

**Hastings Deering**



# Election and Responsibilities of Health and Safety Representatives

HDAL-SHEQ-11-PR03

Procedure

Version 4.1

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## 1. PURPOSE

To provide a systematic process for the election and function of Health and Safety Representatives (HSR) representing the employee workgroups at Hastings Deering (Australia) Limited (HDAL).

## 2. SCOPE

This Procedure is applicable to HDAL business and/or operations within Queensland and Northern Territory with the exception of:

- Queensland Coal Mining; and
- Queensland Mining sites which will operate within the Mine's Safety Management System.

## 3. RESPONSIBILITIES

### 3.1. Executive Manager – Safety Operations

The Executive Manager – Safety and Sustainability is responsible for:

- Ensuring there is a process in HDAL for the election and function of HSRs that aligns with relevant legislative obligations.
- Establishing and maintaining processes to provide assurance to the Managing Director that this procedure is being complied with across HDAL.
- Undertaking a review of this procedure every 2 years or whenever circumstances arise that require an earlier review e.g. result of audit an investigation or legislative change.

### 3.2. Area Manager/Functional Manager

The Area Manager/Functional Manager is responsible for:

- Ensuring staff receive the required level of training to function as a HSR.
- Ensuring adequate resources are available to enable the requirements of this procedure to be implemented and maintained.
- Ensuring the requirements of this procedure are implemented and maintained for their area of control.
- Allowing time, with pay, for HSRs and Deputy HSRs to attend meetings and carry out their functions.
- Ensuring an up-to-date list of each HSR and Deputy HSR for each work location is displayed
- Notifying the Safety Superintendent of any changes to HSRs and Deputy HSRs elected within their area of operations.

### 3.3. Safety Superintendent

The Safety Superintendent is responsible for:

- Ensuring the relevant Workplace Health & Safety (WHS) Regulator is notified as soon as practicable of any changes to the current list of elected HSRs and deputies using the approved method or equivalent.
  - e.g. NT Worksafe Form – “Notification – Health and safety representatives”
  - WHS Qld use Spreadsheet available from WHS Qld website.

#### 3.3.1 Update copies to be forwarded to:

- For WHS Queensland email to: [WHSnotification@oir.qld.gov.au](mailto:WHSnotification@oir.qld.gov.au)
- For NT Worksafe email to: [WHSntworksafe@nt.gov.au](mailto:WHSntworksafe@nt.gov.au)

#### 4. DEFINITIONS

Term	Definition
Responsibilities of HSR	The powers and functions of HSRs and Deputy HSRs as defined in relevant health and safety legislation

#### 5. REFERENCES

References
Workplace Health and Safety Act (QLD) 2011
Workplace Health and Safety Regulations (2011)
Workplace Health and Safety (National Uniform Legislation) Act 2011 (NT)
Industrial Relations Act 2016

#### 6. ASSOCIATED DOCUMENTS

Document ID	Document Title
HDAL-SHEQ-11-F02	Health and Safety Representative Nomination Form
HDAL-SHEQ-11-F03	Health and Safety Representative Nomination Total Form
HDAL-SHEQ-11-F04	Health and Safety Representative Nomination Ballot Form
HDAL-SHEQ-11-F05	Health and Safety Representative Ballot Total Form
HDAL-SHEQ-11-F06	Health and Safety Representative Poster Form
HDAL-SHEQ-11-F07	Health and Safety Representative Contact List Form
HDAL-SHEQ-11-F08	Health and Safety Representative Appointment Form
HDAL-SHEQ-11-F09	Health and Safety Committee Member Appointment Form
HDAL-SHEQ-11-F11	Health and Safety Committee Formal Appointments Register Form
HDAL-SHEQ-11-F12	Notice of Election or Ballot Form
HDAL-BMS-05-STD02	Records Management and Archiving Standard
HDAL-SHEQ-11-PR04	Stop Work Procedure
HDAL-SHEQ-11-PR08	Provisional Improvement Notices (PINS) Procedure
HDAL-SHEQ-11-PR09	Consultation, Communication and Issue Resolution with Workers Procedure
3.9	Responding to a Union Official who is a WHS entry permit holder

#### 7. REQUIREMENTS

Employees will elect a HSR and Deputy HSR from their work group in accordance with this procedure.

