safe work australia

Work health and safety consultation, cooperation and coordination

Code of Practice

FEBUARY 2022

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Foreword

This Code of Practice on how to meet the requirements for consultation, cooperation and coordination 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 provides practical guidance on how to achieve the standards of work health and safety required under the WHS Act and the *Work Health and Safety Regulations* (the WHS Regulations) and effective ways to identify and manage risks.

A code of practice can assist anyone who has a duty of care in the circumstances described in the code of practice. Following an approved code of practice will assist the duty holder to achieve compliance with the health and safety duties in the WHS Act and WHS Regulations, in relation to the subject matter of the code of practice. Like regulations, codes of practice deal with particular issues and may not cover all relevant hazards or risks. 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 WHS Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk, risk assessment or risk control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code of practice relates. For further information see the Interpretive Guideline: *The meaning of 'reasonably practicable'*.

Compliance with the WHS Act and WHS Regulations may be achieved by following another method 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.

Scope and application

This Code is intended to be read by a person conducting a business or undertaking (PCBU). It provides practical guidance to PCBUs 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 PCBUs who share responsibility for the same work health and safety matter on how to consult, cooperate and coordinate activities with each other.

This Code may be a useful reference for other persons interested in the duties under the WHS Act and WHS Regulations.

This Code applies to all workplaces covered by the WHS Act where work health and safety consultation, cooperation and coordination is required.

How to use this Code of Practice

This Code includes references to the legal requirements under the WHS Act and WHS Regulations. These are included for convenience only and should not be relied on in place of the full text of the WHS Act or WHS Regulations. The words 'must', 'requires' or 'mandatory' indicate a legal requirement exists that must be complied with.

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.

1. Introduction

1.1. Who has duties in relation to work health and safety consultation, cooperation and coordination?

Duty holders who have a role in either consultation, cooperation or coordination include:

- persons conducting a business or undertaking (PCBUs)
- designers, manufacturers, importers, suppliers and installers of plant, substances or structures, and
- officers.

Workers and other persons at the workplace also have duties under the WHS Act, such as the duty to take reasonable care for their own health and safety at the workplace.

A person can have more than one duty and more than one person can have the same duty at the same time.

Early consultation and identification of risks can allow for more options to eliminate or minimise risks and reduce the associated costs.

Person conducting a business or undertaking

PCBUs have a duty to consult workers about work health and safety and may also have duties to consult, cooperate and coordinate with other duty holders.

Consulting workers

WHS Act section 47

Duty to consult workers

A PCBU 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 a PCBU must consult with employees and anyone else who carries out work for the business or undertaking. A PCBU must consult, so far as is reasonably practicable, with contractors and subcontractors and their employees, on-hire workers, outworkers, apprentices, trainees, work experience students, volunteers and other people who are working for the PCBU and who are, or are likely to be, directly affected by a health and safety matter.

Workers are entitled to take part in consultations and to be represented in consultations by a health and safety representative who has been elected to represent their work group.

Example

A marketing company is located in one office building in the city. The company needs to consult with all its workers who are likely to be impacted by a health and safety matter. This includes its permanent and contract staff, a staff member that works remotely from a regional area, as well as its two work experience students. The company will also need to consult with the four workers from another marketing firm who will be working out of the company's office for a period of two months while a joint project is undertaken.

Consulting, cooperating and coordinating activities with other duty holders

WHS Act section 46

Duty to consult with other duty holders

The WHS Act requires a PCBU to consult, cooperate and coordinate activities with all other persons who have a work health or safety duty in relation to the same matter, so far as is reasonably practicable.

There is often more than one business or undertaking with responsibility for the same health and safety matters, either because they are involved in the same activities or share the same workplace.

In these situations, each duty holder should exchange information to find out who is doing what and work together in a cooperative and coordinated way so risks are eliminated or minimised so far as is reasonably practicable.

Examples of where a PCBU will have a health and safety duty include where:

- the PCBU engages workers to carry out work
- the PCBU directs or influences workers in carrying out work
- other persons may be put at risk from work carried out in their business or undertaking
- the PCBU manages or controls a workplace or the fixtures, fittings or plant at a workplace
- the PBCU's business or undertaking involves designing, manufacturing, importing or supplying plant, substances or structures for use at a workplace
- the PBCU's business or undertaking involves installing, constructing or commissioning plant or structures at a workplace.

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

Example

A construction company is the principal contractor undertaking a renovation of a large commercial building. In addition to its duty to consult with the health and safety representatives[1] and workers, the company has identified all other PCBUs which it will share health and safety duties with at the site. This includes the electrical company it has subcontracted, the building owner and property manager, as well as the company that has been separately contracted to paint the building. The company works with the other PCBUs to set out the ways they will consult, cooperate and coordinate activities with each other in

[1] You must consult any health and safety representatives on health and safety matters. Refer WHS Act section 70 - *General obligations of person conducting a business or undertaking*.

the WHS management plan for the project. The other PCBUs also have obligations to consult with their workers and any health and safety representatives.

Further information and examples are provided in the Code of Practice: *Construction work*.

Designers, manufacturers, importers and suppliers of plant, substances or structures

WHS Act Part 2 Division 3

Further duties of persons conducting businesses or undertakings

Designers, manufacturers, importers and suppliers of plant, substances or structures must ensure, so far as is reasonably practicable, the plant, substance or structure they design, manufacture, import or supply is without risks to health and safety. This duty includes carrying out testing and analysis as well as providing specific information about the plant or substance.

To assist in meeting these duties, the WHS Regulations require:

- manufacturers to consult with designers of the plant
- importers to consult with designers and manufacturers of plant, and
- the person who commissions construction work to consult with the designer of the structure.

Principal contractors

WHS Regulation 309

WHS management plan—preparation

The principal contractor for a construction project has a specific duty under the WHS Regulations to document, in their WHS Management Plan for the project, the arrangements in place for consultation, cooperation and coordination between the PCBUs at the site.

