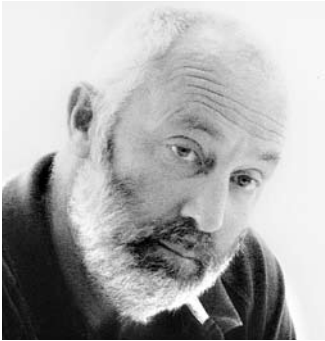


Health & Safety Representatives Guide to the Occupational Health and Safety Act 2004



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Introduction by
Graham Bird



Secretary
AMIEU

Your employer MUST provide and maintain a healthy and safe workplace and work process.

Workers have a right to workplaces and work processes where all risks to health and safety are controlled. It is your employer who has the primary responsibility for your health, safety and welfare at work.

Work in meatworks, and associated workplaces, has always been physically hard, dangerous and skilful. Without the strength of organised labour, the AMIEU, it would undoubtedly be more dangerous.

Health and Safety Representatives should be elected to represent you.

Health and safety representatives have a number of legal rights/powers to contribute to workers' health and safety. This booklet is provided by the AMIEU to assist you to get HSRs and to help the HSRs to understand the law.

Workplaces with active worker's Health and Safety Representatives are healthier and safer than workplaces where there are no HSRs.

This is not surprising as workers' representatives know the workplace far better than management and are aware of what really goes on. They also act as a channel for workers to raise their concerns and get something done. There are numerous studies around the world that show this.

Organised workplaces are safer workplaces.

The most effective tool in organising good health and safety representatives is the Union. There are many ways that the Union makes a difference for health and safety representatives.

The AMIEU provides training for health and safety reps; assists with hazard identification, risk assessment and control; provides back-up with information about risks and controls; assists HSRs in negotiations when needed; makes workers more confident; and helps develop a more positive safety culture in the organisation. The Union keeps up to date with developments in research and laws and makes sure that HSRs are kept informed.

For decades the AMIEU has had Health and Safety staff to help members.

Unions often realise the risks long before management.

Many risks were first identified by unions, sometimes after management ignored or hid early warnings. The AMIEU fought for recognition that workers can contract diseases from animals (zoonoses), for doctors to recognise the diseases and treat them, as well as for compensation systems to recognise them as work related. We are still fighting for the prevention of zoonoses.

It was unions that highlighted the dangers of asbestos and campaigned for a ban many years before the government introduced one. Unions also

unearthed the risks posed by numbers of hazardous chemicals. Unions were the first to raise major concerns over Repetitive Strain Injuries, bullying in the workplace, and the effects of long hours of work. When unions first raised the most of these risks, employers and the media argued it was nonsense but the Unions were right.

WorkSafe has helped health and safety representatives by funding a Support Officer at the AMIEU.

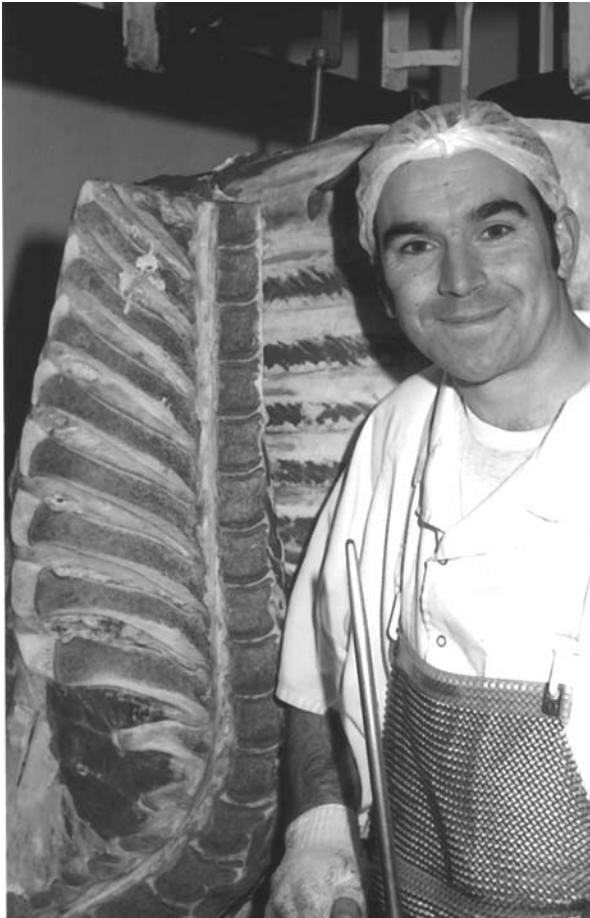
Since November 2004 the AMIEU has applied for funding to have a Support Officer into the future and to develop new ways of health and safety representatives supporting each other in a network.

Workers have the right to come home from work as healthy and safe as when they went to work. Union organised workplaces are safer workplaces.

Know your rights.

Elect your own Health and Safety Representatives.

The Australasian Meat Industry Employees Union will help you.



This booklet is designed to help Health and Safety Representatives to understand some of the rights and obligations in relation to the Occupational Health and Safety Act. It is influenced by the experiences of HSRs in the Meat Industry.

Some of the abbreviations used in this booklet are as follows:

- Act – Is the Victorian Occupational Health and Safety Act 2004.
- ARREO – Authorised Representatives of Registered Employee Organisation.
- DWG – Designated Work Group.
- HSR – Health and Safety Representative.
- OHS – Occupational Health and Safety.
- PIN – Provisional Improvement Notice.
- RTW – Return to Work Plan.
- Union – Australasian Meat Industry Employees' Union.

Objects and principles of health and safety

The purpose of the Act is spelt out in section 2(1) as:

- To secure the health, safety and welfare of employees and other persons at work; and
- To eliminate at the source risks to health, safety

or welfare of employees; and

- To ensure that the health and safety of the members of the public is not put at risk by the conduct of undertakings by employers; and
- To provide for the involvement of employees, employers and organisations representing those persons in the formulation and implementation of health, safety and welfare standards.

