Chapter 3:
Regulating worker participation, engagement, and representation
Introduction

This chapter seeks feedback on policy proposals for regulations to support worker participation, engagement and representation under the proposed new Act.

In this chapter:
- **New regulation** refers to regulations to be made under the proposed new Act that cover worker participation, engagement and representation.

Involving workers in health and safety matters is a key part of making workplaces safe to work in. Worker participation provisions in the HSE Act require every employer to provide reasonable opportunities for employees to participate effectively in ongoing processes for health and safety. However, the Taskforce found that in many of our workplaces, worker participation practices were missing or weak. The Royal Commission said that worker participation was essential when designing and monitoring health and safety policies in the workplace. Part of the Government’s response to these findings is to provide clarity in the health and safety legislation on worker participation.

The requirements in the proposed new Act can be supported by more detailed requirements in the regulations. This chapter sets out what we are proposing to include in the regulations for worker participation, engagement and representation. We would like your feedback on these policy proposals.

Drivers for change

The Taskforce found that worker participation practices in New Zealand fall well short of the current legislative requirements and practices in similar countries. Many workplaces do not effectively engage with their workers. The Taskforce identified contributing factors as follows:

- The law provides little support for worker participation. Workplaces with fewer than 30 employees are not required to have formal participation systems
- The regulator does not enforce the worker participation provisions vigorously
- Employees are often unaware of their rights. If they do know about their rights, employees fear they will be punished for exercising them
- Union density (the proportion of workers who are union members) has fallen
- There is increasing use of casual, contract and short-term workers
- Many managers lack the awareness, motivation and skills needed to engage with workers and respond effectively if workers raise health and safety issues; and
- Many businesses prioritise production targets over health and safety concerns.

The Taskforce’s recommendations

The Taskforce recommended that the Government strengthen the law for worker participation by having:

- stronger duties on PCBUs to support worker participation
- more powers and responsibilities for Health and Safety representatives; and
- stronger protections for workers who raise work health and safety concerns.

The Taskforce also recommended that worker participation be further strengthened through:

- including specific requirements and information about how worker participation is expected to operate in regulations, ACoPs and guidance material.
• the provision of increased support for worker participation by WorkSafe NZ, including specific support for:
  • Health and Safety representatives
  • workers who raise work health and safety matters, either confidentially or anonymously
  • workers who are hard to organise as a group or to reach with information; and
  • unions’ existing rights of entry to a workplace.

The Taskforce identified a number of principles that it felt should underpin worker participation. These principles are outlined below for your reference.

• The workplace rather than the employment relationship should be the focus for work health and safety systems – so all workers present in a workplace are covered by the system, including temporary and contract workers
• Workers should actively participate in developing, implementing and monitoring the work health and safety system that is present in their workplace
• All workers have a right to participate through an independent range of representation mechanisms of their own choosing, including work Health and Safety representatives, committees and unions where they are present in a workplace
• Workers should be encouraged to take active responsibility for their own actions and those of co-workers; and
• Workers should be provided with appropriate training, time, facilities and support to enable them to participate in the health and safety system that is present in their workplace.

The Government’s response
The Government is committed to reforming New Zealand’s health and safety system. For worker participation, the Government has decided that:

• all PCBUs will have a duty to consult with workers, so far as is reasonably practicable, on health and safety matters that affect them, and all PCBUs will have a duty to have worker participation practices appropriate to their workplace
• if the workers and/or a PCBU want to have Health and Safety representatives, the PCBU must consult the Health and Safety representatives, allow them time off for training within three months of being requested, pay for that training, and provide them with the time, resources and information needed to perform their role
• if the workers and/or PCBU want to have a health and safety committee, workers must make up at least half of the Health and Safety committee, the PCBU must consult the Health and Safety committee and the PCBU must give the Health and Safety committee the time and information needed to perform its role
• Health and Safety representatives and Health and Safety committees will have powers and functions based on those provided under the Australian model Act, including the right for trained Health and Safety representatives to direct unsafe work to cease (with protections against misuse) and to issue a provisional improvement notice to a person they believe is contravening the law
• the Employment Relations Act 2000 should continue to provide the basis for resolving disputes between employers and employees about discrimination in relation to health and safety issues; and
there should be new anti-discrimination provisions covering disputes between workers and PCBUs outside the employment relationship for discrimination relating to health and safety matters.