Officers

WHS Act section 27

Duty of officers

Officers, for example company directors, have a duty to exercise due diligence to ensure the PCBU complies with the WHS Act and WHS Regulations. This includes taking reasonable steps to ensure the business or undertaking has appropriate processes for complying with the duty to consult workers as well as the duty to consult, cooperate and coordinate with other duty holders. Further information on who is an officer and their duties is available in the *Interpretive Guideline: The health and safety duty of an officer under section 27*.

Workers

WHS Act section 28

Duties of workers

Workers have a duty to take reasonable care for their own health and safety and to not adversely affect the health and safety of other persons. Workers must comply with reasonable instructions, as far as they are reasonably able, and cooperate with reasonable health and safety policies or procedures that have been notified to workers, 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 both physical and psychosocial hazards and risks, talks about health and safety concerns and works together to find solutions. This includes cooperation between duty holders, 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 their workers, PCBUs can make more informed decisions 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 cooperation and trust.

In situations where a PCBU shares responsibility for health and safety with another person, the requirement to consult, cooperate and coordinate activities with other duty holders will help address 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 someone else is taking care of the health and safety matter, or
- the person who takes action is not the best person to do so.

Consulting, cooperating and coordinating activities with other duty holders assists each duty holder understand how their activities may impact on health and safety and the actions each duty holder takes to control risks are complementary.

2. When to consult with workers

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.

WHS Act section 49

When consultation is required

As a person conducting a business or undertaking (PCBU) you must consult with workers when:

- identifying hazards and assessing risks to health and safety 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 at the workplace; monitoring health of your workers; monitoring the conditions at the workplace under your management or control and providing information and training for your workers.

However, it may be useful to also consult workers about matters not listed above. Requirements for consultation in the WHS Regulations are listed in Appendix E.

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

2.1. Managing work health and safety risks

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

In deciding how to eliminate or minimise 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. A duty holder must review control measures if consultations indicate a review is necessary.

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

Workers and their health and safety representatives may request access to information, for example technical guidance about workplace hazards and risks associated with plant, equipment and substances. Information should not be withheld just because it is technical or may be difficult to understand.

The WHS Act requires you to allow health and safety representatives 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 information about the health and safety of workers in the

work group. This does not extend access to personal or medical information that identifies or could reasonably lead to the identification of 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, for example toilets, drinking water, washing facilities, eating facilities, 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, the nature of the hazards in the workplace and the size and location of your workplace. The consultation should include 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 changes affecting the adequacy of the facilities. This will help you determine if you should change or expand your facilities.

Further guidance is available in the Code of Practice: *Managing the work environment and facilities.*

2.3. Making changes affecting work health and safety

You must consult your workers when proposing changes that may affect their work health and safety. Some examples of when consultation would be required include when you are proposing to:

- change work systems such as shift work rosters, work procedures or the work environment
- develop a new product or plan a new project
- purchase new or used equipment or use new substances, or
- restructure the business.

Example

A small café routinely consults with staff about health and safety matters. The café owner and workers have agreed to a process of consultation that includes discussions during morning briefings which occur during paid work time before the busy service period. The owner also talks to workers who undertake specific tasks when doing the risk assessments of those duties, and when considering the purchase of any new equipment that workers will operate. The owner recently paid workers to attend a meeting prior to the café opening for the day to seek workers' views on options to replace the old bain-marie before making any decisions. The owner also consulted with workers to get their views when it was planning updates to the staff room and locker facilities.

Example

A community soccer club has a large number of volunteers, including team managers and coaches. The club pays its president and referees and is considered a PCBU. The president organises an information evening for volunteers before the start of each soccer season to provide input into draft policies and procedures on health and safety, provide information on health and safety risks and seek views on health and safety matters that may need to be addressed. This includes the club's policy on dogs at playing fields, dealing with violence and aggression, and the procedure for safely constructing and dismantling the goals. The president highlights the importance of volunteers' contribution to ideas on how they can keep everyone safe. An online forum with volunteers is held at least twice during the season and health and safety is a standing item on the agenda. The president also informally checks in with volunteers on game days to identify any concerns. The club consults with volunteers on reports of hazards and incidents, and before making decisions on proposed control measures and changes to policies and procedures.

2.4. Developing work health and safety procedures

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

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

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, both legislative and workplace specific, and other parties involved in the activity. The procedures should be easily accessible, for example by placing them on noticeboards and intranet sites.

Developing issue resolution procedures

The WHS Regulations set out default issue resolution procedures which you must follow unless you choose to develop your own procedures. If you choose to develop your own procedures, you must follow the minimum requirements and steps set out in the WHS Act and WHS Regulations. These include setting out your procedures in writing and communicating the procedures to all workers they cover.

3. What is effective consultation?

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.

WHS Act section 48

Nature of consultation

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
- workers are advised of the outcome of any consultation in a timely manner, and
- if the workers are represented by a health and safety representative, consultation must include that representative.

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 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, and
- be part of the problem-solving process.

While consultation may not always result in agreement, agreement should be the objective as it will make it more likely the decisions are effective and 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 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 the information 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, and
- 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 to make it easier to understand, for instance using diagrams.

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

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

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

3.2. Providing reasonable opportunities to express views and contribute

Workers must be given a reasonable opportunity to express their views, raise work health and safety issues and contribute to health and safety decisions. This 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, and
- 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 direct involvement of workers.

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 health and safety decisions you make in your business.

You should agree to respond to concerns and questions raised by workers within a certain timeframe and offer feedback about options they propose.

3.4. Advising outcomes of consultation

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 employees, contractors and subcontractors, the workers of contractors and subcontractors, employees of labour hire companies assigned to you, outworkers, trainees and apprentices, work experience students and volunteers (if any) about health and safety decisions directly affecting them and which you influence or control.

Consultation that is 'reasonably practicable' is both objectively possible and reasonable in the particular circumstances. What is reasonably practicable will depend on an objective consideration of relevant factors, for example the:

- size and structure of the business
- nature of the work carried out in the business
- 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 health and safety representatives
- work arrangements, for example shift work and remote work, and
- characteristics of the workers including languages spoken and literacy levels.