The administration of the Act must be in line with the principles of health and safety protection as spelt out in section 4. That is:

- Workers, other people at work and the public must be given the highest level of protection against risk; and
- People who control or manage workplaces or work processes must eliminate/reduce risks; and
- Employers should be proactive to ensure health and safety (in other words eliminate the risks before anybody gets hurt);
- Communication, exchanging information and ideas about risks and controls is necessary;

and

- Employees should be encouraged to be represented on health and safety i.e. to have Health and Safety Representatives.

This is spelt out further in section 20 of the Act which spells out the elimination of risks to health and safety or reduction of risk as far as reasonably practicable. It also makes it clearer what is meant by “reasonably practicable”.

These sections basically mean that workers have the right to have a job that is safe and no risk to health. It also means workers are entitled to be represented by Health and Safety Representatives and the Union.

How do we go about getting represented by HSRs?

The role of the Health and Safety Representative is to represent the members of their Designated Work Group in all health and safety matters.

Put simply, the DWG is the people who elect the HSR. It is covered in detail in Part 7 of the Act. If workers want to have HSRs (or change the numbers of HSRs) it is time to go to management and

open discussions/negotiations about DWGs. Management must talk to you about DWGs. They cannot decide by themselves how many HSRs there will be. Employees are able to authorise a representative to act on their behalf in these negotiations [Section 44(5)].

A Shop Steward, Union Organiser or HSR Support Officer can negotiate on behalf of the workers.

What kinds of groupings ensure that workers are best represented on health and safety? In deciding how many HSRs are needed, in line with section 46 you should consider:

- How many workers are there?
- Do you all do the same kind of work?
- Do you all face the same hazards?
- How many workers are there doing similar work?
- Whereabouts are you all and how accessible are you to each other?
- Do you all work at the same time or are you on different shifts?
- Do you all speak the same languages?

The other issue to consider is how many HSRs and Deputy HSRs you need in each DWG. There is to

be at least one HSR in each DWG. Deputy HSRs get to replace the HSR when they are not there to exercise their rights e.g. when the HSR is on leave.

Example 1

An example in one of the Abattoirs was that initially there was only 1 HSR for the entire workforce. The workers wanted to have more HSRs so that there was one for each kill floor, one for each of the boning rooms and one for the load out. The workers also wanted to have Deputy HSRs after the 2004 Act came in.

The Job Delegate raised this issue with Management in a discussion but it was not dealt with on the spot and the issue went into limbo even though the negotiations should have started within 14 days [section 43(3)].

After the Organiser was called by the workers, negotiations started. Initially management felt that the workers proposed too many HSRs for their workplace even though there were more than 100 workers. The Organiser asked for assistance from the HSR Support Officer who pointed out how the proposal could work to the benefit of health and safety in the workplace. The Support Officer also

pointed out that if agreement could not be reached, it would be possible to bring in the Authority to have an inspector determine the issue [section 45(1)]. Following discussions and time to consider the issue, agreement was reached between management and the workers' representatives.

After the negotiations between management and workers resulted in agreement on the DWGs the employer gave notice of this in writing. This was in line with section 44(2) of the Act.

The workers asked the HSR Support Officer to organise the elections [section 54(4)] because some were worried that management would appoint the representative. It was pointed out by the Support Officer that management could not decide who should be the representative and nominations were called for in each of the DWGs, it was pointed out that any member of the DWG was eligible to stand for election. Because the number of candidates for election as HSR and Deputy HSR in each of the DWGs was the same as the number of vacancies there was no need to conduct any elections [section 54(6)].

It had been agreed that the HSRs would hold office for 3 years which is the maximum period of office under section 55(1). They can be re-elected.



A hint for HSRs

Where there are a number of representatives, it is necessary to co-ordinate with each other and collectively represent workers on the site. To do this there must be good communication.

This will be achieved through meeting with members to involve them on issues and reporting back to them, holding collective meetings with other health and safety representatives, producing workplace OH&S newsletters and co-ordinating with union shop committees.

One myth that is often promoted by management is that a worker cannot stand for the position of HSR when he or she is a Job Delegate. This is not true. There are advantages to having the same person elected to both positions – the obvious one is that it is impossible to play the HSR and the Job Delegate off against each other when it is the same person.

While HSRs can generally only exercise their powers with respect to things that affect the members of their own DWG, if there is an immediate risk to health or safety that affects a member of another DWG or if the members of another DWG ask for assistance, and it is not feasible to refer the matter to their own HSR you could act on their behalf. This is spelt out in section 59(a) & (b).

Example 2

An example of this was in an abattoir where there were no Deputy HSRs and the HSR on the small stock line was off sick. When 4 lamb carcasses dropped off the rail in one morning the workers asked the HSR from the beef line to come and investigate the near misses.

In this instance there was no doubt that the HSR

from the beef line could cross over to the small stock line, investigate and negotiate with the supervisor. When it was found that there was not sufficient maintenance it was agreed that there would be a stoppage of the line while urgent maintenance was performed.

Who is responsible for health and safety in the workplace?

The employer is responsible. They must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risk to health. Health includes the obvious things such as diseases (zoonoses being diseases that can be caught from animals and meatworkers could contract) but it is also spelt out in the definition of health that it includes psychological health. The employers' responsibilities are spelt out in Division 2 of the Act.

Section 21 spells out the responsibilities regarding the work environment, plant, substances and systems of work. It is also clear that the employer has to provide facilities for the welfare of workers including facilities such as toilets, showers, change rooms, lockers and dining facilities. Section 21 also states that employers have to provide the information, instruction, training and supervision that is neces-

sary for their employees to perform work safely and without risk to health.

