

# INFORMATION FOR HEALTH AND SAFETY REPRESENTATIVES

## CONSULTATION, REPRESENTATION AND RESOLVING HEALTH AND SAFETY ISSUES

### 2ND EDITION

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This information is for health and safety representatives (HSRs) and deputy HSRs. It explains your rights and powers, what you should expect from your employer and where to go for help.

### A NEW ACT WITH NEW OPPORTUNITIES

The Victorian *Occupational Health and Safety Act 2004* came into effect on 1 July 2005. Like the previous 1985 Act, it has the clear objective of preventing illness and injury at work and saving lives.

The Act includes basic principles to guide how health and safety issues should be managed. The first principle requires the highest practicable level of protection against risks to health and safety at work. Two further principles promote the participation of employees and their representatives in occupational health and safety (OHS) matters. They are:

- That employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.
- That employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.

The Act recognises the important role HSRs play in representing the health and safety interests of employees. HSRs have been an important feature of OHS in Victoria since 1985 and it is widely acknowledged that HSRs can make a real difference in having OHS issues addressed and can help achieve better health and safety outcomes.

To support these principles and to encourage more employees to be represented on OHS issues, the 2004 Act offers more options for how employees can be represented by HSRs, provides for more involvement of employees and their representatives in health and safety decisions, and outlines a process for how health and safety issues must be resolved.

For more information about the Act, including a full list of the principles, refer to the *Summary of the Occupational Health and Safety Act 2004* available from WorkSafe.

## Sections 43 to 53

### REPRESENTING EMPLOYEES

Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues. When employees have an effective way to provide input into OHS decisions, workplaces have better health and safety outcomes.

#### Overview of representation arrangements

Employees have the right to ask their employer to set up designated work groups (DWGs) of employees so HSRs can be elected. Employees or employers can start negotiations to set up DWGs. Only employees can decide how to elect HSRs and only employees can vote.

If employees ask for a DWG to be set up, the employer must do everything reasonable to start negotiations within 14 days after the request. Employees can be represented by anyone they choose in negotiations about DWGs and can ask their employer or a union official to conduct an election.

To encourage more employees to be represented and more involvement of HSRs, the Act gives more options for how employees can be represented by HSRs than before. The Act allows for:

- More than 1 HSR for a DWG.
- Deputy HSRs (who can act as the HSR when the HSR is not able to).
- HSRs to represent employees at different locations.
- HSRs to be authorised to represent independent contractors and their employees.

These representative arrangements must be negotiated between employees and their employer, although each DWG must have at least one HSR. If agreement can't be reached within a reasonable time, anyone involved in the negotiations may ask WorkSafe to arrange for an inspector to visit and determine the unresolved particulars.

If agreed between the employees and the employers involved, the Act also allows for employees from different employers to be part of the same DWG. This could be employees from two or more employers who work at the same workplace, for example a shopping centre, market, construction site or workplaces with contractors or labour hire employees. Or it could be employees from two or more employers who work at different locations, such as a DWG involving teachers and after school care providers who work across a number of school campuses.

For more information on establishing DWGs and electing HSRs, refer to *Information for Employees (Consultation, Representation and Resolving Health and Safety Issues)*, available from WorkSafe.

## Section 58

### **YOUR POWERS**

The Act set out your powers as an HSR. These powers may also be exercised by a deputy HSR in the HSRs absence.

You have an important role to play in representing members of your DWG, including bringing issues to the attention of your employer, attempting to resolve these issues and taking information back to your DWG on health and safety.

Your powers enable you to:

- Speak up and act on behalf of the employees you represent on OHS issues.
- Monitor the health and safety actions taken by your employer.
- Look into anything that might be a risk to the health and safety of the employees you represent.
- Attempt to resolve with your employer any health and safety issue that could affect members of your DWG.

You have the right to do any of the following:

#### **Inspect any part of the workplace where a member of your DWG works**

You have the right to inspect any part of the workplace after giving reasonable notice to your employer. In addition to any inspections you may carry out in response to issues raised by a member of your DWG, it is a good idea for you and your employer to agree on the number and type of inspections you will carry out. High risk industries or workplaces that change often may require more frequent inspections than more stable workplaces.