Further information is available in the Guide: *How to determine what is reasonably practicable to meet a health and safety duty.*

The aim of consultation should be to ensure you have sufficient information to make well-informed decisions and 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 consult if it is not possible in the circumstances, 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 these workers are kept informed about matters affecting 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 may need to be consulted about the matter.
- If only one section of the workforce is required to deal with distressing material as part of their role, consultation about this hazard may only be needed with these workers and any health and safety representatives, not the whole workforce.

Example

A large IT company identifies the need to change its client management system to ensure it remains competitive. It discusses the proposed new system with the health and safety committee as the change could create stress for workers, such as increased job demands and lack of role clarity. The health and safety committee, including the CEO and health and safety representatives, identify the need for further consultation to better understand these and other hazards, seek input on how to manage them, and discuss a plan for how this consultation will occur.

Engagement with workers and their health and safety representatives from the customer engagement team identifies that some features of the new system may increase customer dissatisfaction and aggression as it lacks the flexibility needed to meet client needs in some circumstances. Management organises a virtual meeting and encourages workers and their health and safety representatives to share their ideas on important system features. For example, managing workflows and ensuring client history is easily accessible. After identifying potential system modifications to minimise risks, management asks teams to have further discussions and sets up an on-line survey for feedback. Management and health and safety representatives meet to discuss the survey results and possible solutions, after which a follow-up meeting with workers and health and safety representatives is arranged to explain the proposed solutions and plans for system changes, including the training and support required by workers.

Example

A small agricultural business has a weekly team meeting with all workers. It is scheduled on a Monday when all permanent and casual workers are typically onsite. During one of these meetings, some workers raise safety concerns about the loading of livestock onto trucks. As the PCBU, the business owner observes the task in action and encourages workers to share their views on possible solutions. One worker suggests a system that worked well at a previous similar workplace, which is supported by the other workers. The owner agrees that this would effectively manage the risk and should be implemented. The manager, as an officer in the business, meets with workers to check the solution is working as intended and to get their views on the longer-term plans for the re-design of the loading ramps and yards.

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. For example, regulation 552 of the WHS Regulations requires a major hazard facility's safety case outline to include a description of the consultation with workers undertaken in the preparation of the safety case. However, it is good practice to keep records to demonstrate compliance with consultation requirements. Records of consultation may also assist the risk management process and make disputes less likely.

Records should include outcomes of discussions. Records can be brief and simple, and cover:

- what the safety matter is
- who was identified as affected, or likely to be affected
- who was involved in consultations
- key issues consultation identified
- what decision has been made
- why the decision has been made

- who is to take action and by when, and
- when the action was completed.

If established, the health and safety committee should decide on how records of the meetings will be documented.

4. How to consult with workers

Consultation with workers can be undertaken in various ways depending on the size and complexity of the workplace. It may involve a formal, structured process or it may be as simple as talking directly to workers and considering their views when making decisions, identifying hazards, assessing risks and proposing changes that affect health and safety.

Consultation can 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 five or more workers or a health and safety representative.

However, a PCBU may also choose to establish a health and safety committee on their own initiative.

If workers are represented by a health and safety representative, any consultation must involve that representative.

As a person conducting a business or undertaking (PCBU) you may establish 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?

Workplaces may need to use a mix of consultation arrangements to effectively consult with different types of workers and in different situations.

Consultation arrangements should take into account:

- the size of the business and how it is structured
- the way work is arranged and where workers are located
- what suits your workers, and
- the complexity, frequency and urgency of issues that require consultation.

To determine how best to consult, you should discuss with your workers:

- the duty to consult
- the purpose of consultation
- the range of work and associated health and safety issues at the workplace (e.g. both physical and psychosocial hazards)
- the various ways for consultation to occur including your workers' right to elect health and safety representatives, and
- your workers' ideas about the most effective way(s) to consult. How would your workers prefer to raise and discuss health and safety concerns or suggestions? What forms of consultation will help to overcome any barriers to workers' engagement?

You should develop methods that:

- meet your duty to consult and support you to effectively protect the health and safety of workers and others

- so far as is reasonably practicable, ensure all affected workers can participate in consultation, including
    - shift workers, workers who work non-standard hours or flexibly, and mobile workers
    - seasonal or temporary workers (e.g. labour hire workers)
    - workers who have a disability
    - workers with diverse language or literacy needs
    - contractors and others at the worksite
- will best integrate with the way your business manages health and safety.

You should consider how management normally communicates with the workers.

You may not need to establish separate consultation arrangements if there are regular discussions and interactions between managers or supervisors and the workers. For example, weekly team meetings, which provide opportunities for consultation to occur. This may be the case in a small business with few workers where there are direct discussions between the PCBU and workers as part of everyday work.

You should agree on ways to support ongoing, effective consultation with your workers.

Some examples include:

- raising health and safety matters in pre-start briefings (paid time)
- using regular team meetings to ask workers and their health and safety representatives about any health and safety concerns, how problems could be solved, and advise workers of the outcomes of consultation (e.g. feedback on decisions made and the reasons for these)
- talking with workers about their health and safety concerns or ideas when you walk the floor
- having an open-door policy for your workers on health and safety
- using 'toolbox talks' to discuss specific health and safety issues, and
- using your regular staff updates and emails to raise health and safety matters and seek feedback.

Effective consultation with your workers may also require you to:

- stagger the times you consult to include workers on different shifts
- allocate specific, dedicated time for workers to raise non-urgent health and safety issues with managers
- use surveys and feedback forms to seek workers' views, including anonymously
- hold focussed meetings to discuss health and safety issues with workers who undertake specific tasks
- use culturally appropriate approaches and translation and interpretation for culturally and linguistically diverse workers (e.g. this could include inviting bilingual workers to translate).

