CHD PARTNERS

WORKPLACE CONSULTATION

The guide for setting consultation in the workplace

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INTRODUCTION

A safe workplace is more easily achieved when 'persons conducting a business or undertaking' (PCBUs) and workers communicate with each other about work health and safety (WHS) issues, and work together to find solutions.

What is consultation under the model WHS Act?

Consultation is a two-way process between the PCBU and their workers where views and information on work health and safety are sought, shared and considered. Consultation with other duty holders is also required.

When and how should consultation take place?

Consultation is required for the following health and safety matters (section 49 of the model WHS Act):

- identifying hazards and assessing risks
- making decisions about ways to eliminate or minimise those risks
- making decisions about the adequacy of facilities
- when proposing changes that may affect health and safety
- when making any decisions about health and safety.

The three options for consultation are:

- health and safety representatives
- health and safety committees
- informal arrangements (eg tool box talks, WHS consultation may be a permanent agenda item at weekly meetings).

Your obligations

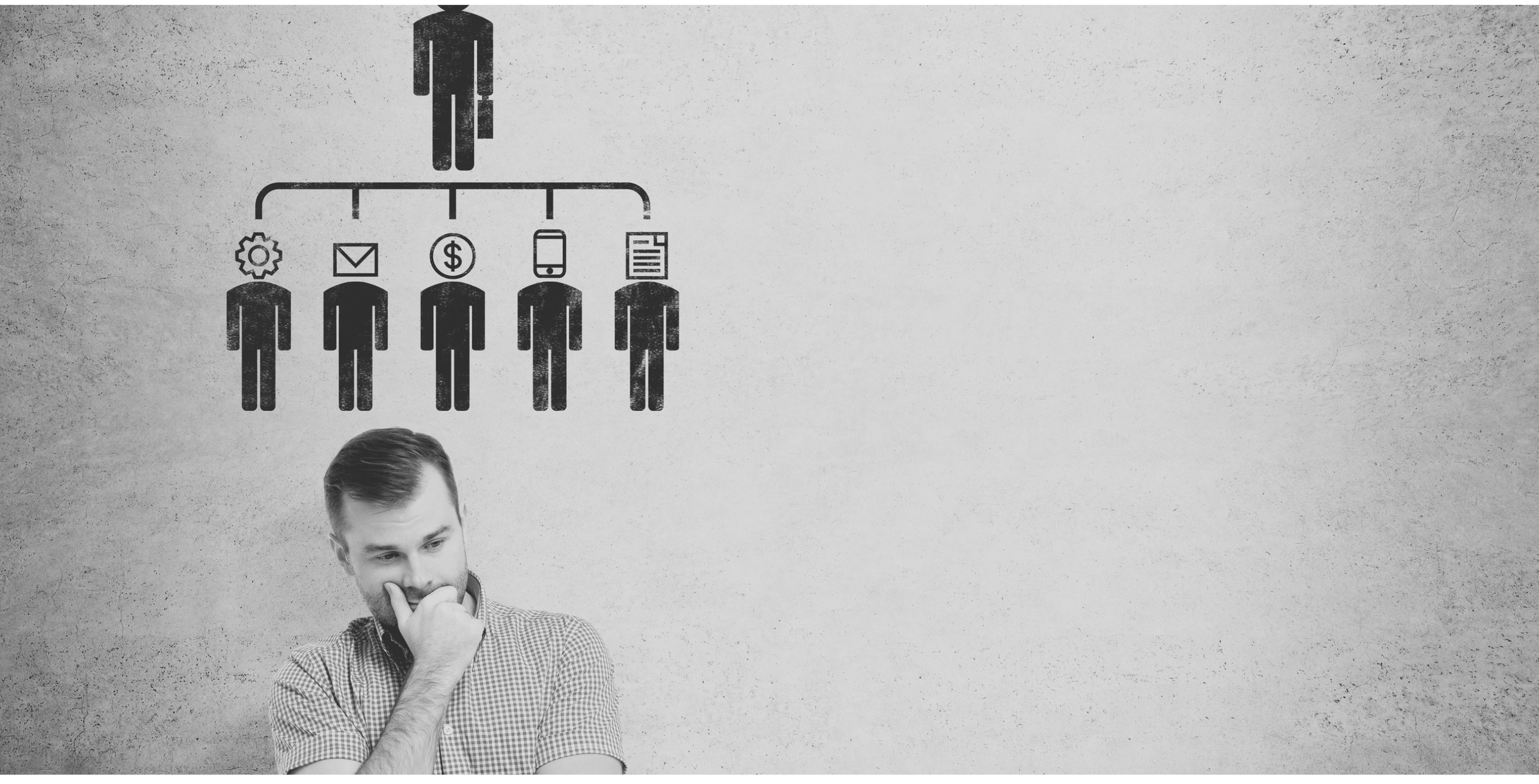
Consultation is about sharing WHS information with workers and providing them with an opportunity to respond and contribute to WHS issues that affect them.

