

## Issue resolution

The issue resolution provisions are located in Part 5 of the *Work Health and Safety Act 2011* (WHS Act) which aim at providing for fair and effective workplace representation, consultation, cooperation arrangements at the workplace level. An 'issue' is any matter about health and safety at the workplace that remains unresolved after it is discussed by parties to the issue.

The provisions outline how a health and safety issue can be resolved, with the aim of resolving issues as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue. The intention is that issues should be resolved 'once and for all' to the extent that is possible in the circumstances. The existence of an issue does not necessarily mean there is a dispute on the matter.

### Who can be involved in issue resolution?

Parties in relation to an issue are limited to:

- persons conducting a business or undertaking (PCBUs) or their representative (or other PCBUs if the issue involves more than 1 business)
- health and safety representatives (HSRs) – where there are workers affected by the issue in a work group
- workers who are not in a work group that are affected by the issue – the worker/s or their representative ('*representative*' is defined in the WHS Act as '*HSR, a union representing the worker or any other person the worker authorises to represent them*').

(Note: a PCBU must ensure, if they nominate a representative, that the person is not a HSR, has an appropriate level of seniority and is sufficiently competent to act as their representative).

### Initial reporting and discussion of a health and safety matter

Where there is a health and safety matter, it is expected that parties will communicate, consult and cooperate to discuss the matter. For example, the initial reporting of a health and safety concern may involve:

- if they are in a work group, a worker raising the matter with the HSR, who should then raise the issue with the PCBU or their representative
- if there is no work group, a worker raising the matter directly with the PCBU or their representative (e.g. a supervisor)
- if there is no work group, a worker raising the matter with their representative, who should then raise the matter with the PCBU or their representative.

It is recommended that the outcome of the initial discussions be documented as a record of the matter being raised and discussed.

### When do the issue resolution provisions apply?

Only where the matter remains unresolved through initial discussions does the matter become an 'issue' and the issue resolution process in the WHS Act and WHS Regulation will apply.

Where the matter is resolved during initial discussions and the parties are satisfied the agreement reflects resolution of the matter (e.g.

immediate action taken by the PCBU to install toeboards to prevent objects falling and hitting workers or other people below the work area, which is then observed by the HSR/representative of a party), the issue resolution process does not commence.

### **Resolving an issue**

Only a party to an issue or a representative of a party can be involved in the issue resolution process.

Any party to the issue may commence the formal issue resolution procedure by telling each other party:

- (a) that there is an issue to be resolved
- (b) the nature and scope of the issue.

As soon as parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue using the issues resolution procedure.

Some workplaces will have developed an agreed issue resolution procedure with their workforce, which should be followed when resolving an issue. If a PCBU does not have a written agreed procedure for issue resolution, the WHS Act requires the default procedure in the WHS Regulation be used. If a PCBU's agreed procedure does not include a step specified in the default procedure in WHS Regulation, that step is automatically included in the agreed procedure.

Matters to be taken into account when considering an issue include:

- the degree and immediacy of risk to workers or other people affected by the issue
- the number and location of workers or other people affected by the issue
- what measures are required to resolve the issue (both temporary and permanent)
- who will be responsible for implementing the resolution of the issue
- an agreed timeframe for when measures to resolve the issue will be implemented.

### **What is the role of a representative in the issue resolution process?**

A PCBU, worker or a HSR for a work group who is a party to an issue, may be assisted by a representative in resolving the issue (s. 81 WHS Act, s. 23(5) WHS Regulation).

The role of the representative is generally to provide advice to their party on the issue which is subject to the resolution process and to assist

in the discussions with a view to resolving the issue.

A representative does not necessarily need to have health and safety expertise and could include people such as a designer of a piece of equipment at the workplace or a person with workplace consultation and negotiation skills.

### **Representatives of a party entering the workplace for the purpose of resolving the issue**

Section 81(3) of the WHS Act entitles a representative of a party to enter the workplace for the purpose of attending discussions with a view to resolving the issue.

Entry by a representative of a party under this section can only occur once the issue resolution procedure has been enlivened (i.e. the matter is not resolved after discussions between the parties to the issue – see s. 81(1) WHS Act).

Entry is also conditional on the representative holding an entry permit under the *Fair Work Act 2009*, producing the entry permit for inspection if requested, and exercising the right only during working hours. In addition, if entry will involve inspecting or otherwise accessing an employee record, giving at least 24 hours' written notice of entry is required (see Fair Work Act ss. 494-499).

### **Issue resolution example**

A worker identifies a problem with scaffolding and there is no HSR in their workplace and the worker does not feel comfortable raising the matter with their supervisor. Instead the worker raises the issue with their representative.

The representative notifies the PCBU of the issue but initial discussions fail to address the matter. The parties then commence the formal issue resolution procedure. The agreed issues resolution process is followed.

As the issue resolution provisions have been enlivened, in this context, it would be reasonable for discussions between the parties to take place at the workplace where the scaffolding could be physically observed, so all parties can observe the scaffolding and come to a common understanding of the issue to be addressed.

### **Resolution**

If the issue is resolved, the details of the issue and the resolution must be set out in writing if any party to the issue requests this.

A copy of the written agreement must be given to the parties to the issue. A copy of the agreement to the resolution of an issue may be forwarded by any of the parties to any union or employer organisation that represents the party.

If an issue remains unresolved, any party may ask Workplace Health and Safety Queensland to appoint an inspector to attend the workplace and assist in resolving the issue.

Such a request does not prevent a worker from ceasing unsafe work or an HSR from issuing a Provisional Improvement Notice (or PIN). In addition, the inspector may exercise any of his/her compliance powers under the WHS Act.

If an issue remains unresolved at least 24 hours after the regulator has been asked to appoint an inspector to assist in resolving the issue, the issue can be referred to the Queensland Industrial Relations Commission (QIRC) for resolution (see section 102B of the WHS Act).

In dealing with a dispute, the QIRC may:

- consider the matter by means of mediation, conciliation or arbitration and

make any order it considers appropriate for the prompt settlement of the dispute;

- review a decision made by an inspector to use their compliance powers to assist in resolving the dispute (i.e. if an inspector issues an improvement notice to assist with resolving a dispute, the QIRC can review the inspector's decision and confirm, vary or set aside the inspectors decision); and
- decide not to deal with a dispute, and order costs, if they consider the matter to be frivolous, vexatious, misconceived or lacking substance.

### **Further information**

For more information visit

[www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au) or call 1300 362 128.