

Change
THE **RULES**

OH+S

A UNION GUIDE FOR
WORKERS, HEALTH AND
SAFETY REPRESENTATIVES
+ THEIR UNIONS TO

ISO 45001:2018

Occupational health and safety
systems – Requirements with
guidance for use.

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THE **RULES**

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OH+S: A UNION
GUIDE FOR
ISO 45001



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FOREWORD

The Australian Council of Trade Unions (ACTU), has produced this guide about the new global health and safety management systems standard, called ISO 45001:2018, as it presents useful opportunities for workers, health and safety representatives and their union organisers to participate at a high strategic level in designing, implementing, reviewing and auditing their health and safety management system.

During the development of this standard, representatives of the Australian union movement worked with representatives of union centres around the world, to make this new standard something that can have a positive impact on health and safety outcomes at the workplace, whatever their nature.

Health and safety at work is at the centre of the ACTU Change the Rules campaign. As many studies around the world have demonstrated, workplaces where unions are active are safer and healthier places at which to work.

The essence of the Change the Rules campaign is to achieve social and economic justice for working people. Work related injury, illness and disease often have a catastrophic impact on workers and their family and friends, as in many cases compensation and support are inadequate. So organising around ISO 45001 is a new way of engaging in the Change the Rules campaign.

Let's continue to make health and safety a top priority issue at the workplace. I hope this guide helps you in this task.

In unity,

Michael Borowick JP

Assistant Secretary

ACTU

INTRODUCTION

ISO 45001 (45001) is the new global framework Standard, for organisations to build their work health and safety management systems around. In Australia, it will replace the old Australian Standard AS/NZS:4801:2001 (4801) and the often-used UK OHSAS:18001 Standard. Within Australia, there is now an identically adopted Australian version of 45001. If you work in the public sector or a large private sector employer, it is likely that you are working under a work health and safety management system, developed using 4801.

45001 is the product of an intensive 4-year negotiation process conducted through the International Organisation for Standardisation (ISO). Through this process, a number of national union peak bodies, including the Australian Council of Trade Unions, led by the Canadian Labour Congress, have ensured that 45001 contains new opportunities for workers, health and safety representatives and unions to assert their rights to healthy and safe work and to use the beneficial provisions of 45001 to organise around.

As 45001 gives significant new rights to participate at the highest strategic level in an organisation's health and safety management system, the top management layer of executives and board members must now, with worker participation, establish a process for workers and their union representatives to make this participation happen. The central participation and consultation clause in 45001, is clause 5.4. The Details section of this Guide contains what you need to know about this clause and the other important clauses referenced by it.

Attached to this Guide is a preliminary check list, draft introductory letter and memorandum of understanding for union organisers, delegates and health and safety representatives, to start discussions over the change to 45001 from 4801 and how these new rights for workers will be developed in your organisation.

45001 is not prescriptive about the design of a health and safety management system. Like our Work Health and Safety Acts and Occupational Health and Safety Acts, 45001 states what is required, not how to do it.

45001 is not usually a compulsory Standard. However, many organisations seeking work from large organisations will need to be certified as compliant to 45001, to be able to tender for contracts with them. To gain 45001 certification, an organisation must be externally audited, to ensure that the processes they have in place to manage health and safety meet all the requirements in it.

An organisation cannot solely rely on achieving 45001 certification, as a way of ensuring that they are fulfilling all their legal health and safety duties. Even if they are following what is in 45001, organisations must ensure that they have met all the requirements of Australia's Work Health and Safety Acts & Occupational Health and Safety Acts (WHS Acts & OHS Acts), Regulations and Codes of Practice. 45001 is an "add-on" which an organisation may use to try to raise standards.

Unfortunately, 45001 is copyrighted by the ISO, so it is not possible to reproduce its actual text here. If your organisation is planning to use 45001, they cannot properly discuss its use, unless the workforce and their representatives are freely given access to copies of it. To this end, your organisation can buy copies, at <https://www.iso.org/iso-45001-occupational-health-and-safety.html>.

