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## Introduction

The NSW Labor Government introduced the new OHS Act, after negotiations with unions across many industries, to improve the Laws. The changes to the Act are designed to strengthen the Laws and make it easy for Union Representatives to understand.

Unions worked hard to ensure changes to the Act would empower workers by enabling them to address safety issues in their own workplaces. The new Law allows for workplace safety representatives to be elected and OHS committees to be established to represent their work group (**there is more detail about this later in this booklet**).

**This booklet has been produced to assist you in your role as an OHS Representative.**

### OHS Website – UnionSafe

Unions NSW have also established a special OHS website to assist union representatives in their role.

The site is divided into a number of areas and has user-friendly information i.e. fact sheets on the Law. It also has an A to Z of hazards and a facility for Union Representatives to have their questions answered.

The website address is [www.unionsafe.labor.net.au](http://www.unionsafe.labor.net.au)

# New OHS Laws give you a real say

The **new Laws** require employers to consult with their employees about all issues affecting health and safety and welfare in the workplace. This is an absolute obligation and employers can be prosecuted for not complying.

The **new Laws** state that employers must take into account the views of employees. It is important that OHS Reps put recommendations in writing to the employer.

**This includes:** suggested changes to work practices, equipment, rosters, or any decision which could have OHS implications.

Codes and Workplace Policies underpin the new Laws i.e. the Act and Regulation.

**It is important for you to get involved in developing your Workplace Policies. The OHS website will provide you with templates of policies.**

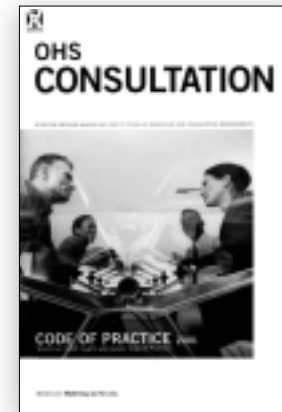


- **OHS Act** – is the Law and MUST be followed.
- **OHS Regulation** – is the Law and MUST be followed.
- **Codes & Industry Standard** – provides guidance on how to meet the Law.
- **Workplace Policies** – very important, they provide guidance and can be used in prosecutions.

# Consultation is the key

In addition to the Law, there is also a Code of Practice, which has been developed by WorkCover for employers and employees on how to consult.

The Code explains what is effective and ineffective consultation.



*The Code of Practice is available at [www.unionsafe.labor.net.au](http://www.unionsafe.labor.net.au)*



# When should employees have a say?

The OHS Act says consultation **must** be undertaken when:

- Employers are **changing systems of work** or work practices or **introducing new equipment** or chemicals into a workplace
- **Decisions** about health and safety issues are made
- **Identifying** and assessing risks in your workplace
- **Decisions** are made about the appropriateness of facilities for the welfare of employees.

**Under the Law the union can represent workers to set up the best consultation structure for your workplace.**

The employer **must** also consult with employees after an injury or accident occurs, to discuss why OHS measures failed and to identify any changes needed to ensure a similar accident or injury doesn't happen again.

## Information, instruction and training

*(Refer to Section 8 of the OHS Act)*

The Law requires that an employer must provide appropriate information, instruction, training and supervision to ensure the health, safety and welfare of its employees.

The employer should consult their employees about training necessary to undertake their work safely and ensure that any information and training is in a form that is easily understood.

Training procedures should be well developed in consultation with employees, well displayed and accessible to all employees.

# Getting involved

The Law and Code of Practice outline options for the best ways for consultation to be carried out. They include:

- **OHS Committees** and/or
- **OHS Representatives**, who represent the workers of a designated area, or work group, in the workplace and/or
- **Your union** can negotiate on other agreed arrangements, which may be a combination of OHS Representatives and Committees.

Whatever consultation system is used, it is more likely to succeed if the employer and employees agree to it.

## Making sure all workgroups are represented

*(Refer to Clause 23 of the OHS Regulation)*

The Law requires that the employer must take into account different groups of employees. These are defined as workgroups.

The Law states that in establishing a workgroup it should take into account the number of employees and hours of work, including shift workers, part-timers, seasonal workers or short-term employees.

