

Australian Capital Territory

# Work Health and Safety (Work Health and Safety Consultation, Cooperation and Coordination) Code of Practice 2011\*

Notifiable instrument NI2011–750

made under the

*Work Health and Safety Act 2011*, section 274 (Approved Codes of Practice)

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## 1 Name of instrument

This instrument is the Work Health and Safety (Work Health and Safety Consultation, Cooperation and Coordination) Code of Practice 2011.

## 2 Commencement

This instrument commences on 1 January 2012.

## 3 Code of Practice Approval

Under section 274 of the *Work Health and Safety Act 2011* (the Act), and being satisfied that this code of practice was developed by a process described in s274 (2) of the Act, I approve the ACT Work Health and Safety (Work Health and Safety Consultation, Cooperation and Coordination) Code of Practice 2011

Dr Chris Bourke  
Minister for Industrial Relations  
15 December 2011

\*Name amended under Legislation Act, s 60

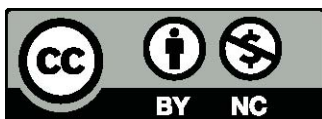


**safe work australia**

# **WORK HEALTH AND SAFETY CONSULTATION, CO-OPERATION AND CO- ORDINATION**

## **Code of Practice**

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## FOREWORD

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This Code of Practice on how to meet the requirements for consultation, co-operation and co-ordination on work health and safety matters is an approved code of practice under section 274 of the *Work Health and Safety Act* (the WHS Act).

An approved code of practice is a practical guide to achieving the standards of health, safety and welfare required under the WHS Act and the Work Health and Safety Regulations (the WHS Regulations).

A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act, in relation to the subject matter of the code. Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks that may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Codes of practice are admissible in court proceedings under the WHS Act and Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Compliance with the WHS Act and Regulations may be achieved by following another method, such as a technical or an industry standard, if it provides an equivalent or higher standard of work health and safety than the code.

An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice.

This Code of Practice has been developed by Safe Work Australia as a model code of practice under the Council of Australian Governments' *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* for adoption by the Commonwealth, state and territory governments.

A draft of this Code of Practice was released for public consultation on 7 December 2010 and was endorsed by the Workplace Relations Ministers' Council on 10 August 2011.

## SCOPE AND APPLICATION

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This Code of Practice provides practical guidance to persons conducting a business or undertaking on how to effectively consult with workers who carry out work for the business or undertaking and who are (or are likely to be) directly affected by a health and safety matter. It includes information on mechanisms to facilitate worker participation and representation.

This Code also provides guidance to duty holders who share responsibility for the same work health and safety matter on how to consult, co-operate and co-ordinate activities with each other.

This Code applies to all types of work and all workplaces covered by the WHS Act.

### *How to use this code of practice*

In providing guidance, the word 'should' is used in this Code to indicate a recommended course of action, while 'may' is used to indicate an optional course of action.

This Code also includes various references to sections of the WHS Act and Regulations which set out the legal requirements. These references are not exhaustive. The words 'must', 'requires' or 'mandatory' indicate that a legal requirement exists and must be complied with.

## 1. INTRODUCTION

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### 1.1 Who has duties in relation to consultation, co-operation and co-ordination?

#### *Consulting with workers*

**Section 47:** A person conducting a business or undertaking must consult, so far as is reasonably practicable, with workers who carry out work for the business or undertaking and who are (or are likely to be) directly affected by a health and safety matter

This duty to consult is based on the recognition that worker input and participation improves decision-making about health and safety matters and assists in reducing work-related injuries and disease.

The broad definition of a 'worker' under the WHS Act means that you must consult with your employees plus anyone else who carries out work for your business or undertaking. You must consult, so far as is reasonably practicable, with your contractors and sub-contractors and their employees, on-hire workers, volunteers and any other people who are working for you and who are directly affected by a health and safety matter.

Workers are entitled to take part in consultation arrangements and to be represented in relation to work health and safety by a health and safety representative who has been elected to represent their work group. If workers are represented by a health and safety representative, consultation must involve that representative.

#### *Consulting, co-operating and co-ordinating activities with other duty holders*

**Section 46:** If more than one person has a duty in relation to the same matter, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter

**Persons conducting a business or undertaking** will have health and safety duties if they:

- engage workers to undertake work for them, or if they direct or influence work carried out by workers
- may put other people at risk from the conduct of their business or undertaking
- manage or control the workplace or fixtures, fittings or plant at the workplace
- design, manufacture, import or supply plant, substances or structures for use at a workplace
- install, construct or commission plant or structures at a workplace.

These duty holders' work activities may overlap and interact at particular times. When they share a duty, for example, a duty to protect the health and safety of a worker, or are involved in the same work, they will be required to consult, co-operate and co-ordinate activities with each other so far as is reasonably practicable.

Principal contractors for a construction project, as persons who manage or control the workplace, have specific duties under the WHS Regulations to have arrangements in place for consultation, co-operation and the co-ordination of activities between any persons conducting a business or undertaking at the site.

**Officers**, such as company directors, have a duty to exercise due diligence to ensure that the business or undertaking complies with the WHS Act and Regulations. This includes taking reasonable steps to ensure that the business or undertaking implements processes for complying with the duty to consult workers as well as consulting, co-operating and co-ordinating activities with other duty holders.

**Workers** have a duty to take reasonable care for their own health and safety and that they do not adversely affect the health and safety of other persons. Workers must comply with any reasonable

instruction and co-operate with any reasonable health and safety policy or procedure, for example procedures for consultation at the workplace.