APPENDIX A – PRELIMINARY CHECKLIST FOR WORKPLACE UNION REPRESENTATIVES

- Ensure that if your organisation is considering seeking to implement 45001, it is discussed in a participative way with your union, either directly or through the health and safety committee, including health and safety representatives, at the earliest opportunity.
- If you are part of an organisation with several sites, or which operates in different countries, ensure that you have an organisation-wide health and safety committee and that all the relevant unions are meeting regularly – at least electronically. Also, if your organisation is based outside Australia, ensure that the consultation arrangements meet the minimum requirements of the WHS & OHS Acts, as some organisations may seek to set up company-wide non-union committees to bypass the unions.
- Check that the organisation is seeking 45001 certification for all parts of the organisation, including subsidiaries.
- Ask management to provide you with a copy of 45001, along with any other material that they intend to use.
- If any consultants are being used, ask for discussions on who is used.
- If they are seeking certification, ensure that the union receives a copy of all reports and meets regularly with the team or consultant responsible for achieving the standard.
- Ask for arrangements to be in place to allow workers, health and safety representatives and other union representatives to give feedback to the auditors during any audit.
- Ask for the training of union delegates and health and safety representatives on 45001 and the certification process.
- Once certification has been obtained, ensure that any reports on the operation of 45001 are made with the participation of union delegates, health and safety representatives and the work health and safety committee at regular intervals. To ensure ongoing worker participation and consultation, management must give you copies of any resultant monitoring reports or action plans.
- Remember that a standard can be revoked and, if your organisation fails to meet any part of the standard in the future, raise it with them and if they do not act, contact the auditor. If they fail to act, report it to your union for assistance with how to proceed from there.

N.B. This checklist is a modified version of the UK Trades Union Congress's Guide to ISO 45001.

APPENDIX B – DRAFT LETTER TO BEGIN DISCUSSIONS OVER IMPLEMENTING 45001

Date

Board Chairperson

Dear Chair

Re: Introduction of ISO 45001 & transition from the existing Australian Standard AS/NZS:4801:2001

The union is aware that this organisation has previously built its health and safety management system around the existing Australian Standard AS/NZS:4801:2001 (4801).

It has come to our attention that the International Organisation for Standardisation, in March 2018, published a new global standard, ISO 45001:2018 – Occupational health and safety systems – Requirements with guidance for use, (45001). And that 45001 is intended to replace 4801.

We are aware that amongst others, 45001's clause 5.4, significantly expands the rights for workers, health and safety representatives and their union representatives, to participate in the development, planning, implementation, performance evaluation and improvement of an organisation's health and safety management system.

Under 45001's clause 5.4, participation and consultation is required directly between top management, non managerial workers and those who represent them, with respect to health and safety management system activities.

So, this letter serves to start this process, by way of requesting an initial meeting between; yourself, others in top management positions, union delegates, health and safety representatives, health and safety committee members and the union(s) representing the organisation's workers. Attached to this letter, for discussion at the proposed meeting, is a draft memorandum of understanding, for working together with 45001.

We look forward to reaching agreement over the participation and consultation process for 45001's new high level strategic approach to health and safety management systems. So as, to prevent ill health and injury.

Yours faithfully

c.c. Chief Executive Officer

APPENDIX C – DRAFT MEMORANDUM OF UNDERSTANDING

Between

The Organisation

and

The Union(s), Union Delegates, Health and Safety Representatives, Health and Safety Committee Members.

Introduction

This Memorandum of Understanding, (the Memorandum), sets out the agreement between the parties above, with respect to the introduction of ISO 45001:2018 – Occupational health and safety systems – Requirements with guidance for use, (45001), and the transition from the existing health and safety management system.

Aim

The aim of this Memorandum is to agree on how the parties will work together to; develop, plan, implement, evaluate and improve this organisation's health and safety management system, using 45001.

Parties

The parties to this Memorandum are:

The Union(s), Union Delegates, Health and Safety Representatives, Health and Safety Committee Members, representing the non managerial workers engaged by the organisation.

The organisation through its' Top Management.

Agreement

The parties agree that: 45001's clause 5.4 requires an organisation to collaboratively set up a health and safety management system process or processes to ensure the consultation and participation of all workers at all levels, including unions as representatives of workers.

The parties also agree that: with respect to Clause 5.4 and all its subsequent referenced clauses; 4.2, 5.2, 5.3, 6.1.3, 6.2, 8.1.4, 9.1, 9.2.2, 10.3, 6.1.1, 6.1.2, 6.1.4, 7.2, 7.4, 8.1, 8.1.3, 8.2, 10.2. That many of these would fall outside WHS Act Section 77, Functions of a health and safety committee.

