

# How we make decisions about the removal of a Health and Safety Representative from office (OP 05)

## Operational Policy (OP 05)

Date issued July 2024

---

A Health and Safety Representative (HSR) is a worker elected to represent the members of a work group on health and safety matters at a workplace. The health and safety regulator of the workplace of an HSR may remove an HSR from office indefinitely or for a specified period, if there is evidence that they have misused their powers or have not performed satisfactorily.

## **This policy applies to all decisions about the removal of an HSR from office in workplaces where Maritime NZ is the health and safety regulator**

This policy applies to these decisions about all HSRs appointed under the Health and Safety at Work Act 2015 (HSWA) in workplaces:

- on New Zealand vessels; and
- at designated ports.

This policy does not apply to employment relationship matters involving an HSR.

## **What is a misuse of power?**

A misuse of power by an HSR is a serious breach of HSWA, and of the trust that workers and persons conducting a business or undertaking (PCBUs) hold in their HSR. A misuse of power by an HSR means they have:

- performed or exercised their functions or powers for an improper purpose; or
- improperly used or disclosed information acquired as a HSR.

This could be, but is not limited to:

- the disclosure of health and safety information about a person to a third party without the consent of the person whose information is disclosed;
- putting the interests of a third party above the health and safety interests of the workers they represent. For example, by sharing health and safety information with the third party to give them an advantage in any health and safety contracts with the PCBUs; or

- using health and safety information obtained to further their own business interests, such as a separate health and safety consultancy.

## **What is unsatisfactory performance?**

Unsatisfactory performance refers to an HSR failing to carry out their functions or exercising their powers, in a satisfactory way. This could be, but is not limited to:

- failing to represent the health and safety interests of workers; or
- not exercising the powers available to them to address health and safety issues.

## **We will consider removing an HSR from office when we become aware that they may be misusing their HSWA powers or are not performing satisfactorily**

Concerns about an HSR may be identified:

- when carrying out our functions, such as undertaking an investigation, inspection or audit;
- from a notification of alleged improper use of an HSR power; or
- from a request to remove an HSR from a PCBU.

## **How we make decisions about removing an HSR from office**

If, when carrying out our functions, we identify that an HSR may be improperly using their powers or not performing satisfactorily we will investigate and collect evidence to inform our decision about whether they should be removed from office.

If a PCBU or other person raises an allegation about an HSR, we will only investigate the matter if the person making the allegation provides us with information to support their allegation.

The person making the final decision to remove an HSR must have the appropriate delegation.

### **Our investigation will consider the available evidence and relevant circumstances**

If we establish, based on evidence, that a power has been misused or there has been unsatisfactory performance, we will consider whether the circumstances warrant the removal of an HSR for a specified time or indefinitely. The circumstances we consider include, but are not limited to:

- whether the HSR has had the appropriate training and time to undertake their role;
- whether any misuse of power or unsatisfactory performance is an isolated incident or a repeated pattern of behaviour;
- whether the HSR acted in good faith;
- the behaviour, actions, or influence of third parties;



- the seriousness of any misuse of power, including intention;
- the effect on workers, the PCBU, and the workplace;
- the wider health and safety culture of the workplace; and
- the views of the workers on whether they feel represented by the HSR.

### **When we are likely to remove an HSR**

Removal is the appropriate action to take where:

- there is a risk of repeated misuse of power or unsatisfactory performance;
- the circumstances indicate that the behaviour was intentional, and the HSR was not acting in good faith;
- there is more than a minimal impact on workers, the PCBU, and the workplace; or
- the HSR was knowingly influenced by the behaviour or actions of a third party.

### **Removal for a specified period**

Determining the length of time an HSR is removed from office considers the:

- length of time the person has been in the role of HSR;
- severity of the misuse of power or unsatisfactory performance; and
- views of workers and their confidence and trust levels in the HSR to represent them following further training and education.

During the specified period, the HSR may need to undertake further training and education to ensure that they understand their functions and powers and how to use them.