The OHS consulting arrangement should also consider the different types of work performed and different levels of responsibility.

Under the Law, an OHS Committee or Safety Representative must represent a defined 'work group' of employees.

In a hospital, for instance, the workgroups could be doctors, nurses, maintenance workers, cleaners, administration staff, catering staff, kitchen workers, x-ray department, drivers and security officers. These groups should all have elected representatives. You would also need to take into account the number of employees and the shifts worked.

**The employer cannot determine what a workgroup is.**

Employees must elect their own representative from the workgroup.

## OHS Committees

*(Refer to Clause 24 of the OHS Regulation)*

An OHS Committee is established where the employer has more than 20 employees and the majority request a Committee. More than one Committee can be established.

Committees are made up of management and employee representatives. Workers must elect the employee representative and the employer nominates their own representatives. The management representatives should be the "decision-makers" and people who have control of the budget.

A person who is elected from a workgroup can be an employee representative on a Committee. Employer representatives cannot outnumber employee representatives.

**The Chair of the Committee must be an employee.**

OHS Committees must receive training (**paid for by the employer**) and this should be arranged within three (3) months of their appointment.

**Unions can** conduct elections for OHS Committees or Representatives.

**Make sure your OHS Committee has been set up properly.**

Members are elected for a two (2) year term.



## OHS Representatives

*(Refer to Clause 25 of the OHS Regulation)*

In all workplaces **the Law** and the Code allow for the election of OHS (Safety) Representatives as an option for consultation. Employees in their workgroup must elect these reps. They are also entitled to receive WorkCover accredited training to help them carry out their role/duties.

**Under the Law** the employer must provide adequate time and facilities for these representatives to carry out their role and consult with the employees in their workgroups (Refer to clause 27).

**Unions can** conduct the election. OHS Representatives (and OHS Committee members) must receive WorkCover-accredited paid training.

**Ask** your union organiser for more information about training.

### The power of OHS Representatives

*(Refer to Clause 30 of the OHS Regulation)*

The **new safety Laws** give real power to OHS Committee members and Safety Representatives. They must be involved in the risk assessment process. Their recommendations must be considered. The employer must deal with issues raised.

Safety Representatives and OHS Committee members can call on their union or WorkCover to assist.

## Under the Law an OHS Representative...

(Refer to Clause 30 of the OHS Regulation)

- **Can investigate** any matter that may be a risk to health and safety in the workplace
- **Must receive** appropriate training, paid for by the employer, as they have a clearly defined role to consult the employees they represent
- **Must make sure** that they represent all the workers in their work group
- **Must be elected** by employees in their workgroup (for a 2 year term)
- **Can be re-elected**
- **May request unions** to assist them in the election process
- **Can request** to accompany an inspector as an observer on an inspection or during a formal report by an inspector to an employer in connection with OHS matters
- **Can accompany an employee** of the OHS rep's workgroup, by request of the employee during an interview by the employer on an OHS matter
- **Can be an observer** during a formal in-house investigation of an accident or other occurrence at the relevant place of work that is required to be notified by WorkCover under Division 4 of Part 5 of the OHS Act
- **Can assist** in the development of workplace policies to promote improved workplace health and safety
- **Can make recommendations** on training of members of OHS committees, OHS Representatives and employees in relation to OHS.

## Being an effective OHS Representative

It is very important for union representatives to take an active role in occupational health and safety.

Safety is an important issue for all workers but, as a Rep, you should **work with** members in your work group to make sure all the hazards are addressed. Workers should **not tolerate** working in hazardous conditions where they are likely to be injured or killed.

As a Rep you must **be alert** and **investigate** all accidents and any complaints about unsafe working conditions.

It is important for all of the people in your work group to have safe work procedures in writing and that they are trained in how to perform jobs safely.

**Unions will strongly support OHS Representatives in dealing with all safety matters.**

**Unions NSW have a special website – [www.unionsafe.labor.net.au](http://www.unionsafe.labor.net.au) to assist you in this role.**



# OHS Committees and OHS Representatives working together

It is very important for Occupational Health and Safety Committees and OHS Representatives to work together.