##### 7.1. Eligibility

A worker will only be elected as a HSR or Deputy HSR for a work group if:

- they are a member of the work group, and
- they have not been previously disqualified as a HSR.

### 7.2. Term of Office

A HSR and Deputy HSR will hold office for 3 years, unless they:

- resign,
- cease to be a worker in the work group,
- are disqualified, or
- are removed by a majority of members of the work group.

### 7.3. When an Election is Not Required

If the number of candidates for election as a HSR for a work group equals the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a HSR for the work group and formally accepted the appointment.

### 7.4. Determination of Work Groups

Negotiations for a work group, determination of work groups, and variation of work groups will take into account all relevant matters including the following:

- the number of workers;
- the views of workers in relation to the determination and variation of work groups;
- the nature of each type of work carried out by the workers;
- the number and grouping of workers who carry out the same or similar types of work;
- the areas or places where each type of work is carried out;
- the extent to which any worker will move from place to place while at work;
- the diversity of workers and their work;
- the nature of any hazards at the workplace or workplaces;
- the nature of any risks to health and safety at the workplace or workplaces;
- the nature of the engagement of each worker (for example as an employee or as a contractor);
- the pattern of work carried out by workers, (for example whether the work is full-time, part-time, casual or short-term);
- the times at which work is carried out; and
- any arrangements at the workplace or workplaces relating to overtime or shift work.

### 7.5. Negotiations for Agreement for a Work Group

A work group is to be determined by negotiation and agreement between:

- The Area Manager/Functional Manager and the workers who will form the work group or their representatives.
- The Area Manager/Functional Manager will take all reasonable steps to commence negotiations with the workers within 14 days after a request is made.

The purpose of the negotiations is to determine:

- the number and composition of work groups to be represented by HSRs; and
- the number of HSRs and deputy HSRs (if any) to be elected; and
- the workplace or workplaces to which the work groups will apply; and
- the businesses to which the work groups will apply.

Work group/s and management will, at any time, negotiate a variation of the agreement. The Area Manager/Functional Manager will, if asked by a worker, negotiate with the worker's representative in any relevant negotiations (including negotiations for a variation of an agreement) and will not exclude the representative from those negotiations. If the negotiations fail, any person who is or would be party to the negotiations can ask the Regulator to appoint an Inspector for assistance.

### 7.6. Determination of Multiple Working Groups

Work groups will be determined for workers carrying out work for two or more persons at one or more workplaces. The particulars of the work groups will be determined by negotiation and agreement, between each of the AM/FMs and workers. Work group/s and management will, at any time, negotiate a variation of the agreement.

The determination of one or more work groups does not:

- prevent the determination of any other work group of the workers concerned; or
- affect any work groups of those workers that have already been determined. Negotiations concerning determining of work groups will be directed only at the following:
  - the number and composition of work groups to be represented by HSRs;
  - the number of HSRs and deputy HSRs (if any) for each work group;
  - the workplace or workplaces to which the work groups will apply; and
  - the businesses to which the work groups will apply.

An Area Manager/Functional Manager will, if asked by a worker, negotiate with the worker's representative in negotiations (including negotiations for a variation of an agreement) and will not exclude the representative from those negotiations. If agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations, any party to the negotiations will ask the regulator to appoint an Inspector to assist the negotiations in relation to that matter.

### 7.7. Withdrawal from Negotiations or Agreement involving Multiple Work Groups

A party to a negotiation for an agreement, or to an agreement, concerning a work group may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.

If a party withdraws from an agreement concerning a work group:

- the other parties must negotiate a variation to the agreement; and
- the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

### 7.8. Notification to Workers

An Area Manager/Functional Manager involved in negotiations to determine a work group will, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.

