



International
Labour
Organization

▶ A MANUAL FOR FACILITATORS, CHAIRPERSONS AND MEMBERS OF WORKPLACE FORUMS



▶ **International Labour Organisation**

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SRI LANKA

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▶ Acknowledgements

This Manual has been prepared by ILO consultants and officials, drawing on materials produced by the International Training Centre of the ILO, Turin, by CoSolve and other sources acknowledged in the text.



▶ Purpose of this manual

This Manual has been designed to equip facilitators, chairpersons and members of Workplace Forums to promote the work of those Forums. As at 2022, everything is in a pioneering stage, with this Manual produced for the very first pilot site Forums.

Most of the material reproduced here is of equal relevance to Forum chairs and facilitators on the one hand and then Forum members on the other. Some of it, though, is pointedly directed at members (for instance, 'Next Steps', at the end). Other sections are specifically intended for Forum chairs and facilitators.

None the less, the full set of material is being made available to both audiences in a single text – it's not a bad idea for members to get a sense of the role of facilitators and chairs, and vice versa.

Workplace Forums are the ground-level building blocks for the new labour relations framework for the public service in Sri Lanka. Their role is complemented by Sectoral Councils – with their focus on collective bargaining – and then also the apex National Dialogue Council.

Workplace Forums are bodies designed to foster cooperation between workers and managers with a view to –

- ▶ improving workplace productivity (meaning better public services for all in Sri Lanka) and
- ▶ improving the workplace experience and morale of all employees (by giving them opportunities to shape their own work environments).

Workplace Forums operate under their own charters, customized to meet local needs and aspirations. They need competent and independently-minded facilitators and chairs to ensure they run well.

In their formative stages, Forums will be guided by independent facilitators appointed by the Public Service Ministry. Once firmly established, Forums may decide to appoint or elect their own chairs from internal resources to supervise their work.

The 'Class of 2022' Forum members are pathfinders for the public service. Their experiences and contributions will shape the success of the whole unfolding reform venture.

We trust this Manual and its supporting training will assist everyone on the journey.

The ILO and Ministerial Team

▶ Learning outcomes

With the training in the content of this Manual completed, participants should have a good understanding of –

- ▶ the objectives and practical operation of Workplace Forums
- ▶ the place of Workplace Forums in the broader labour relations framework
- ▶ how to promote collaborative problem-solving to advance the objectives of Workplace Forums
- ▶ how to promote dispute prevention and dispute resolution in relation to the operation of Workplace Forums
- ▶ how better to chair meetings

A word on the style of training at the Workshop and on the material in the Manual itself

In the case of Forum facilitators and chairpersons, the workshop participants are mainly professional and administrative people with experience in engaging with others in a range of workplace settings. So, the style here assumes that the workshop is a bit of a 'Master Class' – presentation and informed discussion amongst thinking people!

In the case of Forum members, we will be working with more of a cross-section of people, with a mixed amount of prior knowledge and experience in project and engagement work. The workshop style will be adjusted for the differing sets of participants.

Things are meant to be interactive throughout, though: guided discussion and learning in a roundtable environment, with illustrative activities.

The participants should do some pre-reading (of pieces of this Manual, perhaps other material as well) in advance, and then come prepared to engage in conversation, develop shared understandings and set themselves up for getting going with Workplace Forums in the real world.

There are no magic formulas in this supporting Manual. We expect the workshop participants to use the material as a guide to assist them to play their part in making Workplace Forums work.

The Manual is here to be improved – made more fit for purpose – as a result of the training workshop and the feedback from the participants themselves.

▶ Using this manual

This Manual makes up the bulk of the text for a training workshop for Workplace Forum people. It should be made available to workshop participants ahead of time.

Before the Workshop:

You (as a workshop participant) should read up on the scene-setting introductory piece: on pages 9-16 below. Then you will be prepared to discuss and debate these topics at the beginning of the Workshop. Feel free to read further. Every bit of extra pre-reading will help you get more out of the Workshop.

At the Workshop:

- ▶ We will be working through the Contents (of this Manual) and the *Agenda* (of the Workshop) – see the next two pages.
- ▶ The workshop facilitators will guide you through the material, presentations, exercises and plenty of discussion.
- ▶ The last item on the Agenda deals with the link between the training and your workplace – of special relevance to Forum members.
- ▶ Feel free to make notes as you go along on the reverse side of any page.

Afterwards:

Please give feedback to the Workshop presenters on –

- ▶ how the Manual content could be improved (it's meant to be an evolving document);
- ▶ any thoughts you may have on how the delivery of training can be improved – a better format for workshops or perhaps using other channels such as online training.

Please refer back to the Manual as you go about your site role.

▶ Contents

1. The developing labour relations framework in the public service in Sri Lanka	01
2. The case for cooperation in the workplace	07
3. A word on the Workplace Co-operation Unit of the Ministry of Public Services	10
4. All about Workplace Forums: examining key provision of an example Workplace Forum constitution	11
5. Collaborative problem-solving: elements and an exercise	17
6. A word on 'Lean Manufacturing' and its relevance for efficient and effective service delivery	19
7. A word on Business Literacy	22
8. Workplace Forums in action: Meetings and more	33
9. Dispute prevention and dispute resolution	35
10. Grievance handling	37
11. Key takeaways	50
12. Next steps	53

Companion pieces to this Manual

- ▶ Supporting PowerPoint slides, *Missing Tools* (separate)
- ▶ Facilitator's Manual (separate)

Warming up: the very big picture Activity

What do you think are the features of a 'Great Workplace'?

Meaning, a place–

- ▶ which consistently produces excellent, much appreciated goods and services to the public or its customers;
- ▶ where workers and managers enjoy rewarding working?

From the workers' and managers' point of view, what do you think they would identify as the things – the features – that produce strong working relationships and also quality goods and services?

Make your own list, compare with the person next to you and then let's share and discuss.

What is a High-Trust Culture?

'It is a workplace where trust-based relationships are highly valued. In our 30 years of research, we have found that employees experience high levels of trust in the workplace when they –

1. 1. believe leaders are credible (i.e., competent, communicative, honest)
2. 2. believe they are treated with respect as people and professionals
3. 3. believe the workplace is fundamentally fair.'

Michael C Bush, *A Great Place to Work for All*

Why change ? What makes a workplace great?

Simply the best workplace in Australia



Getting a sense of where Forums fit in the larger framework

– Some prep reading –

► 1. The developing labour relations framework in the public service in sri lanka

Sri Lanka has a relatively large public service sector. Over 1,400,000 employees are currently engaged there.

For a lower middle-income nation, Sri Lanka has a reasonable reputation for public sector service delivery, notable in areas such as health and education. But there are also plenty of complaints from members of the public: issues over quality, reliability (strikes!), affordability and more.

Clearly, a well-functioning and ever-modernising public service is essential for the continued development and welfare of the country.

