



CONSULTATION ON HEALTH AND SAFETY

This guidance has been issued by the Safety, Rehabilitation and Compensation Commission (the Commission) to employers. Its purpose is to help employers carry out their responsibility under the *Occupational Health and Safety Act 1991* (the Act) to consult with their employees and, where required, their representatives on health and safety matters.

Introduction

A safe workplace is more easily achieved when employers and employees talk to each other about potential problems, and work together to find solutions¹. From their knowledge of the workplace and work practices, employees can provide valuable input on work hazards. Consultation between employers and employees on occupational health and safety matters can result in; healthier and safer workplaces, better decisions on health and safety matters, a stronger commitment by everyone to implementing decisions, and greater cooperation and trust between employers and employees.

This guidance should be read together with the Comcare publication OHS workplace consultative arrangements (OHS67), which outlines the relevant legislative provisions.

When is consultation required and with whom?

One of the objects of the Act is to foster a cooperative, consultative relationship between employers and employees on the health, safety and welfare of employees at work. The Act sets out various workplace arrangements to facilitate consultation between the employer and employees, and where required, their representatives, on health, safety and welfare matters². These arrangements include:

- health and safety management arrangements;
- health and safety committees;
- designated work groups; and
- health and safety representatives.

The OHS Act provides that an employee may request to be represented by another employee or by an employee representative in their consultations with the employer about the establishment or variation of health and safety management arrangements or designated work groups.

1 WorkSafe Victoria, *Consultation on health and safety A handbook for workplaces*. Ed No1, June 2007
2 Occupational Health & Safety Act 1991, *Part 2 Occupational health and safety and Part 3 Workplace Arrangements*

Health and Safety Management Arrangements

As part of meeting their duty of care obligations under the OHS Act³, employers must develop written health and safety management arrangements (HSMAs), that will enable effective cooperation between the employer and the employees in promoting and developing measures to ensure the employees' health, safety and welfare at work, in consultation with their employees, and their representatives if requested. Employees and/or their representatives must also be consulted when employers want to vary HSMAs.

Health and Safety Committees

A key function of health and safety committees (HSCs) is to facilitate cooperation between employers and employees on health and safety matters. HSCs assist the employer to develop, implement and review measures to protect employees' health and safety at work.

Designated Work Groups

A designated work group (DWG) is a group of employees of the same employer who can be represented by an HSR in relation to OHS matters⁴. Employers must consult with employees, and their representatives if requested, about the establishment or variation of a DWG.

Health and Safety Representatives

Health and safety representatives (HSRs) represent the interests of employees in DWGs. HSRs play an important part in facilitating communication/consultation between employers and employees. If requested by the HSR, the employer must consult the HSR on the implementation of changes at the workplace that may affect the health and safety at work of employees in that DWG.

If there is no HSC, the HSR can represent employees in their DWG in consultations with the employer concerning the development, implementation and review of measures to ensure the employees' health and safety at work.

What is consultation?

Consultation is a two-way exchange of information. It should be seen as an opportunity to add value to the employer's decision-making processes.

The Commission has adopted a working definition of what constitutes consultation from the Australian Industrial Relations Commission case, *Australian Workers' Union v Campbell Mushrooms Pty Ltd* 1183/96 Print N4825 (1996). Consultation, as explored in that case can be summarised as:

Consultation means to appropriately inform employees, inviting and considering their response prior to a decision being made. Employees' opinions should not be assumed. Sufficient action must be taken to secure employees' responses and give their views proper attention. Consultation requires more than a mere exchange of information. Employees must be able to contribute to the decision-making process, not only in appearance but in fact.

³ Occupational Health & Safety Act 1991, Part 2 Occupational Health and Safety, s16(d)(i)

⁴ Occupational Health and Safety Act 1991

Consultation should involve:

- sharing information with employees on the matter on which the employer is required to consult;
- giving employees a reasonable opportunity to express their views and concerns about the matter;
- taking those views into account and reporting back to employees, including on how their views have been taken into account in making the final decision.