The **OHS Committee** plays a strategic role in:

- Developing workplace policies and procedures
- Addressing specific problems referred to them by OHS Representatives
- Assisting with the development of systems for managing safety, investigating accidents, etc.

The role of the **OHS Representative** is to look after their own individual workgroup and the day to day issues i.e. hazards, etc., which may arise. They should also be involved in identifying, assessing and controlling risks in their work area.

The OHS Representative should refer any issue which has the potential to impact on an organisation as a whole to the OHS Committee. The OHS Representative should also refer any matter that can not be resolved at their level to the Committee with a recommendation, and outline a timeframe for report back.

Where Committees and Representatives are present and there is a workplace accident involving WorkCover they should elect one representative to assist the WorkCover Inspector. The union can also be present for these investigations and inspections.



# What employers must do under the new Law

From the **1st September 2002**, all large employers (20 employees or more) and from 1st September 2003 all small employers (less than 20 employees), **must identify hazards, assess the risks associated with these hazards, and take steps to fix or control the risks.**

## Conduct a risk assessment

*(Refer to Clause 9 of the OHS Regulation)*

For example, an employer – in consultation with employees – must review all workplace safety procedures (including workplace tasks) to ensure that:

- Hazards are clearly identified
- Risks are assessed
- Risks are eliminated or, if they cannot be eliminated, control measures are put in place.

As an OHS Representative, you should be actively involved in all stages of this process.

**Employers can be prosecuted for failing to identify hazards. The fine is up to \$27,500.**

## When must an employer do this?

- Before using premises as a place of work
- Before installing or altering the plant
- Before changing work practices or systems, i.e. shifts or rosters
- Before hazardous substances are introduced
- While work is being carried out
- If new information becomes available
- Before purchasing new equipment and chemicals
- When jobs are introduced or changed
- When safety incidents are being investigated
- When risk assessments are being carried out.

**EMPLOYEES MUST BE INVOLVED IN THIS PROCESS**

## How do employers go about identifying risk?

*(Refer to Clause 9 of the OHS Regulation)*

Employers would do this by:

- Reviewing their Workers Compensation claims records
- Reviewing the workplace injury register (employers are required by Law to have an injury register)
- Surveying and consulting employees and their representatives
- Inspecting workplaces
- Liaising with OHS Committees and Representatives
- Considering others, i.e. contractors, visitors, maintenance workers, etc.

## How does an employer control risks?

*(Refer to Clause 11 of the Regulation)*

Under the Law an employer is required to eliminate, and if this is not possible, control risks.

The employer has to adopt the five steps for controlling risks.

1. **Can the risk be eliminated or substituted?** For example, removing risk of electricity by using compressed air driven tools.
2. **Can the person be isolated from the risk?** For example, guards on power tools and enclose heavy machinery.
3. **Can the risk be designed out?** For example, earth leakage device, use a machine to lift heavy objects, use scaffold instead of ladders.
4. **Can the work practice be changed** or could the person be trained to avoid the risk? For example, training in lifting techniques, tagging procedures.
5. **Provide the person with personal protective equipment** (PPE is a last resort). However if it is provided it must be worn and used properly.

**Employers can be prosecuted for failing to control risks.**

## What is a risk assessment?

*(Refer to Clause 10 of the OHS Regulation)*

A risk assessment measures the likelihood and the severity of the risk – for example, how likely is it that a person is going to be harmed or killed? How serious could the injury be?

## How to do a risk assessment

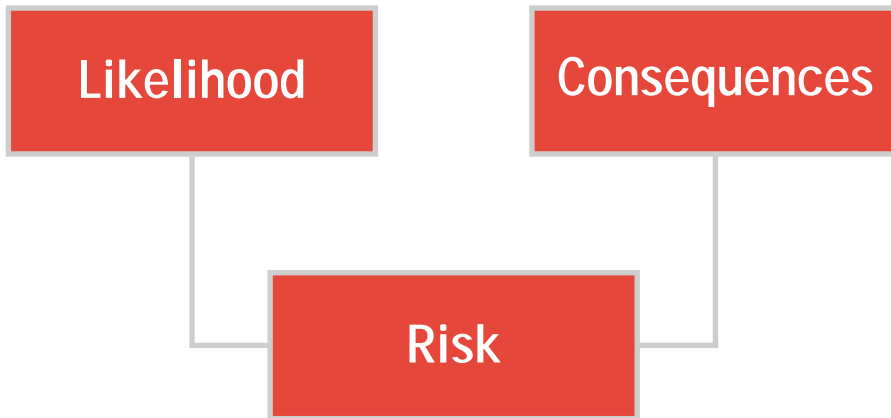
*(Refer to Clause 10 of the OHS Regulation)*

