

Workplace Consultation: Best Practice



A resource for the child and family services sector

During periods of major change in the workplace, such as we are seeing during the COVID-19 pandemic, consultation between employers and their employees regarding proposed changes is essential.

There are two broad reasons for devoting serious attention to the consultative process in these circumstances:

1. A good consultative process greatly improves the likelihood of making good, evidence-based decisions, and emerging from a period of major change with a workforce that is engaged and committed. This in turn improves the likelihood of being able to deliver high quality services after the disruption. A key characteristic of failed restructures is poor communication and consultation.
2. Employers have industrial obligations to consult in relation to a range of matters under industrial law in Australia.

It is recognised that issues for consultation may be raised by either the employer or employee/s. This resource sets out key industrial obligations and gives advice on what a good workplace consultation process should involve.

It has been developed collaboratively by the Association of Child Welfare Agencies (ACWA) in consultation with its member agencies and the Australian Services Union (ASU), with the assistance of the Fair Work Commission. This resource is based on similar guidelines developed for use by the disability sector during the COVID-19 pandemic.



What is consultation?

From an industrial relations perspective, consultation goes beyond simply providing information. It requires a genuine interaction and the possibility that the employer might decide to modify the original proposal in light of feedback from staff and their representatives.

When is consultation around change required?

From a people management perspective, consultation should be business as usual for any significant change proposal. Some of the main statutory obligations are summarised in the attached table.

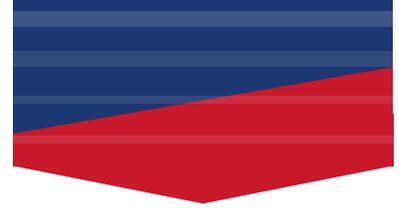
The recent process that ACWA/The Children in Care Collective and the ASU entered into with the assistance of the Fair Work Commission to develop model Individual Flexibility Agreements and related Guidelines to respond to the emergency staffing requirements brought about by the COVID-19 pandemic is an example of a constructive consultation process – see

<https://www.acwa.asn.au/residential-oohc-sector-covid-19-emergency-staffing-options/>

What are the main practical steps of a consultative process?

- ▶ Inform the affected staff and the Australian Services Union (the ASU) about the need for change, the proposal or options being put forward, and the potential effect on employees and their working arrangements.

- ▶ Discuss with staff and the ASU, seek input and feedback, consider and provide responses to issues raised.
- ▶ Modify the proposed change if appropriate in light of the discussions.
- ▶ Finalise the decision and communicate clearly, including specifying whether or not the change is temporary, and what is intended to occur after a defined period passes e.g. the COVID-19 pandemic restrictions.



Key objectives of the consultative process include:

- ▶ Exploring ways to minimise any adverse effects on employees.
- ▶ Getting feedback from staff about the practical aspects of the proposal to help inform decision making.
- ▶ Building trust and good working relationships.



Practical issues to consider

In practice, genuine consultation and discussion may involve a range of different communications and discussions:

- ▶ Have all of the affected employees been notified?
- ▶ In the case of significant change, has the ASU been notified, or have staff at least been informed of their right to union representation if they are members?
- ▶ Has adequate time been allowed for effective discussions?
 - ▷ Have employees been given enough time to digest the information, and to meet with relevant managers?
 - ▷ Have employees been provided with reasonable time to meet with their union representatives?
 - ▷ Have union delegates had a reasonable opportunity to talk with members and be involved in discussions with management?
- ▶ Have you provided sufficiently detailed information for staff to be able to understand the potential impact of the proposed change in practical terms (this includes acknowledging aspects that might not yet be known)?
- ▶ Has time been allowed for staff to digest the information and get advice if necessary?
- ▶ If staff will be working differently, have WHS, induction and training needs been considered?
- ▶ In considering ways to minimise adverse effects on staff, have options been considered around:
 - ▷ Voluntary options before directing staff (e.g. for taking leave or changing hours of work)?
 - ▷ Redeployment?
 - ▷ Modifying duties?
 - ▷ Working from home or delivering supports remotely?
 - ▷ Taking the opportunity for staff to complete relevant training?

Where specific feedback is provided or issues raised by staff, management will need to take these into account and provide a response with reasons for whether or not the proposed changes will be modified in light of the issues raised.

What does consultation not require?

You should aim to get agreement on proposed change and avoid unnecessary and time-consuming disputes. However, while agreement is desirable it is not ultimately required. Once the discussions have covered all the issues raised, it is not necessary to go around in circles trying to reach agreement. What matters is that the process has provided a genuine opportunity for staff to influence the outcome, and to help management make good decisions. A well-managed process should be able to identify and address issues effectively.

Table: Consultation requirements

Common types of change requiring consultation	Where does the obligation come from?
<p>Major change in the workplace that is likely to have effects on employees such as</p> <ul style="list-style-type: none"> (a) termination of employment; or (b) (major changes in the composition, operation or size of the employer's workforce or in the skills required; or (c) loss of, or reduction in, job or promotion opportunities; or (d) loss of, or reduction in, job tenure; or (e) alteration of hours of work; or (f) the need for employees to be retrained or transferred to other work or locations; or (g) job restructuring. 	<p>Modern awards such as SCHADS require this, as do enterprise agreements. There is a general obligation to consult on major change.</p>
<p>Changes to hours of work or rostering.</p>	<p>Modern awards such as SCHADS specifically require consultation in relation to roster changes, as do many enterprise agreements.</p>
<p>Workplace health and safety</p>	<p>Employers have general statutory obligations to consult with workers and their representatives around WHS and in particular in the context of the COVID-19 pandemic. Safe Work Australia have issued guidelines that define consultation to include consultation on:</p> <ul style="list-style-type: none"> ▶ assessing the risk COVID-19 presents to the health and safety of workers ▶ determining control measures to eliminate or minimise the risk of exposure to COVID-19 ▶ determining the adequacy of facilities for the welfare of workers (e.g. hand washing facilities) and, ▶ proposing other changes to the workplace as a result of COVID-19 which may affect health and safety, ▶ continuity of business plans
<p>Under the JobKeeper package for eligible employers:</p> <ul style="list-style-type: none"> ▶ Standing down an employee ▶ Directing an employee to perform different duties ▶ Directing an employee to work at a different location 	<p>Fair Work Act amendments (a new Part 6-4C of the Act) as part of the Coronavirus Economic Response Package set out the requirements.</p>