

WORKPLACE CONSULTATIVE ARRANGEMENTS

LEARNING OUTCOME

Describe the need for the establishment of consultation processes at the workplace and the promotion of community awareness about health and safety.

ASSESSMENT CRITERIA

- Describe the statutory requirements relating to workplace consultative processes and the roles and responsibilities of the following persons:
 - Workgroups and Health and Safety Representatives
 - Entry Permit Holders
 - The Regulator - Inspectors
- Describe the legislative responsibilities of persons conducting a business or undertaking or principal contractors to co-operate in the workplace consultative process.

REFERENCES

- Work Health & Safety Act 2011 Part 5 – Consultation, representation and participation
- Work Health & Safety Regulation 2011 Chapter 2 – Representation and participation

ATTACHMENT

[Work Health and Safety consultation, co-operation and co-ordination Code of Practice 2011](#)

WORKGROUPS AND HEALTH AND SAFETY REPRESENTATIVES

AGREEMENT ON WORK GROUPS

Work groups are workers represented by a health and safety representative (HSR). Usually these workers perform similar types of work and have similar health and safety concerns and conditions within the workplace.

Work groups allow workers' interests to be represented effectively and conveniently.

The purpose of workers belonging to a work group is to facilitate representation on work health and safety matters by a HSR.

Once an election for a HSR has been requested by a worker, the person conducting a business or undertaking (PCBU) must take all reasonable steps to start negotiations with workers within 14 days to establish work groups.

This process will also help the PCBU and workers in a work group negotiate the number of HSRs and work groups required.

DETERMINING WORK GROUPS

In determining work groups consider:

- 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 must 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
- any arrangements at the workplace or workplaces relating to overtime or shiftwork.

Decisions about establishing work groups must be made by consultation and agreement between the PCBU and the relevant workers. A worker's representative can be appointed by the workers to negotiate on their behalf.

A work group may involve multiple PCBUs at one or more workplaces and these are called multiple business work groups. The aim is to identify the most workable arrangement for the workplace.

When agreement on the work groups has been reached, the PCBU must notify the workers of the outcome of the negotiation.

HEALTH AND SAFETY REPRESENTATIVES

A health and safety representative is a worker at a workplace who is elected as a health and safety representative by the worker's co-workers at that workplace.

Workers at a workplace may elect one or more representatives, depending on size of operation and number of workers, the type of work performed and the number of separate areas that make up the workplace. This election process is the right of the worker and should the workers choose to elect, then the employer is obliged to support this process.

The person conducting a business or undertaking (PCBU) has a number of responsibilities. Some of the key issues are:

- PCBU must negotiate with workers if asked.
- The PCBU is to help workplace health and safety representatives.
- PCBU is to tell the health and safety representatives about certain things.
- The PCBU is to display the identity of the health and safety representatives and notify the Regulator of all HSRs

HSRs are able to exercise all their powers under the Work Health and Safety Act 2011 (i.e. issuing of provisional improvement notices (PINS) and the power to direct workers to cease work) if they have successfully completed the current prescribed course to be entitled to these powers.

If they have not undertaken the requisite training, they will not be able to exercise the entitlements of a qualified HSR.

All HSRs must undertake the relevant approved training course within six months of their election. Existing HSRs, who have not already completed the training, will have six months from 1 July 2018 to undertake this training. If a worker refuses to undertake the training within the time period, they will no longer be eligible to fulfil the role of HSR and will need to be replaced.

ISSUING PINS

Only HSRs who have been trained by a Registered Training Organisation (RTO) can issue PINs in their own workplace.

A PIN is a written direction from a HSR to an employer (or employer representative) requiring them to fix a workplace health and safety problem. A PIN is a legal document and is designed to improve health and safety in a workplace, encouraging PCBU's and workers to openly discuss health and safety hazards and risks.

If the issues are not satisfactorily resolved by the HSR and the PCBU, the HSR may notify a Workplace Health and Safety Queensland Inspector. WHSQ Inspectors can be found in all regional offices.

Providing a list of health and safety representatives

Section 74 of the Work Health and Safety Act 2011 states that a person conducting a business or undertaking (PCBU) must ensure that a list of health and safety representatives and deputy health and safety representatives (if any) for the business or undertaking is prepared and kept up-to-date. A copy of the up-to-date list must be displayed in a way that is readily accessible to workers in the relevant work group or work groups:

- at the principal place of business of the business or undertaking
- at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups.

The PCBU must also provide a copy of the up-to-date list to the Regulator as soon as possible after it is prepared.

ISSUE RESOLUTION

The Work Health and Safety Act 2011 places a duty on persons conducting business or undertaking (PCBU) to make reasonable efforts to achieve a timely resolution of issues, relating to workplace health and safety, that may arise at a workplace or from the conduct of a business or undertaking.

An 'issue' is a matter about health and safety at the workplace that remains unresolved after it is initially discussed by parties to the issue. A party to a health or safety issue can be the PCBU or their representative, a HSR, or if there is no HSR for the workgroup, the workers or their representative (including a union representative or any other person authorised by the worker).