The Constitution, says the state must promote –

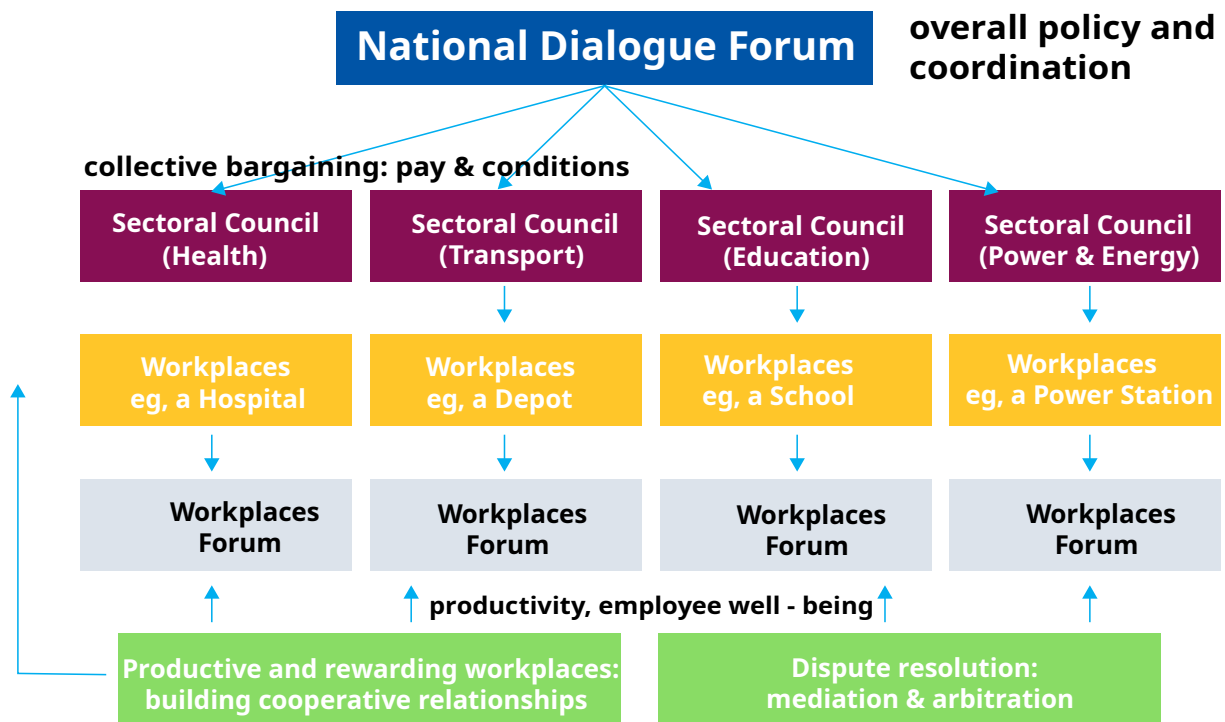
1. the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life; and
2. the realisation by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.

However:

‘One of the major drawbacks in labour- management relations in the public service in Sri Lanka is non-existence of an environment for social dialogue and appropriate mechanisms to prevent and settle disputes. There is no proper environment for the employees and the management to come together to learn and listen to each other.’

(Ariyaratne Hewage, Upali Athukorala & DM Somarathne Dissanayake)

And that’s the background to the labour reforms which have seen the emergence of, among other things, Workplace Forums. Here is a helicopter view of the institutional architecture:



Workplace Forums are the bedrock of the new system. They are the places where ordinary workers and employees will be interacting with managers in order to –

- boost productivity – so that goods and services are delivered to the public more efficiently, are more accessible and of better quality;
- improve the workplace experience and morale of all worker and employees.

How is this meant to be done?

By providing structures (forums) and processes (consultation, joint problem-solving) for greater cooperation between management and employees/workers. By giving workers and employees the opportunity (through) to contribute their ideas on workplace improvement. By giving employees much more information about their workplace operations. By building trust and between managers and employees/worker to allow for changes to be adopted a lot faster. And in other ways.

Will this be easy or difficult? Spoiler alert: this will be challenging, and will take years. Fortunately, there are also quick gains to be made – by tackling burning issues that really just require deliberate and cooperative attention to be successfully solved.

Sectoral Councils are forums for major engagement between the state as employer – represented by Ministries and Departments – and the unions representing the bulk of employees/workers in each major area of the public service (with exceptions). The principal activity of Councils will be collective bargaining – negotiating over terms and conditions of employment. Once Councils are up and running, these terms and conditions will not be set unilaterally by the State – often in reaction to labour political pressure – but rather through engagement with unions. Provision will be made for the right to strike, subject to constraints in respect of genuinely essential services (where the health and safety of the public is at stake). In the case of essential services, here wage outcomes will either match outcomes in the rest of the particular sector or be the product of collective bargaining followed by compulsory independent arbitration if bargaining ends in an intractable impasse.

Councils will also discuss and attempt to agree on sector-level strategic matters such as policies on the education and training of employees/workers.

The **National Public Service Dialogue Council** will become the apex labour-management body in the public sector. National service delivery and national employment policy issues will be up for debate and agreement here. The National Council will also have a role in establishing the broad parameters for sectoral wage setting – looking at such matters as fairness, equity and affordability. It will also have a role in dispute prevention and dispute resolution.

This is how the 2014 ILO Report described the big picture:

Social dialogue

Against a history of low levels of structured engagement between the state as employer and unions and a high incidence of strike action, this Report advocates the introduction of a framework of social dialogue institutions.

And so provision is made for engagement at three levels through three interconnecting institutions:

1 Workplace Forums. These would be bipartite bodies (comprising employer and employee representatives, but with provision for union participation as well) established at the level of the workplace (flexible defined) at the initiative of local management and employees or unions. While their emergence would depend on local initiatives and local consensus, a local employer should not be entitled to resist their establishment.

The key role of the envisaged Workplace Forums would be to promote local employer-employee engagement aimed at productivity improvements and a better employee work experience. The mode of engagement at a forum would be consultation, with a firm emphasis on collaborative problem-solving. While consensus outcomes would be the goal, the employer's right to implement change after due consultation would not be excluded.

Training for the parties in effective consultation and problem-solving approaches and skills would be essential.

2 Sectoral councils. It is proposed that these bipartite bodies (comprising the employer and the most representative or otherwise significant unions) be set up for the major public service sectors excluding those involving law enforcement and security. The provisional plan is that such councils be established for Health Services, Education Services, Transport Services, Port & Aviation Services, Power & Energy Services, Water Services, Public Administration Services (deemed to be a sector and a catch-all for any other employees left out), Provincial Public Services and Local Government Services and Agriculture, Livestock and Fisheries.

A council's primary role would be to develop provisional collective agreements regulating terms and conditions of employment through processes of consultation and negotiation. Given obvious considerations of national budgetary constraints and the need for equity across sectors, collective agreements would require endorsement at national level (see below) before they could be finalised. And so approval for provisional agreements would need to be gained from the National Public Service Dialogue Forum, which in turn would confer with the National Pay Commission and the General Treasury.

This Report also proposes another option in relation to pay-setting. On this alternative approach, General Treasury would essentially determine pay and conditions but would then refer the package to sectoral councils (and the National Public Service Dialogue Council) for their feedback.