## 8. WORK GROUP ELECTION PROCESS FOR A HEALTH AND SAFETY REPRESENTATIVE

The workers in a work group will determine how the election of a HSR is conducted and HDAL will provide the necessary resources, facilities and assistance to conduct the election to comply with this procedure. The workplace area where a Health and Safety

Representative Election is required is to be identified and defined and a HSR for a work group will be elected by members of that work group. All workers of that work group are entitled to vote and will not unreasonably delay the election of a HSR.

### 8.1. Notice of Election

Notice of Election or Ballot Form HDAL-SHEQ-11-F12 will be placed on Notice Boards by the Safety Advisor advising of an election so as not to unreasonably delay the election of a HSR.

Notice details to include:

- Work area requiring election.
- Date of closing for nominations.
- Who to give names to.
- Date of election if more than one nomination (one week after closing).
- Workers entitlement to request a union to conduct election if required.

On the election date (to be conducted at the workplace during working hours): Workers will select who conducts the ballot if union participation has not been requested. All workers in the work group are required to vote and will decide the method of voting (show of hands, or secret ballot). Workers in the work group and all relevant persons will be informed of the outcome of the election.

### 8.2. Secret Ballot Method

The site Safety Department will facilitate the process of identification of work groups. The election nomination method will involve secret election and ballot using the HSR Nomination Form HDAL-SHEQ-11-F02.

This individual election nomination is to be completed and placed in a padlocked box provided – this is an anonymous process. Workers will be advised when an election of a new representative is required and the Election or Ballot Form HDAL-SHEQ-11-F12 Notice will be placed on the Safety Notice Board by the Safety Advisor.

The Site Safety Department (two employees) and randomly selected employees (two employees) will open the padlocked box behind closed doors and count the nominations using HSR Nomination Total Form HDAL-SHEQ-11-F03.

The top three nominees will be contacted by one of the site Safety Department personnel and will be asked if they are happy to accept their nomination, if not, the next highest voted person will be contacted until three nominations have been received.

When the three highest nominees have accepted their nomination, the ballot will be held with the top three nominees to be chosen from. If there is only one nominee and they have accepted their nomination, a show of hands vote will be conducted to elect the nominee and this will be recorded in the meeting minutes.

### 8.3. Election Ballot of Employee Representatives

The Safety Department will hold a ballot process where employees of HDAL can nominate an individual they want to represent the workgroup from the three nominated persons using the HSR Nomination Ballot Form HDAL-SHEQ-11-F04.

This individual ballot nomination is to be completed and placed in a padlocked box provided – this is an anonymous process. Workers will be advised by the Safety Advisor using Notice of Election of Ballot Form HDAL-SHEQ-11-F12.



Safety Department (two employees) and randomly selected employees (two employees) will open the padlocked box behind closed doors count the nominations using the HSR Ballot Total Form HDAL-SHEQ-11-F05.

The top ballot winner will be contacted by one of the Safety Department personnel and will be asked again if they are happy to accept the HSR Position, if declined, the next person with the highest vote will be contacted until there is an acceptance. If all ballot nominees decline the offer, the election process will be completed again.

#### **8.4. Communication of Elected Representatives**

The result of the ballot of the elected HSR and Deputy HSR will be communicated:

- At the next Right to Start Meeting;
- Where posters will be displayed on Safety Noticeboards to display current HSRs and Deputy HSRs using HSR Poster Form HDAL-SHEQ-11-F06.
- Where posters will be displayed on Safety Noticeboards to display current HSR and Deputy HSR contact details which include contact number and email address using HSR Contact List Form HDAL-SHEQ-11-F07.

#### **8.5. Health and Safety Representatives Appointments**

All employees at the Health and Safety Committee Meetings will have completed formal appointment letters for their appropriate position.

Health and Safety Representatives will complete Health and Safety Representative Appointment Form HDAL-SHEQ-11-F08 and Health and Safety Committee Member Appointment Form HDAL-SHEQ-11-F09.