Consultation does not mean handing out papers, telling employees about a decision or action on a health and safety matter after it has been taken, or simply ascertaining the views of employees.

Sharing information

It is important to ensure that all employees are able to be part of the process. The type of work employees do, their working environment and geographical spread of the workforce, will affect the consultation mechanism/s chosen, such as meetings, email etc.

Information provided should be in a form that can be easily understood by employees and HSRs⁵. Employees and their HSRs may need to have access to information such as technical guidance about workplace hazards and risks (plant, equipment and substances), and work organisation (such as systems, data reports, procedures and guidance material). Information should not be withheld just because it is technical, or possibly difficult to understand. However, information may need to be simplified and presented in different ways to make it comprehensible to all employees.

If it is reasonably practicable, the information should be provided to the HSRs prior to it being provided to the employees. This will give HSRs time to consider the material and discuss it with employees in their DWG, before providing feedback to the employer.

It is also important to follow any agreed procedures for consultation. These may be contained in an organisation's HSMAs.

Accommodating employees from culturally or linguistically different backgrounds

Employers should ensure that there are arrangements in place to consult with employees from culturally or linguistically divergent backgrounds. Where reasonably practicable, consultation material must be translated into appropriate language/s, or non-written forms, to assist employees with poor English language skills and/or low literacy levels.

Giving employees and HSRs a reasonable opportunity to express views

Bringing people together is the first step in providing them with a meaningful opportunity to express their views; however there may be circumstances where this is not possible or preferable. Employers should consider different options when deciding on consultation methods appropriate to their workplace.

For consultation to be meaningful, employers should provide opportunities for employees and HSRs to express their views on health and safety matters, encouraging them to ask questions, raise concerns, propose options, make recommendations, and be part of the problem-solving process. Where there are HSRs, employers should consult with them.

It is also important that the consultation process allows enough time for employees and HSRs to assimilate information and provide meaningful feedback.

⁵ However, privacy considerations mean that information such as personal records, material involving legal professional privilege, etc. would not normally be made available. Occupational Health and Safety Act 1991 s28(6)

Taking views into account

In order to meet the requirements of the OHS Act the views of employees and HSRs should be taken into account by employers before final decisions are made. Employers should respond to concerns and questions raised by employees and HSRs, and give feedback to employees and HSRs about options that they have proposed. They should explain the final decision or course of action to employees and HSRs, including why it has been taken.

While employers, HSRs and employees should aim to reach agreement as a result of consultation, agreement is not a required outcome of the Act. An employer is still ultimately responsible for making decisions about health and safety, and controlling risk as far as is reasonably practicable.

Dispute resolution

Consultations can break down and sometimes employees may feel that they are not being consulted with.

All employers are required to have as part of their HSMA a dispute resolution mechanism to deal with disputes arising in the course of consultations. In addition to the mechanisms established through the HSMA, the OHS Act provides that where disagreements arise during consultations on DWGs that either party may take the matter to the reviewing authority for mediation⁶.

In general terms the dispute resolution mechanisms established through an organisation's HSMA should be the basis for resolving disputes that arise during consultation on OHS issues.

HSRs under the OHS Act can investigate complaints made by employees in their DWG concerning the health and safety of the employees at work. Where there is no HSR in place then employees can consider requesting that a DWG be established so that an HSR can be elected/selected to take on this important role of assisting in the resolution of disputes.

Record-keeping

Employers should document their consultations on health and safety as part of their recording of matters related to the occupational health and safety of employees.

Records of consultation may assist employers demonstrate that they have met their responsibilities under the OHS Act.

In Summary

- The Act sets out a number of workplace arrangements designed to facilitate consultation between employers and employees.
- Consultation involves the sharing of information; thus giving employees the opportunity to express their views, and employers the chance to take those views into account when making decisions on OHS matters.
- Employers should ensure that they have arrangements in place that enable all employees to fully participate in consultation processes.

⁶ Occupational Health and Safety Act 1991, s24(4)