Resolution of the issue should be achieved by the use of an agreed resolution procedure, or if there is no agreed procedure at the workplace, through the use of the default procedure as defined in Section 23 of the Work Health and Safety Regulation 2011.

DEFAULT RESOLUTION PROCEDURE

The default issue resolution procedure can be commenced by either party to the issue by telling the other party there is an issue to be resolved and the nature and scope of the issue.

Once parties have been advised there is an issue they must meet or communicate with each other to attempt to resolve the issue.

The parties must have regard to all relevant matters including:

- the degree and immediacy of risk to workers or other persons affected by the issue
- the number and location of workers and other persons affected by the issue
- the measures (both temporary and permanent) that must be implemented to resolve the issue
- who will be responsible for implementing the resolution measures.

If the issue is resolved, details of the issue and its resolution must be set out in a written

agreement if any party to the issue requests this.

If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.

A copy of the written agreement must be provided to -

- all parties to the issue
- if requested, to the health and safety committee for the workplace

Nothing in the default procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.

DIRECT UNSAFE WORK TO CEASE

If a HSR has a reasonable concern that in carrying out work, workers in their work group would be exposed to a serious health and safety risk, the HSR can either:

- issue the directive to cease hazardous work if, after consultation with the person conducting a business or undertaking (PCBU) and attempting to resolve the risk, the issue remains unresolved, or
- if the risk is so serious and immediate that it is not reasonable to consult the PCBU first, the HSR can direct workers to cease work without consultation.

The HSR must, in all instances, inform the PCBU of any direction given by the HSR to workers to cease unsafe work.

WHS ENTRY PERMIT HOLDER

RIGHT OF ENTRY

A work health and safety (WHS) entry permit holder is a union official who has completed an approved training course and holds entry permits under both the Commonwealth *Fair Work Act 2009* and the Work Health and Safety Act 2011.

ENTRY TO INQUIRE INTO SUSPECTED BREACHES

A WHS entry permit holder may enter a workplace during its usual working hours to inquire into a breach relating to a relevant worker, if they reasonably suspect one has occurred or is occurring. While at the workplace they may:

- inspect any work system, plant, substance, structure or other thing that is relevant to the suspected contravention
- talk to any worker who is entitled to be represented by the union
- consult the person conducting the business or undertaking (PCBU) about the suspected breach

- warn anyone they believe is exposed to a serious health or safety risk
- request to look at, and make copies of, records or documents kept at the workplace in hard copy or on a computer, that are directly relevant to the suspected contravention.

Note: Records do not need to be made available if this breaches a law of the Commonwealth or state.

An entry permit holder must give a PCBU or the person with management and control of the workplace notice that they have entered the workplace and information about the suspected breach as soon as is reasonably practicable after entering the workplace (unless the notice would defeat the purpose of the entry or cause unreasonable delay in an urgent case).

ENTRY TO INSPECT EMPLOYEE RECORDS OR INFORMATION HELD BY ANOTHER PERSON

When inquiring into a suspected contravention, an entry permit holder can also enter any workplace to inspect or make copies of relevant documents held by a person other than the PCBU. At least 24 hours' notice must be given to the PCBU and the person from whom the documents are requested before the proposed entry.

ENTRY TO CONSULT AND ADVISE WORKERS

Entry permit holders must give at least 24 hours (but not more than 14 calendar days) notice of the proposed entry to the PCBU when entering a workplace to consult with workers about health and safety matters and to provide advice to workers about those matters (using Notice of entry form). While at the workplace, t

hey may also warn any person whom the entry permit holder reasonably believes to be exposed to a serious risk, emanating from an immediate or imminent exposure to a hazard of that risk.

CONDITIONS OF ENTRY

A WHS entry permit holder who comes into a workplace must have their WHS entry permit and photographic identification available for inspection by any person on request.

If the purpose of entry is to enquire into a suspected contravention of the Work Health and Safety Act 2011, the WHS entry permit holder must, as soon as possible after entering the workplace, give notice of the entry and the suspected contravention to the relevant PCBU and the person with management or control of the workplace. The WHS entry permit holder is not required to give notice if giving notice would:

- defeat the purpose of the entry to the workplace (to enquire into suspected contraventions of the Work Health and Safety Act 2011)
- unreasonably delay the WHS entry permit holder in an urgent case.

While in a workplace the WHS entry permit holder must:

- only enter the area of the workplace where relevant workers carry out their work or any other area that directly affects the health and safety of these workers

- comply with reasonable requests in relation to a work health and safety requirements (e.g. site induction)
- protect the identity of workers by not disclosing their names unless they have given their consent.

Entry permit holders must not enter outside the usual working hours of the workplace or enter any part of the workplace that is used for residential purposes (e.g. a WHS entry permit holder could enter a convenience store where work takes place but not the living quarters of the residence if work is not carried out there).

A PCBU should let security and other point-of-entry staff know when a visit from a WHS entry permit holder is expected.

The Industrial Registrar maintains a publicly accessible register of WHS entry permit holders.