Subsequently the parties agree to establish a specific '45001 Health and safety committee' to be able to properly address the much expanded coverage required by 45001. Membership of such a committee should include the Board Chairperson, the Chief Executive, the most senior WHS and HR Manager, Senior Operational Managers, a full time official and a workplace delegate of each relevant union, existing Health and Safety Representatives and Health and Safety Committee Members. It is also agreed that managers have the right to be represented by their unions on the 45001 Health and safety committee.

So that through the 45001 Health and safety committee, workers have an ongoing role in improving the organisation's health and safety management system and its outcomes, by;

- Developing,
- Planning,
- Implementing, and
- Evaluating the organisation's health and safety management system and its outcomes.

So as then to proactively and systematically improve the organisation's health and safety management system and its outcomes in reducing injury, illnesses, disease and fatalities. 45001 also requires that the organisation provides; the resources, training and time through its mechanisms for worker consultation and participation. The parties agree to coordinate the delivery of these elements, through the 45001 Health and safety committee.

The parties agree that: clause 5.4 also calls for the organisation to give emphasis to the participation of workers who are not managers in the following, through the 45001 Health and safety committee;

- Setting up processes for their consultation and participation,
- Hazard identification, risk assessment and opportunities for improving health and safety outcomes,
- Working out how to eliminate hazards and if not possible, then reducing remaining health and safety risks,
- Deciding health and safety risk controls and how to implement these effectively,
- Establishing: training needs, competence levels and the evaluation of training,
- Deciding the health and safety communication measures and the manner in which they are done,
- The investigation of health and safety incidents, including near misses and other types or exposures to hazards and their risks. Including nonconformities within the health and safety management system, and decisions over actions to correct these.

The parties agree that: clause 5.4 specifically refers to giving emphasis to consulting workers who are not managers in the following, through the 45001 Health and safety committee;

- Drawing up the work health and safety policy,
- Working out who has what health and safety roles,
- The determination of the organisation's fulfilment of their legal and other requirements,
- Designing the health and safety objectives for the organisation including plans for their achievement,
- Working out risk management processes in the use of outsourcing, contractors and procurement,

- Decisions over monitoring, measuring and evaluating elements of the organisation’s health and safety management system,
- Decisions over applying the audit process, including the audit plan and its establishment, implementation and maintenance.

The parties agree that: top management will ensure that the participation and consultation provisions of 45001, currently laying outside the WHS Act, will be integrated as matters for participation and consultation using the framework set out in 45001’s clause 5.4 and part 5 of the WHS Act, through the 45001 Health and safety committee.

The parties agree that: the role of top management in clause 5.1 of 45001, sets out a list of things that top management must do, to demonstrate commitment and leadership to their health and safety management system.

Two of these directly refer to the rights of workers;

- Ensuring that clause 5.4 is implemented,
- Ensuring the protection of workers from any reprisals when they report hazards and risks.

The parties agree that: this Memorandum represents a new level of high level strategic engagement with respect to the role of the worker representative parties, in the organisation’s health and safety management system.

The parties agree that: awareness of the right to cease unsafe work – clause 7.3, builds on the right to cease unsafe work without reprisals or victimisation etc., as set out in clauses 83–88 of the WHS Acts. 45001 requires the organisation to make their workers aware of their ability to cease work where they consider a serious and imminent hazard to their safety or health exists.

Clause 7.3 also requires the organisation to make workers aware of the arrangements in the health and safety management system that protect workers from consequences that are undue in exercising this basic right at work. The parties agree they will jointly develop and deliver training for all workers in this basic human right at work.

The parties agree that: ceasing unsafe work does not mean walking off the job, in fact an essential part of ceasing unsafe work is reporting the hazard to management and as quickly as possible negotiating a resolution to their reasonable concern. This can include an interim measure, pending a permanent resolution.

The parties agree that: clause 6.1.2.1 Hazard Identification, sets out a list of hazards, below, some of which extend beyond those appearing in the Regulations to the WHS & OHS Acts.