All workers should be able to have a say on matters that will affect their health and safety. Effective engagement will increase workers’ awareness of health and safety and enable them to work cooperatively with management to identify and resolve work health and safety issues and risks. PCBUs will be able to make better decisions by drawing on the knowledge and experience of the people who do the job.

Greater involvement will help build workers’ commitment to improving health and safety in their workplace.

Overview of worker participation, engagement and representation

Existing arrangements
Existing worker participation provisions in the HSE Act require every employer to provide reasonable opportunities for employees to participate effectively in ongoing processes for health and safety. Employers are also required to have a system for employee participation when either an employee requests it, or the employer employs more than 30 employees.

An employee participation system may have one or more health and safety representatives or a health and safety committee that represents a particular type of work, place of work or grouping. The employer, employees and any employee union must co-operate in good faith to develop, agree, implement and maintain the employee participation system.

Where the parties fail to agree a system within six months, a default process applies to elect Health and Safety representatives. An employee or the union representing the employee can ask the employer to hold the election for the health and safety representative, or they must hold the election themselves. Up to five Health and Safety representatives can be elected to be members of a Health and Safety committee. The Health and Safety representatives must comprise at least half of that committee.
The new regime

The proposed new Act will set out:

- the main duties of PCBUs as they relate to worker participation
- the functions and powers of Health and Safety representatives
- the functions of Health and Safety committees
- the right for workers to refuse to do unsafe work
- the protections for workers from adverse conduct in relation to health and safety matters

The worker participation requirements in the proposed new Act look like this:

- All PCBUs must engage with workers on health and safety matters
- All PCBUs must have effective worker participation practices
- Workers or PCBUs may choose to have Health and Safety representatives (HSRs)
  - Functions and powers of HSRs
  - Obligations of PCBUs about and towards HSRs
- Workers or PCBUs may choose to have Health and Safety committees (HSCs)
  - Functions of HSCs
  - Obligations of PCBUs about and towards HSCs

The proposed new Act makes it clear that all PCBUs have two overarching duties for worker participation – a duty to engage with workers, and a duty to have effective agreed participation practices regarding health and safety matters.

The Bill requires all PCBUs to provide workers with reasonable opportunities to participate effectively in improving work health and safety on an on-going basis.

The proposed new Act does not specify what types of practices PCBUs must have. The important thing is that workers are able to be involved in an effective way.

Different types of practices will suit different workplaces. PCBUs could comply with this duty by having Health and Safety representatives or Health and Safety committees - or both, or neither, relying on more informal practices instead. Such practices include regular toolbox talks, having health and safety as a regular agenda item at team meetings, or another feedback mechanism so staff have a defined way of raising any health and safety concerns with the business owner. Informal practices like this may well be enough for smaller or low-risk businesses.

The proposed new Act does outline provisions that apply if the more formal approach of having Health and Safety representatives or Health and Safety committees is chosen.
Worker participation, engagement and representation regulations

The new regulations can:

- set out how a specific process must be done (e.g. how to elect Health and Safety representatives); or
- provide more detail about the duties of PCBU sets out in the proposed new Act.

WorkSafe NZ is developing a worker participation ACoP to help PCBU sets and workers understand how the requirements of the proposed new Act and regulations could apply to their workplace. The ACoP and guidance material will be available to help people understand the new legal requirements.

**Process for developing the options in this chapter**

We have used the Australian model regulations as the starting point for what should be included in the new regulations.

We have also considered:

- whether there are any details from the HSE Act that should be included; and
- feedback from submitters on the exposure draft of the Bill.

**What’s not in scope**

The following areas are not covered in this chapter:

- Worker participation regulations that apply only to particular industries: we will undertake further work to identify whether any of these are needed after the proposed new Act has passed.

The proposed new Act contains a schedule that carries over the work done in 2013 to strengthen worker participation requirements in the HSE Act for the mining industry, implementing the recommendations of the Royal Commission.

- Permits to enter workplaces: Government has already decided that this aspect of the Australian model Act will not be put in place in New Zealand. The existing provisions for unions to enter workplaces under the Employment Relations Act 2000 will continue to apply.

**Details of the proposals**

**Exercising Government’s ability to regulate more widely**

As in the Australian model Act, the proposed new Act contains a broad regulation-making power in relation to matters of worker participation, engagement and representation.

To date, the Australians have not made model regulations for all of the matters that are provided for by the Australian model Act.