## **1.2 Why is consultation important?**

Consultation is a legal requirement and an essential part of managing health and safety risks.

A safe workplace is more easily achieved when everyone involved in the work communicates with each other to identify hazards and risks, talks about any health and safety concerns and works together to find solutions. This includes cooperation between the people who manage or control the work and those who carry out the work or who are affected by the work.

By drawing on the knowledge and experience of your workers, more informed decisions can be made about how the work should be carried out safely.

Effective health and safety consultation also has other benefits:

- *Greater awareness and commitment* – because workers who have been actively involved in how health and safety decisions are made will better understand the decisions.
- *Positive working relationships* – because understanding the views of others leads to greater co-operation and trust.

In situations where you share responsibility for health and safety with another person, the requirement to consult, co-operate and co-ordinate activities with other duty holders will help address any gaps in managing health and safety risks that often occur when:

- there is a lack of understanding of how the activities of each person may add to the hazards and risks to which others may be exposed
- duty holders assume that someone else is taking care of the health and safety matter
- the person who takes action is not the best person to do so.

The outcome of consulting, co-operating and co-ordinating activities with other duty holders is that you each understand how your activities may impact on health and safety and that the actions you each take to control risks are complementary.

## 2. WHEN TO CONSULT WITH WORKERS

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Many organisational decisions or actions have health and safety consequences for workers. For example, introducing new equipment into the workplace may affect the tasks your workers carry out, the timeframes for doing work, how they interact with each other and the environment in which they work.

The WHS Act identifies specific matters that trigger the requirement for consultation.

**Section 49:** A person conducting a business or undertaking must consult with workers when:

- identifying hazards and assessing risks arising from the work carried out or to be carried out
- making decisions about ways to eliminate or minimise those risks
- making decisions about the adequacy of facilities for the welfare of workers
- proposing changes that may affect the health or safety of your workers, and
- making decisions about procedures for consulting with workers; resolving health or safety issues; monitoring health of your workers; monitoring the conditions at the workplace and providing information and training for your workers.

However, it may be useful to also consult workers about matters that are not listed above, for example when conducting investigations into incidents or 'near misses'.

Regular consultation is better than consulting on a case-by-case basis only as issues arise because it allows you to identify and fix potential problems early.

### 2.1 Managing risks

Consultation is required when identifying hazards, assessing risks and deciding on measures to control those risks.

In deciding how to control risks, you must consult with your workers who will be affected by this decision, either directly or through their health and safety representative. Their experience may help you identify hazards and choose practical and effective control measures.

Regularly walking around the workplace, talking to your workers and observing how things are done will also help you identify hazards. Conducting a survey of your workers can provide valuable information about work-related health issues such as workplace bullying, stress, as well as muscular aches and pains that can signal potential hazards.

Workers and their health and safety representatives may need access to information such as technical guidance about workplace hazards and risks (plant, equipment and substances). Information should not be withheld just because it is technical or may be difficult to understand.

The WHS Act requires that you allow any health and safety representative for a work group to have access to information you have relating to hazards (including associated risks) affecting workers in the work group and also any information about the health and safety of workers in the work group. This does not extend access to any personal or medical information concerning a worker without the worker's consent.

Further guidance on risk management is available in the *Code of Practice: How to Manage Work Health and Safety Risks*.



## **2.2 Deciding on welfare facilities**

Facilities are things provided for the welfare of workers, such as toilets, drinking water, washing facilities, dining areas, change rooms, personal storage and first aid.

You must consult your workers when making decisions about what facilities are needed (for example, the number and location of toilets), taking into consideration the number and composition of your workforce, the type of work your workers do and the size and location of your workplace. The consultation should also cover things such as access, cleaning and maintenance of the facilities.

If the facilities are already provided at the workplace, you should consult your workers and their health and safety representatives when there are any changes that may affect the adequacy of the facilities. This will help you determine if you need to change or expand your facilities.

Further guidance is available in the *Code of Practice: Managing the Work Environment and Facilities*.

## **2.3 Making changes**

You must consult your workers when planning to make changes that may affect their work health and safety, for example when:

- changing work systems such as shift work rosters, work procedures or the work environment
- developing a new product or planning a new project
- purchasing new or used equipment or using new substances
- restructuring the business.

## **2.4 Developing procedures**

A procedure sets out the steps to be followed for work activities. You must consult with affected workers when developing procedures for:

- resolving work health and safety issues
- consulting with workers on work health and safety
- monitoring workers' health and workplace conditions
- providing information and training.

Procedures should be in writing to provide clarity and certainty at the workplace and assist in demonstrating compliance. They should clearly set out the role of health and safety representatives, and any other parties involved in the activity. The procedures should be easily accessible, for example by placing them on noticeboards and intranet sites.

If issue resolution procedures are agreed to, the WHS Regulations include minimum requirements including that these procedures are set out in writing and communicated to all workers to whom the procedure applies.

### 3. WHAT IS EFFECTIVE CONSULTATION?

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Consultation is a two-way process between you and your workers where you:

- *talk* to each other about health and safety matters
- *listen* to their concerns and raise your concerns
- *seek and share* views and information, and
- *consider* what your workers say before you make decisions.

