

# INFORMATION FOR EMPLOYEES ON HEALTH AND SAFETY

## CONSULTATION, REPRESENTATION AND RESOLVING HEALTH AND SAFETY ISSUES

### 2ND EDITION

FEBRUARY 2006

#### **YOUR RIGHTS AND RESPONSIBILITIES. WHAT YOU SHOULD EXPECT FROM YOUR EMPLOYER. WHERE TO GO FOR HELP.**

This information is for employees, independent contractors and their employees and is based on the requirements of the Victorian *Occupational Health and Safety Act 2004*. The Act 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.

#### **YOUR RIGHT TO A SAFE AND HEALTHY WORKPLACE**

You have the right to a healthy and safe workplace. Your employer must protect you while you are at work by making sure that your workplace is safe and without risks to your health, including your psychological health. They must do this 'so far as is reasonably practicable', which basically means doing what a reasonable person would do in the circumstances.

As well as protecting all employees, your employer has the same obligations to independent contractors and their employees, and the employees of labour hire firms who are working at your workplace. This obligation applies to matters that your employer can, or should, control. For example, at a supermarket the employer does, or should have, control over the loading and unloading of trucks and has the same obligation to provide a safe workplace to contract truck drivers as they do for the supermarket employees working on the loading bay.

Your employer must:

- Make sure that the machinery and equipment you use and the systems of work at your workplace – such as the way work is performed, the training provided and safety procedures – are safe and do not create health risks. Examples include ensuring dangerous machinery is guarded, having a safe process for handling cash and protecting you from violence at work;
- Make arrangements to protect you from risks connected to using, storing or transporting equipment and substances – such as toxic chemicals, dusts and fibres;
- Maintain your workplace in a condition that is safe and doesn't risk your health. For example, controlling noise and lighting levels, maintaining clear fire exits;
- Provide you with adequate facilities at workplaces they manage, such as hygienic washrooms, toilets and meal areas; and
- Give you information, training and supervision so you can work safely and without risking your health.

Your employer must also:

- Monitor the health of employees and the conditions of the workplace;
- Provide information about health and safety, in languages other than English if required, including the names of people employees can contact to make an enquiry or complaint about health and safety;
- Keep records on the health and safety of their employees; and
- Employ or contract someone who is qualified in OHS to advise on employees' health and safety.

For example, a workplace might need a hygienist to monitor chemical exposure or an ergonomist to advise on setting up workstations.

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## YOUR RESPONSIBILITIES

When you are at work, you have the responsibility to take reasonable care for your own health and safety and the safety of others who might be affected by your actions. For example, you should not take short cuts when doing your job that might put yourself or someone else at risk and you should not play practical jokes that could hurt someone.

You must cooperate with your employer when they are taking action to improve health and safety or to meet their obligations under the Act. You must follow safety policies and procedures, attend OHS training, follow the advice you've been given, and use safety equipment supplied by your employer.

## YOUR RIGHT TO BE REPRESENTED

You are entitled, and are encouraged, to have someone represent you on health and safety matters with your employer. When employees have an effective way to provide input into decisions made about health and safety, workplaces have better health and safety outcomes.

You have the right to ask your employer to set up a designated work group (DWG). Once a DWG is established, you have the right to elect health and safety representatives (HSRs). As a member of the DWG, you are eligible to be elected.

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.

HSRs can request a health and safety committee (HSC) to be established.

## DESIGNATED WORK GROUPS (DWGs)

### What is a DWG?

A DWG is a group of employees who share similar workplace health and safety concerns and conditions.

One of the main functions of a DWG is to elect HSRs. An HSR is a person from your work group who has been elected by their co-workers to represent them on OHS issues.

Not all workplaces are the same, so the size, number and make-up of DWGs will vary.

A DWG may include employees from:

- One employer who work at the same workplace;
- One employer who work at different locations, such as a catering company working at different events or a bank with branches;
- 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
- 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.

### How do you establish a DWG?

You have the right to ask your employer to establish a DWG. If you, or any other employee asks for a DWG to be set up, your employer must do everything reasonable to start negotiations within 14 days after the request. Your employer can also start discussions about forming DWGs. You have the right to be represented by anyone you choose in negotiations about DWGs.

### Who should belong to the group?

In discussion about who should belong to the DWG, the aim is to work out the grouping that best and most conveniently enables the group's OHS interests to be looked after and provides its members with ready access to HSRs. Usually it will involve people you regularly work with.

