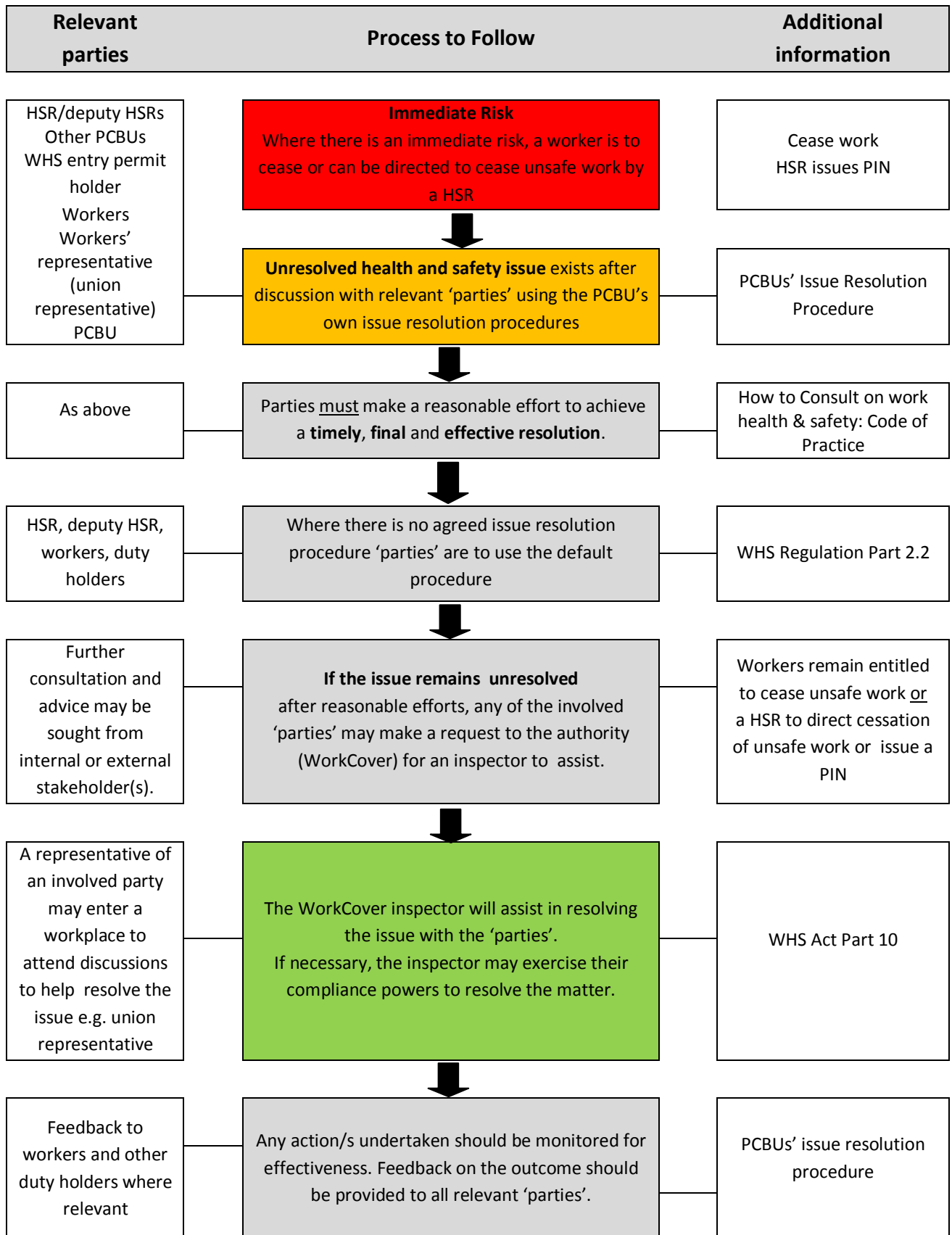


# FACT SHEET 7: WHS Issue Resolution



The WHS Act refers to a requirement to utilise the default procedure prescribed in the WHS Regulations where a PCBU/s does not have a written agreed procedure for issue resolution.

**Matters to be taken into account** by parties to the health and safety issues include:

- the number and location of workers affected by the issue;
- any relevant accepted industry practice, if that practice is consistent with the WHS Act and the WHS Regulations;
- the requirements for the management of risks (WHS Act s17);
- what (if any) temporary measures are required;
- what (if any) further information is required;
- a method and timeline for resolution of the issue;
- whether any other persons may reasonably be required to assist the early resolution of the issue; and
- who is to be responsible for implementing the resolution of the issue on behalf of the PCBU.

**Other requirements** pertaining to the issue resolution procedure under the WHS Regulation include:

- If the issue is resolved, the details of the issue and the resolution must be set out in writing to the satisfaction of all the parties.
- As soon as reasonably practicable after the issue is resolved, the PCBU must ensure that:
  - ❖ the workers affected by the issue are informed of the details of the agreement between the parties
  - ❖ a copy of the agreement is forwarded to any relevant HSR.
- **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.

#### Workplace issue resolution procedure

- If an agreed procedure for issue resolution at a workplace does not include a step specified in the default procedure in WHS Regulation 2.2.1, as described above that step is automatically included in the workplace agreed procedure.
- The PCBU must ensure that the agreed procedure for issue resolution at the workplace is:
  - ❖ set out in writing; and
  - ❖ communicated to all workers engaged by the person.

#### Discriminatory conduct

#### Model WHS Act: s104-107

A person only commits an offence under the WHS Act if the **dominant reason** for the discriminatory behaviour is conduct by a person in relation to health and safety activities.

**Discriminatory conduct** is considered to be if a person does, organises or threatens to :

- In regards to a worker:
  - ❖ dismiss or terminate a contract for services with a worker; or alter the position of a worker to the worker's detriment; or
- In regards to a prospective worker:
  - ❖ refuse or fail to offer to engage a prospective worker; or
  - ❖ treat a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement; or
- Terminates, refuses or fails to enter into a commercial arrangement with another person.

The WHS Act also makes it clear that is illegal for a person to request, instruct, induce, encourage, authorise or assist a person in discriminatory behaviour.

**Coercion or inducement:**

A person must also not organise or threaten to take actions against another person with the intent of coercing or inducing them in relation to performing (or not performing) their role, exercising or not their powers or from taking or continuing in a role under the WHS Act e.g. a person attempting to persuade individuals not to take a role as a HSR or to cease unsafe work.

**Misrepresentation:**

To support the prohibition of coercion or inducement under the WHS Act, a person can be fined for knowingly or recklessly making false or misleading representation to another person about the other persons':

- rights or responsibilities; or
- ability to initiate or participate in a process or proceedings e.g. request the election of a HSR or the establishment of a HSC, cease work; and/or
- ability to make a complaint or inquiry to a person or other body e.g. WorkCover, that has the power to seek compliance with the WHS Act.