**Section 48:** Consultation requires that:

- relevant work health and safety information is shared with workers
- workers are given a reasonable opportunity to express their views and to raise health or safety issues
- workers are given a reasonable opportunity to contribute to the decision-making process relating to the health and safety matter
- the views of workers are taken into account, and
- workers are advised of the outcome of any consultation in a timely manner.

Management commitment and open communication between managers and workers is important in achieving effective consultation. Your workers are more likely to engage in consultation when their knowledge and ideas are actively sought and any concerns about health and safety are taken seriously.

Consultation does not mean telling your workers about a health and safety decision or action after it has been taken. Workers should be encouraged to:

- ask questions about health and safety
- raise concerns and report problems
- make safety recommendations
- be part of the problem solving process.

While consultation may not result in agreement, this should be the objective as it will make it more likely that the decisions are effective and will be actively supported.

#### 3.1 Sharing information

You must share relevant information with workers and their health and safety representatives about matters that may affect their health and safety. This information should be provided early on so that workers and health and safety representatives have enough time to consider the matters, discuss them and then provide feedback to you.

You should make available all the information that you have relating to the health and safety matter to enable informed and constructive discussions. This information may include:

- health and safety policies and procedures
- technical guidance about hazards, risks and risk control measures
- hazard reports and risk assessments
- proposed changes to the workplace, systems of work, plant or substances
- data on incidents, illnesses or injuries (in a way that protects the confidentiality of personal information).

The information should be presented in a way that can be easily understood by your workers and take into account literacy needs and the cultural or linguistically diverse backgrounds of your workers.

Young workers and those with limited English may be less likely to question health and safety practices or speak up if they are unsure. They may find it easier to communicate through a health and safety

representative, an interpreter or worker representative. Information should also be simplified and presented in different ways, such as using diagrams, to make it easier to understand.

Meeting face-to-face is usually the most effective way of communicating, although that may not always be possible or preferable. Information can also be shared in other ways, including:

- by telephone or email
- featuring current health and safety news and information on intranet sites or noticeboards.

Information should be updated and attention drawn to new material so that people who do not regularly check it will know what is happening in their workplace.

### **3.2 Providing reasonable opportunities to express views and contribute**

Giving your workers a reasonable opportunity to express their views and contribute to health and safety decisions may involve:

- providing a suitable time during work hours for consultation with workers
- allowing opinions about health and safety to be regularly discussed and considered during workplace meetings
- providing workers with different ways to provide feedback, for example using email, setting up an intranet health and safety page or a suggestion box.

How long the consultation process takes will depend on the complexity of the health and safety matter, how many people are being consulted, the accessibility of workers and the methods of consultation. A simple issue affecting only a small number of workers can probably be dealt with in a few hours or days through regular channels of communication. A complex technical matter, or consulting a large workforce, may require more time.

If there are health and safety representatives for the workplace, you must include them in the discussions, with or without the involvement of workers directly.

### **3.3 Taking views into account**

You must take the views of your workers and health and safety representatives into account before making a decision. Consultation does not require consensus or agreement but you must allow your workers to contribute to any health and safety decisions you make in your business.

### **3.4 Advising outcomes of consultation**

You should agree to respond to concerns and questions raised by workers within a certain timeframe and offer feedback about any options they propose. You must inform your workers of your final decision or course of action as soon as possible. You should provide information to help them understand the reasons for your decision.

### **3.5 To what extent should you consult?**

You must consult on health and safety matters so far as is reasonably practicable with workers who carry out work for you and who are (or are likely to be) directly affected. This includes consulting with your contractors and their workers and volunteers (if any) about health and safety decisions that directly affect them and which you influence or control.

Consultation that is 'reasonably practicable' is both possible and reasonable in the particular circumstances. What is reasonably practicable will depend on factors such as the:

- size and structure of the business
- nature of the work that is carried out
- nature and severity of the particular hazard or risk

- nature of the decision or action, including the urgency to make a decision or take action
- availability of the relevant workers and any health and safety representatives
- work arrangements, such as shift work and remote work
- characteristics of the workers, including languages spoken and literacy levels.

The aim of consultation should be to ensure that you have sufficient information to make well-informed decisions and that the workers who may be affected are given a reasonable opportunity to provide their views and understand the reasons for the decisions.

You are not expected to do the impossible, but are required to take a proactive and sensible approach to consultation. For example, an urgent response to an immediate risk may necessarily limit the extent of consultation in some circumstances. It may also not be reasonably practicable to consult with workers who are on extended leave. However, it would be appropriate to ensure that these workers are kept informed about any matters that may affect their health and safety when they return to work.

It is not always necessary to consult with every worker in your workplace. The workers you consult with will be those who are, or could be, directly affected by the health and safety matter. For example, a problem with air temperature experienced on one level of an office block may not directly affect the work health and safety of workers on other levels. Only workers on the affected level need to be consulted about the matter.

### **3.6 Must consultation be documented?**

Consultation with workers and with other duty holders does not have to be documented unless specifically required under the WHS Regulations. However, it is recommended that you keep records to demonstrate compliance with consultation requirements. Records of consultation may also assist the risk management process and make disputes less likely.

The records should include any outcomes of discussions. The records can be brief and simple, and cover:

- who is involved
- what the safety matter is
- what decision has been made
- who is to take action and by when
- when the action has been completed.

## 4. HOW TO CONSULT WITH WORKERS

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Consultation with workers can be undertaken in various ways. It does not need to be a formal process and can be as simple as talking to them regularly and considering their views when making health and safety decisions.