These changes are intended to bring about the attenuation of unilateral employer (government) decision-making in the area of pay movements; and also the lessening of labour-political power-play and manoeuvring in the determination of pay outcomes. A primary emphasis would be on constructive consultations and negotiations, but late-stage hard bargaining and the possibility of strike action (or, on the employer's part, the unilateral implementation of the last bargaining offer) would not be excluded. Mediation would need to be exhausted before power could be exercised. The objective, clearly, is to promote agreement-reaching through rational if robust debate. The power option should feature as last resort.

Essentials service employees represent an exception: they would not be permitted to engage in strike action and their fortunes would need to be determined either by broader sectoral negotiating outcomes or arbitration.

Councils would play a role in overseeing the activities of Workplace Forums, and promoting best practices developed in Forums across the sector and even across the entire public service. They would also have a broad dispute resolution role in their respective sectors.

3 National Public Service Dialogue Council. This, too, would be a bipartite body, comprising the state as employer and the most representative unions and possibly federations. The role of this apex body would be to –

- (i) regulate rules, norms and standards that apply across the public service, or to two or more sectors, and to conclude collective agreement in this regard after liaison with the National Pay Commission and the General Treasury;
- (ii) negotiate pay and reward arrangements across the public service where appropriate, and to conclude collective agreement in this regard after liaison with the National Pay Commission and the General Treasury after liaison with the National Pay Commission and the General Treasury;
- (iii) sanction draft collective agreements negotiated at sectoral councils after liaison with the National Pay Commission and the General Treasury;
- (iv) engage in high-level dispute resolution in the event of major disputes, especially those involving strike action.

Again, the primary mode of engagement would be consultation, preferably with a firm emphasis on collaborative problem-solving, with a negotiating mode (admitting a right to use power) as the next stage in the event that agreement escapes the parties. The National Pay Commission would also be expected to play an influential advisory role in the deliberative processes.

As with the other engagement tiers, training for the parties in effective consultation, negotiation and problem-solving approaches and skills would be essential.

Dispute resolution

Rights disputes (legal issues)

There is already a fairly wide-ranging set of institutions in place to deal with rights (legal) disputes, from the Public Service Commission through the Administrative Appeals Tribunal to the ordinary courts and other specialist tribunals. None the less, there is room in this area for flexibility and innovation through

alternative dispute resolution processes. The Report's proposals in this zone are modest: essentially to provide new resources of mediation and arbitration and then to encourage the parties to use these processes voluntarily, with their benefits of earlier intervention, lower formalities and potentially quicker and more customised resolutions.

A notable expansion of the role of the Administrative Appeals Tribunal is in the offing. It is suggested that this Tribunal deal with all disputes arising out of the interpretation or application of collective agreements, and determine which employees are engaged in (strike-free) essential services. Its decisions should be legally enforceable.

Interest disputes (economic issues)

It is in this area that the greatest changes are proposed, and this follows from the fact that the array of new social dialogue mechanisms requires a dispute resolution safety net. And so the constitution of every Workplace Forum, sectoral council and the National Public Service Dialogue Council would need to provide for conflict management in the event of disagreements, and at council level at least the emergence of dispute resolution committees or dispute referral mechanisms should be anticipated.

A new Mediation Panel, housed in the Ministry of Public Administration, is proposed, and while much of its work may be the product of voluntary referrals its services would be compulsory in the event of unresolved disputes where strike action is threatened.

It is also proposed that provision be made for the voluntary arbitration of interest disputes and in very limited cases the compulsory arbitration of such matters. This would see the establishment of a new Arbitration Panel, again housed in the Ministry of Public Administration.

Despite their location, both panels would need to be, and seen to be, fiercely independent of government, protected by a clear charter enshrining that independence.

Building A High Quality Public Service In Sri Lanka Through Workplace Reform,

**Report Commissioned by the ILO for the Senior Ministers'
Secretariat of the Government of Sri Lanka, 2014**

(Clive Thompson, Upali Athukorala, Ariyaratne Hewage & Bandu Wijayaratne)

Additional material on the emerging framework: See the presentation of Upali Athukorala Training Programme for WPC Staff [18 Feb 2022], especially slides 25 – 40), kindly make a request to Investigation Research and Monitoring Division at Ministry of Public Services at sddpr2021@gmail.com)

Activity: Questions, answers, round table discussion

Your thoughts on the desirability, feasibility and prospects of the reforms underway?



▶ 2. The case for cooperation in the workplace

ILO Recommendation 94

The International Labour Organisation has long seen that there are significant benefits to be gained from an effective system of workplace cooperation. As far back as 1952, the ILO encouraged states 'to take appropriate steps to promote consultation and cooperation at the workplace'.

Co-operation at the Level of the Undertaking Recommendation, 1952 (No.94) describes workplace cooperation as:

Consultation and co-operation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment.

What's in, and what's out? Matters not normally dealt with by collective bargaining are what local forums are about. That can be a tricky line to draw. Bargaining focuses strongly on pay and working conditions, but often stretches into other topics as well. Consultation usually focuses on work processes and the work experience. As you would expect there will be some grey areas where things overlap.

Recommendation No 94 flags that workplace cooperation may be facilitated by the establishment of bodies for consultation and cooperation. Sri Lanka has taken that advice up by providing for dedicated, local level workplace forums.

Generally speaking, **the purpose of workplace cooperation committees (Workplace Forums)** is to provide a mechanism for management and workers at a site to:

01. Consult and cooperate on measures to improve the working environment.
02. Facilitate two-way communication between management and workers.
03. Provide a vehicle for management to make informed decisions, through consulting staff prior to taking decisions.
04. Build mutual trust and commitment in the workplace.

And so, the sort things cooperation committees (Forums) would tackle are:

- ▶ Initiatives to increase efficiency, job satisfaction, and to achieve better management-staff relations (for example, through jointly developing and introducing staff recognition and rewards programmes).
- ▶ Initiatives to improve occupational safety and health.
- ▶ Procedures for the rapid resolution of grievances. The grievance handling functioning should not entail discussions on grievances raised by specific workers, as this would undermine the principle of confidentiality. Rather they should focus on resolving workplace level grievances, which if unresolved, may affect the operations of the workplace.
- ▶ Procedures to combat harassment.
- ▶ Initiatives to promote gender equality.
- ▶ Initiatives to promote staff training and development.
- ▶ Initiatives to promote effective two-way communication within the health facility.

Activity: Consider this case study, then discuss and answer the questions

Trouble at Fab Fashions

Fab Fashions is an enterprise in the readymade garment sector. Following a national lockdown due to a pandemic, Fab Fashions is now returning to operations.

While workers are pleased to be back at work, within days of operations resuming a number of health and safety concerns have arisen, some being issues which individual workers have brought to the attention of their supervisors. Workers are very worried about the lack of social distance on the factory floor, where they sit nearly elbow-to-elbow at their sewing machines. Workers are particularly worried about this for workers over the age of 60, and those who have underlying medical conditions, and who are at greater risk of becoming infected, or becoming more ill if they are infected.

The supervisors have said that it is not in their power to make changes to the layout of the factory. Being very worried about the situation, a few workers have approached a trade union representative in the enterprise who was a member of the enterprise's cooperation committee. He said that these were serious issues that should be raised within the committee, along with the issue of overcrowding in the canteen, another problem workers had complained to him about.