It is also made clear in section 21(3) that these responsibilities of employers extend to protection of independent contractors and employees of contractors.

Others with responsibilities

The other people who have responsibilities for health and safety are the designers of buildings (section 28) and plant (section 27). Manufacturers of plant or substances (section 29) and suppliers of plant or substances (section 30) also have specific responsibilities for health and safety.

Even though the employers, designers and manufacturers have most of the responsibilities for health and safety, there are some responsibilities that all workers have. Section 25 talks about the duties of employees. In short it says you have to take reasonable care for the health and safety of yourself and others around you. What is “reasonable care” depends on the care of which you are capable.

An example of an activity which would not be acceptable would be where the slaughterers who were

responsible for removing the udders squirted each other with milk from the udders. Whilst such activity would only be a game it could place co-workers at risk because zoonotic bacteria could be in the milk (and other bodily fluids) and cause illnesses to the workers.

If it were proven that the slaughterers had been educated about the risk of zoonotic diseases and knew about the dangers from the milk, it would be possible to show that the workers who were squirting others were not taking:

- Reasonable care for the health and safety of persons who may be affected by the employee’s acts or omissions at a workplace.

It is spelt out in section 25(3) that before workers can be penalised for not taking reasonable care it must be determined “regard must be had what the employee knew about the relevant circumstances”.

Clearly if the slaughterers had not been educated about the zoonoses and the risk associated with getting unpasteurised milk on the skin, the employer could be held responsible for not providing:

- “such information, instruction, training or supervision to the employees of the employer

as is necessary to enable those persons to perform their work in a way that is safe and without risks to health” [section 21(2)(e)].

As well as taking reasonable care, employees aren't to wreck or misuse anything that the company provides for health and safety, section 25(2).

HSRs should note that they are not responsible for the health and safety of workers because they have been elected. This is spelt out in section 58(3) as:

- Nothing in this Act or the regulations imposes, or is to be taken to impose, a function

or duty on a health and safety representative in that capacity.

The HSR role is to represent the workers in your DWG, not to represent management.

Example 3

As soon as a meat wrapper was elected as HSR in a retail meat room the representative was told by the store manager that it was her duty to make sure that the butchers were wearing their mesh gloves when they were cutting. It was suggested that the HSR report any butcher who was not wearing a glove to the store manager for disciplinary action. Policing is not the duty of health and safety representatives.

Penalties

In the Act the penalties for not accepting responsibility for health and safety are spelt out. They are significant. In many of the sections of the Act there is a maximum penalty spelt out for example if an employer does not comply with section 21 the penalties are 1800 penalty units for an individual; 9000 penalty units for a body corporate.



Possible fines are usually referred to in “penalty units” and where you find them in the Act the figures are the maximum penalties. At the time of writing (in 2007) 1 penalty unit = \$107.43 i.e. 9000 penalty units = \$966,870.00

In addition to most breaches of the Act there is a specific clause (section 32) about a “Duty not to recklessly endanger persons at workplaces” which has the highest penalties of all breaches of the Act including jail of up to 5 years.

Whilst this was put into the Act instead of introducing Manslaughter laws that are specific to workplaces, it should be noted that the only prosecutions for ‘reckless endangering’ to date (September 2007) have been of workers.

Rights of HSRs

As said above section 58(3) states that HSRs do not have any duties. However HSRs do have rights. In pursuing this role you have a number of rights under the Occupational Health and Safety Act 2004:

- to be consulted on hazard identification, risk assessment and decisions on controls and any changes at the workplace that could affect health, safety or welfare,

such as introduction of new equipment or substances, any modifications, changes to processes or staffing, changes to rosters or shift arrangements - sections 35 and 36;

- to be provided with information on health and safety, such as hazards, injuries, investigations or consultants reports – section 69(1)(a)
- to have regular paid time to get actively involved in health and safety matters, such as inspections, investigations, OH&S Committee meetings, talking to members, meeting with other health and safety representatives – section 69(1)(d);
- to attend training for HSRs – section 67;
- to be provided with facilities, such as access to photocopier, facsimile, telephone, filing cabinet, computer, email/internet – section 69(1)(e);
- to issue a Provisional Improvement Notice to force action to remove risk when you are unable to resolve an issue by negotiation with your manager - sections 60, 61 & 62;
- to issue a Cease Work on any issue that you believe is an immediate threat to health and safety of any member – section 74;
- to get advice and assistance from other per-

sons, such as other HSRs, delegates, Organisers, Union Health and Safety Officers and a VWA Inspector or Field Officer – sections 58(1)(f) & 70.

Consultation

In the Act there is Part 4 spelling out the duty of the employers to consult with employees and HSRs. It should be noted that although section 35(1) says that the “employer must so far as reasonably practicable consult” in this context “reasonably practicable” has its ordinary dictionary definition meaning of “that which is feasible and can be done”.

If employees are represented by health and safety representatives, the consultation must involve the HSRs [section 36 (2)]. The employer may need to allow time during work hours for the HSR to discuss the matter with members of the designated work group.

Even if there are no HSRs the employer must consult with the workers [section 35]. Section 36(1) establishes how employees are to be consulted. Consultation means that employers must share information, give them a reasonable opportunity to express their views and take those views into account.



For example, an employer cannot withhold relevant information simply because it is complex or highly technical, but should try to make sufficient information available to allow employees to engage in meaningful discussion about the health and safety matter.

Note: if you are told that there are “consultation procedures” in your workplace, this is possible but such procedures must be agreed, not decided by management alone [section 36(3)].

Whilst some employers don't recognise that consulting the workers and their HSRs is in their own best interest, the fact is that the workers are most likely to be able to identify risks and suggest solutions.

