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Consultation and representation at work

Guidelines for employers and workers

A safe workplace is more easily achieved when everyone talks openly about work health and safety issues and concerns, helps to identify hazards and risks, and works together to find solutions.

Consultation at work is a two-way process where information and views are shared between employers and workers. It is a requirement of South Australia's work health and safety laws and an essential element in the proactive management of health and safety in South Australian workplaces.

Good consultation enables workers to respond and contribute to issues that directly affect them, before decisions are made.

Consultation can be informal, or through any agreed arrangement (eg weekly toolbox meetings where health and safety is an agenda item). It can also be approached more formally through:

- Health and Safety Representatives (HSRs)
- Health and Safety Committees (HSCs).

Representation through HSRs or HSCs, in consultation with employers, enables workers to be involved in identifying issues, finding workable solutions and ensuring a safe workplace for everyone.

Employers must consult with all workers and their representatives (including HSRs) before making any changes that may affect their health and safety.

Consultation should take place during both the initial planning and implementation phases so that everyone's concerns, experience and expertise are considered.

Consultation should also include anyone else at the workplace who is, or is likely to be, directly affected. This includes contractors, subcontractors, labour hire workers, apprentices, trainees, work experience students and volunteers, as well as other employers if their respective duty of care overlaps.



Employers: You should keep records of your health and safety discussions and meetings, and regularly review and update your consultation arrangements.



Workers: Speaking up about work health and safety issues is important. You should immediately report any potential hazards or unsafe work practices to your manager, supervisor or HSR.

The law prohibits discriminatory behaviour directed at anyone who raises work health and safety issues or carries out legitimate safety-related functions or activities.

Resolving issues

An agreed issue resolution procedure should:

- relate only to health and safety issues
- be in writing and outline the steps for resolving issues
- be developed through genuine consultation
- be communicated to all workers.

Where an issue is raised, all parties must meet or communicate with each other to help resolve it, taking into account the:

- immediacy of the risk
- number and location of workers affected
- resolution measures (temporary and/or permanent) that must be implemented and who will be responsible.

 **Employers:** Where you are unable to resolve an issue, despite reasonable efforts, contact a SafeWork SA inspector for assistance.

A request for an inspector's involvement does not prevent a worker from ceasing unsafe work, or a trained HSR from either directing the cessation of work or issuing a provisional improvement notice (PIN).

 **Workers:** Where your HSR considers that an issue you have raised with them is not related to health or safety, they should refer you to someone who can resolve it.

Stopping unsafe work

The law enables workers to stop or refuse to carry out unsafe work where they reasonably believe they would be exposed to a serious health or safety risk arising from an immediate or imminent exposure to a workplace hazard.

If an HSR has a reasonable concern that work being performed poses a serious risk to someone in their work group, they must first consult with their employer.

However, if the risk is so serious and immediate or imminent that there is no time to consult, a trained HSR can direct workers in their work group to stop work, but must consult with the employer as soon as practicable after doing so.

 **Employers:** You may direct workers to carry out suitable alternative work at the same or another workplace until they can resume normal duties.

 **Workers:** If you stop or refuse to carry out unsafe work without the involvement of your HSR, you must notify your employer as soon as practicable and remain available to perform suitable alternative work.

Provisional improvement notices

A provisional improvement notice (PIN) may be issued by a trained HSR when, in their opinion, work health and safety laws are being contravened.

The HSR must consult with the employer before issuing a PIN. It will be considered that consultation has taken place even if there is no response from the employer within a reasonable time or no agreement has been reached on the contravention.

The PIN must state the reasons why the HSR considers the laws are being contravened, or the contravention is likely to continue or be repeated.

The PIN should be in writing and given directly to the employer or their representative (eg the person with management or control of the workplace).

 **Workers:** The person issued with a PIN must display the notice in a prominent place close to affected workers and/or parts of the workplace(s). You must not remove, damage or deface the PIN while it is in force.

The HSR must specify a time limit (at least eight days) for the contravention to be fixed.