Similarly, even though the proposed new Act will allow for regulations to be made about the following matters, we do not consider that there is a need to regulate at this stage:

- further activities that PCBU sets must engage with workers on
- further requirements for worker participation practices; and
- further functions of Health and Safety committees.

This is because we think it is important to strike the right balance when setting the new regulations between getting the improved worker participation, engagement and representation needed to
achieve our goal of safer workplaces, and taking an overly prescriptive approach that doesn’t add enough value or gets in the way of innovative thinking.

**Health and Safety representatives**

Health and Safety representatives are one way that workplaces can facilitate worker participation that is particularly effective when the business is large, high-risk or involves a complex operation of some kind. A Health and Safety representative is someone elected by their fellow workers to represent them in health and safety matters. The representative role can mean that workers have an efficient mechanism for making sure that any safety issues are channelled through to those in charge, so they can be addressed promptly before someone gets hurt. And it should work in the opposite direction as well - those in management positions can be supported by the Health and Safety representative to help them spread key safety messages and information to the workers so everyone gets on board.

**Existing arrangements**

The HSE Act allows parties to have an agreed system for employee participation. This may include electing Health and Safety representatives to represent employees at the workplace. The HSE Act does not provide for how a Health and Safety representative must be elected unless the parties fail to implement an agreed system for employee participation within six months of setting out to do so.

Under the default procedure, employees, together with any unions representing them, must hold an election for a health and safety representative or they may require the employer to hold the election. The employer must hold the election within two months.

The election must be conducted through secret ballot and give all employees in the relevant grouping a reasonable opportunity to vote. The health and safety representative will be elected by the majority vote.

An election is not required if there is only one candidate for a position, as this candidate automatically fills the position. If there are no candidates, the position will not be filled.

**Overview under the proposed new Act**

The proposed new Act sets out the functions and powers of Health and Safety representatives. It also sets out PCBUs’ corresponding obligations to assist Health and Safety representatives to carry out their functions and powers.

Workers and PCBUs may also agree to have deputy Health and Safety representatives if they want.

In that case, the proposed new Act provides that Deputies may act as the Health and Safety representative for the work group if the Health and Safety representative is unavailable for any reason (including if the Health and Safety representative stops being a Health and Safety representative). When acting as a Health and Safety representative, deputies have the same functions and powers as the Health and Safety representative and PCBUs have the same obligations to assist them to do their job. Deputies are also entitled to training.

**Proposed regulations**

We propose that the new regulations will set out:

- the process for electing Health and Safety representatives
- who can be a Health and Safety representative
- training for Health and Safety representatives
- Health and Safety representatives’ term of office; and
how someone ceases to be a Health and Safety representative.

Once workers or a PCBU decide that they want to have a Health and Safety representative they must then decide how best to group the workers that each Health and Safety representative will represent. These groups are known as a “work group”.

Before we go any further to outline the regulatory proposals, it’s important that people know more about how we view the work group concept and envision it working in practice, because it is central to the discussion – see the blue box that follows.

**What is a work group?**
Quite literally, a work group is an agreed group of workers – it’s essentially the same concept as that contained in Part 2A of the HSE Act which talks about a grouping of workers, but by another name.

Work groups don’t need to be overly complicated – their purpose is to support Health and Safety representatives to be as effective as possible by ensuring they represent groups of workers with similar interests and concerns when it comes to health and safety at work. In the majority of situations the most effective way to group workers will be obvious to all concerned (for example, according to the type of work they do, the risks they face, where they are physically situated or when they work), and you can agree and get on with the rest of the process.

**What might work groups look like in different types and sizes of business?**
Here’s one example - in a large manufacturing plant that operates 24/7 on a three shift rotation, each shift could be a separate workgroup. This would mean that the PCBU is able to get better information about the specific health and safety needs presented by the time of day/night that workers are performing their work (in addition to information from all shifts about the tasks being performed). This arrangement would also mean that workers have access to their own health and safety representative no matter when they are working.

Or you could cut it another way, if different types of work done in the business presented quite different risks – such as administration staff, those on the tools, and those spending a lot of time on the road checking sites in a large construction firm.

Workers in very small businesses tend to have more direct access to the boss because they’re often working right alongside each other and have a working relationship that they can use to raise any concerns - so there may not be the same need to set up a formal mechanism like having a Health and Safety representative.