All workers took lunch between 12h00 and 12h30, which meant at least 300 workers in and around the canteen at one time. In the dry season, many workers sat at tables outside the canteen, but in the wet season, that was approaching, workers sat inside, which made the space very crowded. The ventilation in the canteen was not very good, due to there being only a few windows.

At a meeting of the cooperation committee, these issues were put on the table for discussion. The trade union representative and other worker representatives explained the workers' concerns about the distancing on the factory floor and in the canteen, as well their worries about high-risk workers and the need for extra health and safety measures to be put in place for older workers.

The production manager, who was a member of the committee, said that while he appreciated the workers' concerns, given the dramatic drop in orders, there simply wasn't money to make any structural changes to the layout of the factory. And neither could they do anything that would disrupt operations or production.

The HR manager, who was a member of the committee, suggested they think about all possible ways of addressing these concerns. After many ideas were shared and examined, the following agreements were reached:

1. That an unused storeroom would be cleaned and the workstations of workers over the age of 60 and those with underlying medical conditions would be moved into this area. (With the drop in orders and output, this storeroom was not being used.)
2. With these workers moving, the workstations of the other workers could be spaced better.
3. The introduction of staggered mealtimes – some workers would take lunch from 12h00-12h30 and others from 12h40-13h10. The 10-minute gap would allow for all workers of the first lunchtime to be out before the next batch of workers came.
4. A group of more experienced machinists would be tasked with producing canvas awnings that would be erected outside of the canteen to provide protection from the rain and enable workers to sit outside.

- ▶ What were the interests of the workers: what mattered to them?
- ▶ What was important to the company?
- ▶ If there had been no cooperation committee, what do you think would have happened, or not happened?
- ▶ What was it about the cooperation committee that allowed the problems to be tackled and solutions offered?
- ▶ Given each party's concerns, what do you think about the agreements actually reached?

► **3. A word on the workplace cooperation unit of the public services ministry**

The Workplace Co-operation Unit of the Ministry of Public Services is a new entity created specifically to promote the emerging new labour relations framework in the public sector.

Over the longer term, the country will need a fully-fledged Labour Commission to underpin the emerging framework. Such a Commission will need an administrative division, a research (data) division, an education division, a dispute prevention and dispute resolution division and then an enforcement (of standards and agreements) division. The Workplace Co-operation Unit represents the forerunner of such a Commission.

Of immediate relevance here is the embryonic dispute prevention and dispute resolution functions.

Social dialogue – formal and informal engagement between the state as employer and employee/workers and their representatives – is the key mechanism to promote dispute prevention in the world of work. In the new scheme of things, Workplace Forums and the Sectoral Council represent the backbone of social dialogue institutions. Forums are there to facilitate engagement over productivity and welfare matters at the local level. The core role of Sectoral Councils is to provide a vehicle for collective bargaining over pay and conditions of service.

The new Workplace Forums will need good facilitators to set them on their way. The Workplace Cooperation Unit will either train up and supply those facilitators from within their own ranks or source them for elsewhere.

Disputes will happen under any system, no matter how good the dispute prevention mechanisms. And so there will be a need for dispute resolvers: mediator (conciliators) and arbitrators. Again, the intent is that the Workplace Cooperation Unit train up and then supply a group of mediators and arbitrators from within its ranks or source them from elsewhere.

▶ 4. Getting to grips with the key features of forum constitutions

Note: The full text of the Model Constitution prepared by the Workplace Cooperation Unit appears as an annexure to this Manual.

Who drafted the Model Constitution?

The basic provisions of the Model Constitution arise from the design of the labour relations reforms as set out in the 2014 Report (*Building a High-Quality Public Service in Sri Lanka through Workplace Reform*, Thompson, Athukorala, Hewage and Wijayarathne, 2014). It was drafted by ILO consultants.

Building on but also modifying the Model layout, the provisions of any specific Workplace Forum constitution have either already been drawn up or will be drawn up by a Task Team comprising local workplace managers, public service officers and representatives of key trade unions active in the workplace concerned, assisted by ILO consultants.

Who make up the members of any Workplace Forum?

Who are the parties? Essentially, people from the local workplace: managers and worker representatives. External trade union officials may also be members if that is how a particular constitution has been drafted.

Who else can participate in Forum business? Members of Forum sub-committees, drawn from the workforce (managers and employees/workers) may be involved in the work of a Forum. The Constitution may also allow others to attend meeting by invitation.

Key concern: The Forum members must represent a good cross-section of the local workforce to facilitate the effective engagement of everyone and the legitimacy of the Forum in the eyes of the workforce.

What is a Forum meant to do?

As you would expect:

- ▶ Promote workplace productivity through engagement of managers and employees/workers representatives
- ▶ Promote employee/worker interests locally

The main objectives of the Forum are to provide a setting and opportunities for employees/workers and employer representatives to –

- ▶ share information about the organisation’s operation, performance, track record and goals
- ▶ promote innovative thinking in the workplace
- ▶ share and develop ideas and initiatives for ongoing process improvement and general organisational efficiency and productivity
- ▶ consult with one another with a view to reaching consensus over any proposals on change including –
 - the introduction of new technology and new work methods
 - changes in the organisation of work
 - process improvement changes
 - any other restructuring of the workplace
 - education and training
 - workplace recognition and reward schemes
 - work/personal life balance
 - the workplace environment
- ▶ work together to enhance every aspect of services to the public generally
- ▶ work together improve the workplace experience and morale of all employees
- ▶ diffuse improved practices across the workplace and the organisation as a whole
- ▶ share learnings on improved practices with other Workplace Forums and Sectoral Councils

Key concerns:

The what? The Forum members must take on *meaningful* things to demonstrate that it is a worthwhile institution:

- Things that will improve productivity – a better, more affordable service to the public
- Things that will improve the workplace experience of employees

The how? The Forum *must* engage workers/employees in their natural, day-to-day work groups. These are the frontline people who should be involved in the process improvement projects. The people working there know how things work, and are best placed to come forward with ideas to improve the way in which things are done.

A Forum may also decide, where appropriate, to deal with **workplace issues and grievances:**

‘The Forum may deal with any workplace matter, issue or grievance raised by any management person, any trade union (whether involved with the formation or operation of the Forum or not) and any local employee or group of employees, provided the Facilitator of the Forum, after consultation with Forum representatives, agrees that it would be beneficial for the Forum to deal with the matter or issue.’

Caution! It may be important and even necessary for a Forum to take on the job of trying sort out local grievances, but if these cases begin to dominate the agenda, the Forum will have failed.

Why is access to information so important?

The model Constitution says that the employer must disclose to the other Workplace Forum parties in good time all relevant information that will allow the parties to engage effectively in consultation.

Forums are all about engagement to help the organisation deliver better services. If employees/workers are to contribute their ideas for improvement, and if management want to introduce changes in work practices or technology, then it is vital that all dialogue and joint problem-solving takes place on the strength of good information. Without that, people will be debating in the dark.

The more everyone knows about how 'the business' operates and the organisation's strategic plans, the better. Rational discussion and decent solutions require facts and understanding.

If there is a dispute about the disclosure of any information, it must be dealt with under the Constitution's disputes procedure.