 **Employers:** You must take all reasonable steps to remedy the identified contravention by the due date noted on the PIN or, if no date has been specified, as soon as possible.

The PIN remains in force until the matter has been resolved. However, the HSR who issued the PIN may cancel it, by written notice, at any time.

 **HSRs:** You can only direct that unsafe work ceases or issue a PIN if you have completed an approved five-day training course.

South Australian legislation requires that reasonable efforts be made to resolve workplace health and safety issues that could result in injury or illness.

Agreed issue resolution procedures should be in place to deal with this and help achieve timely and effective management of the identified issues.

HSR elections

A work group chooses how an HSR election will be held, and the person conducting the election (agreed on by the work group) informs the employer accordingly. This person can be from another work group, but not a candidate in the election, or someone else from outside the workplace can help if this is agreed to by a majority of the work group.

The person conducting the election first calls for nominations. Work group members may nominate themselves or another member of the work group for the role of HSR.

If the number of nominees equals the number of vacancies, there is no need to conduct an election and they are declared elected. If the number of nominations exceeds the required number of HSRs, an election must be conducted. The person conducting the election must then fix a place, day and time and for the election.

SafeWork SA must be notified of the elected HSR as soon as possible via the HSR Online Registration Portal on the SafeWork SA website.



Employers: You must provide reasonable resources, facilities and support to enable the conduct of the election, and display a list of elected HSRs at your workplace.



Workers: All work group members must be given the opportunity to vote, so elections may need to be conducted over an extended period of time.



HSRs: An HSR's term of office is three years, unless you resign, leave the work group, are disqualified, or the majority of the work group sign a declaration that you should no longer represent them.



Employers

An employer, referred to as a Person Conducting a Business or Undertaking (or PCBU) in South Australia's work health and safety laws, is someone who employs a person to carry out work for them or on their behalf.

An employer can be a business owner/operator, corporation, partnership, government organisation or trustee of a trust.

You must provide reasonable resources, facilities and support for HSRs to fulfil their role.

HSR training

It is important that HSRs understand their role and how, where and when to use their legal powers.

To help develop the skills needed to effectively represent workers in their work group, HSRs are entitled to attend approved HSR training and should do so as soon as possible after being elected.

An HSR's training entitlements during their three-year term of office are:

First year – five days

Second year – three days

Third year – two days.

A list of SafeWork SA approved training providers and a training calendar is available at safework.sa.gov.au.

Employers organising training for HSRs in a high risk industry or from a business with less than 100 workers may be eligible for an HSR training subsidy from SafeWork SA, of up to \$100 per day for each HSR.

HSRs may participate in other workshops, seminars and/or relevant conferences held either on consecutive days or throughout the year, by negotiation with their employer. Attendance at these sessions may occur outside of the HSR training entitlement days, with employer agreement.



Employers: HSR training time must be paid at the worker's usual pay rate. You must also pay course fees and any other reasonable associated costs.



HSRs: You are entitled to attend approved training during each year of your term of office, with course costs and your time off work paid for. In consultation with your employer, you can choose the course and the approved training provider.



Workers

A worker is someone who carries out work for an employer/PCBU on a full-time, part-time or casual basis.

'Workers' under South Australia's work health and safety laws include apprentices, trainees, labour hire workers, contractors, subcontractors, volunteers and work experience students.

Your work group's HSR may be present (with your consent) at any interview you are asked to attend concerning work health and safety.

Health and Safety Representatives (HSRs) can be elected by groups of workers (called work groups) to represent them and act on their behalf.

Some of the benefits provided by HSRs include:

- a single point of contact for workers raising health and safety issues, as well as for employers when consulting with workers
- improved efficiency, particularly where there is a large group of affected workers, reducing the need for individual consultation
- more effective representation, through their training, experience and regular involvement with health and safety matters.



Work groups

Forming a work group is the first step to take before the election of one or more HSRs. A work group should be structured to ensure that an HSR is able to effectively and conveniently represent group members.