### **Indefinite removal**

Indefinite removal is likely to be appropriate where:

- there is a repeated pattern of behaviour;
- the behaviour is intentional;
- the severity of the behaviour is high and has a high impact on others;
- the workers represented by the HSR have lost confidence in the HSRs ability to carry out their function; or
- there is a loss of trust in the HSR from both the workers they represent and the PCBU.

### **What happens if we decide not to remove an HSR**

If we decide not to remove an HSR, we will provide education and guidance materials to the HSR and PCBU.



## Third party behaviour, actions or influence

If there is evidence that the HSR's misuse of power or unsatisfactory performance is a due to the behaviour, actions or influence of a third party, we may consider taking action against the third party.

## Legislative basis

The functions and powers of an HSR and the requirements for removal are in Schedule 2 of HSWA.

- Clause 1 sets out the functions of HSRs.
- Clauses 2 – 8, and some provisions of HSWA, set out the powers of HSRs.
- Clauses 13 and 14 of Schedule 2 specify that the functions, powers and information used by an HSR must be for health and safety purposes only.
- Clause 17 of Schedule 2 sets out the regulator's power of discretion to remove an HSR indefinitely or for a specified period.
- Clauses 18 and 19 of Schedule 2 specify that an HSR may appeal a decision to remove, that a PCBU may request the removal of an HSR, and contains requirements for notification of decision.

Maritime NZ's role as a health and safety regulator is defined in the Health and Safety at Work (Maritime New Zealand) Agency Designation 2023.

## Disclaimer

This policy provides information on and sets out Maritime NZ's approach to the removal of an HSR under HSWA. It is not a substitute for legislation.

Health and Safety Representatives and PCBUs must make sure they are operating to the latest legislation and obtain legal advice where appropriate.

This document may not be the most current version available so please check [maritimenz.govt.nz/operational policy](https://maritimenz.govt.nz/operational-policy) to confirm that you are referring to the current version of this document.

## Key Terms

For the purposes of this document:

### Employment relations matter

means an issue that directly relates to employment, such as wages or misconduct. More information on employment relations matters and employment issues can be found at :

- Employment New Zealand; and
- Employment Relations Authority.

### Good faith

means the use of honesty and best efforts to deal fairly with others. It includes an absence of intent to harm other individuals or parties when carrying out an action. The person believes they are acting honestly, fairly



and transparently when carrying out actions, functions, or powers.

**Designated ports**

for the purposes of this policy means a port operated by a port company within the meaning of the Port Companies Act 1988 and includes the following ports:

- Northport
- Ports of Auckland
- Port of Tauranga
- Eastland Port
- Port Taranaki
- Port of Napier
- CentrePort Wellington
- Port Marlborough
- Port Nelson
- Lyttleton Port
- PrimePort Timaru
- Port Otago
- South Port
- Ports used in connection with the Cook Strait inter-island ferries.

The definition also includes:

- any area within the security fenced boundaries of a port listed above, whether or not that area is operated by a port company; and
- the buildings, installations, other structures or equipment on or adjacent to a port listed above and used in conjunction with that port's operation or administration.



**New Zealand vessels**

means:

- New Zealand-flagged vessels in any waters;
- a foreign vessel on demise charter to a New Zealand-based operator when it is operating in New Zealand waters; and
- foreign-flagged vessels as workplaces for New Zealand workers employed by a PCBU.

It does not include naval vessels or the vessels of, or pertaining to, the Armed Forces.

**PCBU**

means a person conducting a business or undertaking and is defined in detail in section 17 of HSWA. Most New Zealand businesses, whether large corporates, sole traders, or self-employed, are classed as PCBUs.

**Removal of an HSR**

means the removal of a person from their role as a Health and Safety Representative for a specified period or indefinitely.

**Third party**

A person or entity other than the relevant person, HSR or PCBU.

**Using powers inappropriately**

means using powers in a way that is not appropriate for the situation and not taking reasonable steps to resolve a health and safety situation before ceasing work or issuing a PIN. It does not include misuse of a power.

**Vessel**

means vessel, ship, or boat and is a generic term that is not associated with the size of the craft.

