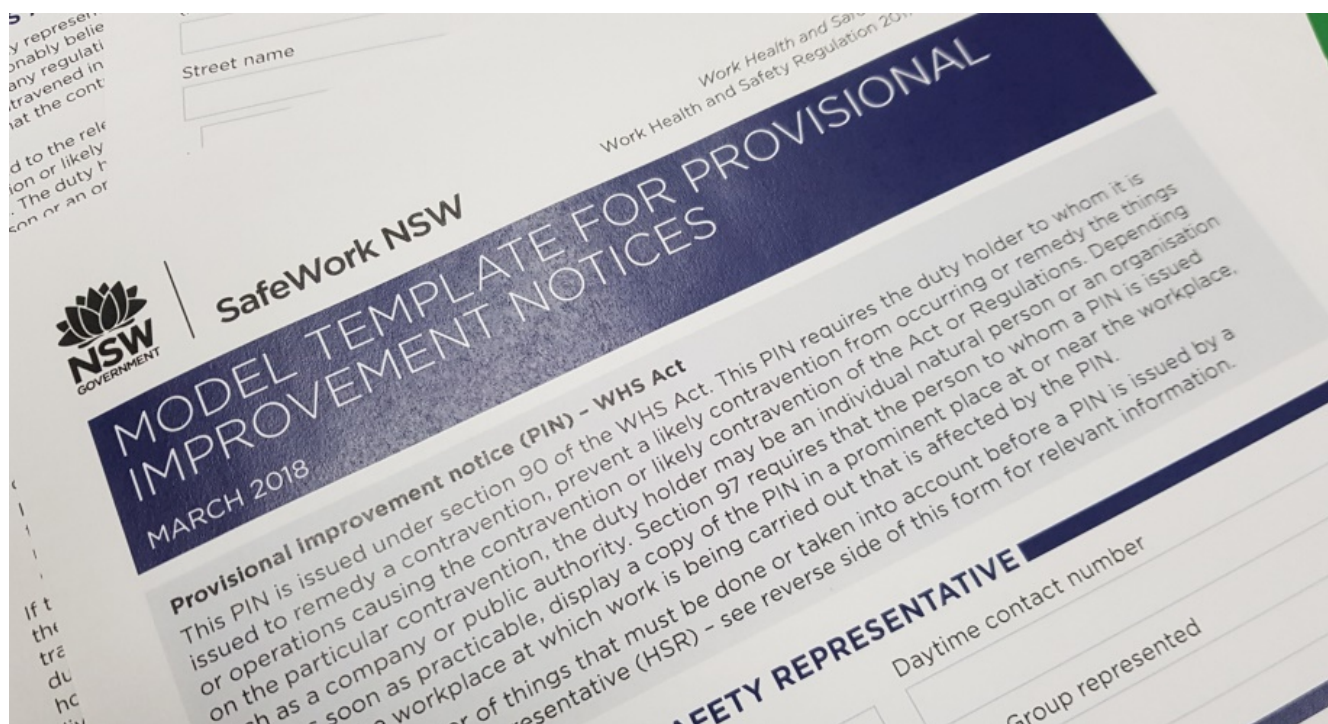


Department of Finance, Services and Innovation breaches WHS Act



The Department of Finance Services and Innovation (DFSI) has breached the Workplace Health and Safety (WHS) Act by not consulting with its staff, as required, during an open plan office fit-out.

This finding from a review by a senior WHS Inspector is important for ALL public sector workers.

The Inspector was requested to review Provisional Improvement Notices (PINs) issued by Health and Safety Representatives (HSRs) at the Gosford office of DFSI. This office has staff from SafeWork NSW, Revenue NSW, Fair Trading, Government and Corporate Services and the State Insurance Regulatory Authority.

In December 2017 several PINs were issued. These stated DFSI had not correctly followed the consultation provisions of the WHS Act. DFSI asked for a review of the PINs, modestly claiming they had “over-consulted” about the open-plan office “restack” project and that the PINs were “invalid”.

The DFSI opinion was not shared by the Safety Inspector. Its decision on 19 April 2018 was that the PINs were valid and that proper consultation had not happened:

“The information and documents provide evidence of communication by the Person Conducting a Business Undertaking [DFSI] with workers about the office restack.”



Department of Finance, Services and Innovation breaches WHS Act

However, the documents do not provide evidence of consultation with workers as set out in Division 2 of Part 5 of the WHS Act”.

(Conclusions and Decision from the Inspector’s review are included at the end of this bulletin).

This important decision confirms there is an enforceable legal difference between simply communicating information to workers and genuine consultation under the WHS Act.

It is rare for management in the public sector to correctly follow the [consultation obligations of the WHS Act](#) during office renovations. Workers are usually told what is going to happen and not given a real opportunity to participate and influence the process.

Consultation obligations

A change in the workplace such as office renovations must involve WHS consultation according to section 48 of the WHS Act:

48 Nature of consultation

1. Consultation under this Division requires:
 - a) that relevant information about the matter is shared with workers, and
 - b) that workers be given a reasonable opportunity:
 - i. to express their views and to raise work health or safety issues in relation to the matter, and
 - ii. to contribute to the decision-making process relating to the matter, and

- c) that the views of workers are taken into account by the person conducting the business or undertaking, and
- d) that the workers consulted are advised of the outcome of the consultation in a timely manner.

2. If the workers are represented by a health and safety representative, the consultation must involve that representative.

Remarkably, the Head Office of SafeWork NSW is among the DFSI agencies in the Gosford office affected by the breach of the WHS Act.

For the purposes of the WHS Act, DFSI is the Person Conducting a Business Undertaking (employer) for SafeWork, which is the NSW workplace safety regulator.

As an employer, DFSI has been found to be non-compliant with the WHS legislative obligations that SafeWork regulates.

PSA WHS training

Trained HSRs can issue legally enforceable PINs and cease unsafe work notices, conduct WHS investigations and represent workers. The PSA acknowledges the tremendous efforts of our members working as HSRs. Within DFSI the actions of the HSRs have resulted in the Regulator being regulated.

The PSA conducts training courses (found [HERE](#)) for HSRs, Bullying Prevention and Care and Resilience.



Department of Finance, Services and Innovation breaches WHS Act

Contact whs@psa.asn.au for more information about WHS training or if you are concerned that WHS consultation is not happening properly in your workplace.

Safety Inspector's conclusions and decision

Conclusions

"I am satisfied that the PCBU had a duty to consult with workers about the Dennison Street office restack.

I am satisfied that the HSRs consulted with the PCBU prior to the issuing of the PINs as required by section 90(3) of the WHS Act. The consultation was in the form of requests for information.

I am satisfied that the HSR's requests for information from the PCBU about the office restack prior to the issue of the PINs were not addressed by the PCBU.

I believe the specific measures to be taken by the PCBU should be amended to better reflect the legislative provisions under Division 2 of Part 5 of the WHS Act and the duty of a PCBU to consult with workers.

I am satisfied that the PINs should be confirmed with changes.

Decision

For the above reasons, pursuant to section 102(1)(b) of the WHS Act, I confirm the provisional improvement notice with changes to read:

To remedy the contravention or prevent the likely contravention in accordance with section 93(1) of the WHS Act, the PCBU must consult with workers and their health and safety representatives in accordance with Division 2 of Part 5 of the WHS Act as part of any proposed future office restacks".