Consultation can also be undertaken through health and safety representatives and health and safety committees. However, the WHS Act does not require the establishment of these consultation mechanisms, unless:

- in relation to a health and safety representative – a request is made by a worker
- in relation to a health and safety committee – a request is made by 5 or more workers or a health and safety representative.

You may establish any arrangements for consultation to suit your workers and workplace situations, including agreed consultation procedures, as long as those arrangements are consistent with the requirements of the WHS Act.

### 4.1 What kind of consultation is best for your workplace?

Consultation arrangements should take into account the size of the business, the way work is arranged and what suits your workers. Many workplaces will already have ways to consult on health and safety that suit their needs. These arrangements can continue if they are consistent with the requirements of the WHS Act and workers have been consulted about them.

To determine how best to consult, you should first discuss with your workers issues such as:

- the duty to consult and the purpose of consultation
- the range of work and associated health and safety issues at the workplace
- the various ways for consultation to occur, including your workers' right to elect health and safety representatives
- your workers' ideas about the most effective way to consult.

You should work out methods that:

- meet your duty to consult
- ensure all workers can participate in consultation including any shift workers or mobile workers
- will best integrate with the way your business manages health and safety.

Consideration should be given to how management normally communicates with the workers. You may not need to establish separate consultation arrangements if there are regular discussions between managers or supervisors and the workers, for example weekly team meetings. This may be the case in a small business with few workers where there are direct discussions as part of everyday work.

In organisations where it may not be reasonably practicable to consult each worker individually, health and safety representatives or committees may be more appropriate. Some workplaces may need a mix of consultation arrangements to suit different types of workers and situations. For example, a business may have a number of full-time workers where structured arrangements involving health and safety representatives and committees may be suitable. On occasions the business may also engage contractors or on-hire workers to carry out specific tasks, where arrangements such as 'toolbox talks' (short discussions on specific health and safety topics relevant to the task) may be the most practical way to consult with them.

When unexpected matters arise, there may not be time to plan consultation, so consideration should be given to whether the issue can be addressed through one of the regular communication channels, or if there is a need to do something different like hold a one-off meeting.

See Appendix A for examples of consultation arrangements for different types of workplaces.

## 4.2 Agreeing on consultation procedures

The WHS Act does not require a person conducting a business or undertaking to reach agreement with their workers on how consultation will occur, but doing so will help to make the consultation more effective.

**Section 47(2):** If a person conducting a business or undertaking and the workers have agreed to procedures for consultation, the consultation must be undertaken according to those procedures.

Agreeing on procedures for consultation with workers can save time and confusion about how and when consultation must occur. The agreed consultation procedures should clarify key responsibilities of people in the workplace and clearly state when consultation is necessary.

Before consultation procedures can be agreed, you must genuinely consult about the proposed procedures with all affected workers, including any health and safety representatives for the relevant workers.

If procedures for consultation are agreed, they must be consistent with the requirements of the WHS Act and the consultation must be conducted in accordance with those procedures. For example, the procedures must include sharing of information, allowing workers a reasonable opportunity to express their views and cannot remove the powers of any health and safety representatives or the functions of any health and safety committee established for the workplace.

Agreed consultation procedures are likely to be most effective if they include:

- the matters that require consultation
- who will be consulted
- the ways consultation will occur, for example, through regular meetings, tool-box talks or health and safety representatives
- how information will be shared with workers and health and safety representatives
- what opportunities will be provided for workers and health and safety representatives to give their views on proposed matters
- how feedback will be given to workers and health and safety representatives
- how consultation will occur with any workers who have special language and literacy needs
- timeframes for reviewing the procedures.

The procedures may also include the provision of practical assistance for affected workers and health and safety representatives to facilitate the consultation process. For example, opportunities may be made available for affected workers and their health and safety representatives to come together to consider the information that has been provided, to discuss the issues and form their views.

While more detailed procedures will assist in providing consistency and certainty of approach, the procedures should be flexible enough to respond to different circumstances (such as urgency).

In a small business with few workers, effective informal agreed procedures that are understood by everyone in the business should be sufficient, though these should be discussed and reinforced regularly. In larger workplaces, documented procedures are appropriate.

Consultation procedures should be monitored and reviewed to ensure they continue to be effective.

## 4.3 Consulting using health and safety representatives and committees

### *Health and safety representatives*

A worker may ask you for the election of a health and safety representative to represent them on work health and safety matters. If a worker makes this request, work groups must be established to facilitate the election. The process requires you and your workers to negotiate and agree on the formation of work groups.

**Section 52(3):** The purpose of the negotiations is to determine:

- the number and composition of work groups to be represented by health and safety representatives;
- the number of health and safety representatives and deputy health and safety representatives (if any) to be elected;
- the workplace or workplaces to which the work groups will apply, and
- the businesses or undertakings to which the work groups will apply.

A work group may operate across multiple businesses if all parties agree to such an arrangement.

**Section 52-53:** To establish a work group, the person conducting the business or undertaking must:

- Take all reasonable steps to commence negotiations with the workers within 14 days after a worker makes the request.
- Negotiate with a worker's representative (such as a union official) if a worker asks you to do so.
- Notify the workers of the outcome of the negotiations and of any work groups determined by agreement as soon as practicable after negotiations are complete.

**Section 54:** If negotiations fail, you or a work group member can ask the regulator to appoint an inspector to assist negotiations and determine certain matters if negotiations remain unresolved.

