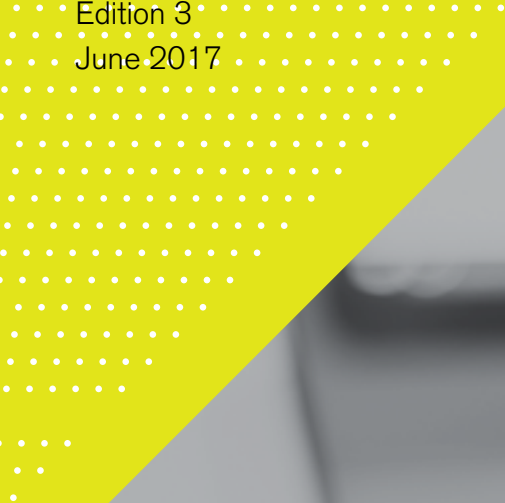


# A guide for Victorian workplaces

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## Consultation

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This guidance has been reviewed and updated for the sole purpose of amending year and regulation references relating to the Occupational Health and Safety Regulations, in line with amendments which came into effect on 18 June 2017.

# Definitions

Agreed issue resolution procedure	An agreed process or outline of the steps involved in resolving health and safety issues in a workplace.
Designated work group (DWG)	A DWG is a negotiated and agreed grouping of workers who share similar workplace health and safety interests and conditions. One of the main functions of a DWG is to elect health and safety representatives (HSRs).
Employer	A person who employs one or more people under contracts of employment or contracts of training.
Health and safety committee (HSC)	A cooperative forum for employers and workers to work together on OHS issues. HSCs are involved in the development, review and communication of OHS standards, rules and procedures in the workplace.
Health and safety representative (HSR)	A member of a designated work group elected to represent that DWG on matters relating to occupational health and safety.
Person	A person can be an organisation (such as a company), a body corporate, an unincorporated body, association or an individual natural person.
Reasonably practicable	In relation to consultation, this means that employers must consult with workers to the extent that is reasonable in all the circumstances. What is reasonably practicable will depend on a range of factors, for example, the size and structure of the business, the nature of the work, work arrangements (shift work), and characteristics of workers (language or literacy).
Worker	A person employed under a contract of employment or contract of training. Please note that the word 'worker' as used in this publication, is taken to have the same meaning as 'employee' as defined in the Occupational Health and Safety Act 2004

# Introduction

**One of the key objectives of the *Occupational Health and Safety Act 2004* (the OHS Act) is to promote greater involvement and co-operation between employers and workers on workplace health and safety matters.**

The OHS Act recognises the benefits of worker involvement in occupational health and safety (OHS) matters. Employers and workers should exchange information and ideas about risks to health and safety, and measures that can be taken to eliminate or reduce those risks. Workers are entitled, and should be encouraged, to be represented in relation to health and safety issues.

The OHS Act and the Occupational Health and Safety Regulations 2017 (the OHS Regulations) provide a clear framework for workplace consultation and worker representation, and set out the mechanisms for resolving workplace health and safety issues.

This publication provides information on:

- what matters employers must consult about
- who needs to be consulted
- what consultation involves
- different ways that consultation can occur
- developing consultation procedures.

More information about worker representation and issue resolution is available from

**[worksafe.vic.gov.au/hsr](https://www.worksafe.vic.gov.au/hsr)**

# The benefits of consulting about health and safety

Consultation about health and safety can result in:

- healthier and safer workplaces as worker input is valuable in identifying hazards, assessing risks and developing ways to control or remove risks
- better decisions about health and safety as decisions are based on the input and experience of a range of people in the organisation, including workers who have extensive knowledge of their own job and the business
- stronger commitment to implementing decisions or actions as workers have been actively involved in reaching these decisions
- greater co-operation and trust as employers and workers talk to each other, listen to each other and gain a better understanding of each other's views.

Consultation about health and safety is easy and can be done in a number of ways, depending on the type of workplace.

# When is consultation required?

Many organisational decisions or actions have health and safety consequences. For example, introducing new equipment into the workplace may affect:

- the tasks that workers undertake
- the steps involved in doing the work
- the timeframes for doing work
- how workers interact with each other
- the environment in which they work.

Workers may also be exposed to new or different health and safety hazards or risks, such as manual handling or fatigue.

Employers must consult with workers when:

- identifying or assessing hazards or risks
- making decisions on how to control risks
- making decisions about the adequacy of facilities for worker welfare (such as dining facilities, change rooms, toilets or first aid)
- making decisions about procedures to:
  - resolve health and safety issues
  - consult with workers on health and safety
  - monitor workers' health and workplace conditions
  - provide information and training
- determining the membership of any health and safety committee in the workplace
- proposing changes that may affect workers' health and safety, such as changes to:
  - the workplace
  - plant, substances or other things used in the workplace
  - the work performed at the workplace
- doing any other thing prescribed by the Regulations.

