

WHS P003 Consultation Protocol

Section 1 - Overview

(1) The [Work Health and Safety \(WHS\) Act 2011](#) (clause 47) requires (in summary) that the University must, as far as reasonably practicable, consult with workers and other stakeholders whose health and safety is likely to be affected by the undertakings of the University.

(2) The University acknowledges that there is a specific legal requirement to consult, along with specific ways that the consultation shall occur. This Protocol specifies the consultation framework that underpins the University's compliance with this legal requirement.

(3) Furthermore, the University values consultation with staff as it is an essential part of effectively managing health and safety at work. The University views consultation not just as a legal requirement, but as a valuable means of improving decision making and support for health and safety matters.

Section 2 - Scope

(4) This document has been developed in accordance with:

- a. [Work Health and Safety Act 2011](#) and [Work Health and Safety Regulation 2017](#);
- b. AS/NZS 4801:2001 Work health and safety management systems — Specification with guidance for use;
- c. AS/NZS 4804:2001 Occupational health and safety management systems — general guidelines on principles, systems and supporting techniques; and
- d. Work Health and Safety Consultation Cooperation and Coordination: Code of practice 2011.

(5) This protocol applies to University Representatives, Students and visitors.

Section 3 - Protocol

(6) In all instances where consultation occurs at the University the fundamental nature of the consultation shall be in accordance with clause 48 [WHS Act 2011](#) and be executed in such a way to ensure that:

- a. relevant information about the matter is shared with staff; and
- b. that staff be given a reasonable opportunity:
 - i. to express their views and to raise work health or safety issues in relation to the matter; and
 - ii. to contribute to the decision-making process relating to the matter; and
- c. the views of staff are taken into account by the person conducting the business or undertaking; and
- d. the staff consulted are advised of the outcome of the consultation in a timely manner.

(7) The various forms of formalised consultation at the University include:

- a. Work Health and Safety (WHS) Work Groups with elected Health and Safety Representatives (HSRs) and

- Deputies;
- b. WHS Committee;
- c. WHS Management Group;
- d. scheduled inspections;
- e. risk assessment teams;
- f. 'Health and Safety Talk' meetings;
- g. WHS Management System development; and
- h. Investigation teams.

Health and Safety Representatives (HSRs)

(8) The University places a high degree of importance on those staff elected as Health and Safety Representatives (HSRs). It is acknowledged that their drive and passion to protect and improve health and safety at the University is pivotal to an effective WHS Management System.

(9) Clause 48 of the [WHS Act 2011](#) requires that if staff are represented by a health and safety representative, consultation must involve that representative.

(10) HSRs and their deputies are elected by the work group they belong to.

(11) In the event where there is no more than one nominee for election of an HSR to any given work group, that person shall be elected by default and there is no requirement for an election process to take place. In this case, the HSR may nominate a Deputy HSR (or several) of their own choosing, with that person's consent.

(12) HSRs and their deputies hold office for three years and are eligible for re-election, except in cases where they resign, cease work, or are disqualified as per clause 64 and 65 of the [WHS Act 2011](#).

(13) Deputy HSRs may exercise all powers and functions of their elected HSR in the event that the relevant HSR is unable to, in cases such as absenteeism or cessation of office holding.

(14) Unlike Officers of the University, HSRs are not personally liable for anything done or omitted to be done in good faith. HSRs are a representative 'voice' only and responsibility for health and safety at the University cannot be delegated or transferred to them beyond the responsibilities imposed upon them in the capacity for which they are employed.

(15) The powers and functions of HSRs are specified in clause 68 of the [WHS Act 2011](#). In summary, a HSR is able to:

- a. represent staff and investigate complaints in their work group on matters relating to health and safety;
- b. inquire into risks and monitor measures taken by the University in relation to health and safety;
- c. inspect the work place and accompany Inspectors; and
- d. attend meetings relating to health and safety at the University.

(16) The University is responsible for ensuring that HSRs and their deputies:

- a. are able to execute the powers and functions specified in clause 15 (above);
- b. have access to relevant information that does not compromise the privacy of staff;
- c. have adequate access, resources, facilities and assistance to perform their role;
- d. are paid for the duties they perform as an HSR;
- e. are appropriately trained within three months of their appointment, to perform their role as an HSR according to clause 72 of the [WHS Act 2011](#); and
- f. are identified by way of a list that is displayed and readily accessible to staff, students, visitors and contractors

in the relevant work group. The list of HSRs and deputies must also be provided to SafeWork NSW.

(17) HSRs are entitled to choose and attend, in consultation with the University a SafeWork NSW approved five day training course in work health and safety and a one day refresher course each year during their term of office.

Cessation of Work

(18) A HSR that has completed SafeWork NSW approved training has specific legislative powers to prevent work from occurring if it is believed to be unsafe under Division 6 of the [WHS Act 2011](#). A HSR may instruct another worker to cease work and any worker may refuse to carry out work if there is reasonable concern that serious risk exists so long as there has been efforts to consult with the University and an attempt to resolve the issue. The University must be notified as soon as practicable after cessation of work.

