The role and impact of elected Health and Safety Representatives on Workplace Health and Safety in South Australia

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1. Introduction

There is compelling international, empirical evidence that worker participation in decision-making about workplace health and safety leads to safer and healthier workplaces (Weil 1999, O’Grady 2000, Walters and Nichols 2006, Knudsen, Busck et al. 2011, Clarke 2014). This is not only measured by decreases in work-related injury and illness, but also by improvements in workplace negotiations, seen in workplace relations that lead to improvements in workplace democracy and increases in worker participation in management decision-making. When the representation is mediated by a union, the literature suggests that the impact of worker participation is enhanced (Reilly, Paci et al. 1995, Turner and Park 2004: 40, Australian Council of Trade Unions 2005, Walters, Nichols et al. 2005, Ferguson 2009, Nichols and Walters 2009).

Effective consultation requires effort to make it happen; effort on the behalf of workers to learn about process, to challenge management, to behave respectfully, and to be persistent; and effort on the part of management to behave respectfully, to share information and to share power. Consultation is not only about whether or not it happens, but also about the quality of the effort.

For many people the term ‘consultation’ is equivalent to ‘telling workers what is going to happen’; that is, providing information in essentially a one-way direction. But the definition of consultation is clear in the South Australian legislation (and harmonised in all jurisdictions across Australia), the South Australian Work Health and Safety Act, 2012 (the Act). Section 48 of the Act insists that workers must not only be informed, but must be given the opportunity to have their say and contribute to managerial decision-making.

Consultation and participation underpin South Australian legislation and such that it is given pride of place in Section 3 of the Act, which states that the objects of the Act are

…to secure the health and safety of workers and workplaces by—

(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment…

Whilst the Act encourages constructive action by unions and employer organisations, these organisations do not have a privileged role in participatory processes in health and safety in South Australia (Johnstone 2009). Far more emphasis is placed on the role of elected health and safety representatives (HSRs), ordinary workers who take on an extraordinary role. HSRs have been part of the work health and safety landscape in most jurisdictions in Australia since the introduction of Robens-style legislation in the 1980s. In South Australia they have always had significant rights and functions.

Part 5 of the current Act concerns consultation, representation and participation and this is supported by Regulations, and a Code of Practice and Fact Sheet on consultation, co-operation and co-ordination. Collectively, these define consultation as a two-way process between management and workers involving talking, listening, seeking and sharing views and information, considering what has been said, and advising workers about the outcomes of discussions in a timely manner. These documents put the onus quite squarely on the duty holder (the person conducting a business or undertaking—PCBU) and set out how consultation can happen in an amicable and constructive manner.

2. The role of HSRs

HSRs have significant powers and functions (but not duties) in South Australian legislation and their role is clearly defined in, and supported by the Act. HSRs represent the workers from a defined work group, established to facilitate consultation, and as negotiated with the PCBU. The members of the work group elect
them for a 3-year period. In summary, their legislative functions and powers, set out in Section 68 of the Act, are to:

- represent the workers in the work group in matters relating to work health and safety;
- monitor the WHS measures taken by the PCBU;
- investigate complaints from members of the work group about WHS; and to
- inquire into anything that appears to be a risk to the health or safety of workers in the work group arising from the business.

In fulfilling these WHS-related functions the HSR has the legislative backing to:

- inspect the workplace of the work group;
- accompany an inspector who visits to inspect the workplace of the work group;
- be present at an interview with a fellow worker or workers about WHS if requested by the workers they represent;
- request a WHS Committee to be established;
- receive information about WHS of workers in the workgroup; and to
- request assistance of people who may help in these functions.

Most significantly, HSRs have the power to direct work to cease in the face of serious risk or imminent exposure to a hazard (S.85) and to issue a Provisional Improvement Notices (PIN) if the HSR believes that there is a contravention of the Act (S.90). Interestingly, the harmonisation process introduced a provision that prevents a HSR from issuing a PIN unless they have completed appropriate training. There is some controversy about this provision: on the one hand, it is reasonable to expect the HSR to understand when and how a PIN can be administered; on the other hand, an unscrupulous employer who delays the HSRs’ training may render the HSR incompetent and thus avoid a PIN.

The mechanisms of consultation and the obligations on the PCBU, as the duty holder under the Act, are clearly laid out: these include an obligation to consult with the HSR and work group; and to support the HSR by providing approved training, information, facilities, paid time and assistance to enable them to fulfil their consultative role. They must also display a list of the HSRs and the workgroups they represent and keep this up to date. The legislative role is clear, and the Act insists on fair treatment of managers and workers, and provides remedies for unjust treatment, discriminatory conduct, and dishonesty.

Whilst the legislative framework for HSRs is both prescriptive and detailed, it provides the ‘lowest common denominator’. In the day-to-day work of the business, the role of the HSR can be much more significant. The experiences of HSRs at a workplace level can be very varied; from those who feel that they have meaningful input and who give voice to fellow workers who may feel powerless to participate, to those who feel frustrated and unable to voice their concerns (Blewett and Dorrian 2011).

3. The impact of HSRs

HSRs can be effective as peer-level leaders who influence the views of the people they represent and those with whom they consult. They are able to make significant contributions to work health and safety because they are in the workplace from day-to-day and understand the nature of the work that is performed by the people whom they represent. There are features that promote effective consultation:

- a sincere and honest approach to consultation by managers and employees;
- the existence of respectful relationships between managers and employees;
- understanding the roles and responsibilities of those engaged in consultation;
- training and communication at all levels to build a culture in which worker health and safety is valued and cannot be ignored;
- internal influences from the board of management, and external influences from the regulator or other sources;
- a varied approach to keep consultation and action fresh;
- acceptance of HSRs as peer-level leaders; and
- readily available information (Blewett, 2001: 11-15).

HSRs can have powerful influence and impact on WHS at the organisation level; the level at which people are potentially injured and made ill as a result of their work. Although industry-level interventions to improve WHS are important, ultimately what happens at workplace-level is what makes a difference to the lives of working women and men. Thus it is crucial to understand the features of worker representation that help improve workplace health and safety. These have been identified as:
- Having a cooperative industrial environment where people treat each other with respect;
- The existence of a regulatory framework that gives rights to HSRs for training, to act as representatives, and to take decisive action when necessary;
- HSRs’ commitment to a healthy and safe workplace; their role as principled peer-level leaders; the respect shown to them; their communication skills, confidence, persistence and assertiveness; their participation in training and development activities; and
- The contribution that is made by employers, OHS professionals and fellow workers in supporting HSRs (Blewett and Dorrian 2011).

In South Australia, the State government funds unions to enable them to provide effective training for HSRs. This move has resulted in an increase in trained and effective HSRs in industries where worker representation in WHS has been limited in the past, notably in education and in retail. Unions have observed the improvements in consultation and participation in the organisations where HSRs have been elected and trained, noting that the level of industrial disputation about WHS has declined. HSRs have impact one workplace at a time.

4. Conclusion

Worker participation in decision-making through effective consultative processes contributes to the quality of the working environment. This works best when there is a good balance between democratic principles and concern for efficiency, built on respectful relationships that enable and support workers and management working together (Knudsen et al 2011).

References

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