If your workers are fly-in fly-out or drive-in drive-out, work remotely or are spread across different sites, you may also need to:

- ensure pre-start and de-brief meetings between shifts and swings provide important health and safety messages and the opportunity to raise issues and discuss controls
- ensure consultation arrangements effectively engage with all workers across shifts and swings (e.g. ensure health and safety representatives are readily accessible to all workers)
- ensure consultation includes health and safety issues related to any accommodation or other facilities provided to workers
- ensure consultation includes the psychosocial hazards that may be associated with workers spending extended periods away from their home

- consider using a communication platform to virtually meet with your workers, and
- consider consulting with workers pre-departure to remote sites and on return.

Electing health and safety representatives or establishing health and safety committees may be appropriate in organisations where it may not be reasonably practicable for the PCBU to consult each worker directly, or where a more formal arrangement better suits how the business is structured or the nature of work. Health and safety representatives and committees are also valuable where anonymity encourages engagement, for example when identifying and controlling psychosocial hazards.

Some workplaces may need to use a mix of consultation arrangements to effectively consult with different types of workers, and to suit different situations and hazards. 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 additional approaches, for example 'toolbox talks' on specific health and safety topics relevant to the task, may be the most practical way of consulting.

When unexpected matters arise in the workplace, there may not be time to plan consultation. 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 B for more detailed examples of consultation arrangements for different types of workplaces. This includes examples of consultation in large and small businesses with health and safety representatives.

Example

A produce farm employs a small number of workers year-round to undertake planting, weeding, field preparation and maintenance to the packing shed. During the harvest season, the farm employs an additional 15 workers to pick, sort and pack the produce. Many of the seasonal workers speak Korean as their first language. One of the permanent leading hands is fluent in both Korean and English so is able to assist with interpretation and translation. The owner and the leading hand agree that some of the leading hand's duties will involve supporting translation on safety issues.

Two weeks into the harvest, one of the seasonal workers tells the leading hand that they are experiencing body stiffness at the end of the day. The owner and the leading hand talk with the worker to better understand their concerns. The worker suggests rotating jobs more frequently would help.

At the end of the morning tea break, the owner, with the assistance of the leading hand and other bilingual workers, asks the other workers for their views on how frequently tasks should be rotated. The owner takes the workers' views into account and develops a new rotation schedule to be trialled for one week. At the end of the week, the owner discusses the trial with the workers, and it is agreed that the new schedule is working well. The worker who experienced the body stiffness reports that the more frequent rotations have addressed their concerns.

The owner reminds workers of the importance of continuing to raise any health and safety issues. The owner also schedules regular short breaks where the conveyor is turned off so that workers can stretch, and undertakes a risk assessment, in consultation with workers, on how the risks from hazardous manual tasks can be eliminated through improved work design.

4.2. Agreeing on consultation procedures

The WHS Act does not require agreed procedures for consultation but doing so will help make consultation more effective. 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.

WHS Act section 47(2)

Duty to consult workers

If you and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.

Before consultation procedures can be agreed, you must consult about the proposed procedures with affected workers including 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 consultations must then be conducted in accordance with those procedures. For example, the procedures must include sharing of information and allowing workers a reasonable opportunity to express their views. They cannot remove the powers of health and safety representatives or the functions of health and safety committees established for the workplace.

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

- the matters requiring consultation
- who will be consulted
- the ways consultation will occur, for example through regular meetings, toolbox 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 consultation will occur with workers who have a disability, special language or literacy needs
- how feedback will be given to workers and health and safety representatives, and
- timeframes for reviewing the procedures.

To facilitate the consultation process the procedures may also include the provision of practical help for affected workers and health and safety representatives. For example, time may be made available for affected workers and their health and safety representatives to come together to consider the information 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, for example urgency.

In a small business with few workers, effective informal agreed procedures 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 to elect a health and safety representative to represent them on work health and safety matters. If a worker makes this request, one or more 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.

WHS Act section 51

Determination of work groups

WHS Act section 52(3)

Purpose of negotiations

The purpose of the negotiations is to determine:

- the number and composition of work group/s 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, and
- the workplace or workplaces to which the work groups will apply.

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

WHS Act section 52

Negotiations for agreement for work group

WHS Act section 53

Notice to workers

To establish a work group, you 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, and
- 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.

WHS Act section 54

Failure of negotiations

If negotiations fail, any party to negotiations 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 to elect a health and safety representative you may alert them to their rights under the WHS Act to be consulted and to elect health and safety representatives.

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

The WHS Act and WHS 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 representatives are entitled to undertake training in this role. For more information see the Guide: *Worker representation and participation*.

Examples – Health and safety representatives

Detailed examples of health and safety representatives in large and small businesses are provided in Appendix B.

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.

WHS Act Part 5 Division 4

Health and safety committees

You must establish a health and safety committee within two months after being requested to do so by five or more workers at the workplace, or by a health and safety representative for those workers.

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.

Health and safety committees must meet at least once every three months and at any reasonable time at the request of at least half of the committee members.

You can also establish a health and safety committee by your own initiative for a workplace or part of a workplace. You may consider exercising this initiative if it will help you meet your duty to consult and assist your workforce to participate in making health and safety decisions. One example of where a health and safety committee can be a good option is if workers are reluctant to take on the role of a health and safety representative, but some would be willing to participate on a committee. Another example of where a committee may be effective is when a business needs 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 cooperative approach to health and safety
- bringing together a group of worker and business representatives from across the business or undertaking 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. If agreement cannot be reached, anyone involved in the process can ask the regulator to appoint an inspector to assist. The inspector's decision is taken to be the decision of you, as the PCBU, and the workers.

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.
- While health and safety representatives are also entitled to be on a health and safety committee (but are not obliged to do so) 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 agree to consider the issues a health and safety representative would be consulted on.

A health and safety committee may include workers across multiple businesses or workplaces if parties agree to such an arrangement.

Important details of a health and safety committee (e.g. its membership, functions and how it will operate) are agreed through the development of a 'constitution'.

