

# 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.

### SECTION 1: HEALTH AND SAFETY REPRESENTATIVE

Title	Family/Surname
M r	K o v i c
Given name	
F r a n k	
Daytime contact number	
0 4 0 9 7 7 1 0 9 7	
Work Group represented	
F a m i l y a n d C o m m u n i t y S e r v i c e s	

### SECTION 2: PIN ISSUED TO

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

F a m i l y a n d C o m m u n i t y S e r v i c e s

Street address (must NOT be a PO Box)

Unit number/Street number/Property number (include Lot or DP number if applicable)

7 - 1 1

Street name

B R I D G E S T R E E T

Suburb

C O N I S T O N

State

N S W

Postcode

2 5 0 0

### SECTION 3: PIN GIVEN TO (if the PIN is given to someone on behalf of the duty holder)

Title	Family/Surname
M S	M C M U L L A N
Given name	
K I M	
Daytime contact number	
0 2 4 2 2 2 8 6 0 0	

**SECTION 4: I HAVE CONSULTED WITH THE DUTY HOLDER PRIOR TO ISSUING THIS PIN** ■  
 (section 90(3) of the WHS Act)

**SECTION 5: DETAILS OF CONTRAVENTION**

**Site location**

Unit number/Street number/Property number (include Lot or DP/PO Box/GPO Box/Private Bag/Locked Bag)

7 - 1 1

Street name

B R I D G E S T R E E T

Suburb

C O N I S T O N

State

N S W

Postcode

2 5 0 0

I, F r a n k K o v i c (print HSRs name)

reasonably believe on  Insert date (DD/MM/YYYY) at  :  (insert time)

that you:

- are contravening a provision, or
- have contravened a provision in circumstances that make it likely that the contravention will continue or be repeated of the:

*Work Health and Safety Act 2011*, section

*Work Health and Safety Regulation 2011*, regulation

Brief description of how the provision is being or has been contravened

PCBU has failed to have adequate workplace systems to identify, manage and prevent vicarious trauma and secondary trauma, which is recognised as a inherent risk for child protection workers.

PCBU has no safe system of work for preventing vicarious trauma and secondary trauma.

PCBU has no safe system of work for identifying and managing cases of vicarious trauma and secondary trauma.

PCBU has no review process in place to ensure current systems and procedures for preventing and responding to workplace vicarious trauma and secondary trauma are effective and kept up to date.

Note: The HSR may, but is not required to, specify measures, in accordance with section 93 (1) of the WHS Act, that they believe should be taken to remedy or prevent the contravention or likely contravention or matters or activities causing the contravention or likely contravention

\* PCBU must ensure so far as is reasonably practicable the health and safety of workers by consulting with workers to develop and implement a safe system of work for:

- preventing vicarious trauma and secondary trauma
- identifying and managing vicarious trauma and secondary trauma
- review and revision of the organisation's systems of work for preventing and responding to the incidence of workplace vicarious trauma and secondary trauma.
- PCBU, to consult as per S.4 and S.70 with the PSA and staff, to establish a process to determine fair, safe and achievable workloads for caseworkers, taking into account the complex nature of child protection work.

**SECTION 6: COMPLIANCE**

Date PIN issued

1 6 / 1 1 / 2 0 1 7

Date compliance with PIN required

3 1 / 0 1 / 2 0 1 8

(Minimum of 8 days after date PIN issued)

Signature



## 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 SafeWork NSW (the Regulator) approved initial HSR training course or completed that training when acting as a HSR for another work group 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 the 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 the Regulator 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 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 the 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 the PIN required' and a SafeWork NSW inspector has not already attended, the Regulator 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 SafeWork NSW inspector to attend (see point 8 above).

For queries about PINs or other health and safety matters, contact the Customer Service Centre on **13 10 50** or through our website [safework.nsw.gov.au](http://safework.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.