Example 4

The owner of an abattoir, with both beef and mutton kill floors, decided to develop a boning room. He wanted to establish a boning room designed to eliminate hazards. A committee was established involving himself, management staff, the HSR, the AMIEU, the builder, engineers and OHS consultants. Priorities for health and safety, production needs and quality assurance were established and research undertaken to discover the best options. The owner recognised the importance of designing out the risk and the advantage of paying the HSR to participate in the process of seeking solutions. The original draft plan was changed by the process. Both the employers and the workers have benefited from the process of consultation.

Access to information

It is an obligation of the employer to allow you access to information relating to actual or potential hazards

[section 69(1)] and information about health and safety of the workers in the designated work group. An individual's medical information is only available to the HSR if the worker concerned consents.

Some examples of information to which you are entitled are:

- Plant safety information provided by the manufacturer/supplier;
- Material Safety Data Sheets for hazardous substances;
- Asbestos Registers of the workplace;
- Assessment done on noise levels in the workplace;
- Ergonomic evaluations done by consultants;
- Injury Registers.

An example of how to deal with information from health monitoring and still protect individual worker's privacy is:

Audiometric (hearing) testing is carried out; the HSR should not be told that Ali, Anne, Giovanni, Joe, Maria, Mohamed, Pedro, Robert and Tranh are going deaf (unless each worker wants the HSR to be told) but the HSR must be informed that 9 people in the DWG have

developed Noise Induced Hearing Loss.

Example 5

In a Smallgoods workplace where a worker had his hand caught in a mincer, the employer notified WorkSafe, as is required under section 38 of the Act and created a written record of the incident. The HSR for the DWG who work on the mincer wanted a copy of the report. Management suggested that this was private information and refused to show the Form to the HSR.

The injured worker wanted the HSR involved when he was spoken to by the manager about what happened and so section 69 (1)(c) gave the HSR the right to be present during the interview. Section 38 (4)(d) of the Act also gave the HSR the right to access the record created by the management to ensure that it did reflect what happened.

Following discussion of these matters the rights of the HSR were recognised.

When the worker was fit to return to work, the HSR was able to represent him in the discussion about the RTW offer. The co-operation with the

HSR meant that the process of returning to work was reasonably smooth.

Paid Time

The employer must allow an HSR to take such time off work with pay as is needed to exercise their powers [section 69(1)(d)(i)]. How much time and for what, are issues that can need negotiation. The HSR Support Officer or the AMIEU Health and Safety Officer can assist you in such negotiations.

Activities such as workplace inspections; consulting with the members of the DWG; talking to individuals from your DWG about OHS issues; accompanying inspectors on an inspection; attending training or meetings should all be able to take place on paid time.

When there are Health and Safety Committee meetings the HSRs who are on the committee should be able to participate during normal work hours. If all of the HSRs are not on the committee there should be time provided for them to meet so that those who are, can represent all of the others. Obviously that is only necessary where it is an extremely large workplace so that the participation of all of the HSRs would be an unwieldy committee.

Example 6

In one abattoir the OHS Committee meetings did not happen until after slaughterers had finished work. As a consequence meetings often took place without the involvement of the HSRs.

It was pointed out that the HSRs from the slaughter floors were entitled to be in attendance (they were on the committee) and that they were entitled to be paid overtime because the meetings were not taking place during ordinary hours. Because of having to pay the HSRs time and a half management saw the advantage of having the meeting at a regular hour and day so that it could be arranged for step-up-labourers to replace the slaughterers. Then the meetings were able to go ahead with minimal disruption and maximum participation.

Where there are multiple shifts it is likely that a committee meeting will be held at a time when the participation of HSRs from all shifts will need to participate outside of their normal working hours and therefore be paid at an overtime rate.

Inspections

Many of the powers of HSRs are detailed in section 58 of the Act. Inspections are one of the key powers.



- 1) A health and safety representative for a designated work group may...-
 - a) inspect any part of a workplace at which a member of the designated work group works –
 - i) at any time after giving reasonable notice to the employer concerned or its representative; and
 - ii) immediately in the event of an incident or any situation involving an immediate risk to the health and safety of any person.

Example 7

The following is the description by a former HSR of inspections for which notice is given:

“The way I used go about the job, was to do an inspection, I would give the supervisor 48 hours notice so he could arrange to replace me for that half day or day, what ever it took. I would then take pad and pen and do a walk through inspection of my DWG’s work area. I would spend time talking to the workers in my DWG, in case there were problems I couldn’t see. I would write a list of problems, (if any), put the date on it and make copies. I would give a copy to the relevant manager and ask him to sign my copy. Serious problems would have to be fixed as soon as possible. If there were a lot of issues I would try to get them prioritised based on severity.”

The HSR can inspect any part of a workplace at which a member of the DWG works and a workplace is wherever a person works, not just in a building. If the lumpers are members of the DWG, the vehicles and the places to which deliveries are made could be part of the inspection.

In order to perform inspections immediately in the event of an incident [section 58 (1)(a)(ii)] it is obvious that there must a procedure for making sure that

HSRs are notified when any incident occurs. HSRs should get together and draw up suggested procedures and negotiate with management so that there are agreed procedures on how you will be informed immediately. You can use the HSR Support Officer to assist you.

Training

HSRs and Deputy HSRs are entitled to receive training that provides them with the appropriate skills and knowledge [section 67].

Training providers are approved by WorkSafe and the AMIEU provides approved training. Our HSR training is the only one that focuses on the range of hazards in the Meat Industry. Particular hazards that we address include Environmental Hazards, Manual Handling and Occupational Overuse, Plant and Equipment (including Knife Handling), Noise, Hazardous Substances, Confined Spaces and Occupational Diseases, particularly Zoonoses.

Which course you attend is chosen by the HSR

This must be done In consultation with the employer [section 67 (3)(c)]. Consultation means that the HSR must:

- inform the employer of the proposed course;
- give the employer the opportunity to present views about the suitability of the proposed course and suggest alternatives; and
- take those views and suggested alternatives into account when you the HSR decide which course to attend.

