

Your health and safety guide to Consultation



If this Subject Guide does not contain an up-to-date *More information* sheet, please go to www.worksafe.vic.gov.au to download the PDF or contact us on 1800 136 089 to request a printed copy.

Everyone has a role to play in workplace health and safety.

A safe workplace is more easily achieved when employers and employees talk to each other about potential problems and work together to find solutions.

That's why the law requires employers to consult employees on health and safety matters.

This guide will help you understand how to consult in your workplace.



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About the issue

What is consultation?

Consultation needs to be a two-way exchange between employers and employees that involves sharing information about health and safety, giving employees a reasonable opportunity to express their views, and taking those views into account. Employees can be consulted in a variety of ways, including by setting up a health and safety committee or by holding regular meetings. If employees have elected a health and safety representative (HSR), the HSR must be involved in consultation.

Why consult?

By drawing on employees' knowledge and experience, better decisions can be made about health and safety – and that means fewer workplace injuries.

Through talking about safety, employers can become more aware of hazards in the workplace and employees can provide suggestions about how the work could be done safely.

Effective consultation can also lead to:

- more informed management decisions that take into account a wider range of ideas about health and safety issues in the workplace and how to fix them
- stronger commitment to decisions because everyone is involved in reaching them
- a tried and tested way of dealing with health and safety problems
- more openness, respect and trust because employers and employees have a better understanding of each other's points of view.

Consultation should not be seen as just a legal requirement, but as an essential part of managing health and safety at work.

Your legal duties

The law

Occupational Health and Safety Act 2004 (OHS Act)

The OHS Act came into effect on 1 July 2005. It sets out the key principles, duties and rights in relation to occupational health and safety. The duties imposed by the Act cover a wide variety of circumstances, recognising the need for a duty-holder to have flexibility in determining what needs to be done to comply.

The OHS Act is based upon the following key health and safety principles:

- All people – employees and the general public – should have the highest level of protection against risks to health and safety.
- Those who manage or control things that create health and safety risks in the workplace are responsible for eliminating or reducing the risks, so far as is reasonably practicable.
- Employers should be proactive to ensure health and safety in the workplace.
- Information and ideas about risks and how to control them should be shared between employers and employees.
- Employees are entitled – and should be encouraged – to be represented in relation to health and safety issues.

In recognition of the benefits that regular consultation can produce, the OHS Act has a requirement for all employers to consult their employees on matters that will or are likely to directly affect their health, safety or welfare.

The OHS Act also requires employers and employees (or their health and safety representatives) to attempt to resolve OHS issues in the workplace.

Occupational Health and Safety Regulations 2007 (OHS Regulations 2007)

New Regulations on occupational health and safety come into effect on 1 July 2007.

The new Regulations support the OHS Act's consultation requirements by specifying how health and safety representatives must be involved in workplace consultation.

The Regulations also support the OHS Act's issue resolution requirements by specifying the issue resolution procedure that must be followed when employers and employees have not agreed on a procedure for the workplace.



Employers

Employers are required to consult employees (and their health and safety representatives) about health and safety matters that could directly affect them.

This includes when:

- identifying hazards or risks and deciding how to control risks
- making decisions about the adequacy of workplace welfare facilities (such as dining rooms, toilets or first aid)
- determining the membership of any health and safety committee
- deciding on health and safety policies and procedures
- proposing changes to the workplace that could affect the health and safety of employees, including changes to the equipment and substances used or how work is done.

This duty is not meant to be onerous or time-consuming. Employers need to take a sensible, proactive approach and consult as far as is reasonably practicable in the circumstances.

Consultation needs to involve:

- sharing information about anything that could affect workplace health and safety – information must be timely and in a form that can be understood by employees, including in other languages where appropriate
- giving employees a reasonable opportunity to express their views – employees should be encouraged to play a part in the problem-solving process
- taking those views into account – employees should help to shape decisions, not hear about them after they are made.

Your legal duties continued

You must also consult any independent contractor(s) (and their employees) that you hire to do work over which you have, or should have, control.

If the employees are represented by a health and safety representative, the HSR must be included in the consultation.

