

Model template for provisional improvement notices

Provisional improvement notice (PIN) – WHS Act

This PIN is issued under section 90 of the WHS Act. This PIN requires the duty holder to whom it is issued to remedy a contravention, prevent a likely contravention from occurring or remedy the things or operations causing the contravention or likely contravention of the Act or Regulations. Depending on the particular contravention, the duty holder may be an individual natural person or an organisation such as a company or public authority. Section 97 requires that the person to whom a PIN is issued must, as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace at which work is being carried out that is affected by the PIN.

There are a number of things that must be done or taken into account before a PIN is issued by a Health and Safety Representative (HSR) – see reverse side of this form for relevant information.

1. Health and Safety Representative

First name

Last name

Contact number

Work Group represented

2. PIN issued to

Name of duty holder (ie individual natural person or an organisation such as a company or public authority as relevant)

Address

Unit number/Street number

Street name

Suburb

State

Postcode

3. PIN given to (if the PIN is given to someone on behalf of the duty holder)

First name

Last name

Position

Contact number

WHS ACT – GENERAL INFORMATION ABOUT PINs

1. A health and safety representative (HSR) may issue a PIN if they reasonably believe that a provision of the WHS Act or any regulation is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated.
2. A PIN is issued to the relevant duty holder to remedy a contravention or likely contravention of the Act or Regulations. The duty holder may be an individual natural person or an organisation such as a company or public authority. The duty holder doesn't necessarily have to be in the workplace where the HSR works – for example, they could be a designer of plant, buildings and structures; or a manufacturer or supplier of plant or substances. However, the contravention must relate to the work group the HSR represents.
3. A HSR can issue a PIN to the relevant duty holder by one of the methods listed in section 209 of the WHS Act. For example:
 - delivering it personally to the duty holder, or
 - leaving it for the duty holder at the workplace to which the PIN relates with a person who is in management or control of that workplace (for example, leaving it with the area manager).

If the above methods of delivery are not possible, the HSR can send it by post, fax or electronic transmission to the home or business address of the duty holder or leave it for the duty holder at their home or business with a person over 16 years who lives or works there.
4. The HSR must consult with the duty holder about remedying the contravention prior to issuing the PIN (See section 90(3) of the WHS Act).
5. A HSR cannot issue a PIN unless the HSR has completed a WorkCover NSW approved initial HSR training course or completed that training when acting as a HSR for another workgroup or completed training equivalent to HSR training under the WHS Act.
6. A HSR cannot issue a PIN in relation to a matter if an inspector has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter (see section 90(5) of the WHS Act).
7. The duty holder to whom the PIN is issued is responsible for fixing the identified contravention by the date written in 'Date compliance with this PIN is required'. It is an offence under section 99 of the WHS Act for the person not to comply with the PIN by the 'Date compliance with the PIN is required' – penalties apply.
8. If the PIN recipient wishes to dispute the PIN, they can contact WorkCover and request an inspector to review the PIN – this must be done within seven days of the 'Date of issue' of the PIN. The inspector will review and inquire into the circumstances that are the subject of the PIN and can do this even after the compliance date for the PIN has expired. An Inspector can confirm, confirm with changes or cancel the PIN. A copy of a decision by an Inspector must be given to the applicant for the PIN review and the HSR who issued the PIN. If the PIN is confirmed (with or without changes), the PIN is taken to be an improvement notice issued by the inspector.
9. For urgent issues that are an immediate threat to the health and safety of any person, a PIN may not be an appropriate means to address the situation. Refer to section 85 of the WHS Act regarding the right of a HSR to direct that unsafe work cease.
10. If there is more than one contravention, a separate PIN for each contravention should be written.
11. If the PIN contains formal irregularities, defects or fails to use the correct name of the person to whom the PIN is issued, the PIN may still be valid. The PIN will not be valid, however, if the formal irregularity or defect causes or is likely to cause substantial injustice to the PIN recipient or if the PIN fails to sufficiently identify the PIN recipient (see section 98 of the WHS Act.)
12. A reasonable time should be allowed between the 'Date PIN issued' and the 'Date compliance with PIN required', to enable compliance to be achieved. However, the date for compliance must be at least eight days after the date of issue.
13. The HSR should retain a copy of the completed PIN for their records.
14. If the issue has not been remedied by the 'Date compliance with PIN required' and a WorkCover inspector has not already attended, WorkCover should be contacted.
15. The PIN recipient must as soon as practicable, display a copy of the PIN in a prominent place at or near the workplace, or part of the workplace that is affected by the PIN.
16. A person must not intentionally remove, destroy, damage or deface a PIN that is displayed during the period the PIN is in force.
17. A failure to do any of the things referred to in points 15 and 16 is a contravention of the WHS Act and penalties apply.
18. If the person to whom the PIN is issued disagrees with the PIN or believes they will have difficulty complying with it, they should discuss this with the HSR who issued the PIN. They may also request a WorkCover inspector to attend (see point 8 above).

For queries about PINs or other health and safety matters, contact WorkCover on **13 10 50** or through our website workcover.nsw.gov.au

Work Health and Safety Regulators have developed this sample form that may be used by health and safety representatives to issue a PIN. There is no requirement that a PIN be in this form, provided that the PIN is in writing and meets the requirements of Division 7 of Part 5 of the WHS Act.