As a person conducting a business or undertaking (PCBU), you must consult with all your workers, including contractors, sub-contractors, labour hire workers, apprentices, work experience staff and volunteers. You must also consult with other PCBUs, so far as is reasonably practicable, if your duty of care overlaps.

If a worker requests it, you must facilitate the election of a health and safety representative, who will act on behalf of the worker's workgroup. Consultation on WHS issues can take place:

- with the HSR
- with a health and safety committee (HSC)
- under any arrangement that you agree upon with your workers.

Even if there are no agreed arrangements, you have an obligation to consult with your workers and other PCBUs on WHS issues.



HEALTH SAFETY REPRESENTATIVE

What is the difference between an work health and safety (WHS) representative and a health and safety representative (HSR)?

A HSR will have a few additional functions to an |WHS representative.

The **major difference** involves an HSR undertaking a five-day HSR training course, which allows them to:

- direct a worker to cease work, if they have reasonable grounds to believe that the worker could be exposed to a serious risk to their health or safety by continuing that work
- issue a provisional improvement notice (PIN) to someone, if they have reasonable grounds to believe that the person is contravening the work health and safety (WHS) legislation.

Other **differences** include:

- an HSR is elected for three years, an WHS representative for two – an HSR can also be re-elected
- an HSR can request that a health and safety committee (HSC) be established
- an HSR can be disqualified under certain circumstances.

The **similarities** between an WHS representative and an HSR are:

- both represent a work group
- both investigate complaints about work health and safety matters
- both can accompany an inspector when inspecting a workplace.

How is an HSR selected?

An HSR is elected by members of a work group to represent that work group in WHS matters. However, an election is not required if the number of candidates equals the number of vacant positions for HSRs in a work group – each candidate is taken to have been elected as an HSR (sections 60 to 63 of the model WHS Act).

When a request is made by at least one worker for an election for one or more HSRs, the person conducting a business or undertaking (PCBU) must begin negotiations with the workers within 14 days of the request for an election

Can a HSR inspect the workplace without advising the PCBU?

If the HSR wants to inspect the workplace on behalf of a workgroup, they must give the PCBU reasonable notice. They are do not need to provide notice if there has been a fatality, a serious injury or illness, or a dangerous incident.

Training for HSRs

Approved work health and safety training providers help HSRs to understand and fulfil their role and functions. HSRs are entitled to attend an approved five-day training course in work health and safety and a one day refresher course each year during their term of office.

The PCBU must allow them paid time off work within three months of the request, and pay the course fee

How long can a HSR represent a work group?

An HSR holds office for three years (compared with the two year term of WHS representatives). An HSR can always be re-elected (section 64 of the model WHS Act).

Your obligations to an HSR

As an employer, you must support the HSR by:

- giving them time off at normal pay, and any necessary facilities and assistance, to enable them to fulfil their role
- talking with them about health and safety issues
- giving them access to all information regarding hazards and risks affecting the work group
- allowing them to attend interviews about work health and safety, if the worker consents
- allowing a person assisting the HSR to enter the workplace, if that assistance is necessary
- permitting them to accompany an inspector on an inspection of areas where the workers they represent work

giving them five days training and a one-day annual refresher course, if requested.

Does every workplace have to have an HSR?

No. A PCBU must facilitate the election of an HSR if one or more workers make a request for this type of representation under section 50 of the model WHS Act.