What exactly is meant by 'consultation'?

Effective consultation requires parties to engage with one another in an information-rich, problem-solving and meaningful way. The approach is needed if a Forum is to achieve first prize: reaching consensus on proposals made and on other matters and issues coming to the Forum. More specifically, 'to consult' means that –

employer representatives must –

- ▶ notify employee representatives as soon as is reasonably possible over proposals for change in the organisation likely to affect employees/workers;
- ▶ explain the nature of the proposed change to employee/worker representatives;
- ▶ provide employee/worker representatives with all relevant information that is reasonably available and not of confidential nature relating to the proposal;
- ▶ allow the employee/worker representatives an opportunity to make representations on the proposal and to suggest alternative proposals;
- ▶ consider and respond to the representations or alternative proposals made by employee/worker representatives and, if not agreeing with them, state the reasons for disagreeing;
- ▶ endeavour to reach consensus with the employee/worker representatives on change.

employee/worker representatives must –

- ▶ try to reach consensus with employer representatives over any proposals on change in the workplace, whether employer- or employee/worker-initiated;
- ▶ motivate any proposals made by employee/worker representatives;
- ▶ follow the other features of meaningful consultation noted above, to the extent applicable to employee/worker representatives.

Key point: Consultations should be carried out in nimble and efficient manner, especially so that necessary or desirable changes can be made as soon as possible in the interests of the public. Some matters demand quick decisions, other will require more time. But unhelpful delays frustrate the whole design.

There is no obligation for the representatives to reach consensus with one another, but they must in good faith try to do so.

If no consensus is reached, then –

- ▶ the party making a proposal may drop it, permanently or until some later date; or
- ▶ in respect of any matter, issue or proposal, the Forum may use any agreed procedure such as mediation or arbitration or the referral of the matter to the relevant sectoral council for its consideration, or may agree a procedure just for the present matter, in an endeavour to reach a resolution;
- ▶ the employer may proceed to implement some or all of its proposal, subject to any rights employees/workers or their representatives, including unions, may have.

What is 'consensus'?

'Consensus' (depending on the actual provisions in a Forum's constitution) means –

1. agreement by all members of the Forum; or
2. the agreement of all the employer representatives and a sufficient number of employee/worker representatives, at least more than half of them.

What is 'co-determination'?

Co-determination, also known as joint decision-making, means that action on a matter can only go ahead if there is consensus. It is the strongest form of workplace engagement between the employer and its workforce.

The Model Constitution says that when any matter comes before the Forum, any representative may at any stage ask that it be treated as a subject for co-determination. If the members agree (if they consent), then the form of engagement shifts from consultation to joint determination. If they don't agree, then consultation remains as the default mode of engagement.

Should it be agreed that a matter *must be co-determined*, then –

- ▶ in the absence of consensus, the subject must either be abandoned by the proposing party, or
- ▶ referred first to mediation and, failing successful mediation, to final and binding arbitration before an independent arbitrator appointed by the Public Service Ministry. The arbitration award then determines whose position wins through.

How is the rest of the workforce kept in the picture?

The Forum parties must keep all site employees/workers informed about the activities of the Forum. They must meet and otherwise engage with them regularly to do this, and get feedback.

Depending on the subject matter, the Forum must not only communicate with the workforce but sometimes consult with them: get and consider their feedback (the 'ordinary' form of consultation, not the strong form provided for in respect of interactions between management and employee/worker representatives on the Forum).

The Agenda and Minutes of all Forum meetings must be made available to all employees/workers.

Should a Forum get other managers and employees/workers involved?

Very definitely. The Forum may set up committees of employees/workers or employees/workers and managers, and other persons, for any purpose that promotes the objectives of the Forum.

If the rest of the workforce is not drawn into the business of the Forum, it is not likely to succeed.

Protection against victimisation

No adverse action may be taken against any Forum representative or employee/worker for exercising their rights or duties under the Forum's constitution.

Any Forum representative or employee/worker who believes that adverse action has been taken against them by their employer may refer their case for mediation and, if need be, to arbitration.

Dispute resolution on consultative and co-determination matters

Any disputes over an employer's decision to implement a proposal that has not been agreed may be referred to mediation.

If such a dispute remains unresolved, the employer is not stopped from proceeding with the implementation of its proposal.

The parties may, however, agree in advance that where any proposal by the employer is not consented to but the employer intends none the less to proceed with its implementation, then in the event of a dispute being referred to mediation the status quo (the current position) will remain in place until the matter the mediation has run its course.

Where a matter has been agreed in advance as a co-determination one, and where in the absence of consensus that matter has been referred to mediation or arbitration, the status quo must normally remain in place until mediation and, if need be, arbitration, have run their respective courses.

Interpretation and application disputes

Any disputes over the application and interpretation of any of the provisions of this charter (that is, what they really mean) may be referred by any Forum representative for mediation and, if need be, final and binding arbitration.

Arbitration decisions are binding

The employer, employee/workers and unions involved in this Forums are bound by the decisions of an arbitrator for all purposes under this Charter.

Inclusion of an additional union party

Any union not a party to the Forum may apply to the Forum for admission as a party if it believes it is sufficiently representative of employees/workers generally or of a category of employees/workers.

The Forum must deal with such a request at its next meeting.

If agreed, the new union will be entitled to nominate employee/workers representative to the Forum and to have officials on the Forum as provided for by this Constitution and its Bye-Laws.

If an admission request is refused, or if there is any dispute over the form of its representation, the applicant union, or the new union, as the case may be, may refer the matter to mediation and, if need be, arbitration.

Activity: What's on your Agenda?

What do you think are the matters likely to come up for attention at the first meetings of your Forum?

A ?

B. ... ?

C. ... ?

1. Are they within the scope of the Forum's constitution?

(This question you will be asked to address again as a Forum member right at the end of the Workshop on Day 2.)

▶ 5. Ground rules for interaction between forum members

It is essential that each Forum create some basic ground rules on behaviour. These rules should set expectations, promote productive meetings and other Forum activities, keep the peace generally and allow the situation to be recovered when things go astray.

They also support the role of the facilitator or chair of Forum meetings.

High level ground rules

The most important rule of all is that people should treat one another with respect.

Other values and behaviours one should expect to see coming up are things such as honesty, integrity and trustworthiness.

One can expect that a Forum should not allow discrimination on the basis language, religion, political affiliation, ethnicity, sex, disability and other factors important to the workplace community.

More detailed ground rules

A Forum may draw up a behaviour code dealing with such matters as –

- ▶ time-keeping at meetings
- ▶ use of phones and other devices at meetings
- ▶ how discussions generally will be conducted
- ▶ hours when meetings will be held (to avoid prejudicing certain groups, such as people with child-minding or elder-care responsibilities)
- ▶ language use at meeting – from translations through to bad language.

How ground rules should established

Ground rules are best developed by the Forums themselves, so that they own them. This exercise should be one of the first items on any Forum's first meeting agenda. They can be formalised in the Bye-Laws provided for in the Constitution.

Different Forums in the pilot sites may wish to share their Ground Rules with each other.

A wider Code of Conduct

It's a good idea for the ground rules to reflect the values and norms set out in the employer's Code of Conduct applying to all employees. And if the employer does not have one, it probably should!