Often employers look at minor hazards in a workplace – eg loose carpets, lighting – and do not look at major hazards – eg building structure, chemical, electrical, guarding, slippery floors and manual handling.

WorkCover has developed a risk assessment matrix that shows how to prioritise hazards (Refer to pages 18 and 19). It deals with the most severe hazards first, eg electrocution, which can kill.



# Risk assessment



A risk assessment is a commonsense way of measuring the likelihood of someone being injured and how serious the injury could be. For example, if wiring is frayed in a vacuum cleaner, think about the likelihood of a worker being electrocuted and what the consequences could be.

# Risk assessment matrix

	2. How likely is it to be that bad?			
1. How severely could it hurt someone or how ill could it make someone?	++ Very likely could happen anytime.	+ Likely could happen at some time.	= Unlikely could happen but very rarely.	= Very unlikely could happen but probably never will.
X Kill or cause permanent disability or ill health.	1	1	2	3
!!! Long term illness or serious injury.	1	2	3	4
!! Medical attention and several days off work.	2	3	4	5
! First Aid needed.	3	4	5	6

WorkCover has developed a risk assessment matrix to help employees and employers prioritise risks. For example, if a floor is wet, it is very likely that a person could trip or slip. There is also a potential need for medical attention and several days off. This would score a '2' and should be addressed immediately.



# The Law made easy – one-stop-shop

As well as the OHS Act, the government has developed an OHS Regulation 2001. This regulation is a one-stop-shop and covers everything in a workplace from plant to electricity. It also covers psychological hazards such as bullying and violence. The Regulation is the Law and the employer must comply with all of the requirements of the Regulation. It is easy to follow and highlighted below are the major clauses that a union representative would need to refer to.

- Accommodation – clause 19
- Amenities – clause 18
- Asbestos – clauses 42-44
- Atmosphere – clauses 50-55
- Confined spaces – clauses 66-78
- Construction work – clauses 209-264
- Consultation – clauses 21-32
  - Committees
  - OHS representatives
  - Definition of workgroups
  - Functions and powers of reps
  - Training of committee and representatives
- Electricity – clauses 41-42, 63-65, 205-208
- First aid – clause 20
- Hazardous processes – clauses 158-174
- Hazardous substances – clauses 145-174
- Heat and cold – clauses 47-48
- Instruction, training and information – clause 13
- Lighting – clause 46
- Manual handling – clauses 79-81
- Noise – clause 49
- Personal protective equipment – clause 15
- Plant – clauses 82-144
- Provisions for emergencies – clause 17
- Risk management – clauses 9-12
- Working space – clause 45

The Regulation is the Law and the employer can be prosecuted for failing to comply with the Regulation.

# Employees also have responsibilities

*(Refer to Section 20 of the OHS Act)*

An employee must take an active role to ensure the health and safety of their fellow workers, and of visitors to the workplace.

Employees must also co-operate with their employer, by wearing personal protective equipment and following safe operating procedures.

They must also report all workplace hazards to their employer. Hazards include objects – machinery, chemical substances, tools, equipment – or processes and systems – hours of work, rest breaks, staffing levels, layout of offices.

## Employees cannot be sacked for raising health and safety issues

*(Refer to Section 23 of the OHS Act)*

An employee must **not be dismissed, injured or have their employment altered** by their employer because they

- Made a complaint about safety
- Are a member of an OHS Committee or Safety Representative
- Are injured at work.

As well as the Regulation there are Codes of Practice and guidance material – contact your union or visit the UnionSafe website for a list of this material.