Employers must:

- provide all information to the HSR which will be provided to employees
- provide the information to the HSR a reasonable time before distributing it to other employees, if you can
- meet with the HSR if they accept an invitation to meet or if a meeting is requested by the HSR
- give the HSR the opportunity to express views
- take the HSR's views into account.

Employees

Your employer is required to consult with you on a range of matters that will, or may directly affect your health and safety. If you are represented by an HSR, the HSR must also be included in the consultation.

When your employer consults on a health and safety issue, you need to consider the information that you are provided with and give feedback to the employer through your HSR.

In the absence of an HSR, provide your feedback directly to the employer.



Issue resolution

Workplace health and safety issues need to be resolved. If they are not, workers may be exposed to hazards resulting in injury or death, and businesses may bear considerable financial cost.

Talking about health and safety issues that have been raised is the best way to resolve them.

When an issue arises, the employer and the employees affected (or their health and safety representatives) must try and resolve it using an agreed issue resolution procedure. If there is no agreed procedure in place, employers and their employees must follow the issue resolution process detailed in the OHS Regulations 2007.

If the issue is not resolved within a reasonable time, any of the parties may request that a WorkSafe inspector attend the workplace.

Refer to WorkSafe's *Employee Representation* publication for a detailed outline of issue resolution procedures.

Compliance and enforcement

WorkSafe applies a strategy of 'constructive compliance' – a combination of incentives and deterrents – to improve workplace health and safety.

This strategy recognises that real and sustainable improvement in workplace health and safety requires active involvement from employers and employees in identifying hazards and controlling risks.

WorkSafe inspectors have the primary role of targeting unsafe workplace activity, enforcing compliance with health and safety laws, and providing guidance and advice on how to comply with those laws.

Further information on workplace inspections and WorkSafe's enforcement policy is available through the WorkSafe Advisory Service (1800 136 089) or at www.worksafe.vic.gov.au

How to comply

WorkSafe has a range of guidance materials to advise on the required processes and actions that duty-holders must take in order to meet their legal obligations. *Compliance Codes, Health and Safety Solutions* and *Guidance Notes* each provide detailed and specific advice for duty-holders seeking to comply with the OHS Regulations 2007. See also the enclosed *More information* sheet for a listing of guidance materials related to consultation.

Work out how to consult

The first thing you need to do is talk to your employees and HSRs about the procedures to be used when consulting, including determining whether employees require information in other languages.

While the law is flexible about how to consult your employees, if your employees have elected a health and safety representative, you must involve the HSR in the consultation process.

You can tailor consultation to your workplace by establishing agreed consultation procedures. These must be developed in consultation with employees and must be consistent with your legal duties under the OHS Regulations 2007.

Consultation needs to be planned but it doesn't always have to mean scheduling specific meetings or workshops. In small workplaces for instance, the best way to consult your employees may be to engage in direct discussion as part of everyday work. However, discussions must still include the sharing of information, allowing employees to express their views and taking those views into account.

Example: Include health and safety as a standing agenda item at regular team meetings.

These options for consultation are not necessarily alternatives. One or a mix of these arrangements may be appropriate, depending on your workplace.

Example: An office with 40 employees may have a health and safety committee which includes several health and safety representatives, as well as a separate agreed arrangement for regular direct discussions about health and safety with five employees who work at remote locations.

Once you've established consultative mechanisms and procedures for your workplace, you need to make sure that everyone understands them and knows how they can raise any issues.

Health and safety representatives

A health and safety representative is a person elected by employees to represent them on health and safety issues.

Employers are required to involve HSRs in consultation by:

- providing all information to the HSR which will be provided to employees
- providing the information to the HSR a reasonable time before distributing it to other employees, if you can
- meeting with the HSR if they accept an invitation to meet or if a meeting is requested by the HSR
- giving the HSR the opportunity to express views
- taking the HSR's views into account.

How to comply continued

Health and safety committees

Setting up a health and safety committee is a good way for employers and employees to work together to make the workplace safer.