Organisational culture	Design of services and product	New research about hazards
Leadership	Human factors	Activities of contractors, visitors, other people
Bullying	Past incidents	Proposals for change and actual changes to the WHSMS
Victimisation	Emergency situations	How work is performed
Harassment	Adapting work to workers capacity and needs	The organisation of work
Work hours	Work area design and processes	Proposals for change and actual changes to processes, operations, the organisation
Workload	External hazards near the workplace	

The parties agree that clause 8.1.2 emphasises the need for the participation of non-managerial workers in establishing, implementing and maintaining a process or processes, to both eliminate all hazards and reduce any remaining health and safety risks, using the hierarchy of health and safety control measures. It introduces a requirement to adapt work to the organisation's workers.

This is one of the areas where 45001 diverges from the WHS Acts, with the 45001 hierarchy being;

- Elimination,
- Substitution,
- Engineering controls and work reorganisation (including isolation),
- Admin controls with training,
- Use of free*, organisation provided, personal protective equipment.

*due to the legal effect of the WHS & OHS Acts and Australia's ratification of ILO Convention 155.

45001's hierarchy of health and safety control measures applies to all hazards, unlike the WHS Acts where its version only specifically covers hazards addressed in the Regulations.

Signatory Page

Board Chairperson

Chief Executive Officer

Union Delegates, Health and Safety Representatives & Health and Safety Committee Members

Union Secretaries



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APPENDIX D – DETAILS OF 45001'S KEY ELEMENTS

Definition of legal and other requirements – clause 3.9

45001 is designed to include the *legal and other requirements* with respect to health and safety, lying outside of it. Most obviously the requirements of the WHS & OHS Acts within Australia, plus Commonwealth and jurisdictional discrimination and harassment laws etc. Secondly, it nominates that other requirements include: health and safety related provisions in collective agreements and requirements that determine the persons who are workers' representatives in accordance with laws, regulations, collective agreements and practice. The term, *legal and other requirements*, is used around 50 times throughout 45001.

Work health and safety management system aim, success factors, *Plan-Do-Check-Act Cycle* – clause 0

This is the framing clause to 45001, setting the outcomes intended in the health and safety management system, which include:

- Provision of safe and healthy workplaces,
- Prevention of work related injury, ill health and death.

This statement is of critical importance, as the aims of a health and safety management system can become diverted towards the audit and certification processes, as an end in themselves.

These then feed into 45001's Success factors. One of these (d), is the participation and consultation of workers and their representatives. The next is that top management allocate the resources necessary, for the maintenance of the intended outcomes of the health and safety management system.

Last, 45001 requires that whatever form a health and safety management system takes, it must be based on the fundamental ISO approach in their *Plan-Do-Check-Act Cycle*. This is not an end in itself, but an ongoing cycle of activity through 45001's clauses 4, 5, 6, 7, 8, 9 & 10.

Context of the organisation – determining the scope of the health and safety management system – clause 4

In this clause the organisation is required to determine the expectation and needs of their workers, with their participation and then consultation, with respect to setting the scope of the health and safety management system. Then also whether these are or could become, legal and other requirements.

Participation & consultation – definition clauses 3.4, 3.5 & clause 5.4 – the consultation and participation 'engine room' clause

Both these definitions require engagement with work health and safety committees and existing workers' representatives. These terms appear throughout 45001, they are to be read through the clause 5.4 to properly implement them. The 45001 definition of participation is similar to Section 48 (1) (b) (ii) of the WHS Acts. This Section of the WHS Acts requires that consultation include '*a reasonable opportunity to contribute to the decision making process relating to the matter*'.

The essence of any health and safety management system is for an organisation to proactively and systematically engage with its workers, at all levels, to collaboratively prevent: incidents, injury and disease. With respect to this, the Review that framed Australia's WHS Acts, stated:

There is considerable evidence that the effective participation of workers and the representation of their interests in OHS are crucial elements in improving health and safety performance at the workplace. This representation occurs through the use of health and safety representatives (HSRs), elected by the workers to represent them in relation to OHS. National Review Into Model Occupational Health And Safety Laws, Second Report, To The Workplace Relations Ministers' Council, January 2009, Page 89.

45001's Clause 5.4 requires an organisation to set up a health and safety management system process or processes to ensure the consultation and participation of all workers, including the representatives of workers. 45001 also states that organisations are to support the establishment of health and safety committees. So that workers have an ongoing role in improving the organisation's health and safety management system and its outcomes, by:

- Developing,
- Planning,
- Implementing, and
- Evaluating the organisation's health and safety management system and its outcomes.