However if, for some reason, a small business decided that Health and Safety representatives were the way to go (perhaps because other demands on the PCBU meant they weren’t as accessible to the workers as either party wants) and there were only a handful of workers, everyone could agree that only one workgroup (and one representative) is needed – effectively, the entire business is the workgroup in that scenario.
**How a work group is decided**

We propose that the regulations will set out that a PCBU must negotiate with workers and any worker representatives to determine one or more work groups.

The proposed new Act sets out the purpose of determining work groups which is to facilitate the representation of workers by deciding the following factors:

- the number and composition of work groups to be represented by Health and Safety representatives
- the number of Health and Safety representatives and deputies (if any) to be elected for each work group; and
- the workplace or workplaces that each work group will apply to.

A work group does not have to apply to only one workplace or one PCBU. A work group may include workers who work at several different workplaces for the same PCBU. Or, it may include workers who work for different PCBUs at the one workplace. Where there are multiple businesses or undertakings in the same workplace, the PCBUs and workers will have to decide on the matters listed in the bullet points above as well as:

- the businesses or undertakings that the work groups will apply to.

**When a PCBU must commence negotiations for a work group**

We propose that the new regulations will require the PCBU to take reasonable steps to begin negotiations for a work group with the workers and any worker representatives within 14 days of:

- a worker notifying the PCBU that they want an Health and Safety representative; or
- the PCBU telling the workers that it would like to have Health and Safety representatives as part of its worker participation practices.

A time limit of 14 days is proposed because the determination of work groups is the first step that must be completed before an election for a Health and Safety representative can be undertaken. Therefore, it is important that the negotiations for work groups are commenced promptly so that workers can be represented in health and safety matters by the Health and Safety representative that has been elected.

**Procedure for negotiating work groups**

We propose that the new regulations will set out the procedure for negotiating work groups. This procedure will align closely with section 53 of the Australian model Act and regulations 16 and 17 of the Australian model regulations.

The regulations will set out that the work groups must be set up to ensure that workers are grouped in a way that:

- most effectively and conveniently enables the health and safety interests of workers to be represented; and
- has regard to the need for Health and Safety representatives for the work group to be readily accessible to each worker in the work group.

When deciding on work groups, the parties must take into account any ACoP and the following factors:

- the number of workers working in the business or undertaking
- the number of different places of work for the workers and the distance between them
the nature of the work that is performed and the way that it is arranged by the PCBU; and

the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers.

In addition to the factors listed above, the parties must take into account all relevant matters. These relevant matters may include the following non-exhaustive list:

- the number and groupings of workers who carry out the same or similar types of work
- the areas, places and time each type of work is carried out
- the extent to which any worker must move from place to place while at work
- the views of the workers, and diversity of workers and their work; or
- the nature of any hazards or risks at the workplace(s).

**Changes to work groups**

We propose that in the new regulations, the parties who determined a work group will be able, at any time, to negotiate a variation of the work group.

When varying a work group the parties must take into account the same factors and relevant matters that apply when determining a work group.

**Question 39:** Do you have any comments on the proposed procedure for determining or varying work groups where there is one PCBU?

**Negotiating work groups for multiple businesses**

In addition to work groups negotiated for individual PCBUs, work groups can be negotiated for multiple businesses or undertakings at the one workplace.

The factors that must be taken into account will be the same as those for determining a work group for one PCBU, outlined under “procedure for negotiating work groups” above.

Determining work groups for multiple businesses or undertakings will not affect any work groups that are already set up for individual PCBUs or prevent any further work groups being determined.

We propose that, when negotiating to set up or vary a work group involving multiple businesses or undertakings, a party to the negotiations may withdraw from negotiations by providing reasonable notice, in writing, to the other parties. Where a party has withdrawn, this will not affect the validity of the agreement between the other parties. If a PCBU withdraws from negotiating with multiple PCBUs to determine a work group, it must still negotiate with its workers to determine work groups relating to its business or undertaking.
What might a work group for multiple businesses look like in practice?

Workers on the same worksite may work for more than one PCBU. For example, if you took a construction site, there may be workers from several different sub-contracting firms (which are PCBUs in their own right) such as plumbers, builders, roofers, electricians, plasterers working alongside each other at the same time. These workers can face similar risks arising from the site itself, as well as from the variety of work that is being undertaken (because each can have an effect on the other).

