

# NSW Teachers Federation Work Health and Safety BULLETIN 03

October 2014

## Work Health and Safety Issue Resolution

### What is an issue?

Example: Students and staff have suffered injuries from the multiple trip hazards in our playground and on our stairs. Our school does not have enough funds to fix these hazards. What do we do?

You can use the Department's *Work Health and Safety Issue resolution procedures* to address the problem.

The Department and TAFE Commission define a health and safety "issue" as "a matter concerning workplace risks/hazards/risk management that has not been able to be resolved locally after discussions between employees and others undertaking work and workplace managers".

The trip hazards will need to be identified and assessed. If the school does not have the necessary resources to minimise or control the risks posed by the trip hazards then they are a health and safety "issue".

### How do you use the issue resolution procedure?

#### Step 1

Any employee, Health and Safety Representative, Work Health and Safety Committee member or other person at the workplace is able to, and should, report health and safety issues which need to be addressed to the workplace manager. In schools this is the principal, in TAFE it may be the campus manager or director.

The person or persons reporting the issue will be asked to put it in writing, preferably by using the issue resolution notice. The person should specify the resolution they seek if possible. It is important to document the issue. This will assist with resolving the issue and ensuring there is no confusion about the nature of the issue.

#### Step 2

Once the issue is notified "priority is to be given to taking action to permanently and quickly eliminate the hazard thereby resolving the issue".

If it is not possible to do this "and there is an immediate risk or danger, immediate action needs to be taken to put in place temporary arrangements to remove the immediate risk or danger".

Using the example of trip hazards which may cause injury this could include restricting access to certain areas or putting up barriers so that the risk is eliminated or minimised.

The Department advises that "assistance from work health and safety consultants and managers is available at any stage".

It is important to remember that if the risks or hazards can be dealt with (that is, eliminated or minimised so far as is reasonably practicable) within the school or college then they are not an "issue".

#### Step 3

The workplace manager is required to use the agreed workplace consultation arrangement (for example, meets with Health and Safety Representative) to try to resolve the issue as soon as possible but at the latest within five working days

with advice and support from the work health and safety consultant if required. “If the workplace manager becomes aware before then that the issue cannot be resolved at the local level then the issue is to be escalated.” Some work health and safety issues may need to be notified when the issue is reported if it is clear that it cannot be resolved locally.

#### **Step 4**

If the issue is resolved at the workplace level it needs to be communicated to all employees and documented on the issue resolution notice.

It is important to note that the decision that an issue is resolved is not unilateral. The *Work Health and Safety Issue resolution procedures* state: “Issues are resolved when there is an agreement on actions and controls to minimise or eliminate risks undertaken within an agreed timeframe.”

#### **Step 5**

If it is clear that “available knowledge, training or resources are not sufficient for resolving the issue at the local level, then the issue is to be escalated as soon as this is evident”.

The workplace manager should update the issue resolution notice setting out what has been done and what needs to be done to resolve the issue taking on board the outcome of the consultation conducted through agreed procedures. The issue must be reported by “the workplace manager or other party via the Incident and Injury Hotline on 1800 811 523 or by fax to the Injury Management Centre on 9707 6233”.

It is important that a record is kept of the notification and the information provided in relation to the notification. This may prevent any confusion around the nature of the issue and the resolution sought.

#### **Step 6**

The notification will be received by the “WHS Directorate and the relevant senior manager/Director, Director of Public Schools or relevant senior officers” who will “work with all parties to resolve the issue as soon as possible but at the latest within 10 days”.

The resolution will require consultation using agreed consultation arrangements, for example with the Health and Safety Representative and/or Committee.

The issue is only resolved “when there is agreement on actions and controls to minimise or eliminate risks undertaken within an agreed timeframe”.

#### **Step 7**

If the issue is resolved the “steps taken to resolve the issue are communicated and documented through the issue resolution notice”.

At any stage members can seek assistance from Federation. This includes the workplace managers. The Federation recommends that members contact their Organiser for advice and assistance if there are any concerns or questions about the health and safety issue and/or how the process operates.

### **Who is responsible for resolving an issue?**

Remember an “issue” is a health and safety matter that cannot be resolved locally.

Under the Work Health and Safety Act the Department, as an employer, has a primary duty of care to ensure the health, safety and welfare of employees and other people in the workplace so far as is reasonably practicable. This means that the Department has a responsibility to ensure issues are resolved.

The Act imposes duties on “officers” defined as “a person who makes or participates in making decisions that affect the whole, or a significant part of the business”. The Department’s *Work Health and Safety (WHS) Policy* has identified “officers” as the Senior Executive, not principals or other workplace managers. The Work Health and Safety Act places responsibility on officers to ensure the Department or TAFE has appropriate resources and processes to eliminate or minimise risks to health and safety, and further, that the Department or TAFE complies with its duty to ensure consultation with workers.

The procedures state overall management (not resolution) of the issue remains with the workplace manager, in consultation with the Health and Safety Representative or Health and Safety Committee. Throughout the process the workplace manager keeps parties informed of the progress in resolving the issue.

The management of the issue is not the same as responsibility for resolving the issue. The appropriate resources, knowledge and training necessary to resolve the issue must be provided.

## Does the Health and Safety Representative have additional duties in resolving issues?

No.

The Work Health and Safety Act sets out the powers and functions of a Health and Safety Representative and requires the employer or person conducting a business or undertaking to “provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under this Act.” (Section 70(f)).

The Act also states in section 68(4): “Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.”

This means support must be provided for the Health and Safety Representative to carry out their functions and powers which are not duties. The Work Health and Safety consultation procedures provide more information about this in Section 4.2 pages 11 and 14.

The Health and Safety Representative or Work Health and Safety Committee should be provided with time to consult with other workers about resolving health and safety issues.

The Work Health and Safety Act states consultation is required when identifying and assessing hazards and risks and when making decisions about the ways to eliminate or minimise those risks. Workers need to be given an opportunity to express their views in relation to health and safety issues and where they are represented by a Health and Safety Representative the consultation must involve that representative.

The Work Health and Safety Act and the *Work Health and Safety Issue resolution procedures* make provisions for the Health and Safety Representative to seek assistance from “any person”. Assistance or advice can be provided by Federation, toll free on 1300 654 369 or by contacting your Organiser directly.

### Note

The Department's and TAFE Commission's *Work Health and Safety Issue resolution procedures* have a simple flow chart on page 6.

The Issue Resolution notice is on page 10 of the procedures.