

SUPPLEMENTARY GUIDANCE NOTE

WORK HEALTH AND SAFETY AMENDMENT BILL 2018 ELECTION PROCESS OF HSRs FOR MAJOR CONSTRUCTION PROJECTS

OVERVIEW

The changes to the [Work Health and Safety Act 2011](#) and [Work Health and Safety Regulation 2011](#) that commenced on 1 January 2019 are designed to improve safety in the construction industry by enhancing consultation and collaboration. A Guidance Note titled "Work Health and Safety Amendment Bill 2018" was issued February 2019 to cover the basic operations of the new provisions – see here.

https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/4708/kw/hsr/related/1#!tabs-11

Feedback from stakeholders on the implementation of the new obligations requiring principal contractors to consult with eligible unions has raised some matters that require clarification in relation to the conduct of the nomination and election process of HSRs.

This Supplementary Guidance Note has been developed to assist stakeholders work through the procedure of conducting a nomination process and subsequent election of HSRs and/or Deputy HSRs under section 52 of the [Work Health and Safety Act 2011](#) and section 17 [Work Health and Safety Regulation 2011](#).

Consultation with Eligible Unions

Step One:

Before work commences on a major construction project, the principal contractor must provide written notice to the eligible unions by completing the [Notice of requirement to consult with each eligible union for the major construction project](#) form.

The notice includes the following information:

- the proposed number and composition of work groups to be represented by health and safety representatives; and

- *the proposed number of health and safety representatives and deputy health and safety representatives.*

Step Two:

The eligible unions have the option to negotiate on the proposed (nominated) composition of the working groups and number of HSR representatives (as outlined in the Form under Step One). If any eligible union responds within 14 days after receiving the above Form and identifies that it wishes to participate in negotiations, the principal contractor must negotiate on the number of HSRs and work groups with those eligible unions.

Step Three - Nomination and Election Process

Once the number of work groups and HSRs has been agreed (as proposed in the nomination Form under Step One or by negotiation under Step Two), the Principal Contractor must disseminate to all workers on the major construction project the agreed composition of the working groups and HSR positions to be filled.

This can be done in several ways including an all site meeting with workers present, notice boards and/or communicated by way of email or text to mobile devices.

A period should be provided to the workers to nominate for positions that are available to be filled within the agreed working groups. WorkSafe ACT suggests a minimum period of 7 days.

Irrespective of how the principal contractor communicates and records nominations from workers, a comprehensive record of all notices sent out, meeting agendas, meeting minutes, other relevant communications including nominations received, must be kept on record as evidence that the process was completed. The process trail must clearly demonstrate that all workers had a reasonable opportunity to participate in the nomination and any subsequent election process.

Should the principal contractor receive only enough nomination to fill the available HSR roles then an election is not required.

Information and guidance relating to obligations incumbent upon the principal contractor in relation to HSR training and reasonable costs etc. can be found in Guidance Note 03/2019 -

https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/4713 - and also in the [Work Health and Safety Act 2011](#) and [Work Health and Safety Regulation 2011](#).

The Principal Contractor must as soon as practicable within the period of 3 months after the day the health and safety representative is elected, ensure the health and safety representative has time off work to attend the course of training; and pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training. This means the principal contractor cannot not impose costs upon the sub-contractor (PCBU for the elected HSR) who are not directly employed by the principal contractor.

Related Legislative requirements

As outlined above, all stakeholders should note that the provisions of Section 50A of the [Work Health and Safety Act 2011](#) prescribe the obligations of a principal contractor to consult with each 'eligible union' for a construction project in relation to the composition and number of work groups, the number of HSRs and anything else prescribed by regulation.

This provision does not confer any additional powers on eligible unions (beyond those already contained within the WHS Legislation) such as to consult directly with workers on other matters involved in the project. For example, this provision does not provide a direct power for eligible unions to be involved in the nomination and/or election process as arranged between the workers and the principal contractor, unless requested by a majority of workers.

A second example is under section 52 of the WHS Act where a worker on a major construction project is *not* a member of an eligible union, the principal contractor should ensure their views are taken into consideration. Those workers cannot be compelled to be part of any negotiations with the union and other workers who are union members on the project.

However, the principal contractor must allow eligible union/s to be involved in negotiations subject to section 52 of the [Work Health and Safety Act 2011](#) where the majority of the working group request union participation. The section 52 provisions of the Act remain the same and have not been amended as part of the changes constituted under the *Work Health and Safety Amendment Bill 2018*.

DEFINITIONS

Eligible union for a major construction project means a registered employee association that is eligible to represent the industrial interests of 1 or more workers carrying out work in connection with the project.

Major construction project is a project involving construction work with a contract price that is more than \$5 million.

Contract price is the contract price agreed with the principal contractor before work starts on the project and does not include any variation to the contract price made during the project.

Principal contractor is a person conducting a business or undertaking (PCBU) that commissions a major construction project or the PCBU engaged who has management or control of the workplace.

Person conducting a business or undertaking includes the principal contractor for a major construction project and does not include any variation to the contract price made during the project.

Work groups consists of workers who perform similar types of work and have similar health and safety conditions within the workplace.