Even if your workers do not make a request you can alert your workers to their rights to be consulted and to elect health and safety representatives under the WHS Act.

Where health and safety representatives have been elected, they must always be included in any consultation that affects, or is likely to affect, the health and safety of members of their work group.

The WHS Act and Regulations contain further provisions regarding health and safety representatives including the determination of work groups, conduct of elections and their functions and powers.

### ***Health and safety committees***

A health and safety committee brings together workers and management to assist in the development and review of health and safety policies and procedures for the workplace.

**Section 75:** A person conducting a business or undertaking must establish a health and safety committee within two months after being requested to do so by 5 or more workers, or by a health and safety representative, at the workplace.

**Section 76:** Health and safety representatives may choose to be members of the health and safety committee. In total, at least half of the members of the committee must be workers who are not nominated by management.

If you and your workers cannot agree about the health and safety committee in a reasonable time, either party can ask the regulator to appoint an inspector to decide on the make-up of the health and safety committee, or whether it should be established at all.

**Section 78:** Health and safety committees must meet at least every 3 months.

You can also initiate establishing a committee yourself if you consider it will help you meet your duty to consult and assist your workforce to participate in making health and safety decisions. A health and safety committee can be a good option if a business has a significant number of workers who are reluctant to take on the role of a health and safety representative, but some would be willing to participate on a committee. A committee may also be effective for a large business to consult on matters that are the same across a number of work groups or workplaces.

The benefits of a health and safety committee include:

- having regular, planned and structured discussions about health and safety matters
- encouraging a co-operative approach to health and safety
- bringing together a group of worker and business representatives to collaboratively discuss and develop ways of improving the systems for managing health and safety at the workplace
- encouraging the development and retention of corporate knowledge on health and safety matters for the workplace.

The membership of the health and safety committee should be determined by agreement between you and the workers at the workplace to be represented by the committee.

When a workplace has both a health and safety committee and health and safety representatives then there should be a clear distinction between their roles.

- Health and safety representatives are involved with the specific health and safety issues relevant to the work group they represent.
- The health and safety committee is the forum for consultation on the management of health and safety across the whole workforce. It should consider the development, implementation and review of the policies and procedures associated with the organisation's work health and safety system.

If the workplace has a health and safety committee but does not have health and safety representatives, the committee may consider the issues that a health and safety representative would normally be involved in.

The *Worker Representation and Participation Guide* provides further information on health and safety representatives and committees.

#### **4.4 Sharing consultation arrangements with other duty holders**

If you have contractors or on-hire workers as part of your workforce you share a duty of care to these workers as well as consultation duties with the business that provides them. You should consult, co-operate and co-ordinate activities with the contractor or on-hire firm to develop your shared consultation arrangements with the workers. In doing this you should consider the types of issues that may arise where you would need to consult the contractor or on-hire firm and their workers.

For example, you may propose to change the work carried out by contractors. This may involve changing the equipment, substances or materials used in the production process or the way tasks are carried out. You should ask:

- How should I inform and discuss proposed changes with the contractors' on-hire or contractor firm?
- How should we both co-ordinate consultation with the affected workers?
- How should we each respond to a safety issue raised by one or more of the contractors or to a request from the workers to be represented by a health and safety representative?



A health and safety committee may be in place at the workplace and may be an effective way of consulting with workers, or between duty holders.

#### **4.5 How should the consultation arrangements be reviewed?**

When you have established ways to consult on health and safety that suit your workplace, you should monitor and review these procedures in consultation with workers and health and safety representatives to ensure that consultation meets the requirements under the WHS Act and Regulations.

A checklist of things to consider when reviewing consultation arrangements is at Appendix B.

## 5. HOW TO CONSULT, CO-OPERATE AND CO-ORDINATE ACTIVITIES WITH OTHER DUTY HOLDERS

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There are often situations where more than one business or undertaking operates at a workplace and where people share responsibility for work health and safety to varying degrees, for example shopping centres, construction projects, labour hire and multi-tenanted office buildings.

**Section 16:** The WHS Act requires that where more than one person has a duty for the same matter, each person retains responsibility for their duty in relation to the matter and must discharge the duty to the extent to which the person can influence and control the matter.

**Section 46:** In these situations, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a work health or safety duty in relation to the same matter.

People often assume that someone else is going to take action for health and safety, perhaps because that other person is more directly involved in the activity. This may be more likely where there are numerous people involved in the work. This can mean that nobody takes the necessary action.

Each person conducting a business or undertaking must ensure, so far as is reasonably practicable, the elimination or minimisation of risks to health and safety. This includes ensuring, for example, that safe plant is used, that there are adequate welfare facilities for workers and that training is provided to workers.

You must ensure these requirements are met even if others may also have the duty to do so. You may ensure the outcomes by not necessarily taking the required action yourself, but making sure that another person is doing so.

Talking to, and co-operating and co-ordinating activities with others who are involved in the work or things associated with the work will make the control of risks more likely and assist each duty holder comply with their duty. It can also mean that health and safety measures are more efficiently undertaken.

For example, you may not need to provide toilet facilities for your workers if they are already available, but you need to check that those facilities are in good working order, clean and accessible for your workers. Consultation, co-operation and co-ordination between you and the person providing those facilities will help you ensure that the necessary steps are being taken so that you can meet your duty.

What is reasonably practicable in relation to consulting, co-operating and co-ordinating activities with other duty holders will depend on the circumstances, including the nature of the work and the extent of interaction. For example, two contractors working together may engage in direct discussions and planning as part of their everyday work, whereas the owner of a large shopping centre may need formal mechanisms with the retail businesses, such as written agreements and consultative committees.