One wants a workplace where everyone treats everyone else with respect.



**KEEP
CALM
&
FOLLOW
THE RULES**

► 6. GETTING READY FOR PRODUCTIVE CONSULTATIONS: WHAT ARE INTERESTS, AND WHAT IS INTEREST-BASED PROBLEM-SOLVING? (POSITION VS INTERESTS)

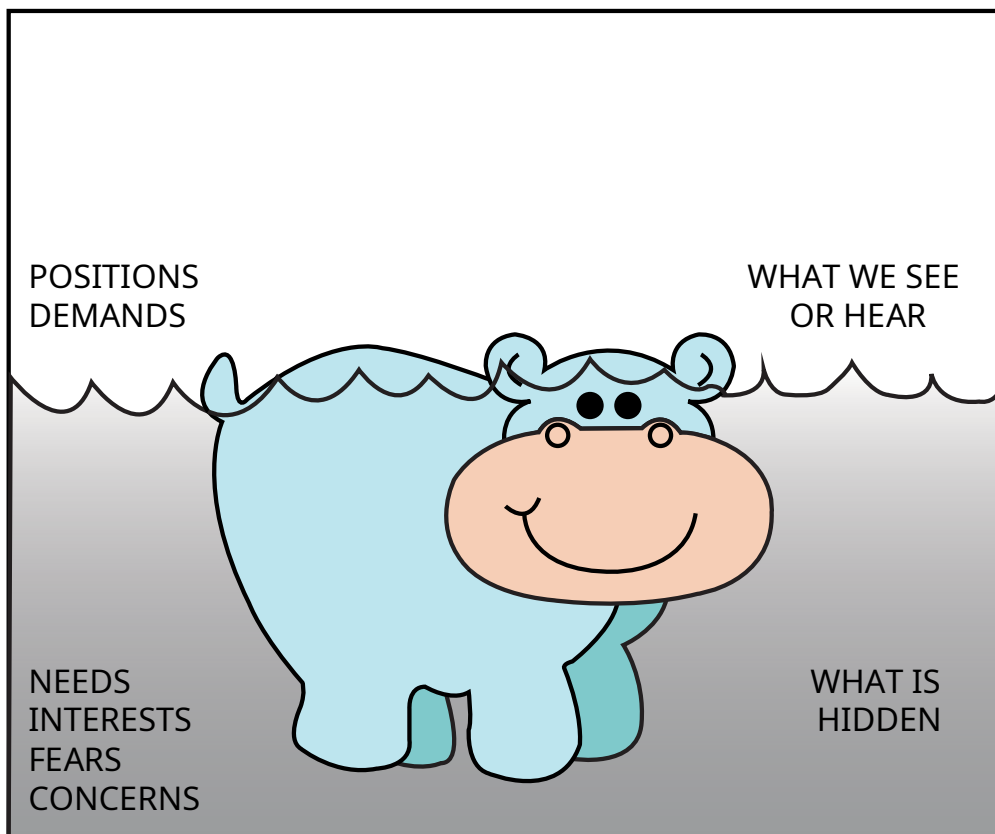
When one party engages with another in, especially, negotiations (bargaining) but also consultations, it is very common for them to take up 'positions' and to make 'positional' statements.

A **position** is a demand or claim for the thing that a party wants. Parties often approach workplace issues with their own pre-conceived positions.

Positions only give one solution: the claim or demand itself, or a compromise of that claim. This creates a more adversarial relationship which is more likely to lead to disputes.

Interests are the things underlying any request or demand. Interests are the 'why' or the reason behind a request. An interest can nearly always be addressed in a number of different ways.

See further: www.fwc.gov.au/issues-we-help/cooperative-workplaces-program/interest-based-approaches



Example

Management believes that it is important to get all workers back into the office as soon as possible after lengthy 'work-from-home' periods because of the Covid-19 pandemic. Without any discussion, consultations or negotiations, the Chief Executive Officer puts out a notice to all staff saying they must report in person for work at their former workstations in a week's time: next Monday.

That demand is a classic positional statement. And this sort of demand very often produces not only resentment by outright resistance.

So, management might be met with this positional demand in return: 'No, we won't. Or a counter-demand: 'We will go back only when you install HEPA (high efficiency particulate air] filters plus air-conditioning in every office'.

And then the fun begins.

In order to try to arrive at a consensus over how to go achieve a general return to work, it may have made better sense to engage in some interest-based problem-solving over the matter. This would involve getting management and workers to move off their one-dimensional demands ('get back to the office by next Monday!') and counter-demands (No!) and instead to find out what their respective underlying interests are. And then try to explore various options that best meets everyone's concerns.

Possible management concerns:

- ▶ Hard to promote productivity when one cannot supervise workers directly
- ▶ Relationship costs associated with a loss of face-to-face interaction at the workplace
- ▶ Returning customers want to deal with real people again, in person
- Etc

Possible worker concerns:

- ▶ Fears about whether the workplace is really safe.
- ▶ Accustomed to not having to waste time every day with travel to and from work.
- ▶ Upset over management's dictatorial style
- Etc

Had the parties shared their respective concerns , they would have an intelligent basis for a productive conversation with one another. In a process of discussion and information-sharing, the parties could then tease out a range of possible solutions. More on how this might be done follows later in this Manual.

Activity: What do you think are the interests or needs that might be underlying the following demands?

1. I refuse to attend a meeting where the person across the table is wearing mirror sunglasses.
2. From next month, we will be installing security cameras across our workplace, and employees are just going to have to accept this or find a job elsewhere.
3. We demand an extra five days paid sick leave a year.

Jot down your own thoughts, then share them with the group.



How best to go about getting consultation to work and producing consensus over good ideas, challenging proposals or thorny problems

► 7. Collaborative problem-solving: a guide

drawn from CoSolve materials

Collaborative problem-solving = an intensive form of consultation

Joint problem-solving

'Joint problem-solving is a technique to establish effective and appropriate solutions to problems by involving all the parties who are concerned or affected by the problem. It involves discussion and interaction between managers and workers that results in binding action.'

Good Practice Guide: Joint Problem Solving,
International Labour Organization

Taking on challenges in the workplace in a productive way

The purpose of this guide is to detail the process for how problems, especially ones that are tricky, contentious and affect parties with different interests, can be worked on using a collaborative approach.