Health and safety issues identified during inspections should be reported to your employer and members of your DWG should be informed about any hazards or potential risks.

#### **Inspect the workplace immediately if there is an incident or a serious risk**

You have the right to inspect the workplace immediately if there is an incident or an immediate risk to someone's health and safety. You can help prevent future injuries by reporting any 'near misses' to your employer, so action can be quickly taken to control the risk.

#### **Accompany a WorkSafe inspector during an inspection**

You have the right to accompany a WorkSafe inspector who is looking into an area or an issue related to where you, or a member of your DWG, works.

The inspector must take all reasonable steps to notify you as soon as they arrive and let you know what the outcome of the inspection is by providing you with a copy of their Entry Report.

#### **Request that a health and safety committee (HSC) be set up**

While your employer has the responsibility for managing health and safety, HSCs are a good way for employers and employees to work together on OHS. They can play a valuable role in facilitating cooperation and enabling employees and their HSRs to participate in developing, reviewing and communicating OHS standards, rules and procedures.

As an HSR you have the right to ask for an HSC to be set up and your employer must do so within 3 months. Employers must consult you about the membership of the committee. At least half of the members must be employees. HSRs or deputy HSRs must fill the employee positions on the committee unless it is not reasonably practicable, or in other words not feasible, for them to do so.

#### **Attend a health and safety interview**

You have the right to attend an interview about health and safety between a member of your DWG and an inspector, or that member and your employer, if the member agrees to, or requests, your attendance.

This includes contractors you are authorised to represent, if they agree to, or request, your attendance.

# REPRESENTATION

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## Sections 59 to 66

### **Ask for help**

You have the right to ask for advice or assistance from anyone within your workplace, such as another HSR, or anyone outside your workplace.

### **Represent employees outside your DWG**

You can represent employees outside your DWG if there is an immediate health and safety risk, or if a member of another DWG asks for your help, and it isn't feasible to ask the elected HSR for that group. This might be because the other HSR is not available or doesn't speak the language of the person asking for assistance.

### **Issue a Provisional Improvement Notice (PIN)**

You have the right to issue a PIN if you reasonably believe that there is, or has been, a breach of the Act or regulations. You must first consult with the person responsible about fixing the breach and if it is not resolved you can then issue the PIN. The PIN must give at least 8 days for action to be taken and can include directions on how to fix the problem.

The person who receives the PIN can comply with the PIN or, within 7 days, request WorkSafe to send an inspector to enquire into the circumstances of the PIN. If they don't request an inspector within 7 days and don't comply with the notice, they may be guilty of an offence and may be prosecuted.

If an employee receives a PIN, they must bring it to the attention of their employer. Employers must bring PINs to the attention of everyone whose work is affected by it and must display a copy of it prominently in that work area, that is somewhere where it will be seen.

To help you, PIN forms can be obtained from unions or can be downloaded from [www.ohsrep.org.au](http://www.ohsrep.org.au)

## Section 74

### **Direct work to stop**

You have the right to direct work to stop if there is an immediate health and safety threat, after you have consulted with your employer and for whatever reason it is not appropriate to follow your agreed issue resolution procedure or the procedures in the *Occupational Health and Safety (Issue Resolution) Regulations*.

At any time, you or your employer can ask WorkSafe to arrange for an inspector to come to your workplace to enquire into the issue.

Everyone has the right to stop work if there is an unreasonable risk to their health or safety.

## Section 36

### **You must be part of consultation on health and safety matters**

Talking to the people you work with and your employer or their representative about health and safety issues is an important part of your role. You must be involved in any OHS consultation affecting the employees you represent. See the Consultation section for more information.

