

## FACT SHEET | WHS (MINES AND PETROLEUM SITES) LEGISLATION

# Consulting workers

May 2016

## Why do I need to consult with workers?

Under the *Work Health and Safety Act 2011* ('WHS Act') the person conducting a business or undertaking must, so far as is reasonably practicable, consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety.

A worker is broadly defined to mean a person who carries out work in any capacity for a business or undertaking and includes employees, outworkers, apprentices, trainees, students gaining work experience, volunteers, contractors or subcontractors and their employees.

## When is consultation required?

Under the WHS Act, a person conducting a business or undertaking (PCBU), including a mine operator, must consult with workers when:

- identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking
- making decisions about ways to eliminate or minimise those risks
- making decisions about the adequacy of facilities for the welfare of workers
- when proposing changes that may affect the health or safety of workers
- making decisions about procedures for consulting with workers, resolving health or safety issues, monitoring the health of the workers, monitoring the conditions at the workplace and providing information and training for the workers.

In addition, under the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (WHSMP Regulation), a mine operator must consult with workers at the mine in relation to:

- the development, implementation and review of the safety management system for the mine
- conducting risk assessments for principal mining hazard management plans
- conducting risk assessments for principal control plans
- preparing, testing and reviewing the emergency plan for the mine
- the implementation of the workers' safety role (see next page)
- developing and implementing strategies to protect persons at the mine from any risk to health and safety arising from worker fatigue or the consumption of alcohol or use of drugs.

## What is consultation?

To help ensure that consultation is effective, the WHS Act prescribes some minimum requirements. Under the WHS Act, consultation requires that:

- relevant information about the matter is shared with workers
- workers are given a reasonable opportunity to express their views, raise work health or safety issues and to contribute to the decision-making process relating to the matter

- the views of workers are taken into account by the person conducting the business or undertaking
- the workers consulted are advised of the outcome of the consultation in a timely manner.

If the workers are represented by a health and safety representative, the consultation must involve that representative.

At a coal mine, if the workers are represented by mine safety and health representatives, the consultation must also involve those representatives.

## Workers' safety role

Under the WHSMP Regulation the mine operator of a mine must implement a safety role for the workers at the mine that enables them to contribute to:

- identifying principal mining hazards that are relevant to the work that the workers are, or will be carrying out
- consideration of control measures for risks associated with principal mining hazards at the mine
- consideration of control measures for risks to be managed under principal control plans
- the conduct of a review of a principal hazard management plan.

Implementing a workers' safety role does not require creating particular positions or functions. Rather, it requires the mine operator to ensure that the consultation arrangements include effective consultation on the matters specified. SafeWork NSW's *Work health and safety consultation, cooperation and coordination code of practice* at page 4 states:

*A safe workplace is more easily achieved when everyone involved in the work communicates with each other to identify hazards and risks, talks about any health and safety concerns and works together to find solutions. This includes cooperation between the people who manage or control the work and those who carry out the work or who are affected by the work.*

*By drawing on the knowledge and experience of your workers, more informed decisions can be made about how the work should be carried out safely.*

The workers' safety role aims to ensure the specific and active participation of workers in consultation on principal mining hazards and the control measures under principal control plans.

## More information

[Work health and safety consultation, cooperation and coordination Code of Practice](#) SafeWork NSW

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Disclaimer: This publication provides a general summary of some of the provisions under the Work Health and Safety Act 2011 and the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 as interpreted by the NSW Department of Industry, Skills and Regional Development of at the time of writing (May 2016). Compliance with the legislation is a legal requirement. This publication does not provide or purport to provide legal advice. Users are reminded of the need to ensure that the information upon which they rely is up to date by checking the currency of the information at the Department of Industry, Skills and Regional Development website or with the user's independent legal advisor.

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