Effective health and safety committee meetings have an agreed agenda circulated ahead of the meeting and record key points of discussion, decisions, and action items in meeting minutes circulated soon after the meeting.

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

Example – Health and safety committee

The owner of a medium-sized steel fabrication business recognises the need to establish more formal arrangements to consult with workers on health and safety. The business already has a health and safety representative and deputy health and safety representative. However, the owner would like to further support consultation with workers as the business grows, particularly on procedures that will be complied with and followed in the workplace.

The owner suggests to the health and safety representative and workers that a health and safety committee be established to provide a dedicated time when health and safety is discussed. The owner and the health and safety representative meet with the workers to discuss the membership of the committee and how it should operate.

The owner asks all workers to express their interest in joining the health and safety committee. The health and safety representative, deputy and some team leaders agree to be members, which provides representation from all work groups. The owner suggests that they also be a member, along with the manager and assistant manager. The owner ensures that at least half of the members of the committee are workers who are not nominated by the PCBU. The owner tasks the manager with providing the secretariat support for the committee.

A constitution for the committee is developed and agreed. This sets out the important details of the committee, including its role, membership, how a chair will be decided, how often it will meet and how any decisions will be made. The owner consults with workers on the best time for meetings to be held (during paid work time), undertakes to roster meetings to ensure all members can attend, and displays the meeting dates on the tearoom notice board. The

manager sends an email calling for agenda items two weeks before the meeting, and then circulates the agenda one week before the meeting. As agreed by the committee, the manager takes notes at the meeting and circulates a list of action items (who is responsible and by what date) in the days following the meeting.

4.4. Sharing consultation arrangements with other duty holders

If you have contractors, subcontractors, the employees of contractors or subcontractors or employees of a labour hire company as part of your workforce you owe a duty of care to these workers. Any business providing workers will also owe them a duty of care. You and that business will both have a duty to consult these workers on work health and safety issues. You must consult, cooperate and coordinate on arrangements for the consultation with the workers, so far as is reasonably practicable, with the contractor, subcontractor or labour hire company. In doing this you should consider the types of issues that may arise where you would need to consult the contractor, subcontractor or labour hire company and their workers.

For example, you may propose to change the work carried out by a contractor's employees. This may involve changing the equipment, substances or materials used in the production process or the way tasks are carried out. You should establish:

- How will I inform and discuss proposed changes with the contractors' on-hire or contractor firm?
- How will we both coordinate consultation with the affected workers?
- How will we each respond to a safety issue raised by one or more of the workers 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 consultation meets the requirements under the WHS Act and WHS Regulations.

See Appendix D for a checklist of things to consider when reviewing consultation arrangements.

5. When to consult, cooperate and coordinate activities with other duty holders

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.

WHS Act section 16

More than 1 person can have a duty

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 they can influence and control the matter.

WHS Act section 46

Duty to consult with other duty holders

In these situations, each person with the duty must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other persons who have a work health or safety duty in relation to the same matter.

People often assume someone else is going to take action for health and safety, perhaps because the 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 nobody takes the necessary action.

Each person conducting a business or undertaking (PCBU) must, so far as is reasonably practicable, eliminate or minimise risks to health and safety. This includes ensuring, for example, safe plant is used, there are adequate welfare facilities for workers and training is provided to workers.

As a PCBU, 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 by making sure another person is doing so.

Talking to and cooperating and coordinating activities with others who are involved in the work or things associated with the work will make the control of risks more effective and assist each duty holder to comply with their duty. It can also mean 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 should check those facilities are in good working order, clean and accessible for your workers. Consultation, cooperation and coordination between you and the person providing those facilities will help you ensure the necessary steps are being taken so you can meet your duty.

What is reasonably practicable for consulting, cooperating and coordinating activities with other duty holders will depend on an objective consideration of 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, for example written agreements and consultative committees.

5.1. Who must consult, cooperate and coordinate and with whom

The first step is to identify the other duty holders you must consult, cooperate and coordinate activities with. The WHS Act requires each person with a health and safety duty to consult, cooperate and coordinate activities with each other person who has a duty over the same matter. Some examples are listed below.

- Various contractors who are involved in the same work at the same time at a workplace will need to consult, cooperate and coordinate 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, cooperate and coordinate activities with each other in relation to when, where and how the plant is to be installed to control health and safety risks.
- A landlord or managing agent should consult, cooperate and coordinate activities with commercial tenants, for example about 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 sub-contracted drivers) should consult, cooperate and coordinate activities with each other on the timing and process for the collection and delivery of the goods.
- A franchisor and franchisee should consult, cooperate and coordinate activities with each other when determining how the franchise arrangements are to operate and requirements the franchisor may impose on the franchisee relating to work health and safety.

The WHS Regulations have specific requirements for some duty holders to consult, for example:

- manufacturers of plant must consult the designers of plant about alterations to control hazards identified in the design
- the person authorising work on energised electrical equipment must consult the person with management or control of the workplace, and
- the person who commissions construction work must consult the designer of the structure.

5.2. When must you consult, cooperate and coordinate with others?

You should start consultation, cooperation and coordinating 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 start discussions as soon as they are reasonably able to do so. This may occur as part of

contractual negotiations, 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 others are involved in it. You may be contacted by another duty holder and asked to engage in consultation.

Consultation should start during the planning of the work, to ensure 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 likely in construction and other long-term projects.

Cooperation and coordination 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.

6. What is effective 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 provide the information required for the risk management process. This process should involve the following steps, consulting with workers throughout.

Identify hazards and (if necessary) assess risks

- What activities will you, as persons conducting a business or undertaking (PCBU) each be doing?
- Could the activities affect the work environment?
- Which workers will be involved in the activity?
- Who else may be affected by the activity?
- What plant or substances will you each use?
- Could the activities of others introduce or increase hazards or risks?
- What does each duty holder know about the hazards and risks associated with their activity?
- What information may be needed by another duty holder for health and safety purposes?

Control risks

- Who has control or influence over aspects of the work or the environment?
- What will each duty holder be providing for health and safety?
- What information, training and supervision must be provided to workers for the activity and how it will be provided?