So as then to proactively and systematically improve the organisation's health and safety management system and its outcomes in reducing injury, illnesses, disease and fatalities. 45001 also requires that the organisation provides; the necessary resources, training and time through its mechanisms for consultation and participation.

When an organisation decides to develop, plan, implement, performance evaluate, or improve their health and safety management system, they are directly engaging the consultative provisions of the WHS & OHS Acts, as well as clause 5.4.

Clause 5.4 also calls for the organisation to give emphasis to the participation of workers who are not managers in the following:

- Setting up processes for their consultation and participation,
- Hazard identification, risk assessment and opportunities for improving health and safety outcomes,
- Working on how to eliminate hazards and if not possible, then reducing remaining health and safety risks,
- Deciding health and safety risk controls and how to implement these effectively,
- Establishing: training needs, competence levels and the evaluation of training,

- Deciding the health and safety communication measures and the manner in which they are done,
- The investigation of health and safety incidents, including near misses and other types or exposures to hazards and their risks, including nonconformities with the health and safety management system, and decisions over actions to correct these.

Clause 5.4 specifically refers to giving emphasis to consulting workers who are not managers in the following;

- Drawing up the work health and safety policy,
- Working out who has what health and safety roles,
- The determination of the organisation's fulfilment of their legal and other requirements,
- Designing the health and safety objectives for the organisation including plans for their achievement,
- Working out risk management processes in the use of outsourcing, contractors and procurement,
- Decisions over implementing, monitoring, measuring and evaluating elements of the organisation's health and safety management system,
- Decisions over applying the audit process, including the audit plan and its establishment, implementation and maintenance.

Role of top management – clause 5.1

In clause 5.1, 45001 uses the term 'top management' to refer a group or an individual at the highest level, controlling and directing the organisation. This is a narrower term than the definition of officer in the WHS Acts. This sets out a list of things that top management must do, to demonstrate commitment and leadership with respect to their health and safety management system. Three of these directly refer to the rights of workers:

- To support establishing and the ongoing operation of health and safety committees, this clause specifically refers to the need to put emphasis on the participation of non-management workers in setting up these committees,
- Ensuring that clause 5.4 is implemented,
- Ensuring the protection of workers from any reprisals when they report hazards and risks.

Hazard Identification – clause 6.1.2

45001 contains a hazard identification clause - this is like the Regulations in the WHS Acts. The list of these has a scope that is broader than the Regulations in the WHS Acts, referring to:

Organisational culture	Design of services and product	New research about hazards
Leadership	Human factors	Activities of contractors, visitors, other people
Bullying	Past incidents	Proposals for change and actual changes to the WHSMS
Victimisation	Emergency situations	How work is performed
Harassment	Adapting work to workers capacity and needs	The organisation of work
Work hours	Work area design and processes	Proposals for change and actual changes to processes, operations, the organisation
Workload	External hazards near the workplace	

Use of the hierarchy of health and safety control measures – clause 8.1.2

This is one of the clauses, referred to in clause 5.4, emphasising the need for the participation of non-manager workers in establishing, implementing and maintaining a process or processes, to both eliminate all hazards and reduce remaining health and safety risks, using the hierarchy of health and safety control measures. It introduces a requirement to adapt work to the organisation's workers.

This is one of the areas where 45001 diverges from the WHS Acts. With the 45001 hierarchy being:

- Elimination,
- Substitution,
- Engineering controls and work reorganisation (including isolation),
- Admin controls with training,
- Use of free, organisation provided, personal protective equipment.

45001's hierarchy of health and safety control measures applies to all hazards, unlike the WHS Acts where its version only specifically covers hazards addressed in the Regulations. Also, the WHS Acts use a modified hierarchy of control measures.

Workers' ability to identify hazards – clause 7.2

The organisation must train all workers to be competent in the ability of hazard identification. It is core to being able to participate in applying the hierarchy of control and to understand when to exercise their right to cease unsafe work.

Awareness of the right to cease unsafe work – clause 7.3

The right to cease unsafe work without reprisals or victimisation etc., is set out in clauses 83–88 of the WHS Acts. 45001 builds on this, requiring the organisation to make their workers aware of their ability to cease work where they consider a serious and imminent hazard to their health or life exists. Clause 7.3 also requires the organisation to make workers aware of the arrangements in the health and safety management system that protect workers from consequences that are undue in exercising this basic right at work.

