigate and inquire into psychosocial hazards as they are into physical ones. Representing workers on psychosocial risk is core HSR work, not an add-on.

“The HSR should be a particular type of employee, like a BSO or Business Manager.”

There is no “right” job type for an HSR. Any member of a work group can be elected. Because psychosocial hazards are closely tied to the kind of work a person does, we strongly recommend that there is a work group with an **educator HSR**, so that the people doing teaching work are represented by someone who understands their risks first-hand. This is one reason the flexibility around work groups (covered below) matters so much.

What an HSR can do

What powers and functions does an HSR have?

Alongside representing, monitoring, investigating and inquiring (described earlier), an HSR can:

- inspect the workplace (with reasonable notice, or immediately in the case of an incident or serious and imminent risk)
- accompany a WHS inspector during an inspection
- be present at interviews about WHS between a worker and the employer or an inspector, with the worker’s consent
- request that a health and safety committee be set up
- receive information about the health and safety of workers in the work group
- request the assistance of any person when needed.

An HSR is entitled to access information the employer holds about hazards and about the health and safety of workers in the group, though not personal or medical information about a worker without that worker’s consent.

Directing that unsafe work cease and issuing PINs

HSRs hold two powers that no one else in the workplace has. These are significant, and they are covered thoroughly in HSR training, so this sheet keeps it brief:

1. **An HSR can direct that unsafe work cease.** If there is a serious risk to health or safety from an immediate or imminent hazard, an HSR can direct workers in their work group to stop that work.
2. **An HSR can issue a provisional improvement notice (PIN).** If an HSR reasonably believes the law is being breached, they can issue a written notice requiring the problem to be fixed.

An HSR must have completed their initial training before using either power. Because these powers are serious and specific, an AEU member who is an HSR should contact the AEU office for advice before using them. This is another reason it helps for HSRs to be union members.

How is stopping unsafe work different from my own right to stop work?

Every worker, whether or not they are an HSR, has the right to stop or refuse unsafe work if they have a reasonable concern that doing it would expose them to a serious risk from an immediate or imminent hazard. You do not need to be an HSR to use this right. If you do stop work, you must tell your employer as soon as you can and stay available for suitable alternative work.

The difference is that an HSR can direct *other* workers in their work group to cease unsafe work, not just stop their own.

How does an HSR help resolve a safety issue?

When a health and safety issue comes up and is not resolved through discussion, there is a formal issue resolution process the parties are expected to follow. An HSR is a party to that process and can represent the work group through it. If the issue still is not resolved, a party can ask the regulator to appoint an inspector to help. The AEU can advise HSRs and sub-branches at every step of this process.

What can my HSR do about occupational violence?

Occupational violence (OV) is a work health and safety hazard, and it can cause both physical and psychological harm, so it sits squarely within an HSR's role.

As with any WHS matter, the duty to prevent and manage OV rests with the employer. The Directorate's *Prevention and Management of Occupational Violence Procedure* sets out the employer's system for meeting that duty. Your HSR's job is not to manage OV risk themselves, but to represent workers and make sure the employer is doing what it should.

Your HSR can use their ordinary powers in relation to OV. They can:

- **represent** workers on OV as a health and safety matter
- **monitor** whether the employer's OV controls are actually in place and working
- **investigate** complaints from members of the work group about OV

- **inquire** into anything that looks like an OV risk, including psychosocial risks that build up over time.

The Directorate's OV procedure also gives HSRs a defined seat at the table. Under the procedure, the employer is required to consult and involve HSRs when managing and reviewing OV risk, when developing an Occupational Violence Risk Assessment (OVRA), when reviewing incidents, and in formal investigations where an HSR has been elected, with the outcomes shared with them. Your HSR can also request information the employer holds about OV hazards and workers' health and safety, and, with a worker's consent, be present at interviews about a WHS matter.

The two special powers apply to OV as well. If there is a serious risk to health or safety from an immediate or imminent hazard, an HSR can direct that unsafe work cease, and if the employer is breaching the WHS Act (for example, by not managing an OV risk so far as is Reasonably practicable), an HSR can issue a provisional improvement notice. Separately, any worker facing that kind of serious and immediate risk has their own right to stop unsafe work, whether or not they are an HSR.

In practice: if you experience or witness OV, report it through the Safety Portal (and, where students are involved, the Student Administration System), and let your HSR know. Your HSR can then make sure the risk is being properly assessed and controlled, and that you are being consulted and supported. The AEU can advise you and your HSR at any point.

Support, protection and getting help

What does my employer have to do to support HSRs?

Employers have clear legal obligations to HSRs. Among other things, the employer must:

- **allow the HSR reasonable paid time to exercise their powers and carry out their functions**
- consult with the HSR on WHS matters and confer with them when reasonably requested
- give the HSR access to information about hazards and about workers' health and safety
- provide the resources, facilities and assistance the HSR reasonably needs to do the role
- pay for HSR training and the time to attend it

What can the AEU do to help my HSR?

The AEU office employs a team who are experts in the technical side of WHS legislation and regulation. We also employ organisers who know your sub-branch and how schools run. Across the AEU office are teachers with plenty of experience navigating education workplaces.

If an HSR is an AEU member the AEU can give them advice, can accompany them to meetings to discuss worker safety, and can represent the workers in any formal issue resolution. The WHS Act allows for unions to play this role.

Even if you're not sure you need help, you can always chat to someone in the AEU office about the issues you're navigating, and we can be a sounding board or source of encouragement – whatever you need.

What has the AEU won for HSRs on top of the law?

Through our enterprise agreements, the AEU has secured additional support for HSRs beyond the legal minimum. This includes:

- payment of the **Corporate Citizens Allowance** to HSRs
- recognition that HSRs should be given **time to complete the work** of the role.

If you are an HSR and you are not receiving this support, get in touch with the AEU.

Am I protected if I take on the HSR role?

Yes. The law protects HSRs in several ways:

- **No personal liability:** An HSR is not personally liable for anything done, or not done, in good faith while exercising their powers or performing their functions.
- **No duty imposed on you:** Taking on the HSR role does not impose any legal WHS duty on you personally. The duties under the Act rest with the employer.
- **Protection from discrimination:** It is against the law for an employer to disadvantage, discriminate against, or coerce a worker because they are an HSR or because they exercise their HSR powers.

If you ever feel you are being treated unfairly for being an HSR or for raising safety concerns, contact the AEU straight away.

Does my workplace have to display who the HSRs are?

Yes. The employer must:

- prepare and keep up to date a list of every HSR and deputy HSR for each work group
- display a copy of the current list where it is readily accessible to the workers in the relevant work group
- provide a copy of the up-to-date list to the regulator (WorkSafe ACT) as soon as practicable after it is prepared.

In a school, this means the current list of HSRs and deputies should be somewhere staff can easily find it, such as a staffroom noticeboard or the intranet. Failing to keep and display the list is an offence. If your workplace has HSRs but no visible, up-to-date list, raise it, and contact the AEU if it is not fixed.

Who do I contact for more help?

- The AEU (via aeuact@aeuact.org.au or 62727900)
- WorkSafe ACT – the WHS regulator (via worksafe@worksafe.act.gov.au or 13 22 81 or 6207 3000)