Review control measures

- What further consultation or communication may be required to monitor health and safety or to identify 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 cooperate and coordinate activities with each other, to ensure they each comply with their health and safety duty.

6.1. What is meant by cooperation?

What is required for cooperation should have been identified in the consultation process.

Cooperation may involve implementing arrangements in accordance with agreements reached during consultation with the other duty holder and involve not acting in a way that may compromise what they are doing to ensure health and safety.

Cooperation also means 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.

6.2. What is meant by coordination?

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

This will include making sure 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, and
- ensure control measures complement each other.

Coordinating activities may include scheduling work activities so each duty holder carries out their work separately, or at the appropriate time. 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 coordinated effectively, the parties should consult further to determine what should be changed.

6.3. What if another duty holder refuses to consult or cooperate or coordinate?

What is reasonably practicable for you to consult, cooperate and coordinate may depend on the level of participation of other duty holders. For example, there may be a disagreement between parties about the extent of consulting, cooperating and coordinating activities required in the circumstances.

This does not mean you should simply accept what you consider to be inadequate action by another duty holder. You should check they are aware of this duty and what you consider is needed to comply with it and with the health and safety duties 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, cooperate and coordinate on safety matters. 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, cooperate and coordinate activities with other duty holders.

Appendix A–Glossary

Term	Description
Duty holder	Any person who owes a work health and safety duty under the WHS Act including a person conducting a business or undertaking, a designer, manufacturer, importer, supplier, installer of products or plant used at work (upstream duty holder), officer or a worker.
Hazard	A situation or thing that has the potential to harm a person. Hazards at work may include: noisy machinery, a moving forklift, chemicals, electricity, working at heights, a repetitive job, bullying and violence at the workplace.
Health and safety committee	A consultative body established under the WHS Act. The committee's functions include facilitating cooperation between workers and the person conducting a business or undertaking to ensure workers' health and safety at work, and assisting to develop work health and safety standards, rules and procedures for the workplace.
Health and safety representative	A worker who has been elected by their work group under the WHS Act to represent them on health and safety matters.
May	'May' indicates an optional course of action.
Must	'Must' indicates a legal requirement exists that must be complied with.
Officer	An officer under the WHS Act includes: – an officer under section 9 of the Corporations Act 2001 (Cth) – an officer of the Crown within the meaning of section 247 of the WHS Act, and – an officer of a public authority within the meaning of section 252 of the WHS Act. A partner in a partnership or an elected member of a local authority is not an officer while acting in that capacity.
Person conducting a business or undertaking (PCBU)	A PCBU is an umbrella concept which intends to capture all types of working arrangements or relationships. A PCBU includes a: – company – unincorporated body or association – sole trader or self-employed person. Individuals who are in a partnership that is conducting a business will individually and collectively be a PCBU. A volunteer association (defined under the WHS Act, see below) or elected members of a local authority will not be a PCBU.

Term	Description
Risk	The possibility harm (death, injury or illness) might occur when exposed to a hazard.
Should	**‘Should’ indicates a recommended course of action.**
Volunteer association	A group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.
Work group	A group of workers established to facilitate the representation of workers by one or more health and safety representatives. A work group may be all workers at a workplace but it may also be appropriate to split a workplace into multiple work groups where workers share similar work conditions or are exposed to similar risks and hazards. For example all workers on night shift.
Worker	Any person who carries out work for a person conducting a business or undertaking, including work as an employee, contractor or subcontractor (or their employee), self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' or a volunteer.
Workplace	Any place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water.

Appendix B–Examples of consultation arrangements

Example 1: Consultation in a workplace with no health and safety representatives

Overview

A small crane hire business employs seven workers, five of whom are crane operators. When the operators return to the yard after a job, they report defects or problems with the crane. This has been an informal process and there have been many instances of 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.

When to consult

In this example, consultation with workers was required for:

- the identification and assessment of hazards and risks, and
- making decisions about ways to eliminate or minimise risks.

Before introducing the checklist, the owner wanted to discuss its merits with the crane operators.

Who to consult

As there are no health and safety representatives in the workplace, the company consulted with the seven workers directly.

How to consult

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.

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 workers would trial the new checklist for three months as some operators were concerned it would be a waste of time if no action was taken on problems recorded on the checklist.

To ensure workers are kept informed of the outcomes of consultations the business keeps records of significant work health and safety issues discussed, actions to be taken and timelines for taking action. The records are displayed on the noticeboard in the workplace and are sent via email to workers as well.

Example 2: Consultation in a workplace with health and safety representatives - large business[2]

Overview

A transport company operates around the clock and has 200 workers. Work groups have been established covering 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 health and safety representatives and some management representatives who hold senior positions in the organisation.

The membership of the committee was determined via extensive consultation with health and safety representatives and workers.

When the company identified the need to move to new premises, it recognised this had the potential to affect workers. The committee played a major role in getting input from health and safety representatives about warehouse layout, ergonomics, selection of new equipment and machinery, traffic management, access/egress and emergency procedures. Regular site visits were arranged to the new premises to view progress and provide advice.

When to consult

In this example, consultation with workers was required for:

- the identification and assessment of hazards and risks
- making decisions about ways to eliminate or minimise risks
- proposing changes to the workplace, and
- making decisions about the adequacy of welfare facilities.

The design and fit-out of the new premises included considering layout, equipment selection, new work systems, lighting installation, design and commissioning of a sorting table and warehouse airflow.

Who to consult

The relocation affected workers and they were consulted via their respective health and safety representatives. The committee acted as a centralised conduit for information flow in this process by providing the workers they represent with regular updates.

How to consult

The organisation has agreed procedures whereby consultation occurs via health and safety representatives and the committee.

Health and safety representatives

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 where all workers could receive information and to express views and raise health and safety issues for discussion by the committee.

[2] While the size and structure of a business will influence how the PCBU effectively consults with workers, all PCBUs must meet the same requirements under the WHS Act.