If the application of the hazard identification and elimination processes leaves workers still considering themselves in imminent and serious danger, then ceasing unsafe work is the only option. Likewise, if a new hazard suddenly arises, that presents an imminent and serious danger, then ceasing unsafe work is the only option. This does not mean walking off the job entirely, in fact an essential part of ceasing unsafe work is reporting the hazard to management and quickly negotiating a resolution to the reasonable concern. This can include an interim measure, pending a permanent resolution.

This clause also requires that workers are made aware of the organisation's:

- Health and safety policy and objectives,
- Outcomes of relevant incidents and their investigations,
- Outcomes of the application of the risk management processes in clause 6 & 8, for hazards, health and safety risks and determined control measures.

Health and safety management system documents – clause 7.4.2 & 7.5.3

Read in conjunction with clause 5.4 (b), these clauses require that workers and their representatives are given copies of 45001 and all other associated documents in their health and safety management system. In the first instance, this would include these documents in a draft form with 45001 included.

Outsourcing, procurement & contractors – clause 8.1.4

This clause has been written to ensure that the organisation does not use the corporate veil, to escape overall responsibility for achieving the intended outcome of their health and safety management system while engaging in outsourcing, engaging contractors and procurement. This clause again must be read in conjunction with clause 5.4, giving workers and their representatives the right to participation and consultation through these processes. These mirror a number of the upstream duties in the WHS Acts, Sections 21 –26.

Monitoring, measurement, analysis and performance evaluation, internal audit programme & management review – clause 9

Read through clause 5.4, this clause gives workers and their representatives the right to participate in these processes and to receive audit results. Any management reviews must include consideration of the outputs from the participation and consultation activities of their workers. The organisation must give workers and their representatives documented outputs from their management review processes.

Incident, nonconformity and corrective action and continual improvement – clause 10

This clause gives workers the right to participate in the evaluation of the root cause(s) of health and safety incidents and health and safety management system nonconformities, with a specific reference back to clause 5.4.

A nonconformity is defined as occurring where a system requirement is not fulfilled. This would include not fulfilling a requirement for the participation and consultation of workers. Likewise, the organisation must promote worker participation in implementing actions arising from the continual improvement components of the health and safety management system.

APPENDIX E – SITUATING 45001 WITHIN THE AUSTRALIAN HEALTH AND SAFETY LEGAL LANDSCAPE

The following outlines how the Australian health and safety laws, and other laws, also take precedence over the application of 45001 and where there are some key differences, with respect to the following concepts within it:

- Organisation
- Worker
- Workplace
- Consultation and participation
- Top management
- OH&S management system
- Roles, responsibilities and authorities
- Eliminating hazards and reducing OH&S risks
- Pay for training
- Free PPE

Organisation

45001 states that it applies to organisations. The key duty holder under the WHS laws is a ‘person conducting a business or undertaking’ (PCBU). The definition of organisation in 45001 is both narrower and broader in some respects than the definition of PCBU. Where the definition in the ISO is narrower than under the WHS Acts there is potential for people to misinterpret their legal duties, leading to non-compliance with the WHS Acts.

Each partner in a partnership is a PCBU under the WHS Acts but under 45001 it appears that the collective partnership is an organization. This could mean that partners in a partnership may not appreciate that each partner still has a WHS duty as a PCBU under the WHS Acts.

Worker

The definition of ‘worker’ in 45001 is narrower in some respects than the definition of ‘worker’ in the WHS Acts.

The definition in the WHS Acts does not require the PCBU to have control of the work being performed by a person for that person to be a worker of the PCBU.

An organisation under 45001 may not appreciate that they have a duty as a PCBU under the WHS Acts to ensure the health and safety of all workers who carry out work in any capacity for a PCBU, so far as is reasonably practical. These differences could lead people to misinterpret their legal obligations, leading to non-compliance with the WHS Acts.

Workplace

The definition of 'workplace' in the 45001 is narrower than that used in the WHS Acts. In the WHS Acts, 'workplace' is defined as any place where a worker goes, or is likely to be, while at work. In 45001, the place must be under the control of the organisation, and it must be a place where the worker needs to be or to go for work purposes.