The Unionsafe website is at [www.unionsafe.labor.net.au](http://www.unionsafe.labor.net.au)

## Investigating OHS problems

Any matter that may be a risk to workplace health and safety can be investigated by the OHS Committee, OHS representatives, or by whatever arrangement has been set up to manage OHS issues.

It is important that clear procedures be established for investigations into incidents, injuries and accidents before they occur.

When an issue is found to be a risk to health and safety, the matter should be formally referred to the employer. The employer must then respond in a timely manner.

If the issue remains unresolved after the employer has been given a reasonable amount of time to respond, contact your union office.

An investigation by a WorkCover NSW inspector can also be requested.

## Unions have power under OHS Laws

*(Refer to Sections 76-85 OHS Act)*

The Law says unions can:

- Enter premises without notice to investigate suspected OHS breaches
- Prosecute employers for breaches
- Inspect and copy all workplace safety records
- Conduct searches, take photos and video and audio recordings.

## Employers and obligations

*(Refer to Clause 27 of the OHS Regulation)*

The employer must make sure that employees are familiar with OHS consultation arrangements. This would be achieved by:

- Recording and publicising arrangements
- Providing OHS Representatives with
  - Appropriate access to employees
  - Access to adequate facilities during working hours, including meetings, inspections and elections
  - Access to information to assist them in this role, for example internet
- Ensuring that employees participating in OHS consultation arrangements are paid as if they are engaged in the duties of their employment
- Paying costs reasonably and necessarily incurred by employees in connection with their participation in OHS consultation or training
- Facilitating OHS consultation arrangements for all people working in their employ, whether they are contractors or directly employed
- Allowing OHS Representatives and Committee members to consult with members of their work groups during work time.

All time spent on OHS matters by OHS elected representatives will be paid time.



# Training

Under the new OHS Regulation, employers are required to provide appropriate training, instruction and information to employees.

All new employees must receive OHS induction training. This covers:

1. How to report hazards
2. Health and safety procedures
3. How to access health and safety information, including use and maintenance of risk control measures.

OHS Committee Members and Safety Representatives must also receive accredited training paid for by the employer.

**Employees must be trained to perform tasks safely.**

# For more information

This booklet is an introduction to the new Occupational Health and Safety Laws in NSW. Your union is also running training courses for delegates on the new Laws.

For more information see page 2 of this handbook, or visit [www.unionsafe.labor.net.au](http://www.unionsafe.labor.net.au)

# Designating a workgroup and OHS Rep nomination letter

*(Refer to Clause 22(5) OHS Regulation)*

Date:

(Title) (First Name) (Surname)  
(Position Title)  
(Company)  
(Address) (Postcode)

Dear (Title) (Surname),

We, the undersigned employees at (insert name), request that negotiations commence within 14 days of the date of this letter, to establish designated workgroups and OHS Representatives in these workgroups.

The employees under Clause 22(5) request the union be involved in these discussions, pursuant to Clause 23 of the OHS Regulation, and in line with WorkCover Consultation Code of Practice.

Further, we advise that we have authorised (insert name), Secretary of the (insert name) union or in his/her place, (insert name), official of the union, to act as our representative in these discussions and elections as allowed by the Clause 25(c) of the Occupational Health and Safety Regulation 2001.

Yours faithfully,

*(NB: A majority of the employees should sign here, not the organiser. This letter should NOT be on union letterhead.)*

Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____
Signature _____	Signature _____

## OHS checklist

- Do you have OHS Consultative mechanisms in place, i.e. OHS Reps and/or Committee and/or other arrangements?
- Are the details of the arrangement displayed in the workplace?
- Has your employer approached you about identifying workplace hazards?
- Has your employer conducted a risk assessment?
- Has your employer done anything about eliminating or, if they were unable to be eliminated, controlling risks?
- Have the workers in your workgroup been trained to perform their tasks safely?
- Is there a Safety Induction Program for new employees?
- Have you attended the union training course on OHS?

IF YOU WANT TO GET INVOLVED IN SAFETY ISSUES  
CONTACT YOUR WORKPLACE UNION REPRESENTATIVE.