Employers must consult on these health and safety matters so far as is reasonably practicable with workers who are (or are likely to be) directly affected. This includes independent contractors and their workers in relation to matters over which the principal employer has control or should have control.

If these workers are represented by an elected HSR, then the employer must involve that HSR in the consultation.

# When is consultation required?

'Reasonably practicable' means that employers must consult with workers to the extent that is reasonable in all the circumstances. What is reasonably practicable will depend on a range of factors, such as:

- the size and structure of the business
- the nature of the work that is carried out
- the nature and level of risk(s) associated with any identified hazard(s)
- the nature of the particular decision or action, including the urgency of the need to make a decision or take action
- the work arrangements, such as shift work and remote work
- the characteristics of workers, including languages spoken and literacy levels.

In most situations it would be reasonably practicable to consult with workers who are:

- working in the workplace
- regularly working outside the workplace (eg drivers on the road or workers working from home)
- on short-term leave (eg sick leave or annual leave).

Employers are not expected to do the impossible, but are required to take a proactive and sensible approach to consultation. For example, it may not be reasonably practicable to consult with workers who are on extended leave. However, it may be appropriate to ensure that these workers are kept informed about any matters that will directly affect or are likely to directly affect their health and safety when they return to work.

# Who must be consulted?

## Workers

Employers must consult, so far as reasonably practicable, with workers who are, or who are likely to be, directly affected by matters in relation to health and safety.

## Health and safety representatives (HSRs)

Workers have the right to be represented in health and safety matters in their workplace. Where workers are represented by HSRs, employers must involve the HSRs in consultation. HSRs are elected by workers in their Designated Work Group (DWG) to represent them in relation to health and safety.

## Independent contractors and workers of labour hire companies

Consultation must also include independent contractors and any workers of the independent contractor/s, including labour hire workers – provided that the action or decision involved is one that the principal employer has, or should have, control over. The independent contractor, sub-contractor or labour hire firm, as direct employers, also have a separate duty to consult with their workers.

When negotiating DWGs, a principal employer and its workers may agree that a HSR for a DWG can also represent independent contractors on health and safety matters in the workplace. Independent contractors and their workers should be consulted before it is agreed that they will be represented by the principal employer's HSRs while working in the principal employer's workplace. Should this not be the case, then the principal employer must consult with the independent contractors and their workers directly.

## Volunteers

Many community service organisations are assisted by volunteers. As volunteers are not workers or independent contractors, the duty to consult does not apply.

The employer must ensure, however, that so far as reasonably practicable volunteers are not exposed to risks to their health and safety. Consultation with volunteers may therefore be valuable in assisting the employer to meet this duty.



# What does consultation involve?

Consultation does not mean telling workers about a decision or action on a health and safety matter after it has been taken. Consultation means giving workers an opportunity to shape that decision or action.

Therefore an employer must:

- share information with workers about the matter
- give workers a reasonable opportunity to express views about the matter
- take those views into account.

Where workers are represented by an HSR, the consultation must involve the HSR.

## Sharing information

For consultation to be meaningful, employers must share all relevant matters involving workers' health and safety with workers and HSRs. This information should be provided in a timely way so that the workers and HSRs have adequate time to consider the matters, discuss them and then provide feedback to their employer.

Unless it is not reasonably practicable to do so, the employer must provide this information to HSRs a reasonable time before providing it to the workers.

This information should be in a form that is easily understood by workers and HSRs. Workers and their HSRs may need to have access to information such as technical guidance about workplace hazards and risks (plant, equipment and substances), and information about work organisation (systems, data reports, procedures and guidance material). Information should not be withheld just because it is technical or may be difficult to understand.

Employers should ensure that there are arrangements in place to consult with workers from culturally or linguistically diverse backgrounds. If workers do not have strong English language skills or have low literacy levels, translation of material into languages other than English may be appropriate. Diagrams or pictures could also be used to convey the health and safety issues involved.

Bilingual workers from the same language group may also be able to assist those with limited English, if they are willing and able to do so. However, employers need to ensure that these workers are able to translate information accurately.

## Giving workers and HSRs a reasonable opportunity to express views

For consultation to be meaningful, opportunities must be provided for workers and HSRs to express their views about health and safety matters.

Where there are HSRs, the employer must invite and meet with the HSRs or meet with the HSRs at their request. A number of meetings may be required, depending on the matters involved.

Workers and HSRs should be encouraged to ask questions, raise concerns, propose options, make recommendations and be part of the problem-solving process.