### 5.1 Who must consult, co-operate and co-ordinate and with whom

The first step is to identify who the other duty holders are that you need to consult, co-operate and co-ordinate activities with. The duty requires each person with a health and safety duty to consult, co-operate and co-ordinate activities with each other person who has a duty over the same matter.

Examples of who may need to be involved in consultation, co-operation and co-ordination of activities are as follows:

- Various contractors who are involved in the same work at the same time at a workplace will need to consult, co-operate and co-ordinate activities with each other as they may each affect the health or safety of their own workers or the workers of other business operators or other people at or near the workplace.

- An installer of plant at a workplace and the person with management or control of the workplace should consult, co-operate and co-ordinate activities with each other in relation to when, where and how the plant is to be installed to control any health and safety risks.
- A landlord or managing agent should consult, co-operate and co-ordinate activities with the tenant (for example, in relation to emergency plans and procedures) or with a contractor carrying out maintenance or repair work.
- Each of the business operators involved in the supply and logistics chain (the consignor and consignee, the operator of a warehouse, the trucking company and any sub-contracted drivers) should consult, co-operate and co-ordinate activities with each other on the timing and process for the collection and delivery of the goods.
- A franchisor and franchisee should consult, co-operate and co-ordinate activities with each other when determining how the franchise arrangements are to operate and any requirements that the franchisor may impose on the franchisee relating to work health and safety.

## **5.2 When must you consult, co-operate and co-ordinate with others?**

You should commence consultation, co-operation and co-ordinating activities with other duty holders when you become aware they are or will be involved in the work. This will usually be apparent from the circumstances, through contractual arrangements, presence on site or the need for others to be involved in the work.

You should identify who else will be involved in the work, make contact with them and commence discussions as soon as they are reasonably able to do so. This may occur as part of contractual negotiations, or discussions when you are engaged to carry out the work, or when you engage another business to carry out work for your business or undertaking.

You may not be the first business or undertaking to be involved in the work, or may not initially be aware that others are involved in it. You may be contacted by another duty holder and asked to engage in consultation.

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.

## **5.3 What is meant by consultation with other duty holders?**

The objective of consultation is to make sure everyone associated with the work has a shared understanding of what the risks are, which workers are affected and how the risks will be controlled. The exchange of information will allow the duty holders to work together to plan and manage health and safety.

The consultation should include:

- what each will be doing, how, when and where and what plant or substances may be used
- who has control or influence over aspects of the work or the environment in which the work is being undertaken
- ways in which the activities of each duty holder may affect the work environment
- ways in which the activities of each duty holder may affect what others do
- identifying the workers that are or will be involved in the activity and who else may be affected by the activity

- what procedures or arrangements may be in place for the consultation and representation of workers, and for issue resolution
- what information may be needed by another duty holder for health and safety purposes
- what each knows about the hazards and risks associated with their activity
- whether the activities of others may introduce or increase hazards or risks
- what each will be providing for health and safety, particularly for controlling risks
- what further consultation or communication may be required to monitor health and safety or to identify any changes in the work or environment.

This consultation will determine which health and safety duties are shared and what each person needs to do to co-operate and co-ordinate activities with each other to comply with their health and safety duty.

#### **5.4 What is meant by co-operation?**

What is required for co-operation should have been identified in the consultation process.

Co-operation may involve implementing arrangements in accordance with any agreements reached during consultation with the other duty holder and involve not acting in a way that may compromise what they are doing for health and safety.

Co-operation also means that, if you are approached by other duty holders wanting to consult with you on a health and safety matter, you should:

- not obstruct communication
- respond to reasonable requests from other duty holders to assist them in meeting their duty.

#### **5.5 What is meant by co-ordination?**

The co-ordination of activities requires duty holders to work together so that each person can meet their duty of care effectively without leaving any gaps in health and safety protection. You should plan and organise activities together with the other duty holders.

This will include making sure that the measures you each put in place work effectively together to control the risks. You should:

- identify when and how each control measure is to be implemented
- ensure control measures complement each other.

Co-ordination of activities may include the scheduling of work activities so that each duty holder carries out their work separately. It may require work to be arranged in a way that will allow for necessary precautions to be in place or pre-conditions met before particular work is done.

Where work is not effectively co-ordinated, the parties should consult further to determine what should be changed.

#### **5.6 What if another duty holder refuses to consult or co-operate or co-ordinate?**

What is reasonably practicable for you may depend on the level of participation of other duty holders. For example, there may be disagreement between you as to the extent of consultation, co-operation and co-ordination of activities that is required in the circumstances.

This does not mean that you should simply accept what you consider to be inadequate action by another duty holder. You should check that they are aware of this duty and what you consider is needed to comply with it, and with the health and safety duties that you each have.

Written arrangements are not essential, but they may help to clarify everyone's expectations. You should consider including in your contracts a requirement for other parties to consult, co-operate and co-ordinate on safety matters, as that can be very useful. This will make the other party clearly aware of the obligation and give you a contractual right to enforce it.

See Appendix C for examples of how to consult, co-operate and co-ordinate activities with other duty holders.