Health and safety committee
The committee takes ongoing responsibility for ensuring 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 three months.

Example 3: Consultation in a workplace with health and safety representatives - small business[3]

Overview

A small charitable organisation has 14 staff who work across two offices in the same city. One work group has been established covering the two office locations. This work group is represented by one health and safety representative.

At one of the regular meetings between the Chief Executive Officer (CEO) and the health and safety representative, the CEO raised the possibility of the organisation taking on some additional work in the coming months, which could have a significant impact on the way work is organised and the demands on workers.

The CEO convened a meeting with workers and the health and safety representative to seek their early views on the possible changes, the potential risks, and suggestions for how work might best be organised and prioritised. The CEO encouraged workers to provide any further concerns or suggestions following the meeting.

The CEO used the feedback from workers to develop a draft workplan, which was shared with the health and safety representative. The health and safety representative identified the need for refresher training for workers before taking on the new tasks. This was included in the draft workplan and circulated to all workers for feedback before being finalised.

When to consult

In this example, consultation with workers was required for:

- proposing changes to the workplace
- the identification and assessment of hazards and risks, and
- making decisions about ways to eliminate or minimise risks.

Who to consult

Agreed procedures set out how consultation occurs via the health and safety representative (see below).

How to consult

The agreed consultation procedure for the workplace is:

- the regular fortnightly meeting with workers where work health and safety is a standing item on the agenda
- regular emails across sites
- dedicated time for the health and safety representative to consult with workers at the other site, and
- monthly meetings between the health and safety representative and the CEO.

[3] While the size and structure of a business will influence how the PCBU effectively consults with workers, all PCBUs must meet the same requirements under the WHS Act.

Health and safety representatives

The health and safety representative acted as an important communication channel between the CEO and the workers. The health and safety representative spoke at the meeting with workers and encouraged them to express their views and concerns. The health and safety representative was available for any workers who wanted to discuss their concerns privately. The health and safety representative alerted the CEO to additional considerations, including the requirement for refresher training.

Background – the election of the health and safety representative

A worker who had been a health and safety representative at a previous workplace made a request to the CEO to facilitate the election of a health and safety representative. The worker believed that formalised arrangements were needed as it was a busy workplace and consultation on health and safety matters between workers and management occurred infrequently. The worker was also aware that other workers had raised health and safety concerns to managers in the past and these had not been promptly addressed.

The workers and the management team met to discuss the establishment of work groups and the election process. It was agreed that the establishment of one work group was appropriate because the work conducted across the two offices was similar and there was a relatively small number of workers. The parties agreed that the health and safety representative would be supported to work out of the other office at regular intervals, so workers have face to face access to the health and safety representative and the health and safety representative understands any health and safety issues specific to the second office. It was discussed that the need for additional workgroups would be closely monitored.

As agreed at the meeting, workers were asked to nominate their interest in being the health and safety representative by email. The worker who had requested the election was the only worker to express an interest, so was elected to the position.

The worker informed the PCBU of the approved training course suitable to the role and the PCBU made the necessary arrangements for their attendance.

It was also agreed that written procedures would be developed so it was clear to everyone how consultation would occur. This took the form of a simple one-page document which sets out what matters require consultation, who is to be consulted, the ways consultation is to occur, how information is shared, and when the procedures will be reviewed.

Appendix C–Consulting, cooperating and coordinating activities

Example 1: Sharing the same workplace

Overview

A finance company is leasing premises in a multi-tenanted office block. It has identified an issue with one of the lifts in the building malfunctioning.

Identify health and safety duties and other duty holders

The finance company and other tenants of the building have duties as PCBUs to ensure the health and safety of their workers and clients visiting their offices.

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 the building is safe and without risk to others.

A company contracted to clean the building will have duties as a PCBU to ensure the health and safety of its workers.

A company contracted to maintain and repair lifts (maintenance contractor) has a duty to ensure its workers and other persons are not put at risk from work carried out as part of its business.

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

Consult

The finance company consults the property manager of the office block to find out what arrangements are in place for the proper maintenance of plant, in this instance, lifts.

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 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 and other tenants should give to their workers and clients.

As the work proceeds, the finance company informs the property manager and the maintenance contractor of concerns or incidents, to enable these to be considered and changes made.

Cooperate

The finance company and other tenants cooperate with the maintenance contractor by complying with the contractor’s safety procedures.

Coordinate activities

The finance company ensures its workers and clients do not use the lifts during the maintenance work and they have another safe means of entry and exit.

The maintenance contractor works with the property manager to schedule maintenance work so it does not interfere with the safe movement of persons in the building, as far as is reasonably practicable.

Example 2: Sharing the same workers

Overview

A manufacturing company is engaging workers through a labour hire firm.

Identify health and safety duties and other duty holders

The manufacturing company has a duty to ensure the health and safety of its workers including its own employees and labour hire workers who are engaged to work on the production line. The labour hire firm has a duty to ensure the health and safety of the labour hire workers it provides to the manufacturing business.

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

Consult

The manufacturing company and labour hire firm consult each other about the job requirements, the skills required of the workers, health and safety risks associated with the work and what each will do to control the risks.

As part of the contract, they clarify responsibility for providing equipment (for example personal protective equipment) and agree to consult before changes are made affecting the health and safety of the labour hire workers.

Cooperate

The manufacturing company cooperates with the labour hire firm by allowing the labour 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 labour hire workers to maintain communication with the labour hire firm.

Coordinate activities

The manufacturing company and labour hire firm agree to coordinate arrangements for:

- labour hire workers to be consulted and represented on work health and safety matters
- reporting and investigating incidents.

Example 3: Running an event with other duty holders

Overview

A local council is 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 PCBU to ensure the health and safety of its workers, those of the community organisation and the public.

The community organisation is a PCBU and has a duty to ensure the work health and safety of its workers, those of the council and that other persons are not put at risk from work carried out as part of its business.

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 its workers and other persons are not put at risk from work carried out as part of its business, in this case providing the equipment.

