

## CONSULTATION

# General

This information bulletin provides guidance for employers and workers on the consultation duties under the [Workplace Health and Safety Act](#). More information can be found in Sections 29 to 32 of the Act.

## Objects of the Act in relation to consultation and worker representation

Part 4 of the Act is intended to ensure that relevant information about occupational health and safety is shared between employers and workers and that workers are given the opportunity to express their views on, and to contribute to, the resolution of occupational health and safety issues at their workplace. The views of workers must be valued and taken into account by the employer.

Section 30 of the Act describes the employer's duty to consult, and Section 32 outlines the duty of workers in regard to consultation.

## Consultation

The purpose of consultation is outlined in the Act but essentially it is intended to provide the opportunity for workers to input into and influence decisions that may affect their health or safety.

Consequently it is also intended to create an environment where decisions that employers' make that may affect health and safety, benefit from the experience, expertise and perspective of the people who actually undertake the work at the workplace.

## Does 'consultation' mean agreement?

While agreement between workers and their employer(s) is the best outcome of a consultation process, agreement is not required.

The primary responsibility for a safe and healthy working environment rests with the employer and the employer has the right, and the obligation, to make and implement decisions about what will happen in their workplace. The employer has 'control' and is expected by the Act to exercise that control appropriately.

The employer is free to make such decisions, provided they consult as required and provided their decisions comply with the law. A consultation process provides the opportunity for workers (or their representatives) to seek advice or raise concerns if they feel that the decision the employer proposes does not meet standards of health and safety. This can then be the catalyst for issues to be raised so that safety concerns can be resolved and a better decision will result.

Consultation is not just a legal requirement; as a principle it is good management practice and part of building a positive and proactive health and safety culture within an organisation.

## Some of the benefits of consultation include:

- keeping workers informed of proposed decisions and engaging them in the process increases the likelihood of the successful implementation of change
- if workers feel that they know what is going on in the workplace and the potential impact on them and that their employer is a reliable source of information about proposed changes, there is less likely to be a negative 'rumour mill' operating that can be a barrier to co operation and engagement

- workers have their own perspectives and experience (sometimes including experience in a range of different workplaces) which can improve the quality of decisions and avoid costly mistakes and rework
- people are much more likely to adopt and support the implementation of decisions when they feel that they have had the opportunity to influence them – whether or not their ideas or proposals are actually taken on board
- ultimately an employer makes better decisions when all the available knowledge, experience and expertise available is part of the process

## Duty to consult

An employer must consult with workers to enable the workers to contribute to the making of decisions affecting their health or safety at work.

### What does 'consultation' mean in simple terms?

An employer does not have to consult with everybody about everything. Those workers who **may be affected** in some way by the decisions to be made or the actions that are proposed to be taken must be consulted before decisions are finalised or implemented.

### An employer should:

- tell the relevant workers what is proposed with sufficient lead time for consultation to be meaningful
- give the workers sufficient information (including available options) to enable them to properly consider the issues; including specifically the potential impact it may have on them. This may mean that the employer has to source additional information for this purpose
- advise workers who they can seek further information or clarification from and how or to whom they should provide feedback
- advise workers of the time frame within which feedback or input is to be provided – ensuring that this is reasonable and takes into account shiftwork etc.
- respond appropriately to feedback, genuinely considering and taking account of worker input where appropriate and letting workers know what feedback will be acted on and what will not and giving reasons
- advise workers of the final decision and the process for implementing it and then go ahead and take action

### **Examples of issues on which an employer is required to consult**

- The identification of risks such as workplace hazard inspections, safety assessment of new plant or equipment, job design, safe work procedures etc.
- The appropriate risk management measures to be adopted at a workplace such as the implementation and monitoring of OHS management systems.
- The facilities to be provided at a workplace for the health and safety of workers (including the provision to be made for first aid).
- Monitoring the health of workers and their fitness for work.
- The provision of information and training for workers.

- Changes to work practices, the way that work is done, or changes to the workplace itself that may have an impact on health and safety.

***The Act requires an employer to consult with worker where there “may” be an impact on health and safety, even if the employer anticipates that there will not be an impact or that the impact on workers will be positive.***

## Urgent issues

However, the Act states that the employer's duty to consult does not justify a failure to implement, or delay in implementing, necessary risk management measures. This means that if there is an urgent risk to health or safety, the employer should take immediate steps to either eliminate or control the risk and not wait until a consultation process on the matter is finalised.

At this point the employer can and must consult:

- either informing workers (or their representative/s) of what has already been done to control the risk and seeking input to the adequacy of the control measures and what else might be done to implement a higher order or longer term control, or
- advising that the risk has been isolated and consulting on options for control measures

## When and how consultation is to take place

***The Act specifically requires consultation:***

- 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 health or safety of workers; and when changes that may affect occupational health or safety are proposed to the workplace, workplace infrastructure or equipment, substances used in the course of work, or the systems or methods of work; and
- when decisions are made about the procedures for consultation; and
- in any other case prescribed by regulation.

It is good OHS and management practice for a workplace to proactively put procedures in place for how, in general, consultation will occur. This enables a mechanism for consultation to be designed to best meet the needs of the employer and the workers at that workplace and to consider and determine this at a time when there is no particular issue on foot.

Such procedures provide confidence about the process that will be followed when there is a need to consult and removes the potential for the way in which consultation occurs to be driven issue by issue and to differ across the workplace.

The regulations do not currently prescribe any additional situations where consultation must occur but the Act leaves it open to do so if an issue is identified in the future where this is appropriate.

## Who is a 'worker' for the purposes of consultation?

Under the Act, a worker is any person who works in the employer's business in any capacity. This includes trainees, volunteers and contractors and their employees. Where their health or safety may be affected by decisions, the employer must consult according to the Act with all of these people.

However, it is recognised that the method of consultation may need to be different for those 'workers' who have a different direct employer, such as labour hire employees, transport drivers etc. In such cases, in addition to consulting with affected employees at their own workplace, the employer must provide information to their contractors and others whose employees may be affected, allow them to provide input and seek clarification, and advise them of the final decision that is to be implemented. This could be by face to face meetings or by correspondence between the parties.

### ***Consultation may take place in one or more of the following ways:***

- with a health and safety committee representing the workers; (refer to publication [A guide to health and safety committees](#))
- with a health and safety representative representing the workers; (refer NT WorkSafe information bulletin [18.01.02 Worker Representation](#)) or
- some other way that is agreed between the workers and the employer. This would be the procedures for consultation referred to above. For example, in smaller workplaces it may be appropriate and desirable to consult with workers directly by means of toolbox meetings, team meetings etc.

However, where workers are consulted through representatives (such as HSR or Health and Safety Committees) it is important to remember that these people are being consulted as 'representatives' and they must be given the time and the opportunity to consult with the workers they represent and to bring their feedback and issues to the consultation process.

Consultation is a two way communication process on health and safety matters. In many organisations, particularly small ones, consultation occurs as a matter of course because relationships are direct and the employer is sharing information and taking on board the input of workers all the time. In larger, more complex organisations, it may be more efficient to consult through HSR or Health and Safety Committees, using email, at team meetings and so on. As long as consultation is meaningful and undertaken in accordance with the Act, the particular process is up to the employer and the workers to determine.

## Worker's reciprocal duty in regard to consultation

The Act requires workers to participate in consultation initiated by the employer and to be prepared to contribute their own insights to that consultation. A worker must be open to suggestions made by the employer on health and safety issues and bring to the employer's attention anything they think may cause a risk to health or safety.

For further information contact NT Worksafe on 1800 019 115 or go to [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)