## APPENDIX A – EXAMPLES OF CONSULTATION ARRANGEMENTS

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### Example 1:

#### Consultation in a workplace with no health and safety representatives

Overview	<p>A small crane hire business employs 7 workers, 5 of whom are crane operators. When the operators return to the yard after a job, they report any defects or problems with the crane. This has been an informal process and many times there have been failures to report mainly small problems. The owner has decided to introduce a checklist to be filled out by the operator when returning the crane.</p>
WHEN to consult	<p>Consultation with workers was required for:</p> <ul style="list-style-type: none"><li>• the identification and assessment of hazards and risks</li><li>• making decisions about control measures</li><li>• proposing changes to the workplace.</li></ul> <p>Before introducing the checklist, the owner wanted to discuss its merits with the crane operators.</p>
WHO to consult	<p>As there are no health and safety representatives in the workplace, the company consulted with all workers directly.</p>
HOW to consult	<p>The agreed consultation procedure for the workplace is the regular weekly meeting with workers where work health and safety is always an item on the agenda.</p> <p>The owner circulated the checklist to the workers a week before the meeting. In discussions at the meeting, there was support for using the checklist with a few more items added to it. It was agreed that workers would trial the new checklist for three months as some operators were concerned that it would be a waste of time if no action was taken on any problems recorded on the checklist.</p> <p>The business kept records of significant work health and safety issues that were discussed, actions to be taken and timelines for taking action. The records were displayed on the noticeboard in the workplace and were sent via email to workers as well.</p>

## Example 2:

### Consultation in a transport company with health and safety representatives

Overview	<p>This company operates around the clock and has 200 workers. Work groups have been established covering all workers working across three shifts, each of which is represented by a health and safety representative. A health and safety committee has been established and is made up of all health and safety representatives and some management representatives who hold senior positions in the organisation.</p> <p>When the company identified the need to move to new premises, it recognised this had the potential to affect all workers. The committee played a major role in obtaining worker and health and safety representative input about warehouse layout, ergonomics, selection of new equipment and machinery, traffic management, access/egress and emergency procedures. Regular site visits were arranged to view progress and provide advice.</p>
WHEN to consult	<p>Consultation with workers was required for:</p> <ul style="list-style-type: none"><li>• the identification and assessment of hazards and risks</li><li>• making decisions about control measures</li><li>• proposing changes to the workplace, and</li><li>• making decisions about the adequacy of welfare facilities.</li></ul> <p>The design and fit-out of the new premises included consideration of layout, equipment selection, new work systems, lighting installation, design and commissioning of a sorting table and warehouse airflow.</p>
WHO to consult	<p>The relocation affected all workers and they were all consulted via their respective health and safety representatives. The committee acted as a centralised conduit for information flow in this process.</p>
HOW to consult	<p>The organisation consulted via health and safety representatives and the committee.</p> <p><b>Health and safety representatives</b></p> <p>Health and safety representatives acted as a communication channel between management and workers. Health and safety representatives chaired the health and safety sections of weekly toolbox meetings, using these as an open forum to the committee.</p> <p><b>Health and safety committee</b></p> <p>Consultation procedures were developed and agreed and the membership of the committee was determined via extensive consultation between health and safety representatives and all workers. The committee takes ongoing responsibility for ensuring that all relevant health and safety information is posted on worker noticeboards, e.g. meeting agendas, minutes, alerts and newsletters. The committee also sets timelines and frameworks for evaluating systems and processes, e.g. warehouse airflow to be assessed by external consultant every 3 months.</p>

## APPENDIX B – CONSULTATION CHECKLIST

Consultation compliance	Yes /No	Chapter in Code
Do I have one or more consultation arrangements in place after consultation with my workers?		4
Do the consultation arrangements include workers other than my employees such as contractors or labour hire workers who are part of my workforce?		4, 5
Do I use my consultation mechanism when I: <ul style="list-style-type: none"> <li>• identify hazards and assess risks?</li> <li>• make decisions to control risks?</li> <li>• make decisions about welfare facilities?</li> <li>• propose changes to the work, including purchasing new or used plant or new substances or materials?</li> <li>• develop and review safety policies and procedures?</li> </ul>		2
When I consult with my workers on these issues do I: <ul style="list-style-type: none"> <li>• Inform them of what I intend to do (<i>eg purchase a new piece of equipment</i>)?</li> <li>• Share relevant information about the issue with them?</li> <li>• Give them a reasonable opportunity to respond?</li> <li>• Discuss any of their safety concerns?</li> <li>• Take into account the views they express?</li> <li>• Advise them of my decision and the reasons for it?</li> </ul>		3
If workers are represented by a health and safety representative, do I: <ul style="list-style-type: none"> <li>• Include the representative in all health and safety consultations?</li> <li>• Make myself available for the representative to raise and discuss health and safety matters with me?</li> </ul>		4
Do I consult other duty holders who share responsibility for a health and safety matter with me? <ul style="list-style-type: none"> <li>• Do I co-operate and co-ordinate activities with them?</li> </ul>		5