The employer has to be given 14 days notice of training [section 67(2)], the AMIEU normally gives the employer 4 weeks notice so we can sort things out in the first two weeks if there are difficulties.

If you need to get assistance with sorting out which training to attend there is a central WorkSafe division that you can ask for help. At the time of writing the person is Jill McCabe on 03 96411555.

An employer must, if requested by an HSR, allow that HSR time off work, with pay to:

- attend an introductory course (5 days long) in OHS after being elected;
- undertake refresher training at least once in each year that they hold office after completing the initial training course; and
- attend other approved training.

Pay during training is equivalent to what you would otherwise be entitled to receive for working during that period. HSRs should not be disadvantaged in any way as a result of accessing the training that the OHS Act entitles them to.

HSR training is part of normal work-related activity. You are entitled to receive your normal/expected earnings during course attendance, including entitlements relating to shift work, regular overtime, higher duties, allowances or penalty rates, or tally that you would have gotten at work.

There are circumstances in which HSRs may need to attend a course that is being conducted outside normal working hours. For example if the HSR:

- normally works two days a week and attends a five-day course run on consecutive days;
- normally has a rostered day off during the course; or
- normally has a shift that does not overlap or overlaps only marginally with the course's hours.

Time spent at a course by an HSR (including casual employees) must be treated by the em-



ployer as time at work.

It is in cases such as the HSRs who usually work in the meat room in the retail industry on weekends that issues such as overtime and penalty rates have to be sorted. The Union Organisers are used to helping HSRs to deal with issues such as this..

HSR training is a work activity. Employers must pay course fees and any other expenses associated with attendance at a course, including:

- travel to and from the approved course (where it is greater than travel to the normal work place); and
- accommodation, meals and incidental expenses where an approved course is remote from the workplace.

In addition to the Introductory Training (5 day training) and the annual Refresher Training which both HSRs and Deputy HSRs are entitled, there can be other training courses approved by WorkSafe [section 69 (1)(d)(ii)]. The employer must allow HSRs to attend such courses if they are relevant to the DWG. Note these courses are not automatically an entitlement of Deputy HSRs, though it

could be negotiated with an employer.

Facilities

Section 69 (1) (e) of the Act says that the employer has to provide:

- facilities and assistance as are necessary or prescribed by regulations to allow the HSR to exercise his or her powers.

Whilst this is a general statement there are some things that are recognised as basic facilities. These include:

- access to a notice board where notices about OHS can be pinned;
- access to a telephone;
- access to a fax machine;
- access to a room to meet with members of your DWG;
- access to a photocopier;
- a filing cabinet drawer where you can keep all your records;
- access to a copy of relevant Acts and Regulations (or even your own copy);
- access to a computer with internet connec-

tions – WorkSafe always puts new information and developments in OHS on their website <http://www.worksafe.vic.gov.au> and presumes that HSRs can get access to them;

- access to a camera so that photos can be taken to help when investigating incidents and to make presentations about issues in your DWG to the health and safety committee; and
- access to technical devices such as sound meters, light meters, etc.

This is not a definitive list, merely examples of facilities that some HSRs have been provided.

Provisional Improvement Notices

OK so you've been elected as HSR, you've been provided with facilities, you've established the fact that you have to be consulted, you've been trained and you've been carrying out an inspection and talked to the workers who have confirmed that there is a risk which nothing has been done about. You are sure that the work process is not safe and without risk to health (i.e. you believe that the employer is in breach of the Act). So what do you do now? The first thing to do is to report the problem and set up a discussion with the employer's representa-

tive to try to have the issue resolved [section 73]. If a remedy is agreed you need to make sure that a timetable is set up so that you know when it will happen. If there is no agreed solution or timetable there are other powers that you have as an HSR. You must try to get problems sorted out by negotiations, but if that does not get issues sorted you can issue a Provisional Improvement Notice [section 60]. To paraphrase the Act:

If an HSR believes on reasonable grounds that a person –

- is contravening a provision of the Act or the regulations; or
- has contravened a provision in circumstances that will continue or be repeated –

the HSR may issue a PIN requiring that the person to remedy the contravention. The PIN must

- state why you believe that there is a breach of the Act, the grounds for your belief; and
- which section of the Act or which part of the OHS regulations is being breached; and
- specify the date by which it must be fixed (at least 8 days after you issue the PIN).

It is not essential but you can include directions on

how to fix the contravention [section 61].

The PIN is a legal order. The person on whom it is issued cannot ignore it [section 62].

If they don't wish to comply with the PIN, within 7 days they may ask for a WorkSafe inspector to come and investigate the circumstances that are the subject of the PIN. The inspector could affirm the PIN, modify the PIN or cancel the PIN [section 63 (3)(b)]. There must be a written notice from the inspector setting out their decision and their reasons for that decision [section 63 (5)].

If you don't consider that the inspector's opinion is accurate you can appeal the decision, so can the person on whom your PIN was lodged.

It should be noted that the wording of HSR rights in the sections on PIN is that they can lodge a PIN on "a person", not only on the employer. This can be extremely important when your employer is a labour hire company who does not run the workplace.

Example 8

The workers in one abattoir were all employed by a labour hire company. The management of

the workplace (the host employer) demanded that the slaughterers and the boners wear mesh gloves; however nobody provided the personal protective equipment.

When the HSR went to the labour hire employer and asked for the gloves to be provided she was told that it was not their responsibility as they did not run the abattoir; so she went to the host employer who said that it was not their responsibility as they were not the employer! Obviously this was buck passing as it is not the responsibility of the employee to provide personal protective equipment under the Act.