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## Other decisions that need to be negotiated when setting up a DWG

You also need to negotiate the following decisions with your employer:

- How many HSRs will the group have?
- Do you need deputy HSRs who can act as the HSR when the HSR is not able to?
- How long will the HSR stay in office? It can't be more than 3 years.
- Should HSRs be authorised to also represent independent contractors?

To encourage more employees to be represented and more involvement of HSRs there are now more options for how employees can be represented by HSRs. A DWG must have at least one HSR, however, multiple HSRs and deputies can be agreed to. It is up to you and your co-workers to negotiate with your employer on the type and number of HSRs required to best represent you. For example, if your DWG involves employees who work multiple shifts, you might find that you are better represented by a number of HSRs or deputy HSRs.

Once agreement has been reached with your employer, your employer must establish the DWG by giving notice in writing to employees in the group as soon as possible.

## What happens if your work group can't reach agreement with your employer?

If agreement can't be reached within a reasonable time on any of the matters related to establishing the DWG, anyone involved in the negotiations can ask WorkSafe to arrange for an inspector to visit and determine any unresolved matters.

## You must not be coerced in negotiations to set up a DWG

Coercion basically means forcing you to think or act in a certain way by using pressure, threats or intimidation. It is an offence for someone to coerce you into not making a request for a DWG, to withdraw a request for a DWG, during discussions about DWGs or about who will represent you in negotiations about DWGs.

## HEALTH AND SAFETY REPRESENTATIVES (HSRs)

### What is an HSR?

An HSR is a person from your DWG who has been elected by the group to represent them on OHS issues. HSRs 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.

Having an HSR to represent your work group can help because:

- An HSR is likely to understand your views and concerns;
- HSRs can be trained in OHS and in how to represent you;
- A coordinated and formal approach to raising OHS ideas and concerns with your employer can have greater impact; and
- HSRs have rights and powers to take action on your behalf.

HSRs have powers to:

- Speak up and act on behalf of the employees they 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 they represent; and
- Attempt to resolve with your employer any health and safety issue that could affect members of their DWG.

### How is an HSR elected?

Once your DWG has been set up, you or any other member of your DWG can stand for election as an HSR. Independent contractors can't stand for election in your DWG.

All employees in the DWG are entitled to vote in the election. The group has the right to decide how the election will be run, for example it may be a show of hands or a ballot. Your work group can ask your employer or a union official for advice or to conduct the election.

Your employer cannot prevent an election and cannot nominate or appoint HSRs. HSRs represent employees and must be elected by them. Your employer should provide the facilities and time necessary for elections to take place.

If the number of people nominated for election equals the agreed number of HSRs and deputy HSRs they can become HSRs without an election. An HSR can hold office for up to 3 years and can then stand for re-election.

Your employer must display a current list of HSRs and deputies for each DWG, or ensure it is readily accessible to all employees.

For more information on HSRs, see 'Information for Health and Safety Representatives available from WorkSafe.

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## HEALTH AND SAFETY COMMITTEES (HSCs)

### What is an HSC?

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.

### How are HSCs set up?

HSRs have the right to ask for an HSC to be set up and your employer must do so within 3 months.

### Who should be on the committee?

Employers must consult you about membership of the committee. If you are represented by an HSR, they must be involved in this consultation. At least half of the committee members must be employees. HSRs or deputy HSRs must fill the employee positions on the committee unless it is not practicable, or in other words not feasible, for them to do so.

## 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.

## 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. Where there are elected HSRs, they must be involved, with or without the involvement of employees directly.

The involvement of 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' by an OHS matter. Basically this means the 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. HSRs must be involved in any 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 is reasonably practicable.

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## 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 you are, or could be, directly affected by a range of OHS matters.

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

## Agreed procedures for OHS consultation

You must be consulted about how consultation will take place at your work, if you are represented by an HSR they must be involved in this consultation. 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 OHS 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 OHS Act – so that they enable your employer to meet their obligation to consult and do not remove powers of HSRs or the functions of an HSC;
- Be developed through consultation between your employer, 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.

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## RESOLVING OHS ISSUES

The Act requires your employer and the employees affected by an OHS issue to attempt to resolve the 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. If the employees are represented by HSRs, your employer and the HSRs must attempt to resolve the issue.

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 and you are affected by that decision, 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 Health and Safety Representatives*
- *Getting into the Act*
- *Resolving OHS Issues in the Workplace – A Guide*
- *Talking Safety Together*

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