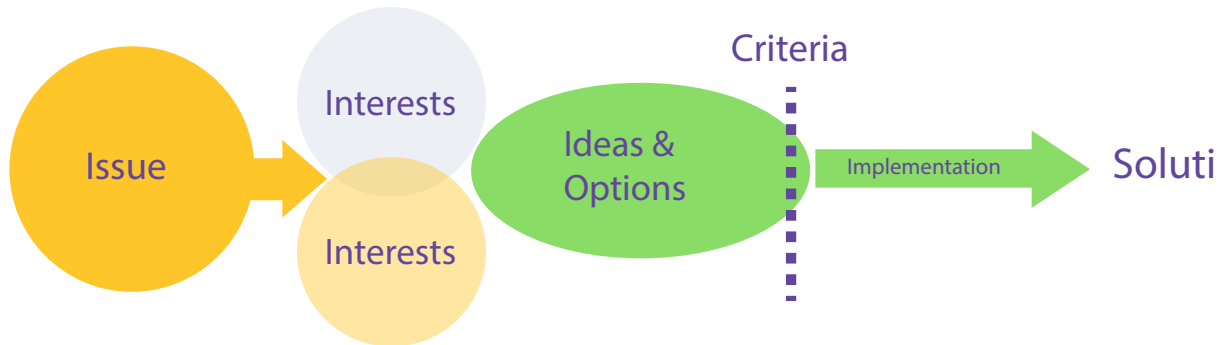
Collaborative problem-solving works by inviting all the parties that are affected by the problem to the table. The major benefit of a collaborative approach is that it is designed to facilitate the movement of people from subjective, entrenched thinking to more objective and creative ways of framing a problem and working together to generate solutions.

The key to success is spending a little time to uncover what motivates each party – to discover their real interests, motivation, worries and concerns, even as you share yours.

Collaborative problem-solving (also referred to as joint or interest-based problem-solving) usually requires more work to be done up front. However, the payoff is generally a smoother and more successful implementation of the outcomes, as all the people who are affected by the problem will have helped in generating the end solution. The aim is to work together rather than trying to get acceptance of one party's desired outcome.

Each step is outlined along with the important points, process and method suggestions relevant for that phase of the process.

The Collaborative Problem-solving Process



Step 1: Identify and define the issue

The first step for group problem-solving is that all participants must be addressing the same problem. Each person’s understanding of the problem cannot be left to chance.

To enable a constructive, focused problem-solving session, the issue in question should be as framed as accurately and concisely as possible, often best in the form of a question. The framing should not point to one particular answer, but rather be open enough to invite exploration over a range of possible responses.

Example

Management believes that it is important to get all workers back into the office as soon as possible after lengthy ‘work-from-home’ periods because of the Covid-19 pandemic. But it wants to get the workforces’ buy-in, and so has reached out to the unions and invited them to jointly problem-solve the matter.

The parties need to agree the objective of the exercise – a problem-statement – at the outset.

Possible agreed problem-statements:

1. How best should we be go about getting a return to work post-Covid?

Comment: This formulation already accepts that there should be a return to work, the only issue is how. If the unions are happy with this goal, then the question is broad enough to allow lots of options to be raised and considered.

2. What do productive and fair post-Covid work arrangements look like?

Comment: This framing of the question is very open-ended. It does not even assume that a return to the office or other physical place of work has to happen. Who knows? Perhaps the employer’s underlying need for a productive operation can be met without any, some or all employees returning to work in the old way.

Once you have properly identified the problem, you can work out who needs to be at the table, what information is needed, and what ground rules and resources make sense. Without key people and the necessary resources, it will be very challenging if not entirely impossible to reach an agreement that is widely acceptable and readily implementable.

Step 2: Identify stakeholders

Collaborative problem-solving is founded on the idea that the best solution is the one which meets the needs of all key stakeholders to the maximum extent possible. So: identify stakeholders and map out their interests.

Identify stakeholders by asking: Who is affected by the problem? Whose support is required to implement a solution? These people should be at the table.

The stakeholders for whom the problem is most important are those who are probably present, or represented, in the problem-solving group. However, there will also be stakeholders outside the process whose concerns need to be taken into account. They may be stakeholders to whom the group has a moral obligation. They may be stakeholders who occupy positions of authority or who can take other forms of action such as imposing a decision or defeating a proposed outcome by asserting their power or legal rights. There could be stakeholders whose support would be important in the promotion of the solution to others.

The aim of a collaborative group should be to craft a well thought-through solution that meets both their needs as well as any other key parties. This often requires the group to bring these stakeholders into the collaborative problem-solving process at some stage or simply to develop agreed communication and other strategies to bring these stakeholders on side once the agreed solution is developed. In any event, the group needs to identify such stakeholders at the outset.

Step 3: Identify the interests of stakeholders

'Interests' are needs, desires, worries and concerns. They are very different to 'positions.' Positions are a proposed outcomes or answer to a problem – often meeting the interests of just one party. A position is the starting point for an argument. Interests are the starting point for problem-solving. Interests are the factors explain positions.



In problem-solving, the group seeks to understand the interests of each stakeholder group before they proceed to generate options or outcomes to the problem. When responding to needs or concerns (rather than the arguing about a particular position), the group should be able to come up with many ways to meet the need or concern, rather than being stuck on what is good or bad about a particular proposed solution.

People demonstrate respect by listening to and seeking understanding of the needs of others. This is a platform to build trust.

Discovering interests

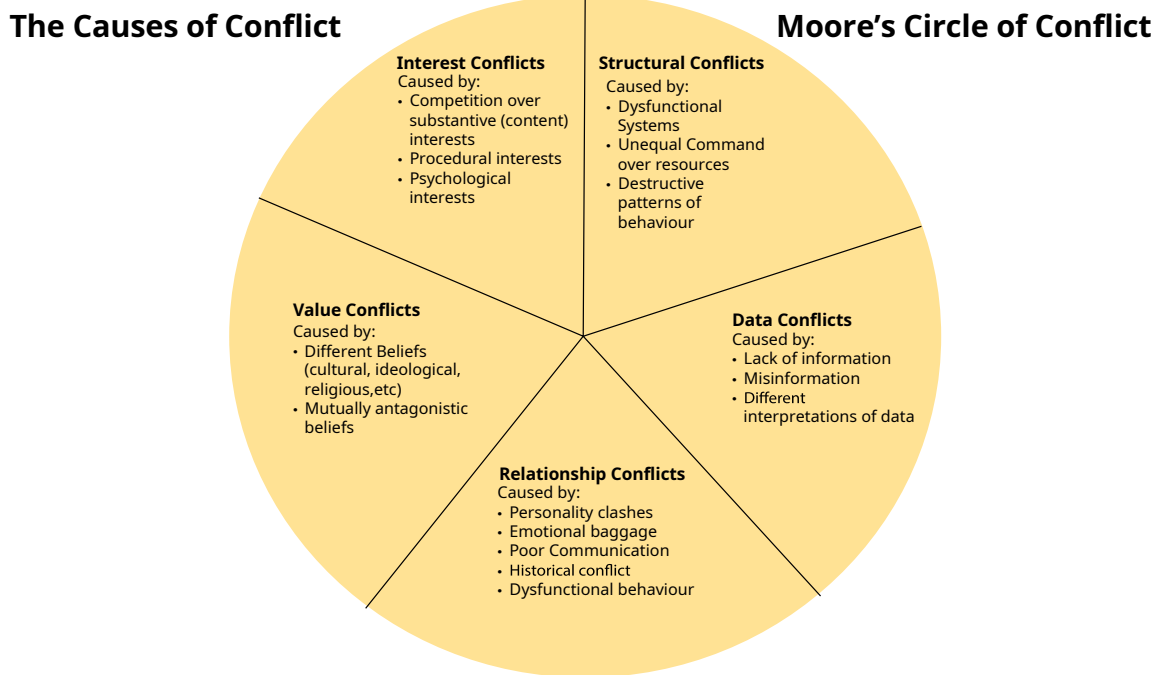
The key questions to ask about each stakeholder are:

- What are their interests and concerns?
- What interests and concerns to the parties have in common?