All of those workers will also be connected to the principal contractor for the site (the PCBU with control of the workplace), because they have been caused to be engaged by that business or undertaking (which is to deliver a finished building to the client).

In this situation, all of the PCBUs and workers involved can agree together that a single workgroup should be formed that is made up of all the workers on that site (regardless of who ‘their’ PCBU is). This will then allow Health and Safety representatives to be elected to ensure that health and safety matters that affect all the workers are channelled through to the appropriate PCBU (or PCBUs, if necessary) and be effectively addressed.

Question 40: Do you have any comments on the proposed process for determining work groups where there are multiple PCBUs?

Notification to workers

- We propose that once a work group has been determined, the PCBU must notify the workers and any workers’ representative of that determination as soon as reasonably practicable.

Who can be a Health and Safety representative

Health and Safety representatives give workers a voice in health and safety matters that concern their work group. It is therefore important that the Health and Safety representative is a worker from that work group.

We propose that the new regulations should specify that an individual can only be eligible to be a Health and Safety representative if they:

- are a worker of the work group they represent
- are willing to be a Health and Safety representative (as in schedule 1A of the HSE Act); and
- work sufficiently regularly and for a sufficient time to carry out their role effectively (as in schedule 1A of the HSE Act).

Question 41: Do you have any comments on the proposed eligibility criteria for a Health and Safety representative?

How Health and Safety representatives and deputies are elected

Under the new regulations we propose that the Health and Safety representative and any deputies must be elected by the members of the work group they will represent. The regulations will provide that all members of the work group may vote for the Health and Safety representative and any deputies.

The members of the work group should choose who they want to represent them. A PCBU cannot appoint Health and Safety representatives or deputies.
**The PCBU’s duties for the election process**

The new regulations will require PCBUs to facilitate an election and to provide the resources, facilities and assistance that are reasonably necessary for the election of Health and Safety representatives to be carried out. The worker participation ACoP being developed by WorkSafe NZ may include examples of the type of things PCBUs should provide, such as access to printers, meeting rooms, notice boards, and email.

Where there is more than one PCBU, the PCBUs should consult together about how they will fulfil this duty. We are not proposing to include details on how PCBUs should split any costs for holding an election in the new regulations.

**The election process for Health and Safety representatives**

We propose that the new regulations should allow the relevant parties (the PCBU and the workers in a work group, including potential candidates) to decide the process for electing Health and Safety representatives. This will give parties the flexibility to agree to an approach to elections that suits the needs of the particular workgroup. For example, workers from a small business may wish to elect their Health and Safety representative by a simple show of hands.

However, in larger or more complex businesses, formal processes – such as a secret ballot - may be more appropriate. The default employee participation system in the HSE Act requires a secret ballot (see section 7(b) of Schedule 1A), so some larger businesses and their workers may already be operating this way. For this reason, we propose that the new regulations should provide support to this method as an option by specifying that if any party (that is, the PCBU or one worker or candidate) requests that a secret ballot be conducted as part of the election process, then a secret ballot will be mandatory in that particular situation.

The worker participation ACoP being developed by WorkSafe NZ may include examples of how Health and Safety representatives will be elected and may include the factors workers should consider, such as the date of the election, the process for nominations and identifying the resources needed to carry out the election.

All members of the work group must have the opportunity to nominate someone, including themselves, to stand as a Health and Safety representative or deputy. If the number of nominations equals the number of vacancies, the nominees will become the Health and Safety representatives and an election does not need to be held.

The new regulations will allow workers to have a worker representative help them organise the election, if the majority of the work group wish them to.

The workers will need to appoint someone to carry out the election. This person could be from the work group, a PCBU or another organisation. Under the regulations, the person carrying out the election will be responsible for notifying the relevant PCBUs of the date of the election as soon as practicable to give the PCBU time to organise the resources, facilities and assistance needed to conduct the election.

In addition to this the worker participation ACoP may provide guidance on what the appointed person may take responsibility for during the election process. One possible example could be ensuring that the PCBU and new Health and Safety representatives and deputies (if any) are told the election results.

**Question 42:** Do you have any comments on the regulatory proposals for the election process for health and safety representatives?
**Term of office**
The Australian model regulations set the term of office at three years. The term of office needs to balance giving a new Health and Safety representative time to become familiar with their role and perform it effectively, with giving other workers the opportunity to be Health and Safety representatives.