An organisation under 45001 may not appreciate that they have a duty as a PCBU under the WHS Acts to manage health and safety risks at the workplace, regardless of whether the worker needs to be or go there, or if the PCBU has control of the place where the work is performed.

These differences could lead people to misinterpret their legal obligations, leading to non-compliance with WHS laws.

Consultation and participation

Consultation between workers, health and safety representatives, union officials and the PCBU is a key element of Australia's WHS Acts. 45001 adds in the concept of participation, which does not directly appear in Australia's WHS Acts. However, Section 48(1)(b)(ii) of the WHS Acts requires that consultation include '*a reasonable opportunity to contribute to the decision making process relating to the matter*'. This is participation by dint of its function, rather than what it is called. Last, Safe Work Australia has produced a *Worker representation and participation guide*.

When a PCBU decides to develop, plan, implement, performance evaluate, or improve their health and safety management system, they are directly engaging the consultative provisions of the WHS & OHS Acts, as well as clause 5.4.

OH&S management system

In 45001, the terms "occupational health and safety" (OH&S) and "occupational safety and health" (OSH) have the same meaning. The equivalent term "work health and safety (WHS)" is what is used in the majority of Australian jurisdictions.

Top management

The obligations imposed on 'top management' under 45001 are broadly comparable to the duty imposed on 'officers' under the WHS Acts, but the definition of 'top management' in 45001 is narrower than the definition of 'officer' in the model WHS Act.

Here, top management is limited to only those persons who direct or control the organisation at the highest level.

The definition of officer in the WHS Acts connects to the definition of 'officer' in the Corporations Act 2001 (Cth), and includes not only directors, but also any person who makes or participates in making decisions that affect the whole or a substantial part of the PCBU.

These differences could lead people who may be officers under the model WHS laws but who may not be top management under 45001, to misinterpret their legal obligations. That is, a person who is an officer under the WHS Acts but who is not also top management under 45001, may not appreciate that they still owe a personal duty under the model WHS laws.

Roles, responsibilities and authorities

Under this clause top management are required to assign responsibility and authority for, among other things, ensuring that the health and safety management system conforms to 45001s requirements.

A note to this clause says that, while responsibility and authority can be assigned, top management is still accountable for the functioning of the health and safety management system.

Under the WHS Acts, where a task required by the officer's duty is delegated/assigned to someone else, it is the personal duty of the officer to be proactive and verify that the task has been done. An officer cannot transfer their duty. This is arguably different to just being accountable if those things are not done.

Eliminating hazards and reducing OH&S risks

The hierarchy of control set out in clause 8.1.2 of 45001 differs in some respects from the hierarchy of control set out in the WHS Acts Regulations (Reg 36) and Codes of Practice (e.g. the Code of Practice: *How to manage work health and safety risks*).

Under the WHS Acts Regulations and Codes of Practice, substituting the hazard, isolating the hazard and implementing engineering controls are equal in the hierarchy. In 45001, substitution is above engineering controls and isolation. While isolation does not appear in clause 8.1.2, the guidance in Annex A indicates that 45001 treats isolation as a form of engineering control, effectively making isolation and engineering controls equal in its hierarchy of control.

Note 4 to clause 5.4

Note 4 reads, *It is recognised that the provision of training at no cost to workers and the provision of training during working hours, where possible, can remove significant barriers to worker participation.*

So, 45001 does not require that workers be paid for training. However, Australia's Fair Work Ombudsman has made it clear that:

In cases where the person is actually an employee, they are entitled to pay and conditions under the Fair Work Act.

If a person is an employee, they may also need to complete formal or informal training to make sure they have the right skills and knowledge to perform their job. This can include on-the-job training, online or formal training courses or team training.

If an employee has to do training as part of their job, they have to be paid the right pay for those hours worked.¹

1 <https://www.fairwork.gov.au/pay/unpaid-work>, accessed 04/05/2018.

Note to clause 8.1.2

The note to clause 8.1.2 reads, *in many countries, legal requirements and other requirements include the requirement that personal protective equipment (PPE) is provided at no cost to workers.*

Section 237 and Regulation 44 of the WHS Acts requires the free provision of PPE. Last, Australia has ratified ILO Convention No. 155, Occupational Safety and Health Convention, 1981. This states that:

Article 21 - Occupational safety and health measures shall not involve any expenditure for the workers.

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