### **Contravention:**

- PCBU has failed to meet its legislative obligations under WHS failing to have in place adequate policy, procedural and training systems that are designed to identify, manage and prevent vicarious and secondary trauma which is recognised as an inherent risk for child protection workers.
- PCBU has failed in its duty where reasonably and practicable to eliminate or minimise the risk to worker health and safety. This duty extends to the risk of harm from stressors at work, due to excessive workload and continuous change management policy and practice, failure to provide appropriate supervision and the inability to identify and manage vicarious and secondary trauma and other stress and anxiety related conditions.
- PCBU has failed to apply the risk management principles to eliminate or minimise, as far as reasonably practicable, exposure to potential causes of work-related stress. This duty extends to the stressors of continual increase in workload and continuous and unrepentant change management policies to casework practice which continued to increase work demands.
- PCBU have overridden an effective control mechanism; where workload allocation had involved the Manager Caseworker and Caseworker negotiating appropriate and realistic workload allocation. The PCBU has imposed a State-wide Key Performance Indicator benchmark mechanism setting arbitrary caseload targets and workloads, thus removing the local level of decision making and control of work being allocated.
- PCBU has forced unreasonable targets and expectations on caseworkers by continuously increasing workloads, whilst having no adequate systems in place to ensure caseload allocation is realistic, measurable, appropriately allocated and managed and in line with caseworker capacity, ability and level of experience.
- PCBU have encouraged District management to undertake performance management and /or disciplinary action towards caseworkers who are considered not to be meeting desired targets and benchmarks in an environment of contentious change in practice and policy set by the PCBU. PCBU continues to fail to ensure appropriate and fair Performance Management and disciplinary process is being conducted and caseworkers continue to experience bullying and harassed by local management. District Management have encouraged staff to resign if unable to meet the standards being set by the PCBU.
- PCBU has failed to consult with staff and PSA when the issues of unrealistic and unreasonable allocation of caseloads, failure to implement a system to monitor the workload of individual caseworkers, the misuse of the performance management framework are brought to the attention of senior management who dismiss the concerns raised by caseworkers as not valid. PCBU fails to address these concerns when they are raised at District WHS committee meetings.
- PCBU has failed to consult with the established State WHS committee on its decision to terminate the functions of the committee without notice. No alternative forum or process has been proposed to replace the functions of the State WHS Committee, whose primary purpose was to act as a consultative forum at a senior level within the organisation. The Committee was to play a strategic governance role in overseeing the effective implementation of WHS across FACS. The termination of this Committee and its functions have contributed to the erosion of commitment to WHS within FACS and has sent a message

through the Organisation that WHS is not of significant importance to PCBU. The committee was established in breach of the legislation having 19 management representatives and 11 employee representatives.

**Directions:**

- PCBU, to consult as per S.4 and S.70 with the PSA and staff, to establish a process to determine fair, safe and achievable workloads for caseworkers, taking into account the complex nature of child protection work.
- PCBU, to consult as per S.4 and S.70 with the PSA, change workplace systems to be in line with improved physical and psychological health, safety and wellbeing of its staff, given the challenging nature of delivering child protection services.
- PCBU to remove the State-wide casework productivity targets which are set for each District resulting in Managers Casework being effectively required to allocate excessive and unsafe caseloads to caseworkers in order to meet the productivity targets.
- PCBU to undertake a State-wide audit of individual caseworker caseloads and provide the information obtained to staff and the PSA and the Regulator.
- PCBU to undertake a State-wide audit of flex records on the hours forfeited under the Flexible Working Hours Agreement and provide a detailed report covering the previous 12 month period to staff, the PSA and the Regulator.
- PCBU in consultation with the PSA, to undertake a State-wide audit of the scope of work undertaken by a caseworker to inform the exact nature of the work undertaken and how long each task takes to complete. This will facilitate transparent and informed negotiation on work allocation and work undertaken.
- PCBU to undertake a risk assessment and implement control mechanisms to manage workload.
- PCBU to provide data and analysis on staff mobility including resignations, sick leave and workers-compensation claims and incident reports relating to stress related conditions or injuries.
- PCBU to undertake a risk assessment in relation to the over allocation of cases to caseworkers and implement systems to monitor and manager caseloads in real time.