

CONSULTATIVE ARRANGEMENTS: POLICY AND GUIDELINES (2012)

POLICY

The NSW public sector delivers value and service to the people of New South Wales. The Government recognises that in changing and adapting to the needs of the state its employees' knowledge and skills are an important contributor to those processes.

It is the primary responsibility of management to make decisions in order to achieve the objective of the agency; however, communication, information sharing and consultation between management, employees and their representatives on workplace matters are critical to the development of a strong, responsive, equitable and efficient NSW public sector. The Government is committed to consulting with employees and their representatives, including unions, at both the agency and the sector-wide level, in relation to proposed major changes in the workplace that are likely to have a significant effect on employees

To achieve these objectives, all public sector agencies must have consultative arrangements in place.

Each agency is best equipped to determine the form of consultation that is effective for its operations. In determining the appropriate consultative process, an agency should take into account the interests of management, employees, employee representatives, its operating environment, and service to its customers.

THE FRAMEWORK – Establishing how an agency may go about implementing the policy

1. PURPOSE

1.1. The NSW Public Sector Workforce Consultative Arrangements Policy 2012 (the Policy) provides general guidance for agency reference when developing and implementing arrangements for consulting with their employees and employee representatives in relation to workplace matters.

The Policy sets out the principles and merits of consultation and the roles participants accept when they are involved in consultation.

This Policy supersedes the *Consultative Arrangements: Policy and Guidelines (1997)*

1.2. The Policy uses the term 'employee representative' as a general description for the different and accepted formal lines of communication on behalf of employees. This includes the customary representation by union officials and delegates, as well as nominated non-union employee representatives in appropriate circumstances.

1.3. The Policy is not intended to reiterate or replace obligations under legislation or industrial instruments; rather, it is a general guide to agencies for determining how consultation arrangements may be established.

2. PRINCIPLES AND MERITS OF CONSULTATION

- 2.1. Consultation is a process that provides an opportunity for people to express their views, state objections, exchange information, and promote understanding.
- 2.2. Consultation provides a genuine opportunity for people directly affected by proposed changes in the workplace, and the wider workforce, to influence the matters under discussion. Consultation should never be treated as a mere formality.
- 2.3. Communication, information sharing, and consultation are key to developing cooperation and a spirit of trust between management and employees and employee representatives.
- 2.4. Relevant information should be exchanged in a timely manner between participants.
- 2.5. Consultation does not require agreement and does not abrogate the right of the agency to make the final decision on matters discussed through the consultative process.
- 2.6. Agencies' consultative arrangements must acknowledge that the disclosure of confidential or personal information is governed by legislation and policy, and that participants have an obligation to comply.
- 2.7. Employee representatives are recognised as legitimate representatives of employees and are an important means of communication between management and employees through which employee views may be promoted.
- 2.8. A key element of consultation is that it requires that reasonable notice be given of the subject upon which the employees and their representative's views are being sought. What will constitute reasonable notice will vary according to the nature and circumstances of the case. This means that there should be an acceptance by all parties of an inherent flexibility to the word 'notice'.

3. ESTABLISHING AND MAINTAINING EFFECTIVE CONSULTATION

- 3.1. Joint understanding of the agency consultative arrangements and the parties' common objectives permits participants to focus on effective communication rather than process.
- 3.2. When establishing consultative arrangements, or reviewing existing arrangements, the following factors should be considered:
 - 3.2.1. The provision of relevant information to employees and employee representatives is necessary to enable them to make an informed contribution to matters raised in a consultative forum.
 - 3.2.2. Information sharing and consultation may be subject to legislation, including instruments governing disclosure of information. The Circular C2007-27 Privacy Guidelines on Disclosure of Information during Industrial Consultations provides a useful resource on privacy and disclosure matters. Other confidentiality rules may apply, such as commercially sensitive material or cabinet papers.
 - 3.2.3. Establishing a formal arrangement for participation by employee representatives enables them to make a meaningful contribution, and ensures an informed decision making process. However, the existence of a formal consultative arrangement should not replace day-to-day consultation and information sharing between managers and employees in the workplace.