We propose that the new regulations will set a term of office of three years for a Health and Safety representative. A Health and Safety representative may stand to be re-elected at the end of the three years. There is no limit on the number of times someone can be elected as a Health and Safety representative.

**Question 43:** Do you have any comments on the regulatory proposal about the term of office of three years?

**Training of Health and Safety representatives**

Under proposed new Act, only a trained Health and Safety representative may issue a provisional improvement notice (PIN) or direct a worker to cease unsafe work.

The proposed new Act will require the PCBU to comply with any requirements in the regulations about allowing access to training for Health and Safety representatives. It will also require Health and Safety representatives to be paid for time away from work while they are training.

**Types of training**
The HSE Act provides that an employer must allow a Health and Safety representative two days’ paid leave each year to attend an approved health and safety representative training course. A trained health and safety representative may issue a hazard notice. We are interested in your feedback on what training you think is required for health and safety representatives to issue PINs or direct unsafe work to cease, under the proposed new Act.

The types of training Health and Safety representatives must have in order to issue a PIN or direct unsafe work to cease will be prescribed by or under the new regulations. We are currently reviewing the training requirements. Decisions made on the type of training needed (including its length and content) that come out of the review will affect the minimum entitlement that Health and Safety representatives are given to access approved training courses. This minimum entitlement will be included in the new regulations once those decisions have been finalised, but in general we intend to continue the status quo of setting an annual entitlement for attendance at one approved course.

We are interested in your feedback on what competencies you think a Health and Safety representative should be required to have. This will enable us to gauge the type, nature and level of training required to develop the competencies that a Health and Safety representative should have. A list of the existing competencies for Health and Safety representatives can be found at: [http://www.dol.govt.nz/er/services/education/courseapproval/GazetteNotice-level-competency.pdf](http://www.dol.govt.nz/er/services/education/courseapproval/GazetteNotice-level-competency.pdf)

The Australian Model Act allows for annual refresher training to be provided. We do not believe the knowledge a Health and Safety representative needs in order to issue a PIN or direct unsafe work to cease will change on an annual basis. For this reason we consider refresher training is unnecessary in the New Zealand context. We would be interested in your feedback on what ongoing learning and development requirements a Health and Safety representative might need, and how they might best be met.
Question 44: Existing trained Health and Safety representatives are able to issue hazard notices – what additional training do you think is required in order for these Health and Safety representatives to issue PINs and direct unsafe work to cease, if any? Please give your reasons.

Question 45: What essential content needs to be covered in training for Health and Safety representatives to have enough knowledge to effectively carry out their functions and powers? Please give your reasons.

Question 46: How do you think Health and Safety representative training should be delivered, for example online or face-to-face? Please give your reasons.

Setting training requirements
Currently, the training requirements for Health and Safety representatives to become “trained Health and Safety representatives” (and therefore be able to issue hazard notices) are specified by notice in the NZ Gazette. A number of courses have been reviewed and approved by the Minister of Labour, where the Minister is satisfied that the training meets the object of the HSE Act and is relevant to the role of a Health and Safety representative. We propose that this situation will continue under the legislative framework, so that the entitlement of Health and Safety representatives to attend training is limited to courses that have been formally approved by the Government as appropriate.

The Health and Safety representative functions and powers under the proposed new Act may require any associated training to be more robust. Under the Australian model regulations the regulator, in approving a course of training, must have regard to all relevant matters, including:

- the content and quality of the training and its relevance to the powers and functions of a Health and Safety representative; and
- the qualifications, knowledge and experience of the person who is to provide the course.

We are interested in your feedback about what relevant matters should be considered when approving training courses, and what knowledge and expertise the provider of the training should have.

Question 47: What level of experience and qualifications must the training organisation have in order to provide training for Health and Safety representatives? Please give your reasons.

Question 48: What assessment should Health and Safety representatives have to undergo, if any, as part of their training to be able to exercise their powers and functions under the proposed new Act?

Access to training
We propose that under the new regulations:

- the Health and Safety representative should provide their PCBU with details of the approved health and safety representative training course that they wish to undertake; and
- the Health and Safety representative must consult with the PCBU about the date and location of the training. This is to allow the PCBU the opportunity to suggest alternative courses, for instance if the date of the course will cause unreasonable disruption to the workplace, the location is out of town or the course fees are higher than other courses.
**PCBU’s obligations for training**

We propose that under the new regulations:

- the PCBU must allow the Health and Safety representative to attend an approved health and safety representative training course as soon as practicable, and within three months of the request;
- the PCBU must pay for the course fees and any reasonable costs for the Health and Safety representative to attend the training. Reasonable costs may include travel, accommodation and meals (for instance, if the course is out of town); and
- if there is more than one PCBU, the PCBUs must pay an equal proportion of the fees and costs, unless they agree to split the fees and costs in another way.