## Sections 67 to 71

### YOUR ENTITLEMENTS

#### The obligations of your employer

An employer must:

- Provide you with access to information they have about actual or potential hazards in the workplace and the health and safety of employees you represent.
- Allow you to attend an interview about health and safety between a member of your DWG and an inspector, or that member and their employer, if the member agrees to, or requests, you to. This also applies for contractors and their employees you are authorised to represent.
- Give you time off work with pay so that you can exercise your powers or take part in training approved by WorkSafe.
- Provide facilities and assistance to help you carry out your role as an HSR, for example, access to a telephone and somewhere to meet.
- Allow someone who is assisting you into the workplace, unless your employer thinks they are not suitable because they don't know enough about health and safety.
- Display a current list of HSRs and deputies for each DWG, or ensure it is readily accessible to all employees.

#### HSR training

You are entitled to:

- an initial OHS training course after being elected – currently 5 days;
- refresher training at least once a year; and
- other training approved by WorkSafe.

You have the right to choose the initial and refresher training course in consultation with your employer, provided it is approved by WorkSafe and is relevant to the work of your DWG or your role as an HSR. You must make the request at least 14 days before the course starts. If your employer refuses to allow you to attend a course or you cannot agree on which course you should attend, you can ask WorkSafe to determine an appropriate course. Your employer cannot refuse, without reasonable excuse, to allow you to attend a course determined by WorkSafe.

Deputy HSRs are also entitled to attend initial and refresher training.

You should not be disadvantaged in any way for taking on the role of the HSR. Your employer must meet the costs of the initial and refresher training and pay you the same amount you would get if you were at work, including shift or other allowances. Costs may include course fees, travel, accommodation, meals, car parking etc.

HSRs are entitled to take part in other training related to OHS approved by WorkSafe. The HSR must give 14 days notice before the course is to start. HSRs are entitled to time off with pay for this additional training. Deputy HSRs are not entitled to this additional training.

#### Your employer must not discriminate against you

Your employer must not discriminate against you, or any other employee or prospective employee, because of involvement in health and safety. This includes as a result of acting as an HSR, being a member of an HSC, assisting an inspector, or raising OHS issues.

Your employer must not threaten, dismiss or refuse to hire someone, or otherwise adversely affect their employment, because of their involvement in health and safety. If they do, it is an offence and they risk major penalties, including up to 6 months jail.

If legal action is taken against your employer on the basis that they allegedly discriminated against someone because of their involvement in OHS and your employer decides to defend the action, it is up to them to prove that the main reason for their actions was not related to the persons involvement in health and safety.

## Section 76

## Sections 35 and 36

### **YOUR RIGHT TO BE CONSULTED**

Since 1985, Victorian employers have been required to consult HSRs on proposed changes that affect health and safety. HSRs must also be consulted on the management of particular hazards such as noise and asbestos. From 1 January 2006, employers must consult employees, so far as is reasonably practicable, on a broader range of matters that may affect employees' health, safety or welfare. You, as an elected HSR, must be involved, with or without the direct involvement of the employees you represent.

Your involvement and that of other employees should lead to better decisions being made and better health and safety outcomes. Your experience and knowledge of the job can help to identify hazards, assess risks and develop workable solutions.

Your employer needs to consult as far as is 'reasonably practicable'. For consultation, basically this means what is feasible in the circumstances. Some of the things that should be considered are the:

- size and structure of the business;
- type of work;
- type and urgency of the situation;
- work arrangements, e.g. shift work and employees in remote locations; and
- employees involved – the languages they speak, how well they read and write, or any disabilities, they may have.

For example, it would not be reasonably practicable for your employer to consult with employees who are on extended leave, although they should be informed about the consultation process and any outcomes on their return to work.

Your employer is expected to take a sensible and pro-active approach to consultation. In almost all circumstances it will be reasonably practicable for your employer to consult.

### **Who must be consulted?**

Employers must consult with employees who are, or are likely to be, 'directly affected'. Basically this means the OHS matter must be having, or is likely to have, an impact on the health and safety of the employee or an impact on their work. As the employees' representative, you have an important part to play in consultation and your employer must involve you in any OHS consultations, whether or not employees are consulted directly.

If independent contractors and their employees are doing work for your employer, they also need to be consulted so far as reasonably practicable.

