



How to Demonstrate Compliance with WHS Consultation Requirements

During 2017 it appears that we have heard from more businesses than usual that a SafeWork NSW Inspector had given those businesses an Improvement Notice because they could not offer proof that they were consulting with their workers in accordance with the requirements of the WHS Act.

This article reviews the consultation requirements of the WHS Act and provides resources and recommendations on actions you may like to consider taking to avoid having to deal with an Improvement Notice about this.

The WHS Act Consultation Requirements

A person conducting a business or undertaking (PCBU) has a duty to consult with workers on matters relating to health and safety in the workplace. Sections 47-49 of the WHS Act 2011 and the *Work Health and Safety Consultation Cooperation and Coordination Code of Practice*, published by SafeWork NSW, explains what is required.

Consultation involves the sharing of information regarding health and safety. Workers must be informed, given reasonable opportunity to express their views, to raise issues, to contribute to the decision-making process and to be advised of outcomes.

The *Work Health and Safety Consultation Cooperation and Coordination Code of Practice* states that:

“You may establish any arrangements for consultation to suit your workplace and workers’ situations including agreed consultation procedures, as long as those arrangements are consistent with the WHS legislation.”

The WHS Act requires a PCBU to consult with workers by using;

- Health & Safety Representatives, or
- Health & Safety Committees, or
- by other arrangements agreed to by the workers in your workplace,
- or any combination of the above three methods.

Recommendations on Demonstrating Compliance with WHS Consultation.

Step 1

Review the nature and effectiveness of consultation in your workplace (section 48 WHS Act). To assist you in this step you can access and download our 12 point Effective Consultation Checklist at this link. http://www.courtenell.com.au/effective_consultation_checklist.html

Step 2

Review if consultation is occurring when it is supposed to. The PCBU is required by section 49 of the WHS Act to consult with workers and others when any of the following occur:

- When identifying and assessing health and safety risks in your workplace
- When making decisions about how to eliminate or minimise those risks
- When making decisions about facilities for the welfare of workers
- When proposing changes that may affect the health and safety of workers
- When making decisions about:
 - procedures for consulting with workers
 - resolving health and safety issues
 - monitoring the health of your workers
 - monitoring conditions at the workplace
 - providing information and training for workers

Step 3

Develop an Action Plan with specific actions to handle any deficiencies you have found when doing Steps 2 and 3. It may include actions such as; writing formal procedures for consultation, putting specific consultation responsibilities into the role of your Supervisors and Managers, training, expanding the functions of your Health & Safety Committee, adding a Health & Safety Representative, modifying your risk management documents to include consultation steps, etc.

Step 4

Implement and complete the actions in your Action Plan. You now have the evidence to convince a SafeWork Inspector that your workplace does comply with the consultation requirements in the WHS Act.

You may never have the need to convince a SafeWork Inspector but your workplace will undoubtedly benefit if you follow these four steps. Especially if you promote this broadly in your workplace and involve or give these 4 steps to your Health & Safety Committee and/or your HSRs to carry out. You achieve compliance and get an excellent boost for safety culture.