**Question 49:** Do you have any comments on the proposed process for Health and Safety representatives to access training and the PCBU’s obligations for training?

**Lists of Health and Safety representatives**

The regulations will require PCBUs to have an up-to-date list of all Health and Safety representatives and any deputy Health and Safety representatives and to display this list so it accessible to workers in each of the relevant work groups. Workers should be able to easily access the list to see who is a Health and Safety representative, so they can talk with them should a health and safety matter arise. It will also allow an inspector visiting the workplace to see who the Health and Safety representatives are so he or she can talk to them.

The Australian model Act requires a PCBU to provide a copy of the list of Health and Safety representatives to the regulator. We consider this requirement too burdensome to place on all PCBUs. Instead, we propose that the new regulations should require the PCBU to provide an up-to-date list of Health and Safety representatives only if requested by the regulator.

**Ceasing to be a Health and Safety representative**

As well as coming to the end of their term in office, someone may cease to be a Health and Safety representative for other reasons. We propose that the new regulations should outline that a person will cease to be a Health and Safety representative if he or she:

- chooses to resign as a Health and Safety representative;
- is no longer part of the work group they represent; or
- is removed from office by a majority of people in the work group.

If a Health and Safety representative ceases to hold office, the workers may elect a new Health and Safety representative. If there is a deputy, the deputy may act as the Health and Safety representative.

**Removal by the Regulator**

The proposed new Act allows the regulator to remove someone as a Health and Safety representative if the Health and Safety representative has not performed his or her functions or exercised his or her powers satisfactorily. The removal may be permanent or for a set period of time. The Health and Safety representative may appeal his or her removal in the District Court.

If the work group has a deputy Health and Safety representative, the deputy may stand in for the Health and Safety representative while the appeal process is underway. If there is no deputy, the
regulations will allow the workers to elect a deputy Health and Safety representative to act as the Health and Safety representative until the appeal process is completed. This will ensure that the workers still have access to a Health and Safety representative, while allowing the Health and Safety representative to return to their role if his or her appeal is successful.

If the Health and Safety representative does not appeal their removal or the appeal is not successful, the workers may elect a new Health and Safety representative.

**Removal by the workers**
We propose that the new regulations should set out the process for workers to remove a Health and Safety representative. We propose to follow the process in the Australian model regulations:

- the members of the work group must sign a written declaration that the Health and Safety representative no longer represents them
- a majority of the work group will need to sign the declaration
- one person from the work group must advise the PCBU and the Health and Safety representative about the removal. He or she will also tell the members of the work group; and
- the removal will be effective from when the Health and Safety representative, PCBU and a majority of the work group have been notified of the removal.

**Question 50:** Do you have any comments on the proposed reasons for someone to cease being a Health and Safety representative or the process for workers to remove a Health and Safety representative from office?

**Question 51:** Do you have any other comments on the regulatory proposals for Health and Safety representatives?

**Health and safety committees**

**Existing Arrangements**
Currently, the HSE Act allows parties to decide the membership of the Health and Safety committee. Where the parties cannot agree to a worker participation system within six months, the default provisions apply. The default provisions require that Health and Safety representatives make up at least half of the Health and Safety committee. There is a maximum of five Health and Safety representatives on a Health and Safety committee.

**Overview under the proposed new Act**

The proposed new Act provides that a Health and Safety committee may be selected by workers or the PCBU as a way to have effective worker participation in health and safety matters at the workplace.

The proposed new Act sets out that a Health and Safety representative or five or more workers at the workplace may ask the PCBU to establish a Health and Safety Committee, or the PCBU may establish an Health and Safety committee on its own initiative.

The functions of Health and Safety committees are set out in the proposed new Act, as well as the PCBU’s corresponding duties that will assist Health and Safety committees to carry out their functions.
Proposed regulations

We propose that the new regulations will set out:

- the membership (constitution) of the Health and Safety committee; and
- how often Health and Safety committees must meet.

