



INFORMATION SHEET

Workplace Services

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Consultation Obligations

In NSW employers have always been required to engage in consultation with their employees to enable those employees to contribute to the making of decisions affecting their health, safety and welfare at work.

The new *Work, Health and Safety Act 2012 (WHS Act)* expands these responsibilities and places obligations on:

- all duty holders who have a duty in respect of the same matter to consult, cooperate and coordinate with each other so far as is reasonably practicable, and
- a person conducting a business or undertaking (**PCBU**) to consult with workers so far as is reasonable practicable.

What are my duties to other duty holders?

Due to the expanded definition of a PCBU there may be more than one PCBU with the same duty creating *overlapping duties*.

To manage this, a PCBU is required to **consult, co-operate and co-ordinate** with other duty holders who have a duty in relation to the same WHS matter as far as reasonably practicable. **Please note that you must address each of these duties separately.**

You should commence consultation, co-operation and co-ordination of activities with other duty holders when you become aware they are or will be involved in the work.

Consultation should commence during the planning of the work, to ensure that health and safety measures are identified and implemented from the start.

A need for **further consultation** may arise when circumstances change over the period of the work, including the work environment and the people involved in the work. This is particularly so in construction and other long term projects.

Co-operation and **co-ordination** with other duty holders should be an ongoing process throughout the time in which you are involved in the same work and share the same duty.

What are my duties to consult with workers?

A PCBU must, so far as is reasonably practicable, consult with workers who carry out work for their business or undertaking who are, or are likely to be, directly affected by a work health and safety matter.

This means that the duty is not limited to consulting with employees but includes contractors, subcontractors, labour hire workers, volunteers and any other people working in the business or undertaking who are, or could be, affected by the matter.

The duty is qualified by 'so far as is reasonably practicable' which means that the circumstances in each case, including the urgency of the health and safety issue and the seriousness of the risk, will be relevant when determining the level of consultation that is required.

The person conducting a business or undertaking and their workers can agree to procedures for consultation that best suit their circumstances. This agreement can be verbal or written (i.e. in your Safety Plan or Safe Work Method Statement). If there are agreed procedures for consultation, the consultation must be in accordance with those procedures

When does a PCBU have to consult with workers?

Under the old *Occupational, Health and Safety Act* an employer was required to consult with its employees:

- when risks to health and safety arising from work are assessed or when the assessment of those risks is reviewed, and
- when decisions are made about the measures to be taken to eliminate or control those risks, and
- when introducing or altering the procedures for monitoring those risks (including health surveillance procedures), and
- when decisions are made about the adequacy of facilities for the welfare of employees, and
- when changes that may affect health, safety or welfare are proposed to the premises where persons work, to the systems or methods of work or to the plant or substances used for work, and
- when decisions are made about the procedures for consultation.

You need to be aware that under the WHS Act although similar to that outlined above you also need to consult when:

- Identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking.
- Proposing changes that may affect the health or safety of workers.
- Making decisions about the procedures for:
 - resolving work health or safety issues at the workplace, or
 - monitoring the health of workers, or
 - monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking, or
 - providing information and training for workers.

What should the consultation process involve?

In NSW, an employer has always been required to:

- share relevant information about occupational health, safety and welfare with employees,
- give employees the opportunity to express their views and to contribute in a timely fashion to the resolution of occupational health, safety and welfare issues at their place of work, and
- value the views of employees and those views are taken into account by the employer.

In addition to the above obligations under the new WHS Act, a PCBU will be required to:

- ensure that workers are given a reasonable opportunity to contribute to the decision making process,
- advise workers of the outcome of the consultation in a timely manner, and
- involve a HSR if one has been appointed.

How to consult on a building site

The national Work, Health and Safety Consultation, Co-operation and Co-ordination code or practice (**Code**) has been adopted in NSW and provides further guidance on how to consult.

The Code recognises that it can be difficult to consult face to face and on a daily basis with every worker on every building site that a PCBU is responsible for.

The Code suggests that consultation on a building site/s can take many forms such as:

- Regular Tool-box talks where WHS discussions can be held.
- Instructions and feedback in relation to consultation by letter, fax or email.
- Face-to-face on-site discussions.
- Instructions and procedures in safety plans and safe work method statements that give processes for consultation.

For more information contact your Workplace Adviser on 1300 650 620