The HSR, through the Union, asked the WorkSafe inspectorate to explain whom it was possible to lodge a PIN on. The response from the inspectorate was that the HSR could lodge a PIN on any person not just the employer. In this instance, the inspectorate spoke to



the labour hire employer and the host employer and advised that they had to work out which of them was providing the PPE; but that it was not the responsibility of the workers to buy the gloves. Gloves were provided. Hence the HSR did not have to issue a PIN.

Example 9

The HSR in a retail meat room was concerned that there was a breach of section 21 of the Act and the Manual Handling regulations because the work at the wrapping machine was highly repetitive, involved handling weights, working above shoulder height and more than 30 cm away from the body for many hours every day. The meat wrappers were developing musculoskeletal injuries in the shoulders, elbows and wrists.

The HSR approached the meat manager who agreed that there was a problem but had no budget to eliminate or minimise the risk. The meat manager and the HSR took the issue to the store manager who advised them to raise the issue at the health and safety committee meeting . They did so. Nothing was done. The HSR continued to raise the issue at OHS committee meetings. Nothing continued to happen.

Being totally frustrated and seeing the meat wrap-

pers' injuries getting worse the HSR wrote a PIN and served it on the store manager who called in the head office OHS Officer who called in the WorkSafe inspector.

The inspector supported the PIN with modification. The modification was to require the store to engage a consultant to evaluate the manual handling risks and recommend solutions and to give more time for the store than had been on the PIN. This was done and eventually the supermarket purchased a new wrapping machine.

Some months later the HSR identified another breach of section 21 of the Act and the Manual Handling regulations. This involved loading and unloading boxed meat where the boxes, which weighed from 22kg to 38kg, had to be unloaded off pallets at ground level in the storage room, and stacked onto racks in the cool room. The racks ranged from 30 cm above ground level to 2 metres high. The musculoskeletal injuries that were identified as resulting from this were to shoulders and lower backs of butchers and meat packers. The HSR raised the issue at OHS committee meetings with support from the meat manager. Again the issue was not addressed by the supermarket despite being raised on numerous occasions. The HSR issued another PIN. This time manage-



ment did not call in the WorkSafe inspectorate but purchased a trolley with a battery powered scissor lift. This helped to solve the problem (remedy the contravention).

It is not unusual for a management to ignore the issues raised by the HSR until a PIN is issued. The dated list (or a diary) is a good way to keep track of how long things are taking. If there are problems getting things done you can write out a PIN. There are some workplaces where problems are resolved using the consultative process and this is the ideal method. It would appear however, that

in too many workplaces the most serious issues are only resolved after the HSR issues a PIN. The resolution is beneficial to the employer, as it will help reduce injuries. You should not be put in the position where you are repeatedly arguing with the employer. If you can't resolve an issue through discussion, you should remember that you can write a PIN.

One suggestion from a former HSR is "If they didn't listen to me I would show a PIN to the relevant manager and tell him that if they haven't started to fix the problem in two days, I will sign the PIN and issue it to him. This way of doing things seemed to work for me, I only ever had to sign and deliver one PIN. PINs are a useful way to get your employer to take you seriously. You are required to consult with your employer to resolve issues before you write a PIN. If the consultation turns into "Talkfest" writing a PIN is a good way to move forward."

Directions to Cease Work

As is obvious from the fact that a PIN must give at least 8 days to rectify the breach of the Act, that is not sufficient action to deal with situation of immediate danger. Let's face it if there was a leak of ammonium into the boning room it would not be

appropriate to wait 8 days before the leak had to be stopped. There are a range of situations where PINs might be necessary but they are not sufficient. In some instances what is needed is a Direction to Cease Work.

This issue is dealt with in sections 74 and 75 of the Act. The issues covered in these sections are specifically "work which involves an immediate threat to the health or safety of any person" If –

- a) an issue concerning health or safety arises at a workplace or from the conduct of the undertaking of an employer; and
- b) the issue concerns work which involves an immediate threat to the health or safety of any person; and
- c) given the nature of the threat and degree of risk, it is not appropriate to adopt the processes set out in section 73 –

the employer or the health and safety representative for the designated work group in relation to which the issue has arisen may, after consultation between them, direct that the work is to cease.

Put simply, if there is a situation where people could be seriously hurt (or killed) in immediate

terms you should raise the issue immediately with the employers representative and try for agreement on ceasing work (on that machine, or getting out of that environment or whatever is needed to get the people out of danger). If you don't agree on the action, either of you can direct that the dangerous work is stopped.

If you order a cease work in these circumstances the workers whose work is affected must not leave the site straight away; that is don't go home im-



mediately. Usually you would go to the lunch room or somewhere like that. This is because the employer can assign the people whose work has been stopped to suitable alternative duties.

If the management person and the HSR did not agree about stopping work and you gave directions, you should call the inspectorate. Tell them that it is about an immediate threat to health and safety and a direction to cease work. They have to come out to the workplace as soon as possible under those circumstances, usually within a couple of hours [section 75 (1); (2); and (3)].

If the inspector issues a Prohibition Notice (i.e. their order not to work); or puts in writing that the workers were reasonably concerned about their health and safety (even if they were wrong) the workers have to be paid as if they are working until the problem is fixed [section 75 (4)].

Example 10

In an abattoir there was a problem on a beef line with a hide puller. The HSR was informed by the regular operators of the hide puller they had become aware that the three stage hydraulic ram which the hide puller travels up and down on

seemed to be “jolting” a lot as each stage of the ram moved into the next part of the ram. Adding to the problem was the fact that the ram was slipping a bit on the downward travel.

The HSR addressed the issue with Management who responded with “we will look at it”. At the next Occupational Health and Safety committee meeting the issue was re-addressed and the HSR was seeking a single stage ram which had been proven to be a lot safer in other meatworks. The company again insisted that there was nothing wrong with the ram and the workers were either bored or just wanted to make the company waste money as some sort of vendetta.