Work groups are determined based on things like group size, work type and hazards, and are decided through negotiation and agreement between an employer and workers.

Union representatives or any other person that a worker nominates to represent them must be involved in negotiating work group formation. Employers must start negotiating with workers and/or their representatives within 14 days of being asked to establish a work group or groups.

As reaching agreement can take time, the actual formation of a group may take longer.



Employers: You must enable access to information relating to hazards that may affect the health and safety of any work group.



Workers: Once work groups have been set up they should remain unchanged, unless you or your employer or your representatives negotiate a variation (eg due to workforce changes or an organisational restructure).



Health and Safety Representatives (HSRs)

HSRs have particular functions and legal powers to:

- represent work groups on health and safety matters
- investigate complaints about health and safety
- monitor employer compliance with work health and safety laws
- enquire into anything that appears to pose a risk to health or safety
- direct unsafe work to cease
- issue provisional improvement notices (PINs)
- whenever necessary, request the assistance of any person.



Health and Safety Committees (HSCs) provide a forum for consulting on health and safety management across a whole workforce.

While HSRs represent groups of workers, an HSC should focus on work health and safety issues affecting the organisation as a whole, rather than the concerns of individual workers or work groups.

Committee functions

HSCs provide an effective means for employers and workers to meet regularly to talk about work health and safety matters. They bring together workers' practical knowledge of their individual jobs and the employer's overview of the workplace and work organisation.

The more specific functions of an HSC include:

- facilitating co-operation between employers and workers
- helping to develop and review health and safety policies, procedures and systems to ensure employers are meeting their duty of care obligations
- dealing with any other health and safety matters, as agreed between employers and committee members.

 **Workers:** You should first attempt to resolve your individual or work group issues through your HSR, supervisor or employer, before escalating them to an HSC.

HSC formation

The composition of an HSC, to be agreed between an employer and workers, should:

- include at least 50% worker representation, not nominated by the employer
- include employer representatives, from senior management, with the necessary level of decision making and expertise
- be reflective of the different areas of the workplace
- automatically include HSRs, unless they do not wish to participate.

If you are an HSC member you are entitled to attend meetings during work time. Any time spent attending meetings or carrying out committee functions should be paid at your usual pay rate.

Although there is nothing to prevent a small business from establishing an HSC, such committees are more common in medium to large workplaces.

Small workplaces that don't have an HSC are still required to make sure that workers are involved in developing and reviewing work health and safety policies and procedures for their workplace.

 **Employers:** You can initiate the establishment of an HSC at your workplace at any time, but you must establish a committee within two months of being asked to do so, either by an HSR or by five or more of your workers.

SafeWork SA works with HSRs, HSC members, employers and workers to help achieve improved consultation and representation in South Australian workplaces.

Our Workplace Advisory Service can provide free support, advice and information about:

- forming work groups
- determining appropriate HSRs
- electing HSRs and deputy HSRs
- HSR training and entitlements
- HSR and HSC roles and functions
- establishing HSCs
- promoting the roles of HSRs and HSCs in the workplace.

Our advisors also conduct information sessions for workplaces and groups on HSR and HSC roles and functions, and consultation processes for resolving safety issues.

SafeWork SA can also:

- manage the approval process for HSR training providers and
- subsidise HSR training.

SafeWork SA can be requested to appoint a WHS Inspector to:

- decide on the structure of a work group that has not been successfully negotiated or agreed upon between employers and workers
- settle a disagreement or delay in the provision of HSR training
- assist in the resolution of a health and safety issue that is unable to be resolved, despite reasonable efforts
- assist in the resolution of an issue arising from the cessation of unsafe work
- conduct a review and decide on the outcome of a disputed PIN.

Further information

Work Health and Safety Act 2012 (SA)

Work Health and Safety Regulations 2012 (SA)

Code of Practice: Work Health and Safety Consultation, Co-operation and Co-ordination

Safe Work Australia's *Worker Representation and Participation Guide* safeworkaustralia.gov.au



**Government
of South Australia**

SafeWork SA

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