All appointments will be placed on the individual's personnel file, employee to receive a photocopy of the appointment and the appointment to be recorded in the Health and Safety Committee Formal Appointments Register Form HDAL-SHEQ-11-F11.

A Deputy HSR will be elected in the same way as a HSR. The deputy will exercise the power and functions of the HSR when the latter is absent.

#### **8.6. Health and Safety Representatives Contact List**

A Health and Safety Representatives Contact List Form HDAL-SHEQ-11-F07 and Health and Safety Representatives Posters Form HDAL-SHEQ-11-F06 for each Health and Safety Representative and Deputy Health and Safety Representative (if any) is to be maintained for each work group and kept up to date and displayed on site noticeboards.

A copy of the up-to-date contact list is to be provided to the Safety Superintendent as soon as practicable after it is prepared by the relevant Area Manager/Functional Manager.

#### **8.7. Health and Safety Representative Training**

Within three months of being newly elected (or as soon as reasonably practicable after the three months if the training is not reasonably available), the HSR and Deputy HSR is to receive paid time off to attend a course plus course costs and reasonable expenses. The training will be an approved industry accredited training course consisting of an initial five days training followed by a one day refresher training course at least every three years, after the initial training. The training provider will be arranged in consultation between the HSR/Deputy HSR and HDAL management in accordance with HDAL's approved panel of providers.

If training dates are not available within three months from the election, the Area Manager/Functional Manager will provide written communication to the EG –

Safety Operations who will review and discuss the topic at the appropriate level of management.

## 9. POWERS AND FUNCTIONS OF HEALTH AND SAFETY REPRESENTATIVES

HSRs will be permitted to spend such time as is reasonably necessary to exercise their powers or perform their functions for a work group which are:

- to represent the workers in the work group in matters relating to work health and safety;
- to monitor the actions taken by HDAL in compliance with Health and Safety legislation in relation to workers in the work group;
- to investigate complaints from members of the work group relating to work health and safety;
- to inquire into anything that appears to be a risk to the health and safety of workers in the work group, associated with the work/activities being undertaken by the workers in the workgroup; and
- issue a 'Provisional Improvement Notice' (PIN) [refer procedure HDAL-SHEQ-11-PR08 Provisional Improvement Notices (PINS) ] when they reasonably believe there is a contravention of the Act. For this action the HSR must have completed approved HSR training; and
- a copy of the PIN must be given to the Area Manager/Functional Manager.

The HSR will inspect the workplace or any part of the workplace which a worker in the work group works:

- at any time after giving reasonable notice to the workgroup Supervisor.
- at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

The HSR will accompany an Inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works.

With the consent of a worker that the HSR represents, be present at an interview concerning work health and safety between the worker and

- An Inspector.
- The Supervisor or Manager.

The HSR is to receive information concerning the work health and safety of workers in the work group. All HDAL sites will allow a person assisting a HSR for the work group to have access to the workplace if that is necessary to enable the assistance to be provided. A HSR can request the assistance of a person (assistant).

The Area Manager/Functional Manager is not required to allow a person assisting a HSR for a work group to have access to the workplace if the assistant has had their Workplace Health and Safety entry permit revoked or during any period where the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a Workplace Health and Safety entry permit.

The Area Manager/Functional Manager may refuse on reasonable grounds to grant access to the workplace to a person assisting a HSR for a work group. If access is refused to a person assisting a HSR, the HSR may ask the regulator to appoint an inspector to assist in resolving the matter.

The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance.

### 9.1. Person Assisting a HSR

The Area Manager/Functional Manager or Supervisor may refuse to grant access to the workplace to a person assisting a HSR for a work group if the HSR has not;

- given notice; or
- given the Area Manager/Functional Manager and Supervisor the information about the assistant.

If the assistant requires access to the workplace to assist the HSR, the HSR must give notice of the assistant's proposed entry to the Area Manager/Functional Manager and Supervisor at the workplace during the usual working hours at the workplace; and at least 24 hours, but not more than 14 days, before the assistant's entry.