The HSR who was now insistent on a single stage ram was told “the issue was not that bad - get on it and see for yourself”. The HSR was also told it was too expensive to buy and the installation would cost too much in lost production. The HSR worked a day on the hide puller for personal experience and noticed above normal tightness in the back and sore knees before the end of one shift.

As one worker was now on WorkCover with a back related injury due to this issue more discussions took place with Management, the HSR and another senior HSR from a different department.

Eventually the company decided that there was still no reason for a single stage ram but they would put some rubber mats on each of the operator's platforms.

This clearly was not sufficient so the HSR issued a cessation of work on the hide puller because of the immediate high risk of back, leg and neck related injuries due to how severe the “jolting” had become.

Along with issuing the cease work the HSR issued a PIN and suggested a possible remedy of the issue being a single stage ram which would eliminate the hazard of “jolting”. The HSR also added to the PIN that consultation should occur between the HSR and the company when seeking a remedy to allow the people who will be using the machinery the option of discussing the pro's and con's of what will be installed.

After this the niceties ceased and the company called WorkSafe to remove the cease work and the PIN.

Two WorkSafe Inspectors attended the worksite to inspect the hide puller and have discussions with all of the relevant people. Then a group meeting took place where the Inspectors handed down their findings.

The inspectors read through minutes taken in discussions about the issue and the injury report books finding many similar injuries to different workers since the issue had first been addressed quite some time beforehand - with no attempt to rectify the problem, which had become worse over time. Due to this and the fact that a lot of meatworks now operate with a single stage ram to avoid this type of injury the inspectors upheld the PIN.

The inspectors also issued a Prohibition Notice on the hide puller.

This meant that until the hide puller was in a safe working order – decided by the inspectors - no work could occur using this machine. That is, they supported the HSR's cease work.

As the beef chain cannot operate without the hide puller the inspectors field report allowed for the company to offer the employees "suitable alternative duties" to cover the wages the company would have to pay under the Act. The company requested that the HSRs and Union delegates stay back for a meeting to make allowances for the labourers to be given suitable duties and decide what is suitable for the slaughterers.

The next day the HSR was informed at about ten

o'clock that the beef chain would be closed for three weeks due to "general maintenance" and all beef chain employees would be "stood down" until further notice.

The HSR could clearly see the untruths in this turn of events but was told "bad luck - we can close for renovations whenever we want to. It is our company".

One of the WorkSafe Inspectors was called again on conference call. The company played the same card with the Inspector saying "it has nothing to do with the decision laid down the previous day, they had been planning to renovate the hide puller and surrounding area for some time this just moved the plans forward.

After a lengthy and heated discussion the Inspector once again gave the employer the choices on hand

- follow the Prohibition notice;
- fixing the hide puller and paying the workers leaving what was "suitable duties" for the company and the Union/Employees to work out; or
- appeal formally; OR
- be taken to the Magistrate's court for a breaches of the Act.

The issue was resolved after that call. After all the company's resistance to providing a safe working machine, the company located, purchased and installed a single stage ram in three days! Some workers were provided suitable alternative duties the others were paid for the days when safe work was not available.

Assistance from other persons

As an HSR you have the right to seek assistance from any person [section 58(1)(f)]. This means that you can get one of the other HSRs to come and have a look at something in your DWG, note in Example 10 the HSR from the beef floor involved another HSR and in Example 9 the HSR involved the Union Health and Safety Officer. If you feel that you need assistance with any of your activities you can seek help from another HSR, from the Union Health and Safety Officer or from the HSR Support Officer. You might request assistance in workplace inspections, in negotiations with management, in having input into health and safety policies or changes to the workplace/work process/plant or substances, or to get information on controls to eliminate or minimise risks.

In general the employer must allow the person

to access the workplace when you request their assistance. The only grounds that they could try to refuse would be because the person was not suitable because the person doesn't know enough about occupational health and safety [section 70(1)]. Should an employer try that argument they can be challenged [section 70(2)].

Example 11

An HSR in a smallgoods manufacturing workplace wanted assistance from the HSR Support Officer. At an upcoming health and safety committee meeting the proposed 'Agreed Procedures' were to be discussed. The HSR wanted assistance in negotiating the procedures. He put this request in writing in an email to the company Occupational Health and Safety Officer and got no response. Again he sent an email to the OHS Officer to seek approval for inviting the HSR Support Officer. Again the OHS Officer did not respond.

The Support Officer notified management, in writing, that he intended to come to the committee meeting to assist the HSRs in negotiating the procedures. When he and the HSR went to attend the meeting they were met by management and refused entry to the meeting. The health and safety

committee meeting went ahead while the HSR and the Support Officer were kept outside.

Next the HSR requested assistance in carrying out an inspection. Basically he wanted a second pair of eyes to look around with him. He spoke to the company OHS Officer who said that they'd think about it. No answer was given. The request was sent by email on several occasions. Management refused, stating that the HSR had been trained and should not need any assistance.



The HSR issued a PIN stating that the employer was in breach of section 58(1)(f) which gave the HSR the right to seek assistance from any person. The inspectorate was called in by management. In this instance the inspector cancelled the PIN!

The HSR asked for a review of this decision. The report of the internal review looked at the range of incidents; it was critical of the actions of management; and of the inspectors; but it did not overturn the cancellation of the PIN. The reason cited for this was that the wrong section of the Act was quoted. Internal Review stated that the PIN was not valid because the HSR had quoted section 58(1)(f) i.e. his right to seek an assistant whereas he should have quoted section 70(1) i.e. the employer's duty to accept that right.

The moral of this story is that if you are arguing about your right to seek the assistance of any person [section 58(1)(f)] you must tell your employer that their obligation to allow the person to assist you is found in section 70(1)!