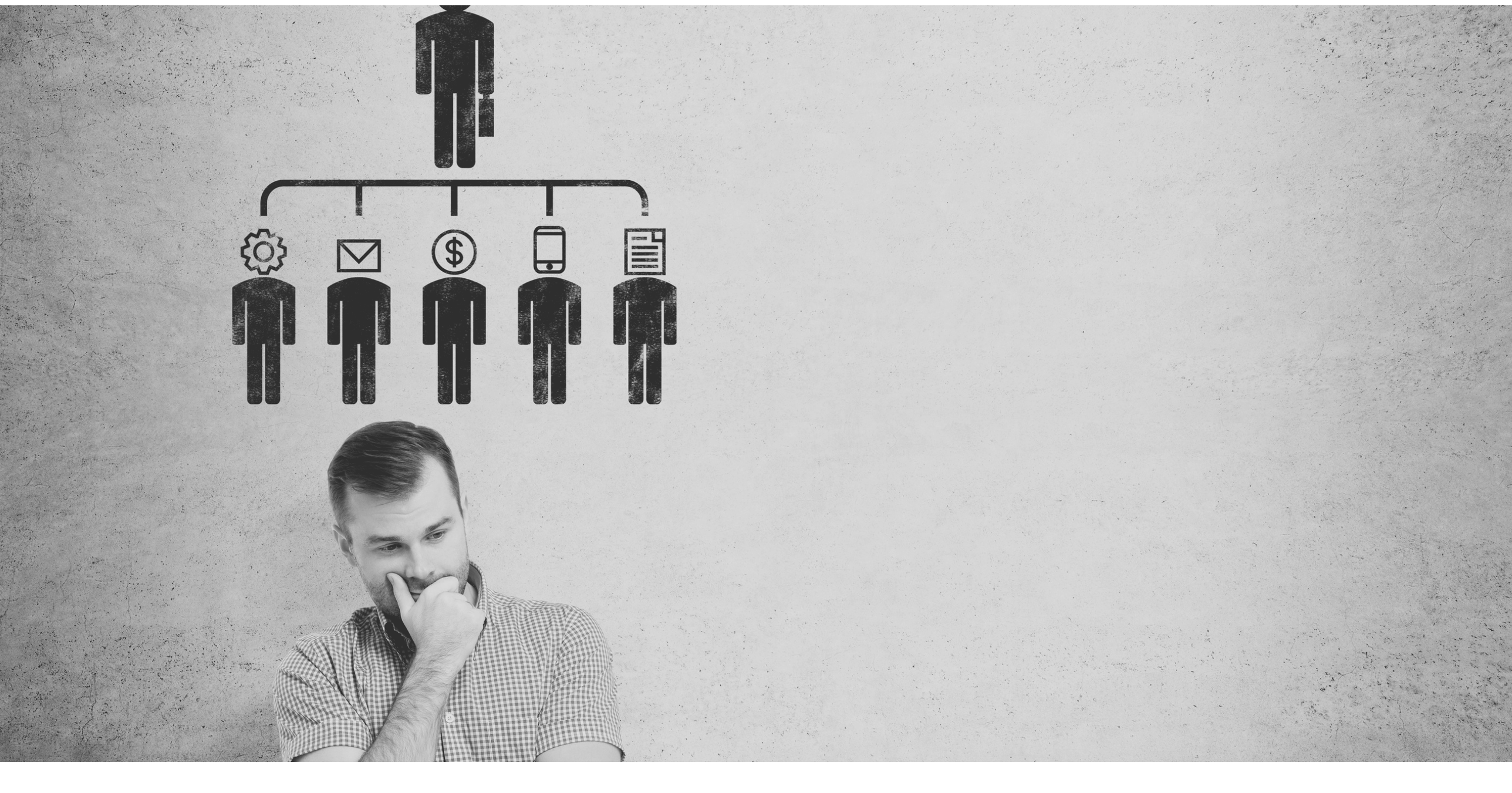
Alternatively, the PCBU can propose that workers consider HSR representation. If there is no HSR, the PCBU must still meet its worker consultation obligations under Part 5 of the Act.

What happens if an HSR does not request to undertake the work health and safety training?

HSRs are entitled to choose and attend a work health and safety training course that has been approved by the regulator (section 72 of the model WHS Act).

Irrespective of whether the HSR has undergone training, the PCBU must still provide resources, facilities and assistance to the HSR enabling them to carry out their functions. If the HSR chooses not to attend an approved training course, they cannot exercise their powers (to issue PINS- Provisional improvement notices direct a person to cease unsafe work).

- This provision is a shift from the old legislation where it is mandatory for WHS representatives and committee members to complete a four day WorkCover NSW course.





WORK GROUPS

A work group is a group of workers who share similar work health and safety (WHS) concerns and conditions.

When do you establish a work group?

Under section 50 of the model WHS Act, a work group must be established by the person conducting a business or undertaking (PCBU) when a worker, or workers, request that an HSR be elected. The work group is formed after consultation between the PCBU and the worker (or workers). By aligning workers into work-related groups, the work group ensures that an HSR can appropriately represent its workers.

If negotiations between the PCBU and workers fail to determine a work group(s), a WorkCover inspector can be asked to resolve the matter. Decisions about work groups are made by consultation and agreement between the PCBU and any relevant workers. The aim is to determine the most workable arrangement for the organisation.

TIP

When setting up work groups, consider the following factors:

- the number of workers employed by the PCBU
- the different types of work performed by the workers
- the number and groupings of workers who perform the same or similar types of work
- the areas or places where each type of work is done
- whether any worker must move from place to place while at work
- the times that work is performed
- the overtime or shiftwork arrangements
- the types of risks involved in particular types of work



HEALTH SAFTEY COMMITTEE

A person conducting a business or undertaking (PCBU) must establish a health and safety committee (HSC) within two months of being requested to do so by a health and safety representative (HSR), or five or more workers.

A PCBU can also establish an HSC if they decide that one is necessary.