Enquiries to the Queensland Industrial Relations Commission (QIRC) should be directed to the Registry general enquiry number 1300 592 987 (mobile and interstate callers - (07) 3227 8060). Permit holder information is also available at www.qirc.qld.gov.au (by selecting the 'WHS entry permit holders' option under the 'Organisations' drop down menu).

DEALING WITH DISPUTES

Inspectors can now decide whether a work health and safety (WHS) entry permit holder has right of entry under Part 7 of the WHS Act. Under section 141A, inspectors can determine whether a WHS entry permit holder has a right to enter the workplace and whether they have complied with notice requirements for the entry.

The QIRC may also deal with a dispute either on the application of a PCBU, an entry permit holder, the relevant union, the regulator or another person affected by the exercise of right of entry powers, or on its own initiative. The QIRC may deal with a dispute in any way it determines, including mediation, conciliation or arbitration.

PROHIBITIONS RELATING TO WHS ENTRY PERMIT HOLDERS

A PCBU must not refuse or delay entry of the WHS entry permit holder, or hinder or obstruct a WHS entry permit holder (e.g. not providing access to records the permit holder is entitled to inspect). Penalties apply for these offences.

At the same time, WHS entry permit holders must not delay, hinder or obstruct any person or disrupt work at the workplace, or act in an improper manner. Permit holders must not disclose unauthorised information collected from the workplace for purposes unrelated to the right of entry.

REVOKING WHS ENTRY PERMITS

If it is suspected that a WHS entry permit holder has breached a condition of their permit or has intentionally hindered or obstructed a PCBU at the workplace, an application can be made to have their permit revoked.

This application must be made in writing to the WHS entry permit holder and relevant union, stating the grounds for seeking to have their permit revoked.

The QIRC will advise the WHS entry permit holder of their right to provide reasons for it not to be revoked, and may suspend the WHS entry permit while the application is being considered. The QIRC can suspend or revoke a permit or impose conditions on it.

INSPECTOR'S ROLE

The conditions of appointment, general powers, investigative powers etc. of Inspectors are detailed in Part 9 of the Work Health and Safety Act 2011. The PCBU and safety representatives all have responsibilities to assist the inspector in the performance of their duties. Assistance, however, is not conditional on the right not to incriminate yourself, refer section 172 of The Act.

If an inspector arrives on site, normal site safety procedures must apply. For example, as a visitor the inspector may require to be accompanied by a member of staff at all times in accordance with the companies Policy and Procedures.

REQUESTING AN INSPECTOR TO BE APPOINTED TO MAKE A DECISION ON AN ISSUE OR ASSIST IN RESOLVING AN ISSUE AT A WORKPLACE

Under the Work Health and Safety Act 2011 certain parties may request the regulator to appoint an inspector to attend the workplace to make a decision on an issue or to assist in resolving an issue. (Note. Reasonable efforts must have been made to resolve the issue internally prior to making the request for an inspector to be appointed.)

These requests under the Act can only be made by parties to the issue.

Section 80 of the Work Health and Safety Act 2011 defines the parties to an issue as -

- a. the person conducting the business or undertaking or the person's representative;
- b. if the issue involves more than 1 business or undertaking, the person conducting each business or undertaking or the person's representative;
- c. if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative;
- d. if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.

A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this division—

- a. is not a health and safety representative; and
- b. has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

Inspectors have a range of powers when appointed to assist with an issue. In some circumstances the inspector has the power to make a decision to resolve the issue, in others the inspector may only assist in the resolution through consultation and mediation.

ISSUES AN INSPECTOR CAN DECIDE

The following are issues that a party may ask the regulator to appoint an inspector to make a decision on:

- The failure of negotiations concerning the agreement of work group/groups (Section 54) - Single business or undertaking
- Where agreement cannot be reached between the PCBU and the HSR within the required time under section 72 (2), regarding the obligation to train health and safety representatives as per section 72.
- Where agreement cannot be reached regarding the constitution of a health and safety committee (Section 76)
- The review of a provisional improvement notice (PIN) (Section 100)
- A dispute about whether the WHS entry permit holder has a right to enter the workplace under Part 7 of the WHS Act, or whether the notice of entry requirements in sections 119 or 122 have been complied with (Section 141A)
- Failure to preserve a workplace health and safety committee established for the workplace under the repealed Act (Section 291)

ISSUES AN INSPECTOR CAN ASSIST IN RESOLVING

The following are issues that a party may ask the regulator to appoint an inspector to assist in resolving:

- A refusal by a PCBU under section 71(5) to allow a person assisting a health and safety representative (HSR) to access the workplace (Section 71)
- A failure to resolve a work health and safety issue at the workplace after reasonable efforts have been made to achieve an effective resolution of the issue (Section 82)
- An issue in relation to the cessation of work (Section 89)
- A dispute about right of entry by a work health and safety (WHS) entry permit holder (Section 141)
- The failure of negotiations concerning the agreement of work group/groups (Section 56) - Multiple businesses or undertaking

Version	Date	Author
1	30/06/2018	WHSQ