Committee meetings bring together employees' hands-on experience of the job and the employer's perspective of the workplace and business requirements. They provide a regular forum for collaboratively developing and reviewing health and safety systems and addressing ongoing and emerging concerns.

A health and safety committee doesn't have to be large, but it must suit the particular needs of your workplace and should represent the interests of all staff groups. You must consult employees (including any health and safety representatives) when deciding on the membership of the committee.

At least half of the committee must be employee representatives, and should be health and safety representatives where practicable.

Resolving issues

If a health and safety issue arises in the workplace, you need to attempt to resolve the issue with the health and safety representative of the employees who raise it or, if there is no HSR, with the employees themselves.

You may agree to issue resolution procedures for the workplace with your employees and/or their health and safety representatives. Development of the procedures must be done in consultation with employees and HSRs. Remember, any agreed procedures must be consistent with the law.

The agreed procedures must be complied with if a health and safety issue arises. If there are no agreed procedures, you must comply with the issue resolution procedure detailed in the OHS Regulations 2007.

If an issue is not resolved within a reasonable time, the employer, the employees or the HSR may call in a WorkSafe inspector.



Review

It's important to review your consultative arrangements and agreed procedures regularly to ensure they are working well and are still adequate.

The arrangements must be reviewed in consultation with employees and HSRs.

Example: If you take on more staff or if working arrangements change, you need to ensure all employees are sufficiently represented and consulted.

GLOSSARY

Agreed issue resolution procedure – An agreed process or outline of the steps involved in resolving health and safety issues in a workplace.

Designated work group (DWG) – A group of employees who share similar workplace health and safety concerns and conditions. One of the main functions of a DWG is to elect health and safety representatives (HSRs).

Employee – A person employed under a contract of employment or contract of training.

Employer – A person who employs one or more people under contracts of employment or contracts of training.

Health and safety committee (HSC) – A cooperative forum for employers and employees to work together on OHS issues. HSCs are involved in the development, review and communication of OHS standards, rules and procedures.

Health and safety representative (HSR) – A member of a designated work group elected to represent those employees on matters relating to occupational health and safety.

Reasonably practicable – In relation to consultation, this means that employers must consult with employees to the extent that is reasonable in all the circumstances. What is reasonably practicable will depend on factors such as the size and structure of the business, the nature of the work, work arrangements (e.g. shift work), characteristics of employees (e.g. language or literacy) etc. See WorkSafe's publication *Consultation on health and safety: a handbook for workplaces* for more information.

In this series

Hazards

- Your health and safety guide to asbestos
- Your health and safety guide to confined spaces
- Your health and safety guide to dangerous goods
- Your health and safety guide to falls prevention
- Your health and safety guide to hazardous substances
- Your health and safety guide to lead
- Your health and safety guide to manual handling
- Your health and safety guide to noise
- Your health and safety guide to plant

Industries

- Your health and safety guide to construction
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- Your health and safety guide to major hazard facilities
- Your health and safety guide to mines

Subjects

- Your health and safety guide to communicating across languages
- Your health and safety guide to consultation
- Your health and safety guide to controlling OHS hazards and risks
- Your health and safety guide to licensing and registrations
- Your health and safety guide to workplace amenities and first aid

Visit www.worksafe.vic.gov.au for online guidance on all of these topics and more...

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WorkSafe Victoria

WorkSafe Advisory Service

222 Exhibition Street
Melbourne VIC 3000

Phone 03 9641 1444

Toll-free 1800 136 089

Email info@worksafe.vic.gov.au

Head Office

222 Exhibition Street
Melbourne VIC 3000

Phone 03 9641 1555

Toll-free 1800 136 089

Website www.worksafe.vic.gov.au

Local Offices

Ballarat 03 5338 4444

Bendigo 03 5443 8866

Dandenong 03 8792 9000

Geelong 03 5226 1200

Melbourne

(628 Bourke Street) 03 9941 0558

Mildura 03 5021 4001

Mulgrave 03 9565 9444

Preston 03 9485 4555

Shepparton 03 5831 8260

Traralgon 03 5174 8900

Wangaratta 03 5721 8588

Warrnambool 03 5564 3200