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

First aid facilities and officers will be provided by another organisation, which has a duty to ensure 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 coordinate 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 relevant to their activities. This includes making clear the role of the police in minimising risks to the public and to the police officers through crowd management. The police identify their requirements of the council and the community organisation for matters like vehicle access.

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

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.

Cooperate

The council and community organisation cooperate with the transport company in the arrangements needed for safe delivery and unloading.

The supplier cooperates with the transport company in requirements it has for the delivery.

The council and community organisation cooperate with the police and the first aid provider in their requirements.

The transport contractor follows the instructions for safe transport and delivery.

Coordinate activities

The council and community organisation coordinate their activities to ensure they do not get in the way of each other and ensure what they each do for health and safety is complementary.

The transport company coordinates collecting the equipment with the supplier and the delivery of the equipment with the supplier and council.

The council and community organisation coordinate the layout of the festival site with the needs of the police and first aid providers.

Appendix D–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:		2
– identify hazards and assess risks?		
– make decisions to eliminate or minimise risks?		
– make decisions about welfare facilities?		
– propose changes to the work, including purchasing new or used plant or new substances or materials?		
– develop and review safety policies and procedures?		
When I consult with my workers on these issues do I:		3
– inform them of what I intend to do (e.g. purchase a new piece of equipment)?		
– share relevant information about the issue with them?		
– give them a reasonable opportunity to respond and contribute to decision making?		
– discuss any of their safety concerns?		
– take into account the views they express?		
– advise them of my decision and the reasons for it?		
If workers are represented by a health and safety representative, do I:		4

Consultation compliance	Yes /No	Chapter in Code
– include the representative in all health and safety consultations?		
– make myself available for the representative to raise and discuss health and safety matters with me?		
Do I consult other duty holders who share responsibility for a health and safety matter with me?		5
– Do I identify other duty holders early before commencing work?		
– Have I established open communication and consultation methods with other duty holders about the work and related health and safety risks?		
– Have I confirmed with other duty holders that our joint duties are met?		

Appendix E–Consultation requirements in the WHS Regulations

Part	Regulation	Requirement
Part 4.7 General Electrical Safety in Workplaces and Energised Electrical Work	158(1)(d)	Before electrical work on energised electrical equipment commences the PCBU must consult with the person with management or control of the workplace.
Part 5.1 General Duties for Plant and Structures	193(1)(c)(iii)	The manufacturer of plant must ensure all reasonable steps are taken to consult with the designer of the plant in relation to the alteration of the design to rectify any hazard identified in the design of the plant.
Part 5.1 General Duties for Plant and Structures	197(d)	An importer of plant must take all reasonable steps to ensure that the designer and manufacturer of the plant are consulted in relation to any alteration made to the plant to control the risk from an identified hazard.
Part 6.2 Duties of Designer of Structure and Person Who Commissions Construction Work	294	(1) A PCBU that commissions construction work in relation to a structure must, so far as is reasonably practicable, consult with the designer of the whole or any part of the structure about how to ensure that risks to health and safety arising from the design during the construction work are: eliminated, so far as is reasonably practicable; or if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable. (2) Consultation must include giving the designer any information that the person who commissions the construction work has in relation to the hazards and risks at the workplace where the construction work is to be carried out.
Part 6.4 Additional Duties of Principal Contractor	309(2)(b)	The principal contractor for a construction project must ensure the WHS management plan includes the arrangements are in place, between any PCBUs at the workplace where the construction project is being undertaken, for consultation, cooperation and the coordination of activities in relation to compliance with their duties under the Act and Regulations.
Part 7.1 Hazardous Chemicals, Part 7.2 Lead Part 8.5 Asbestos at the Workplace	371(2), 408, 416 and 437	The PCBU must consult the worker in relation to the selection of a registered medical practitioner for the purpose of health monitoring.

Part	Regulation	Requirement
Part 9.2 Determinations about Major Hazard Facilities	546	In deciding whether to revoke a determination about a major hazard facility the regulator must consult with the major hazard facility's contact person or operator (as applicable).
Part 9.3 Duties of Operators of Determined Major Hazard Facilities	552(d)	The operator of a determined major hazard facility must provide the regulator with a safety case outline which includes a description of the consultation with workers that occurred in the preparation of the safety case outline, and will occur in the preparation of the safety case.
Part 9.3 Duties of Operators of Determined Major Hazard Facilities	557(2)	In developing the emergency plan for a determined major hazard facility the operator must consult with emergency service organisations with responsibility for the area in which the major hazard facility is located and, in relation to the off-site health and safety consequences of a major incident occurring, with the local authority.
Part 9.3 Duties of Operators of Determined Major Hazard Facilities	559(3)	In reviewing and revising the emergency plan, the operator of a determined major hazard facility must consult with the emergency service organisations referred to in regulation 557(2).
Part 9.3 Duties of Operators of Determined Major Hazard Facilities	561(2)(f)	The operator of a determined major hazard facility must provide the regulator with a completed safety case for the major hazard facility containing a description of the consultation with workers that took place under regulation 575 in the preparation of the safety case.
Part 9.4 Licensed Major Hazard Facilities—Risk Management	569(4)	In reviewing and revising a licensed major hazard facility’s emergency plan, the operator must consult with the emergency service organisations referred to in regulation 557(2).
Part 9.5 Major hazard facilities Consultation and Workers' Safety Role	574–575	The operator of a determined major hazard facility must implement a safety role for the workers at the facility. They must also consult with workers for a range of specified reasons outlined in regulation 575.

Amendments

The model Code of Practice: *Work health and safety consultation, cooperation and coordination* has been amended since its publication in November 2013, including:

- a number of amendments agreed to in 2017 as part of a technical and usability review of the model Code, and
- a number of amendments agreed to in December 2021 to address recommendations agreed by WHS ministers on 5 May 2021 following the 2018 Review of the model WHS laws.

The current version, dated February 2022, incorporates all of those amendments.