Provisional Improvement Notices (PIN)

(19) A HSR that has completed SafeWork NSW approved training may issue Provisional Improvement Notices (a PIN) under Part 5, Division 7 of the [WHS Act 2011](#), only after consultation in an attempt to remedy the issue.

(20) A PIN may be issued from a HSR if they believe the University is contravening, or has contravened and will likely again, a provision of the [WHS Act 2011](#).

(21) A PIN requires that the University:

- a. remedies the contravention along with the contributing factors and operations;
- b. prevents a likely contravention from occurring; and
- c. has these measures in place in the specified time period, defined in the PIN, allowing eight days or more.

(22) A PIN must be issued in writing and may include directions concerning the measures to be taken such as compliance with a code of practice. The PIN must be displayed in the relevant work area.

(23) A HSR may not issue a PIN if the matter has already been addressed by a workplace Inspector.

(24) The University may request a review of the PIN by a workplace Inspector. The operation of the PIN is stayed until the Inspector makes a decision on the review.

(25) The Inspector will:

- a. confirm the PIN; or
- b. confirm the PIN with changes; or
- c. cancel the PIN; and
- d. provide a copy of the outcome to the applicant for review and the HSR that issued the PIN.

Consultation Framework

(26) The foundation for formalised consultation at the University is illustrated below. ([click here for foundation for formalised consultation](#)).

Work Health and Safety (WHS) Work Groups

(27) The University comprises of several distinct work groups to ensure that all staff, students, visitors and contractors have access to adequate representation when it comes to matters relating to health and safety.

(28) Each work group is comprised of a Health and Safety Representative (HSR), one or more Deputy HSRs, and other

staff.

(29) Regular meetings are convened for each work group that are chaired by the HSR (or a deputy in their absence) and attended by other identified staff, known as HSR Nominees. HSR Nominees are typically those who nominated to be elected as a HSR but may include other staff.

(30) Work group meetings operate under specified Terms of Reference to ensure their role is adequately defined.

(31) The University has specialist safety consultation groups known as:

- a. Biosafety Group;
- b. Hazardous Substances Safety Group; and
- c. and Radiation Safety Group.

These work groups operate according to their unique Terms of Reference.

(32) Work group meetings are recorded via utilisation of template agendas and minutes sheets, provided by the University. These templates include an appendix that specifies the distribution list of the agenda and minutes for each meeting.

WHS Committee

(33) The WHS Committee convenes regularly and operates under the [WHS Committee Terms of Reference](#).

(34) The WHS Committee provides a forum for:

- a. consultation;
- b. University HSRs to collaborate;
- c. strategic review and development of the University WHS Management System and associated initiatives;
- d. escalation of health and safety matters that have not be resolved within work groups; and
- e. collective reporting and recommendations to the [WHS Management Group](#).

(35) WHS Committee meetings are recorded via utilisation of template agenda and minute sheets, provided by the University. These templates include an appendix that specifies the distribution list of the agenda and minutes for each meeting. The WHS Committee provides a copy of their agenda and minutes to the [WHS Management Group](#).

WHS Management Group

(36) The WHS Management Group convenes regularly and operates under the [WHS Management Group Terms of Reference](#).

(37) The formation and continued existence of the [WHS Management Group](#) allows for effective:

- a. reporting and information flow;
- b. management review;
- c. demonstration of accountability and proactive interest;
- d. budget and resource allocation;
- e. implementation of management responsibility; and
- f. provides a forum to exercise and demonstrate due diligence.

(38) The WHS Management Group receives information for review via the WHS Committee as well as relevant reports provided by People and Culture.

Scheduled Workplace Inspections

(39) As part of the University's risk management approach, scheduled inspections are carried out in all areas of the University campuses. Clause 49 of the [WHS Act 2011](#) requires that consultation must occur when identifying hazards and assessing risks, as such, relevant HSRs or their delegate are invited to accompany management (or their delegate) and/or University safety personnel on scheduled inspections.

(40) The University highly values the input that HSRs contribute to scheduled inspections as their familiarity of the workplace and operational experience in the work environment is critical to conducting effective workplace inspections.

Risk Assessment Teams

(41) Consultation is required, as far as reasonably practicable, when making decisions about ways to eliminate or minimise risks (clause 49 [WHS Act 2011](#)).

(42) In all circumstances where a hazard is assessed for risk and a risk score is determined, relevant HSRs or their delegate have the opportunity to review and have input into the risk score as well as the identified corrective actions.

(43) The review of risk scores and corrective actions occurs at WHS Work Group meetings via information and reports provided by People and Culture. In the event where the risk score or corrective actions appears, to the HSR or members of their work group, to be inappropriate, a new risk assessment may be completed with involvement from relevant stakeholders.

