

ACT & NSW WHS Act: RECORD of CONSULTATION

Date	HSR Name	PCBU/Employer Representative Name
Time	Workgroup	PCBU/Employer Representative Title
Who was present at the meeting?		
<input type="checkbox"/> I received all the information prior to the meeting [please tick]		
What is the WHS Issue/consultation topic being discussed		
<input type="checkbox"/> Section 19: failure to provide a healthy and safe work <input type="checkbox"/> Section 47: failure to consult <input type="checkbox"/> Other		Details
What is the proposed solution[s]?		
HSR Proposed solution[s]		Employer Proposed solution[s]
Solution agree <input type="checkbox"/> Yes <input type="checkbox"/> No		Solution agree <input type="checkbox"/> Yes <input type="checkbox"/> No
What are the agreed next steps?		
<input type="checkbox"/> Pursuant to section 90(3) of the WHS Act, a copy of this record was given to the PCBU/Employer Rep named above as evidence of the consultation that was undertaken to attempt to resolve the health and safety issue.		
<input type="checkbox"/> I hereby advise the PCBU/Employer representative that if the issue is not remedied, I may choose to exercise my right to issue a Provisional Improvement Notice under Section 90 of WHS Act or take alternative action in accordance with the Act.		
HSR Signature:		

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General Information about Consultation

The WHS Act, Part 5 sections 46, 47, 48 and 49 require that the PCBU/employer consults with workers and their HSRs about health and safety matters.

The PCBU/employer needs to consult when

- Identifying hazards and assessing risks
- Making decisions about risk control measures and facilities like toilets/lunchrooms
- When proposing changes that may affect health and safety eg roster change, production process, new chemical
- Making decisions about health monitoring, workplace conditions, providing information and training

In fact, when it comes to matters that affect H&S, the PCBU/employer has considerable obligations to consult – this is an obligation that is often forgotten.

The purpose of this sheet is to make it easier for HSRs to keep a record of consultation and any decisions that have or have not been made.

Consultation does not require HSR or PCBUs to put anything in writing but it is good practise and a very useful way of reminding everyone of what should be done.

HSRs do not have to agree to any demands from a PCBU/employer.

You do not have to use this form but other HSRs have found it very useful.

Reminder:

WHS Act Section 19 – Primary Duty of Care – the PCBU must protect the H&S of workers and other persons eg visitors. The PCBU must do this by maintaining and providing a safe and healthy work environment, machinery/equipment, substances; adequate facilities for the welfare of workers; information, instruction, training and supervision and monitor the health of workers and work conditions.

The PCBU has to fulfil all of these obligations, so far as reasonably practicable.

Section 18 defines so far as reasonably practicable. Importantly, cost is only one of the 5 factors that the PCBU must consider when deciding on what is reasonably practicable? Cost is only to be taken into account after the risks and the ways of eliminating or minimising the risks have been considered.

Provisional Improvement Notice Section 90: A HSR must consult about the health and safety matter before issuing a Provisional Improvement Notice to a person [section 90(3)]. This record of consultation is useful for that purpose.

The AMWU suggests that you

- keep the original
- give a copy to the employer rep eg PCBU an Officer of the PCBU or Senior Management
- and you may wish to send a copy to your AMWU office or the local office of SafeWork NSW or WprkSafe ACT.

Further advice contact your AMWU H&S officer or HelpDesk 1800 206 316



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Prohibition of discriminatory conduct – WHS Act, Section 104

(1) A person must not engage in discriminatory conduct for a prohibited reason.

(2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

Note. Civil proceedings may be brought under Division 3 of this Part in relation to discriminatory conduct engaged in for a prohibited reason.

Misrepresentation

(1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's:

- (a) rights or obligations under this Act, or
- (b) ability to initiate, or participate in, a process or proceedings under this Act, or
- (c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.

What is "discriminatory conduct" – WHS Act, Section 105

(1) For the purposes of this Part, a person engages in **discriminatory conduct** if:

- (a) the person:
 - (i) dismisses a worker, or
 - (ii) terminates a contract for services with a worker, or
 - (iii) puts a worker to his or her detriment in the engagement of the worker, or
 - (iv) alters the position of a worker to the worker's detriment, or
 - (b) the person:
 - (i) refuses or fails to offer to engage a prospective worker, or
 - (ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement, or
 - (c) the person terminates a commercial arrangement with another person, or
 - (d) the person refuses or fails to enter into a commercial arrangement with another person.
- (2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.

What is a "prohibited reason"

Conduct referred to in section 105 is engaged in for a **prohibited reason** if it is engaged in because the worker or prospective worker or the person referred to in section 105 (1) (c) or (d) (as the case requires):

- (a) is, has been or proposes to be a health and safety representative or a member of a health and safety committee, or
- (b) undertakes, has undertaken or proposes to undertake another role under this Act, or
- (c) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a health and safety representative or as a member of a health and safety committee, or
- (d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way, or
- (e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way, or
- (f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way, or
- (g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act, or
- (h) raises or has raised or proposes to raise an issue or concern about work health and safety with:
 - (i) the person conducting a business or undertaking, or
 - (ii) an inspector, or
 - (iii) a WHS entry permit holder, or
 - (iv) a health and safety representative, or
 - (v) a member of a health and safety committee, or
 - (vi) another worker, or
 - (vii) any other person who has a duty under this Act in relation to the matter, or
 - (viii) any other person exercising a power or performing a function under this Act, or
- (i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act, or
- (j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

A breach of some of these laws carries maximum penalties of

- (a) in the case of an individual—\$100,000, or
- (b) in the case of a body corporate—\$500,000.