- 3.2.4. A consultative and cooperative approach is an important factor in reducing the potential for conflict. A formal arrangement should include decision makers being available at appropriate times.
- 3.2.5. Consultation is a dynamic process and to achieve the best results when considering organisational change, restructuring, and reform – whether in the agency or more broadly across the public sector – often requires a long term view.
- 3.2.6. An agency’s consultative arrangements should take into account the needs and priorities of the agency, employees, the organisational structure, and the services provided to the customer.
- 3.2.7. An agency’s processes for consultation on local matters between an agency and its employees, including any dispute resolution procedure contained in an award or agreement, should always be the first step to facilitating a resolution on matters of concern.
- 3.2.8. The structure and effectiveness of consultative arrangements should be reviewed on a regular basis.

4. THE ROLE OF THE PARTICIPANTS

- 4.1. Agencies and employee representatives participating in consultative arrangements must understand and acknowledge each other’s rights and obligations, including those arising from the relevant legislation and industrial instruments.
- 4.2. Agencies and employee representatives must genuinely participate in the consultative process and commit to upholding an environment of mutual respect and professional behaviour.
- 4.3. Following consideration of the local needs and priorities of the organisation and its clients, proposed consultative arrangements should be discussed and wherever possible, agreement reached between agency and employee representatives.

Management

- 4.4. It is the primary responsibility of management to make decisions in order to achieve the objectives of the agency. However, the effective implementation of such decisions may be significantly enhanced through a process of canvassing issues of common interest between management, employees, and employee representatives.
- 4.5. Management should ensure:
 - 4.5.1. the timely provision of relevant information, including:
 - details of a proposed change
 - the likely impact on employees
 - the reasons for the proposed change, and
 - a proposed implementation schedule (where relevant)
 - 4.5.2 that there is discussion on possible measures for mitigating or averting any adverse effects on employees

- 4.5.3 the provision of appropriate and reasonable resources, including work time and communication facilities, for employee representatives to fully participate in the consultative arrangements
- 4.5.4 that genuine consideration is given to the ideas and contributions of employee representatives and that the agency provides to employee representatives the agency's response to their submissions
- 4.5.5 where the agency makes a final decision in relation to the matter which is the subject of consultation, the agency should notify the affected employees and at the employees' election, their representatives.

Employees

4.6. Employees should ensure:

- 4.6.1. that, in the first instance, they consult with their local management about any local causes of concern or grievance, and
- 4.6.2. that ideas for improving the workplace or systems of work are discussed with their managers, or where it may affect the organisation generally, submit ideas through their employee representatives.

Employee representatives

4.7. Employee representatives should ensure that they:

- 4.7.1. contribute to effective communication within the agency through genuine participation in the consultative arrangements
- 4.7.2. establish good local relations to facilitate resolution of employee concerns as close to the source of the issue as possible, and
- 4.7.3. use the consultative arrangements to present employee's input and seek the settlement of any concerns (not individual grievances).

5. ISSUES TO CONSIDER FOR CONSULTATION

5.1. Issues that may be considered for discussion through the consultative arrangements should either have a direct and significant effect on the workforce, or a large part of the workforce, or have a major impact on the agency in the short or long term. Examples include:

- Machinery of government changes
- Enterprise bargaining
- Workplace reform
- Restructuring and redevelopment
- Establishing a commercial focus to the organisation or parts of the organisation
- Changing work practices to create a more flexible workforce
- Staff turnover and absenteeism
- Improving performance and quality issues
- Introducing new classification(s)/classification scale(s)
- Introduction of new technology or electronic systems

- Government reforms and sector-wide policies
- Agency reforms
- Legislative changes

5.2. The examples list is proposed for discussion and is not all-inclusive or compulsory, remembering, that local issues should be addressed at the local level.

5.3. Matters to be considered for inclusion in consultative arrangements should be agreed between the agency and its employee representatives.

5.4. Work Health and Safety Issues should be referred to the agency's WH&S Committee.

6. LEGISLATION

- NSW Industrial Relations Act 1996
- Fair Work Act 2009
- Public Sector Employment and Management Act 2002
- Public Sector Employment and Management Regulation 2009
- Government Information (Public Access) Act 2009
- Privacy and Personal Information Protection Act 1998
- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011

7. OTHER POLICIES AND GUIDELINES

- M2011-11 – Managing Excess Employees Policy (Policy Document No D2011_07. Including Agency Change Management Guidelines (Policy Document No D2011_014). (To be read in conjunction with C2012-10 & PSCC2012-03)
- M1995-40 – Flexible Work Practices – Policy and Guidelines (Policy Document No G1995_001)
- C2007-27 – Guidelines on Disclosure of Information During Industrial Consultations (Policy Document No D2007_013)