## APPENDIX C – CONSULTING, CO-OPERATING AND CO-ORDINATING ACTIVITIES

### Example 1:

#### Sharing the same workplace: Finance company leasing premises in a multi-tenanted office block – lift maintenance

<p>IDENTIFY health and safety duties and other duty holders</p>	<p>The finance company has a duty as a person conducting a business or undertaking to ensure the health and safety of its workers and clients visiting its offices.</p> <p>At the same time, the building owner and property manager have duties as persons with management or control of the building to ensure people can safely enter and exit the building and that the building is safe and without risk to others.</p> <p>A company contracted to maintain and repair lifts (maintenance contractor) has a duty to ensure that its workers and other persons are not put at risk from work carried out as part of its business.</p> <p>Each of these duties is subject to what is reasonably practicable.</p>
<p>CONSULT</p>	<p>The finance company consults the property manager to find out what arrangements are in place for the proper maintenance of plant such as air-conditioning systems and lifts.</p> <p>Before maintenance is to be carried out on the lifts the property manager consults with the maintenance contractor, the tenants and the cleaning contractor so that all duty holders know of the work and what they each need to do to ensure the safety of persons in the building. This includes identifying the best time for the work to be done, how the work area will be barricaded and what information, if any, the finance company will need to give to its workers and clients.</p> <p>As the work proceeds, the finance company informs the property manager and the maintenance contractor of any concerns or incidents, to enable these to be considered and any changes made.</p>
<p>CO-OPERATE</p>	<p>The finance company and other tenants co-operate with the maintenance contractor by complying with contractor's safety procedures.</p>
<p>CO-ORDINATE activities</p>	<p>The finance company ensures that its workers and clients do not use the lifts during the maintenance work and that they have another safe means of entry and exit.</p> <p>The maintenance contractor works with the property manager to schedule maintenance work so that it does not interfere with the safe movement of persons in the building, as far as is reasonably practicable.</p>

*Example 2:*

**Sharing the same workers: Manufacturing company engaging on-hire workers**

IDENTIFY health and safety duties and other duty holders	<p>The manufacturing company has a duty to ensure the health and safety of its workers, including its own employees and on-hire workers who are engaged to work on the production line. The on-hire firm has a duty to protect the health and safety of the on-hire workers it provides to the manufacturing business.</p> <p>Each of these duties is subject to what is reasonably practicable.</p>
CONSULT	<p>The manufacturing company and on-hire firm consult each other about the job requirements, the skills required of the workers, any health and safety risks associated with the work and what each will do to control the risks.</p> <p>As part of the contract, they clarify responsibility for the provision of any equipment (such as personal protective equipment) and agree to consult prior to any changes being made that may affect the health and safety of the on-hired workers.</p>
CO-OPERATE	<p>The manufacturing company co-operates with the on-hire firm by allowing the on-hire firm to visit the workplace to assess and monitor the adequacy of control measures being provided at the workplace. The manufacturing company also allows the on-hire workers to maintain communication with the on-hire firm.</p>
CO-ORDINATE activities	<p>The manufacturing company and on-hire firm agree to co-ordinate arrangements for:</p> <ul style="list-style-type: none"><li>• on-hire workers to be consulted and represented on work health and safety</li><li>• reporting and investigation of incidents.</li></ul>

### Example 3:

#### A local council running a street festival together with a large community organisation

IDENTIFY health and safety duties and other duty holders

The council has a duty as a person conducting a business or undertaking to ensure the health and safety of its workers, those of the community organisation and the public.

The community organisation is a person conducting a business or undertaking and has a duty to ensure the work health and safety of its workers, those of the council and the public.

A company contracted by the council to supply marquees and other equipment (including bain maries and other equipment that will be used for cooking and serving) has a duty to ensure that its workers and other persons are not put at risk from work carried out as part of its business, in this case the provision of the equipment.

A company contracted by the supplier to transport and deliver the equipment has a duty to ensure that its workers and other persons are not put at risk from work carried out as part of its business.

The police force will be providing members for crowd control and other purposes and has a duty to ensure the health and safety of its workers, those of the council and the community organisation and the public.

First aid facilities and officers will be provided by another organisation, which has a duty to ensure that its workers and other persons are not put at risk from work carried out as part of its business or undertaking.

Each of these duties is subject to what is reasonably practicable.

CONSULT

The council and the community organisation consult with each other to identify how each will be involved in the activities and how each will be minimising the risks associated with what they will be doing. They identify how to co-ordinate their activities.

The council consults the supplier about the health and safety risks of the equipment. This includes the detail of delivery times and circumstances and what will be needed for it to be safely unloaded.

The supplier consults the transport company about when and where the equipment is to be delivered, and how to deal with potential hazards during the transport and unloading.

The police consult with both the council and the community organisation to identify how the festival is to be conducted and the hazards and risks that are relevant to their activities. This includes making clear the role of the police in minimising risks to the public and to the police officer through crowd management. The police identify their requirements of the council and the community organisation for matters such as vehicle access.

The council, community organisation and first aid provider consult on the requirements for the first aid facilities, including the nature, quantity and location of them.

	<p>The council organises a meeting inviting the community organisation, including its health and safety representatives, the supplier and each organisation providing services at the event to facilitate the consultation.</p>
CO-OPERATE	<p>The council and community organisation co-operate with the transport company in the arrangements needed for safe delivery and unloading.</p> <p>The council and community organisation co-operate with the police and the first aid provider in their requirements.</p> <p>The transport contractor follows the instructions for safe transport and delivery.</p> <p>The supplier and council co-operate with the transport company in any requirements that it has for the delivery.</p>
CO-ORDINATE activities	<p>The council and community organisation co-ordinate their activities to ensure that they do not get in the way of each other and ensure that what they each do for health and safety is complementary.</p> <p>The transport company co-ordinates the collection of the equipment with the supplier and the delivery of the equipment with the supplier and council.</p> <p>The council and community organisation co-ordinate the layout of the festival site with the needs of the police and first aid providers.</p>