For meaningful consultation to occur, face to face meetings may be the best option; however, there may be circumstances where this is not suitable. For example, if one HSR cannot attend a meeting with other HSRs and management, or where the OHS Manager is based in Melbourne but the Manager and HSRs of an affected DWG are in a regional workplace, a phone conference may be required.

## Taking views into account

Before a final decision is made, employers should respond to concerns and questions raised by workers and HSRs. They should give feedback to workers and HSRs about options that were considered. They should explain to workers and HSRs the final decision or course of action and why it has been taken.

While employers, HSRs and workers should aim to reach agreement through the process of consultation, agreement is not a required outcome of the OHS Act. An employer is still ultimately responsible for making decisions about health and safety, and controlling risk so far as is reasonably practicable.

# Ways to consult

## Through health and safety representatives

Where DWGs are established and HSRs have been elected, HSRs must always be involved in any consultation that affects, or is likely to affect, the health and safety of members of their DWG.

This must be done by:

- providing HSRs with all the information about the matter that the employer provides, or intends to provide to workers if it is reasonably practicable
- inviting the HSRs to meet with the employer to consult on the matter, or meet with the HSRs at their request
- giving the HSRs a reasonable opportunity to express their views (and the views of their DWG) on the matter and taking those views into account.

## Through health and safety committees

While HSRs ensure effective communication between the employer and the members of DWGs, a health and safety committee (HSC) may also be established to address broader health and safety issues affecting all workers at the workplace. A HSC must be established by an employer within three months of being requested to do so by a HSR.

HSCs are involved in providing a planned and structured mechanism to discuss broad health and safety matters. HSCs bring together HSRs, workers and employer representatives to discuss and develop ways to improve health and safety across the organisation. They also improve and spread health and safety knowledge through discussions, the development of policies and procedures, and the distribution of meeting minutes and reports.

For example, an employer may have a HSC, including a number of HSRs, for its 40 office-based workers and hold regular direct discussions about health and safety with five workers working at remote locations via team meetings. Alternatively, the remote workers may elect a HSR to represent them, and consultation must involve the HSR.

## Additional ways to consult

There are further ways to consult in the workplace, in addition to consultation involving HSRs and HSCs.

Regularly scheduled meetings, such as tool box talks, production meetings, DWG meetings, team meetings and face-to-face discussions, may also be used for consultation. One, or a mix of the arrangements may be appropriate, depending on the type of workplace.

Employers with very small workplaces, where there are no HSRs, may find face to face discussions or regular meetings with workers to be the most appropriate way to consult about health and safety.

# Consulting about health and safety procedures

Employers must consult with affected workers and HSRs, so far as reasonably practicable, when making or changing procedures for:

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

A procedure sets out the steps to be followed in a workplace for the above activities. An employer must consult with all workers when developing procedures, and if HSRs have been elected, they must also be involved in the consultation process.

Procedures should be in writing (to provide clarity and certainty at the workplace and assist in demonstrating compliance) and should clearly address the role of HSRs, HSCs and any other participants in the consultation process.

All procedures should be made available to all workers. They may, for example, be posted on noticeboards in the workplace or be placed on an intranet site. In culturally and linguistically diverse workplaces, procedures should be translated into relevant languages.

It is important that the procedures outline a fair and representative process for reaching agreement. If the procedures outline a flawed or deficient process for reaching agreement, the employer may not have properly discharged its consultation obligations. For example if not all HSRs or all HSC members or all relevant worker representatives (as the case may be) were able to participate in the agreement process.

## Existing procedures for consulting about health and safety

Many workplaces will already have procedures for health and safety consultation that suit their needs. Existing health and safety consultation procedures should be reviewed when needed in consultation with HSRs and workers to ensure that consultation occurs as required by the OHS Act and Regulations.

Although agreed procedures for consultation are not required by the OHS Act, if a workplace has agreed procedures for consultation, they must be followed.

Agreed procedures can be useful as they may:

- clarify key responsibilities of people in the organisation
- clearly state when consultation is necessary
- encourage a greater awareness of OHS issues among workers.

Agreed procedures for consultation must:

- be consistent with the OHS Act (enable the employer to meet their consultation obligations and cannot remove the powers of an HSR or functions of an HSC)
- be the subject of consultation with workers before they are implemented (any HSRs must be involved in this consultation)
- be agreed. This means that there has been genuine consultation and agreement about the procedures between the employer, the HSRs and workers, and it has not been imposed by one party or the other, or arisen out of a flawed process for reaching agreement.

# Consulting about health and safety procedures

Agreed consultation procedures should include:

- the matters an employer must consult about who will be consulted
- the ways consultation will occur (through HSRs, the HSC, regular meetings, tool box talks)
- how information will be shared with workers and HSRs
- what opportunities will be provided for workers and HSRs to give their views on proposed matters, as well as how feedback will be given to HSRs and workers
- how consultation will occur with any workers who have special language and literacy needs
- timelines for reviewing the procedure.