At least half of an HSC must be comprised of workers, including HSRs if they choose to be included. The rest is comprised of representatives of the PCBU, such as senior managers, supervisors, personnel officers, etc.

What is the role of a HSC?

The role of HSCs is to provide a forum for consultation on the management of health and safety across the whole workforce (ie not just one work group.

HSCs should:

- facilitate cooperation between the PCBU and the workers in instigating, developing and carrying out measures designed to ensure the health and safety of workers
- assist in developing standards, rules and procedures relating to WHS

In a workplace that does not have HSRs, the HSC may (with the agreement of the PCBU) consider the issues that would normally be dealt with by an HSR.

When must a PCBU establish a health and safety committee?

Under section 75 of the model WHS Act, a PCBU must establish a HSC if:

- five or more workers request one to be established
- the HSR requests one to be established
- required to do so by the regulations

How often must a health and safety committee meet?

A HSC must meet once every three months or at a reasonable time requested by half of the members of the committee (section 78 of the model WHS Act).

Can a health and safety committee be made up of all workers or supervisors?

Half the members of the committee must be workers who are not nominated by the PCBU (section 76 of the model WHS Act). If there are two or more HSRs at the workplace, the HSRs may select one or more HSRs to be members of the Committee.



ALTERNATIVE ARRANGEMENT

Some workplaces may need a mix of HSRs, HSCs and / or other consultation arrangements tailored to suit the workers and the work environment.

It may be more effective and meaningful to have an alternative arrangement for consultation if workers travel frequently or the business is small.

Other arrangements for consultation on health and safety matters could be through:

- regular scheduled meetings
- team meetings (where work health and safety is always an agenda item)
- one-off meetings
- tool box talks
- face to face discussions
- briefing sessions.

If a procedure for consultation has been agreed with workers, the consultation must be in accordance with those procedures.

CHECKLIST: SETTING UP OTHER ARRANGEMENTS

The person conducting a business or undertaking must:

- consult with the workers on how consultation will occur and explain what consultation requires
- ensure the nature of consultation is consistent with requirements under section 48 of the WHS Act including ensuring information is shared and workers are given a reasonable opportunity to contribute
- ensure consultation occurs when required under section 49 of the WHS Act
- If a procedure for consultation has been agreed with workers, the consultation must be in accordance with those procedures
- regularly monitor and review the consultation procedures to ensure they are the most effective form of consultation.



PENALTIES

Prosecutions for more serious offences (Categories 1 & 2) will be heard in the Supreme and District Courts respectively. Matters heard in the Supreme Court will be jury trials. Category 3 offences will be heard in either the Local Court or Industrial Court.

The Industrial Relations Commission will retain an important role under the bill, such as hearing matters to determine applications to disqualify health and safety representatives who misuse their powers; issuing work health and safety entry permits to union officials, and suspending or revoking those permits where appropriate; determining disputes about right of entry; and conducting an external review of decisions made by WorkCover inspectors and WorkCover.

Category 1

- Recklessly exposes a person to risk of death or serious injury or illness
- $3 million corporations
- $600,000 individuals;
- 5 years imprisonment

NOTE: Reckless means intentional, wilful or grossly negligent

Category 2:

- Serious risk of harm without recklessness
- $1.5 million corporations
- $300,000 individuals

Category 3

- Fails to comply with OHS duty
- $500,000 corporations
- $100,000 individuals



TOOLBOX TALKS

Toolbox Talks are a simple but effective way to communicate information to you team or about hazards before commencing work.

Toolbox talks don't have to take a long time. You can effectively run a Toolbox Talk in the period of five to ten minutes.

You can use Toolbox Talks as part of your consultation methods for sharing knowledge and awareness of risks associated with day-to-day activities in the workplace.

DID YOU KNOW?

Having short but frequent Toolbox Talks can significantly reduce workplace incidents and improve productivity.

In addition to identifying hazards before commencing a task, Toolbox Talks can:

- Improve team communication and productivity.
- Provide reminders of workers' duties and responsibilities.
- Grow a positive safety culture within the business
- Keep workers alert.
- Reduce injuires

Toolbox Functions

Toolbox talks have two functions:

- Consult with workers about concerns in the workplace (not just safety)
- To communicate risk to workers and guidance on how to do tasks safely

The challenge for supervisors and managers is identifying relevant topic to discuss in the toolbox talk.

Items for discussion can be identified by asking workers for input or identifying changes to plant and equipment, response to accidents or incidents in the workplace.

CHD Partners has developed a number of toolbox talks to guide managers and supervisors in their delivery o f safety briefings.

(website or link for toolbox talks?

So the next step is to make a decision on your agreed approach to consultation in the workplace.

Good luck in making this decision. If you require assistance or advice, you can **book a free 15 minute consultation with CHD Partners.**