A Notice of Entry for a person assisting the HSR must be written; and include:

- the full name of the HSR giving the notice;
- the full name of the assistant whose entry is proposed;
- the name and address of the workplace proposed to be entered;
- the date of proposed entry;
- a statement of the reasons why the HSR considers it is necessary for the assistant to enter the workplace to assist.

If the assistant is a WHS entry permit holder, the notice must also include the name of the union the assistant represents.

### 9.2. HSR Liability

A HSR is not personally liable for anything done or omitted to be done in good faith;

- in exercising a power or performing a function under the Workplace Health and Safety (WHS) Act; or
- in the reasonable belief that the thing was done or omitted to be done in the exercise of a power or the performance of a function under the WHS Act.

### 9.3. Primary Functions of HSR

The primary functions of HSRs will include, but not be limited to:

- Being involved in the development, implementation and review of policies and procedures for hazard identification, hazard/risk assessment and control of hazards/risks with appropriate consultation with management.
- Being involved in any consultation where there are any changes that affect workplace health and safety through the safety committees. A review of the consultation and representation processes will occur every two years.

The HSRs functions are limited to the particular work group. The HSR for a work group will exercise powers and perform functions only in relation to matters that affect, or will affect, workers in their elected work group.

This does not apply:

- if there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or will affect a member of another elected work group; or
- if a member of another elected work group asks for the representative's assistance, and the HSR (and any deputy HSR) for that other elected work group is found to be unavailable (after reasonable inquiry).

Any time that a HSR spends for the purposes of exercising his or her powers or performing his or her functions under the WHS Act must be with the pay that he or

she would otherwise be entitled to receive for performing his or her normal duties during that period.

#### 9.4. HSR Direction to Cease Unsafe Work

A HSR can direct a worker who is in a work group represented by the HSR, to cease work if there is a reasonable concern that carrying out the work would expose the worker's health or safety to a serious risk; emanating from an immediate or imminent exposure to a hazard.

However, the HSR will not give a worker a direction to cease work, unless the matter is unresolved after:

- Consulting about the matter with the work group Supervisor or Manager
- Attempting to resolve the matter as an issue.

The HSR will direct the worker to cease work without carrying out consultation or attempting to resolve the matter as an issue if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.

The HSR will carry out the consultation as soon as practicable after giving a direction and will inform the work group Supervisor or Manager of any direction given to workers.

A HSR cannot give a direction unless the HSR has:

- Completed initial training as a HSR as outlined in this procedure;
- Previously completed training when acting as a HSR for another work group;
- Completed training equivalent to that training under corresponding Work Health and Safety Law.

#### 9.5. Issue Resolution

**Step 1** - All Stop Work or cessation due to unsafe work will use the consultation process as per HDAL's Stop Work Procedure HDAL-SHEQ-11-PR04.

**Step 2** - If Step 1 does not resolve the issue; resolution will be undertaken by relevant application of the Consultation, Communication and Issue Resolution with Workers Procedure HDAL-SHEQ-11-PR09.

Any party to the dispute may ask the regulator to appoint an Inspector to attend the workplace to assist in resolving the dispute if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution.

#### 9.6. Consultation

So far as is reasonably practicable, the Area Manager/Functional Manager will consult with HSRs on work health and safety matters and:

- allow HSRs access to health and safety information;
- allow a HSR to be present at a health and safety interview;
- provide resources and assistance to a HSR to enable the representative to exercise their powers or perform functions;
- unless there are reasonable grounds to refuse access, allow a person assisting a HSR to access the workplace;
- permit a HSR to accompany an Inspector during an inspection of their workplace;
- allow a HSR time to exercise their powers and functions;
- keep an up-to-date list of HSRs and any deputies for each work group on display in the workplace and at any other appropriate workplace and submit a copy to the Safety Superintendent, and

- will not allow a HSR to access any personal or medical information without the relevant worker's consent, unless the information is in a form that does not identify the worker and could not be expected to lead to the identification of the worker.