### **How must you be consulted?**

There are a number of things that your employer must do when consulting you. They must:

- share information with you about the health and safety matter;
- give you a reasonable opportunity to ask questions and have your say; and
- take your views into account – this should happen before a final decision is made.

## What must you be consulted on?

Your employer must consult you when members of your DWG are, or could be, directly affected by a range of OHS matters.

<b>OHS MATTERS YOU MUST BE CONSULTED ON</b>	<b>SOME EXAMPLES</b>
<b>Identifying or assessing hazards or risks.</b>	Includes things such as a site inspection, job safety analysis (JSA), meeting or workshop to identify hazards or risks.
<b>Deciding about how to control risks.</b>	Can include health and safety discussions at tool-box meetings, HSC meetings, or reviewing advice from technical experts, such as engineers, hygienists or ergonomists.
<b>Deciding about the adequacy of facilities for the welfare of employees.</b>	This includes decisions to ensure that there are enough toilets or that first aid facilities are adequate.
<b>Deciding about the procedures for:</b> <ul style="list-style-type: none"> <li>• <b>Resolving OHS issues</b></li> <li>• <b>Consulting with employees</b></li> <li>• <b>Monitoring the health of employees and the conditions at the workplace</b></li> <li>• <b>Providing information and training to employees.</b></li> </ul>	<p>For example, you need to be consulted about whether to develop an agreed procedure or use the Issue Resolution Regulations as the way to resolve OHS issues.</p> <p>You also need to be consulted on the way employees will be consulted in your workplace and how you will be trained in OHS.</p>
<b>Determining the membership of any health and safety committee.</b>	This includes deciding who should be on the committee when it is being established.
<b>Proposing changes, that may affect the health and safety of employees, to the following:</b> <ul style="list-style-type: none"> <li>• <b>the workplace</b></li> <li>• <b>the plant, substances or other things used at the workplace</b></li> <li>• <b>the conduct of the work performed.</b></li> </ul>	Examples of changes include introducing new equipment, such as a forklift or sterilisation equipment, starting to use new chemicals or changing the way work is done.
<b>Any other thing prescribed by the regulations.</b>	Some regulations, such as the OHS Noise Regulations, have specific consultation requirements.

# RESOLVING HEALTH AND SAFETY ISSUES

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## Section 73

### Agreed procedures for OHS consultation

You must be consulted about how consultation will take place at your work. Your workplace may already have agreed procedures for OHS consultation. If so, they need to be reviewed to ensure they comply with the new consultation requirements of the Act.

The Act doesn't require a workplace to have an agreed procedure for consultation, but if you have one, it must be followed. Agreed procedures for consultation must:

- be consistent with the Act – so that they enable your employer to meet their obligation to consult and do not remove your powers as an HSR or the functions of a HSC;
- be developed through consultation between your employer, you, other HSRs and employees; and
- be the result of genuine agreement – that is, agreed by a majority of employees.

Agreed procedures for consultation should be in writing and be made available to all employees so that the process is clear to everyone.

### RESOLVING OHS ISSUES

The Act requires you and your employer to attempt to resolve an OHS issue according to the agreed issue resolution procedure at your workplace. If there is no agreed procedure, the process in the *Occupational Health and Safety (Issue Resolution) Regulations* must be followed.

For more information on resolving OHS issues refer to *Resolving OHS Issues in the Workplace – A Guide*, available from WorkSafe.

### YOUR RIGHT TO HAVE WORKSAFE INSPECTORS' DECISIONS REVIEWED

If you don't agree with certain decisions made by a WorkSafe Inspector, you have the right to apply for a review by the Victorian WorkCover Authority, of the decision. You must apply for the review within 14 days of you becoming aware of the decision.

For more information on review of inspectors' decisions, contact WorkSafe.

### MORE INFORMATION

Further information is available from WorkSafe Victoria, contact details below, or [www.ohsrep.org.au](http://www.ohsrep.org.au)

Related WorkSafe Publications:

- *Information for Employees (Consultation, Representation and Resolving Health and Safety Issues)*
- *Getting into the Act*
- *Resolving OHS Issues in the Workplace – A Guide*
- *Talking Safety Together*

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