The procedure could also include what practical assistance will be provided to HSRs and workers to facilitate the consultation process. For example, opportunities may be made available for affected workers and their HSRs to come together to consider the information that has been provided, to discuss the issues and form their views.

Consultation procedures should be recorded and communicated to workers, and should be monitored and reviewed to ensure they continue to be effective. The employer should consult with the workers and HSRs on the nature and timing of these reviews.

## Developing procedures for monitoring worker health and workplace conditions

The OHS Act requires employers to monitor the health of workers and the conditions at the workplace, so far as reasonably practicable. When making decisions about procedures for monitoring the health of workers and the conditions at the workplace, workers and HSRs must be consulted.

Procedures for monitoring the health of workers and conditions at the workplace should include the following:

- the range of monitoring mechanisms that will be employed
- the emphasis and scope of each monitoring mechanism
- how they are to be implemented
- how and when to use 'experts' and how they will be selected
- who will be involved
- who is responsible for ensuring that suggested improvements are taken into account
- what reviews should be carried out to ensure that corrective action has been taken
- how the monitoring outcomes/records are to be documented and stored
- who is entitled to have access to OHS records
- how often the monitoring practices are to be carried out. The frequency will depend on the nature and circumstances of each workplace. For example, where workers work with lead, asbestos, noise or certain other hazardous substances, employers are legally required to:
  - regularly monitor levels in the workplace
  - arrange regular health monitoring for exposed workers
  - keep records of the results.

Refer to the OHS Regulations for further information.

Various Acts and Regulations specify requirements for collecting, keeping and providing certain types of occupational health and safety information and records.

# Consulting about health and safety procedures

For example, under the OHS Act an employer is required to keep information and records relating to the health and safety of workers. The OHS Act also requires an employer to provide information to workers (in appropriate languages) concerning health and safety at the workplace, including the names of persons to whom a worker may make an enquiry or complaint about health and safety. An employer must also allow an HSR to have access to information on actual or potential workplace hazards, the health and safety of DWG members and, if authorised to represent them, independent contractors and their workers (medical information cannot be made available unless it is with the consent of the person or does not identify the person). A number of the OHS Regulations also require the provision or recording of health and safety information, like the Noise and Hazardous Substances Parts.

## Developing procedures for providing information and training

The OHS Act requires employers to:

- provide such information, instruction, training or supervision as necessary to enable workers to perform their work safely and without risks to their health
- provide information to workers (in other languages as appropriate) concerning health and safety at the workplace, including the names of persons to whom a worker may make an enquiry or complaint about health and safety.

When making decisions about procedures for providing information and training to workers, workers and HSRs must be consulted. In identifying training and information needs, a range of factors are relevant, including:

- the nature of the task
- the age, experience, language skills, literacy levels and disabilities of affected workers
- the plant and substances used
- the implications of proposed changes to the systems or methods of work, plant or substances used for work.

Procedures for information and training should include the following:

- an identification of individuals (name, position and contact details) with key responsibilities for providing information and organising/delivering workers' training
- how training providers will be selected
- an outline of specific organisational training needs, which could include:
  - HSR training
  - OHS training for management representatives
  - induction training for new workers
  - refresher or ongoing training
  - red ticket training (construction industry)
  - certification training (eg high risk work licences)
- how to submit a training request
- a description of the training approval mechanism
- how to access training records.

# Consulting about health and safety procedures

## Developing a procedure for issue resolution

The OHS Act requires employers to consult when making decisions about procedures for issue resolution at the workplace. An agreed procedure is not mandatory, as the procedure prescribed in the Regulations can be used. If, after consultation, agreement on a procedure for issue resolution cannot be achieved, then the procedure prescribed in the Part 2.2 of the Occupational Health and Safety Regulations 2017 must be used.

As soon as reasonably possible after the issue is reported, the relevant parties must meet to try and resolve issue, taking into account:

- the number and location of employees affected by the issue
- whether appropriate temporary measures are possible or desirable
- the time that may pass before the issue is permanently resolved
- who, on behalf of the employer, must make sure that the actions agreed are performed.

A party involved in the resolution of an issue may request that the details of the issue and how it was resolved be set out in writing. The employer must do this to the satisfaction of all parties, if a request is made.

Once an issue has been resolved, the written or verbal agreement about the resolution must be reported to the workers affected by the issue and to the HSC, if the workplace has one.

The agreement must be in a form approved by all parties and communicated in a manner and language agreed by the parties to be appropriate. The agreement can also be forwarded to a union or an employer association.

## WorkSafe Victoria

### WorkSafe Agents

Agent contact details are all available at [worksafe.vic.gov.au/agents](https://www.worksafe.vic.gov.au/agents)

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