## 10. REMOVAL OR DISQUALIFICATION OF A HEALTH AND SAFETY REPRESENTATIVE

### 10.1. Application to a Regulator to Disqualify a Health and Safety Representative

An application may be made to the Regulator to disqualify a HSR on the grounds that the HSR has:

- exercised a power or performed a function as a HSR for an improper purpose; or
- used or disclosed any information he or she acquired as a HSR for a purpose other than in connection with the role of HSR.

Any employee can make an application to the Regulator to disqualify a HSR if adversely affected by the HSR's exercise of a power, performance of a function or the use or disclosure of information.

The application may be decided by the Fair Work Commission on the papers filed or at a hearing. The Commission may decide whether or not to take action on the application entirely or partly from a consideration of the documents filed.

The commission must give the applicant and the representative a written notice stating:

- the decision; and
- the reasons for the decision; and
- that the applicant or the representative may appeal against the decision

### 10.2. Work Group Removal of a Health and Safety Representative

The majority of the members of a work group may remove a HSR for the work group if the members sign a written declaration that the HSR should no longer represent the work group. A member of the work group nominated by the members who signed the declaration must, as soon as practicable:

- inform the following persons of the removal of the HSR:
  - the HSR who has been removed;
  - each manager or supervisor in which a worker in the work group works; and
- take all reasonable steps to inform all members of the work group of the removal.

The removal of the HSR takes effect when the HSR, manager, supervisor and the majority of members of the work group have been informed of the removal.

## 11. RECORDS MANAGEMENT

All documentation and associated documents are to be retained as per the Records Management and Archiving Standard HDAL-BMS-05-STD02.

## 12. DOCUMENT HISTORY

### 12.1. Document information

<b>Current Version</b>	4.1
<b>First Released</b>	03 February 2015
<b>Last Updated</b>	08 October 2020
<b>Effective By</b>	08 November 2020
<b>Review Frequency</b>	Every 2 years
<b>Review Before</b>	08 October 2022
<b>Document Authoriser</b>	Safety Manager – Pacific Operations
<b>Functional Owner</b>	Executive Manager - Safety and Sustainability

### 12.2. Document amendment history

Version	Date	Section(s) Amended	Summary of Amendment
1.1	13/02/2015	Section 8	Update the Powers and functions of HSR
1.2	29/10/2015	Section 7.7	First paragraph updated to "...an approved industry accredited training course...". Removed second paragraph.
1.3	14/04/2016	Section 7.7	Amended from "will" attend training to "may" attend training in line with legislation.
2.0	15/06/2018	All 3.1, 10 3 5 7.6, 7.7, 8.4 8	Reference to Business Centre Manager changed to Area Manager. Review period extended to every 2 years. Updated responsibilities including new section for Safety Superintendents. Additional Associated Documents. Updated process. Included ability to issue Provisional Improvement Notice.

Version	Date	Section(s) Amended	Summary of Amendment
3.0	13/07/2018	3.2, 7, 7.1, 8.4, 8.7 6 8.7 9 9.1  9.2 9.3  9.4 10.1	<p>Inclusion of reference to Deputy HSR</p> <p>New section for Definitions.</p> <p>Inclusion of sentence regarding arranging training provider.</p> <p>Replaced 'responsibilities' with 'powers'.</p> <p>Removed reference to 'Queensland Only' in title.</p> <p>Removed dot point - a declaration stating that the assistant's WHS entry permit is not revoked or suspended.</p> <p>New sub-heading 'HSR Liability'</p> <p>New sub-heading 'Primary Functions of HSR'.</p> <p>Included wording in third dot point 'with appropriate consultation with management' and removed word 'primarily' from fourth dot point.</p> <p>Removed reference to 'NT Only' in title.</p> <p>Updated process.</p>
4.0	21/02/2019	3.1 8.7  ALL	<p>Amended role title.</p> <p>Revised training requirements, including training commencement period reduced from 6 months to 3 months.</p> <p>Content transposed into new procedure template, 'Definitions' moved from Section 6 to Section 4.</p>
4.1	08/10/2020	5	Updated reference for Industrial Relations Act as part of procedure review