Despite the formal rejection of the HSR's PIN, the result of the shemozzle was that the HSR Support Officer was able to assist in training HSRs about carrying out inspections, to go into the workplace and to participate in health and safety committees whenever any of the HSRs requested his assistance.

Review of decisions

Basically, if an inspector makes a decision you can ask for a review if you think that it is wrong. A range of decisions can be reviewed [section 127] such as DWGs, PINs (affirmed, amended or cancelled), Directions to Cease Work, Reasonable Cause to be concerned about health and safety, Certification that matters have been remedied. This is not an exhaustive list, merely the ones that impact on HSRs most.

If you think that their decision is wrong you can ask for it to be reviewed. You have 14 days to put in this request. There is a special form that you have to fill in. The relevant sections of the Act are 127, 128 and 129. The form is available through WorkSafe, the Union or you can find it on their website <http://www.worksafe.vic.gov.au>

If you are dissatisfied with the outcome of the internal review it is possible to take the issue further. The next step involves applying to the Victorian Civil and Administrative Tribunal. In general it is a good idea to get assistance from the Union Health & Safety Officer or the HSR Support Officer if you want to have decisions formally reviewed. Don't go it alone; and even when the formal processes don't work the way that you want them to go, the review can help to

make things work better in the future, as described in Example 11.

More about inspectors

Part 9 of the Act relates to inspectors and enforcement. Inspectors can go into any workplace [section 98]. If their entry has anything to do with work that is done by any members of a DWG the HSR must be notified of their attendance [section 102]. The HSR has the right to accompany the inspector during an inspection of the workplace that is relevant to any member of the DWG [section 58(1)(b)]. This means that the HSR has to be informed about the proposed inspection and released from their duties to participate in the inspection. One way of achieving this in an abattoir is by having a Rover or a step-up labourer to take the place of the HSR on the line.

If an inspector speaks to any of the members in a DWG the member can have the HSR present in any such discussion if the worker wants them present [section 58(1)(d) & (e)]. In order to make this work there have to be agreed procedures that make it clear that the HSR is informed in advance so that they can ask the DWG member whether they would like to have their representative present.

When an inspector has entered a workplace he or she must provide a Written Report about their entry. If it relates to any DWG copies of the Report must be given to the HSRs [section 103]. Sometimes when the Report is not given to the HSR it may be because the inspector did not know that there were elected HSRs. There should be a current list of HSRs for DWG's on display and provided upon request [section 71] so inspectors are able to check.

Did they check?

If there has been an inspector visit about something to do with your DWG, contact WorkCover and request that a copy is given to you. If they have not given it to you without reason you should complain to WorkSafe. You can do this by phone on freecall 1800 136 089.

Sometimes the inspectors leave copies of their Reports for the HSRs with management who don't pass it on. If so, they are in the wrong. Take this up with management, set up a procedure to ensure that every inspector's report that is relevant to the members of the DWG is passed on to the HSR. This is an occasion when the HSRs should get together so you are not being split up and played against each other. You can call on the Support Officer or the Union to help with this if needed

If you consider that the report is inaccurate or insufficient you probably can request that there is a review. Get help from the Support Officer.

Protection of HSRs

Any employer who discriminates against an HSR (or Deputy HSR) for exercising any of their rights could be prosecuted [section 76]. Discrimination includes demoting, disciplining or sacking an HSR, or threatening to do so.

Of course this would not protect the HSR who does the wrong thing such as harassing co-workers on the grounds of race, nationality or gender, but it does protect against being discriminated against for raising genuine health and safety concerns, carrying out inspections, writing PINs or using any other rights as an HSR.

It is also illegal to discriminate against any worker who raises health and safety concerns with the HSR or an inspector [section 76(2)(c) & (d)]. If an employer is found guilty of an offence they face potential fines, but they may also face having to pay damages to the worker(s) who were discriminated against [section 78(a)]. If they had sacked an HSR the worker could also be reinstated [section 78(b)].



ARREO

The fancy acronym means the union officials who have been trained in health and safety and authorised by the Magistrates' Court to enter workplaces [section 83]. In the AMIEU the Secretary, the Assistant Secretary, the Health & Safety Officer and all of the Organisers are authorised to enter any workplace where meat is handled if we suspect a breach of the Act or any health and safety regulation.

The ARREO does have to be able to say where they suspect there is a health and safety problem [section 87], but they do not have to disclose who called them or who is an AMIEU member. When they enter the workplace they have to talk to any relevant HSRs.

The ARREO can inspect anything, consult with employees and raise health and safety issues that they see (or hear about) with management [section 89]. The ARREO cannot stop the work process but they can advise management and HSRs that they think that the process/machine etc should be stopped.

If you have a workplace where there are no HSRs and you feel too intimidated to ask for help in a way that identifies yourself, you could get the Union to

come to the workplace using our rights as ARREOs. Obviously this is most useful if you are in one of the workplaces where you have been advised that if you join or call in the Union you will lose your job.

ARREOs don't have the rights of HSRs but they can be helpful if you don't have HSRs and your employer does not want to listen to workers about health and safety.

Health and Safety Representatives are key to improving workplaces

Don't forget that Health and Safety Representatives can do lots of things to help to make sure that you are healthy and safe at work:

- encouraging the activity of members;
- inspections of the workplace for any health and safety hazards and risks and investigations of any incidents, illnesses or injuries in consultation with members;
- discuss and resolve with management any health and safety matters;
- issue PINs;

- direct a cease work in situations of immediate danger;
- represent and consult members about the Health and Safety Committee;
- represent and consult members on the development of any/all health and safety policies and procedures;
- have input into all changes to workplace, work processes, plant and substances that could impact on health, safety and welfare of the workers that you represent; and
- report back to everybody on all health and safety matters.

As well as having these rights under the Occupational Health and Safety Act, the HSR has always got the strength of united members to collectively address an issue. Workers have the right to work that is safe and without risk to your health.

Stick Together!