Membership

The regulations will set out that PCBUs and workers must agree upon the membership (constitution) of the Health and Safety Committee. We propose the membership of the Health and Safety committee will be regulated by requiring that:

- at least half of the Health and Safety committee members must be workers not nominated by the PCBU
- where there is a Health and Safety representative at the workplace, and he or she consents, that representative will be a member of the Health and Safety committee; and
- if there are two or more Health and Safety representatives at a workplace, either one or all, who consent, may be members of the Health and Safety committee.

In some workplaces, where there are two or more Health and Safety representatives, it may not be appropriate or practicable to require each Health and Safety representative to be a Health and Safety committee member. The Health and Safety representatives should be able to choose between themselves how many Health and Safety representatives should be on the Health and Safety committee.

Requiring the Health and Safety committee to have at least half of its membership made up of people who have been chosen by workers will help to ensure that the worker perspective on health and safety issues is represented in the Health and Safety committee.

Beyond these requirements, we are not proposing to regulate a process by which Health and Safety committees are formed. This will allow the PCBU and workers to adopt a process of choosing members that suits its size and needs.

**Question 52:** Do you think PCBUs must be required to appoint at least one person to the Health and Safety committee who has delegated authority to make decisions on health and safety matters? Please give your reasons.

Health and safety committee meetings

The new regulations will specify that the Health and Safety committee must meet on a regular basis as agreed by the Health and Safety committee. However, the Health and Safety committee must meet at least:

- every three months; or
- at any reasonable time at the request of at least half of the members of the Health and Safety committee.

It is important that the Health and Safety committee meets regularly to work cooperatively in developing health and safety policies and procedures and discuss any health and safety issues that need to be raised. Regular meetings should help to ensure that participation in, and awareness of, health and safety matters is regular and on-going. We consider it appropriate that Health and Safety committees must meet at least every three months.

Additionally the Health and Safety committee members, where reasonable, should be able to call a meeting when at least half of the committee consider it necessary. This is consistent with the approach taken in Australia.
We think that, outside the matters intended to be regulated above, no other circumstances need to be regulated at this time.

**Question 53:** Do you have any comments on the proposed regulations regarding Health and Safety committees?

### Issue resolution

The proposed new Act provides that when an issue about work health and safety arises at a workplace, the parties must first make reasonable efforts to achieve a timely, final and effective resolution of the issue.

If the parties, after reasonable efforts, cannot decide the matter between themselves, any party to the issue may ask the regulator to assist them in resolving the matter. The regulator will assess the request and decide the best course of action. This may be that the parties should continue to resolve the matter themselves as the regulator considers reasonable efforts have not occurred, or the regulator may direct them to the worker participation ACoP or other guidance materials or recommend mediation.

The proposed new Act allows regulations to be made that identify certain circumstances where it is appropriate for an inspector to decide a matter.

We think that this should apply in situations where failure to reach agreement will stop worker participation in health and safety matters from occurring. This would generally only occur if all attempts at resolution have failed. We propose that an inspector should be able to do so in the following situations:

<table>
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<tr>
<th>Situation:</th>
<th>Inspector may decide:</th>
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<td>Negotiations to determine a work group have failed.</td>
<td>• the number and composition of work groups to be represented by health and safety representatives&lt;br&gt;• the number of health and safety representatives and deputy health and safety representatives (if any) to be elected&lt;br&gt;• the workplace or workplaces to which the work groups will apply&lt;br&gt;• that an existing agreement on the makeup of the work group should not be varied</td>
</tr>
<tr>
<td>The Health and Safety representative and PCBU are unable to agree on either the time or location of a Health and Safety representative training course.</td>
<td>• the timing and location of the course&lt;br&gt;• the reasonable costs associated with attending the course e.g., one night’s accommodation or travel costs</td>
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</table>
Situation: The parties cannot reach an agreement on the membership of the Health and Safety committee.

Inspector may decide:

- the membership of the Health and Safety committee
- that the Health and Safety committee should not be established

We consider it important that the inspector should be able to make a final decision in the above situations because each of these steps need to occur before either the Health and Safety committee can be established, a Health and Safety representative can be elected or a Health and Safety representative can be trained. It is important that these matters are determined promptly and efficiently so that the PCBU can meet its obligations to have effective worker participation practices.

**Question 54:** Do you have any comments on the proposed situations where an inspector may make a final decision about a matter? Please give your reasons.

**Question 55:** Do you have any further comments that you would like to make on the regulating of worker participation?