

Consultation, Representation and Participation

WHS Act: Part 5, 6 & 7

Consultation requirements have been expanded to engage all persons that may have an impact on the health and safety of persons associated or affected by a business or undertaking.

Consultation is required between:

- Duty holders with shared duties and
- PCBUs and the workers impacted by the work activities or undertakings.

Consultation is required to be effective. It is expected that consultation be approached in a co-ordinated, co-operative and timely manner between all relevant duty holders and other parties.

Consultation is essential when gathering information on all potential hazards, the associated risks and ways in which to eliminate or minimise those risks.

Effective consultation will engage all persons in the workplace and can be utilised to increase understanding, awareness and commitment to health and safety in the workplace.

The WHS legislation requires consultation, as far as reasonably practicable, with workers and other duty holders. A variety of mechanisms are available including HSRs; deputy HSRs; direct consultation e.g. staff and toolbox meetings, co-ordinated consultation between duty holders, and representation and assistance from other parties e.g. WHS entry permit holders (union representatives).

Nature of Consultation

Consultation requires:

- sharing of health and safety information
- providing workers with a reasonable opportunity to:
 - Express their views
 - Raise work health and safety issues
 - Contribute to the decision making process
- taking the views of workers into account
- advising workers on the outcome in a timely manner.

An elected HSR of the workers must also be involved in consultation.

Consultation is required when:

- identifying and assessing risks to health and safety; deciding ways to eliminate or minimise those risks; deciding on the adequacy of facilities for worker welfare;
- proposing changes that may affect the health and safety of workers;
- when deciding on procedures for:
 - consulting with workers
 - resolving work health and safety issues
 - monitoring workers' health
 - monitoring conditions at any workplace under the management or control of the PCBU

- providing information or training for workers; and
- other activities as described under the regulations.

Health and Safety Representatives (HSR)

WHS Act: s50 – 74

Eligibility: A worker must be a member of the workgroup to be elected as the HSR for and by the members of the work group.

Procedures for election:

- Workers of the workgroup determine how the election is to be conducted
- If the majority of workers agree, the election can be conducted with the assistance of a union, other person or organisation

An election is **not required** if the number of candidates = the number of vacancies.

A HSR ceases to hold office if the HSR:

- resigns as the HSR (submitted in writing to the PCBU)
- ceases to be a worker of the workgroup
- is disqualified or
- is removed as the HSR by majority of workgroup

Disqualification by the authority (WorkCover) may result from:

- using a power for an improper purpose; and/or
- using or disclosing information other than is required in the role of HSR.

Training requirements:

The PCBU must, if requested by a HSR, allow the HSR to attend a course:

- approved by the regulator
- that the HSR is entitled to attend under the regulations
- chosen by the HSR in consultation with the PCBU.

If an agreement on training is not reached an inspector can be requested to assist and the decision must be complied with.

Attendance at training is to be within 3 months of the request.

Additional obligations of PCBUs to HSRs:

- Allow access to information on hazards and the health and safety of workers of the workgroup (information must not contain any information that may allow identification) without workers consent;
- Allow the HSR to be present at interviews (with the worker's consent) between a worker, an inspector or PCBU;
- Provide reasonable facilities, time and assistance;
- Allow the HSR to accompany an inspector during an inspection; and
- Share costs associated with HSRs where the PCBU is involved with multiple businesses or undertakings.

When the assistance of another has been requested by the HSR the PCBU is not required to:

- Give financial assistance for this person;
- Allow access when the person's entry permit has been revoked, suspended or if disqualified; and/or
- Allow access when there are reasonable grounds for refusal (the HSR may request the assistance of an inspector to resolve the matter).

Health and Safety Committees (HSC)

WHS Act: s75-79

Requirements for a HSC include:

- The Constitution of a HSC may be agreed to between the PCBU and the workers;
- A HSR may be a member of the HSC if they consent;
- Where there are two or more HSRs, they may choose one or more of their number to be HSC members;
- At least half the members must be workers not nominated by the PCBU; and
- An inspector can assist when agreement cannot be reached and may determine the constitution or that a HSC should not be established.