(44) At any time, relevant HSRs or their delegate may be invited to participate in risk assessments relating to health and safety matters at the University.

(45) University procedures require that at least two stakeholders participate in the calculation of risk scores for any identified hazard and the subsequent identification of corrective actions.

'Health and Safety Talk' Meetings

(46) [Safety Hub](#) is the University's web page where all health and safety system documents, forms and resources are accessible. Health and Safety Talk fact sheets are available for use by work groups, business units, teams and management for utilisation in providing job specific information to staff.

(47) Health and Safety Talks provide an opportunity for structured consultation with staff regarding specific and relevant safety matters.

(48) The meetings are recorded using a template form, also available via Safety Hub. The form records attendance information, the resources used and allows for staff feedback, discussion and follow up.

WHS Management System Development

(49) [WHS OP001 Document Control Procedure](#), along with the [University's Governance - Policy Framework Procedures](#), set out the consultation arrangements for the development of the WHS Management System, as per clause 49 of the [WHS Act 2011](#).

Incident Investigation Teams

(50) HSRs or their delegate may be invited to accompany management or University safety personnel where incident investigations are carried out.

(51) The University acknowledges the inherent advantages of including staff representatives in the incident

investigation process to ensure all factors are considered, such as contributing factors, past occurrences, perspectives of other staff, familiarity with the workplace and operational experience in the work environment.

Authority and Compliance

(52) The Director People and Culture as Rule Administrator, pursuant to the University's [Work Health and Safety \(WHS\) Rule](#), is authorised to make procedures and guidelines for the operation of this University Protocol. The procedures and guidelines must be compatible with the provisions of this Protocol.

(53) University Representatives and Students must observe this Protocol in relation to University matters.

(54) This Protocol operates as and from the Effective Date.

(55) Previous Protocols relating to consultation between the University and those workers and other stakeholders whose health and safety is likely to be affected by the undertakings of the University, are replaced and have no further operation from the Effective Date of this new Protocol.

(56) Notwithstanding the other provisions of this University Protocol, the Vice-Chancellor and Chief Executive Officer may approve an exception to this Protocol where the Vice-Chancellor and Chief Executive Officer determines the application of the Protocol would otherwise lead to an unfair, unreasonable or absurd outcome. Approvals by the Vice-Chancellor and Chief Executive Officer under this clause must be documented in writing and must state the reason for the exception.

Section 4 - Definitions Specific to this Protocol

(57) Consulting with 'Workers' under clause 47 of the [WHS Act](#) means that the University must, so far as is reasonably practicable, consult with workers plus anyone else who carries out work for your business or undertaking and who are (or are likely to be) directly affected by a health and safety matter.

(58) Due Diligence means (in summary, as per clause 27 of the [WHS Act 2011](#)) taking reasonable steps:

- a. to acquire and keep up-to-date knowledge of work health and safety matters;
- b. to gain an understanding of the nature of the operations of the University and generally of the hazards and risks associated with those operations;
- c. to ensure that the University has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety, and to verify the provision and use of such resources and processes;
- d. to ensure that the University has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information, and to verify the use of such processes;
- e. to ensure that the University has, and implements, processes for complying with any duty or obligation imposed by law and to verify the use of such processes, including:
 - i. reporting notifiable incidents;
 - ii. consulting with staff;
 - iii. ensuring compliance with notices issued under the [WHS Act](#);
 - iv. ensuring the provision of training and instruction to staff about work health and safety; and
 - v. Ensuring that health and safety representatives receive their entitlements to training.

(59) Officer (of public authority) as defined by the [WHS Act](#), means a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority. At UNE, this includes the UNE Council, Chancellor, Vice-Chancellor and Chief Executive Officer, Senior Executive, Directors and

Heads of School.

(60) Reasonably Practicable means to ensure health and safety that is, or was at a particular time, reasonably able to be done, taking into account and weighing up all relevant matters including:

- a. the likelihood of the hazard or the risk concerned occurring, and
- b. the degree of harm that might result from the hazard or the risk, and
- c. what the person concerned knows, or ought reasonably to know, about:
 - i. the hazard or the risk, and
 - ii. ways of eliminating or minimising the risk, and
- d. the availability and suitability of ways to eliminate or minimise the risk, and
- e. After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Status and Details

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Glossary Terms and Definitions

"Student" - Is an admitted student or an enrolled student, at the relevant time: 1. an admitted student is a student who has been admitted to a UNE course of study and who is entitled to enrol in a unit of study or who has completed all of the units in the UNE course of study; 2. an enrolled student is a student who is enrolled in a unit of study at UNE.

"Effective Date" - means the Rule/Policy takes effect on the day on which it is published, or such later day as may be specified in the policy document.

"University Representative" - University Representative means a University employee (casual, fixed term and permanent) contractor, agent, appointee, UNE Council member, adjunct, visiting academic and any other person engaged by the University to undertake some activity for or on behalf of the University. It includes corporations and other bodies falling into one or more of these categories.