Each party does not have to accept or submit to the interests of the others. It is only necessary to *understand* the interests. Once interests are identified and understood, it is likely that you will find that some of the interests are common or shared by others in the group. These common interests between the parties help everyone to work together.

It is also useful to get some idea of the importance of an interest. If you can prioritise the various elements of the challenge, you can then focus on the important aspects and not get bogged down or distracted by the less important ones.

If it turns out there are conflicting interests at the table, consider what type of conflict you're talking about. Moore's breakdown of the causes of conflict provides a useful tool. Is the disagreement essentially technical, interest-based, data-based, values-related, relationship-based or structural? Does the conflict relate more to content (ie, *what* is being done or being proposed) or process (ie, *how* things are proposed to be done). This assessment will give you an idea on how best to deal with the differences.



If it is a conflict over data, then some fact-finding or research may be called for to establish the 'truth' of the matter. If in fact disputes are being generated by a lack of consultative processes, or a poor grievance procedure, the perhaps it's time to design a new institution or process – the conflict may be arising from a structure no longer fit for purpose (if it ever was).

Relationship conflicts may be successfully addressed through better communications, or perhaps mediation.

Value conflicts are the hardest to overcome. Here an attempt should be made to find a shared higher value or a key overarching shared concern. For instance, 'the national interest', or everyone's interest in job security, or everyone's need to tackle climate change.

Step 4: Information needs – data gathering

This is an activity that may occur at any stage of the process, and indeed at multiple stages. When generating options (the next stage), information gaps often become apparent. Sources of information are often outside the group. Commitment from a group member to obtain the information and present it to the group is a good demonstration of trust. This step should occur iteratively through the process.

And it's best where appropriate to do research jointly, to avoid another party disputing the input later. Generally speaking, though, it will be the employer who holds the relevant information – often financial information, or strategic planning information – and so it will be mainly the employer who should be injecting that data to promote more informed and rational discussion and problem-solving.

The solution can only be as good as the information base made available to work on.



Purpose of Gathering Data

- Ensure the parties can make better informed, 'facts-based' decisions.
- Parties often have unequal access to data, and the data can be wrong or poorly interpreted.
- Transparent access to information assists in reaching a common understanding and builds trust.

Step 5: Generate options

This stage stands as the engine room of collaborative problem-solving. Here is the opportunity for collaborators to be creative, to bounce ideas off one another and to come up with potential solutions which would otherwise have been impossible to imagine.

The aim is to generate options that address the problem in a way that meets or at least reconciles the interests of stakeholders.

The number one rule in brainstorming – which is part of options generation – is that no idea should be rejected, belittled, or contested. Creative ideas should be allowed to flow: plucked out of the blue, building on one another, jumping laterally.

Each idea is noted and no one is held accountable for any particular suggestion.

The ideas-generation process is a great chance to involve the workforce and tap into the imaginations of a diverse group of people.

This could be helped by research, comparison data, surveys, focus groups, field observations, group brainstorming etc. A good brainstorming session should generate dozens of options. This is sometimes surprising, when only one solution had been initially advocated.



Step 6: Develop criteria

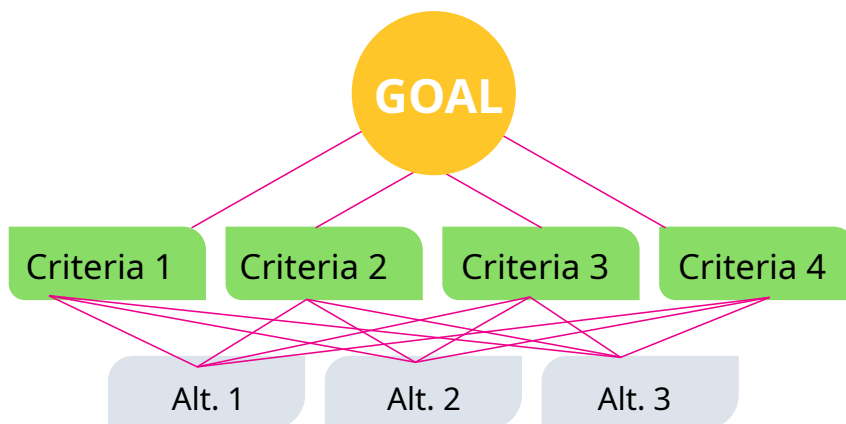
Ideas-generation is pivotal to this process, but with a range of options now on the table – some looking far-fetched, some dubious, some interesting, some a bit contentious and tendentious – how does one go about sifting them to arrive at a single, agreeable, implementable solution? Time to bring some focus to bear.

Setting criteria helps the winnowing process.

Criteria are standards, rules, or tests upon which a judgment or decision can be based. Put simply, if you cannot agree upon the criteria, you will probably never be able to agree on a solution. The criteria also provide a useful platform to explain to stakeholders where the group is going with the issue. Getting sign-off or endorsement of the criteria can be important for securing stakeholder support for the eventual solution.

Interests themselves are an important source of criteria. The ‘shared’ or common interests are often a good starting point to help you move to agreed criteria.

There are general criteria such as the solution must be legal, affordable, implementable and safe. However, the best criteria are objective. An assessment is then based upon facts rather than arguments. An objective criterion is one where the assessment of whether an option fits or does not fit the criteria is plain on the face of it, e.g. within 5 kms of the train station, up to \$5,000 per person.



Step 7: Deciding the solution/solutions

The development of a solution is a 'crafting' process. Options and ideas are examined and combined to meet as many of the interests of *all* parties. Potential solutions are tested against the criteria and the 'best solution' is identified. It is important to acknowledge that while the 'best' solution is one that truly represents a mutual gain for everyone, a *better* solution, one which better meets the interests of the parties that staying with the status quo, is still a gain.

Next time round, under changed circumstances, the 'solution' can be improved upon.

Selecting an option or package of options for implementation is best done by consensus. The decision may not be each person's first choice, but they must be able to say they will live with and support the decision.

It may be that, even after carefully and collaborative deliberation, no great solution is obvious. Not even an clear second-prize solution.

Some real *politik* may come into the picture here, especially where there are multiple stakeholders with divergent (as well as shared) interests. So, some of the endgame may involve straight-forward negotiation, with power making its presence felt in the background. A compromise may be necessary.

And it may happen that, despite everyone's best efforts, there is simply no agreement possible on some party's proposal. This does not mean the whole exercise was in vain. It remains important for ongoing relations that a bona fide effort was made to work together and reach a consensus on something important to one or all of the stakeholders. Provided agreements are being reached in the consultation process more often than they are not, the process is delivering.

And when on occasion no agreement is reached, the party who proposed some change can either chose to abandon it forever or until another day, or go ahead and implement it if they have the legal right and the workplace power to do so. The cost and benefits of each course of action will need to be weighed, of course.

Such is life.

Step 8: Trial (if needed)

A decision to trial, with no obligation to fully implement, is sometimes called for due to the lack of consensus or certainty about whether an option will work or bring unintended consequences.

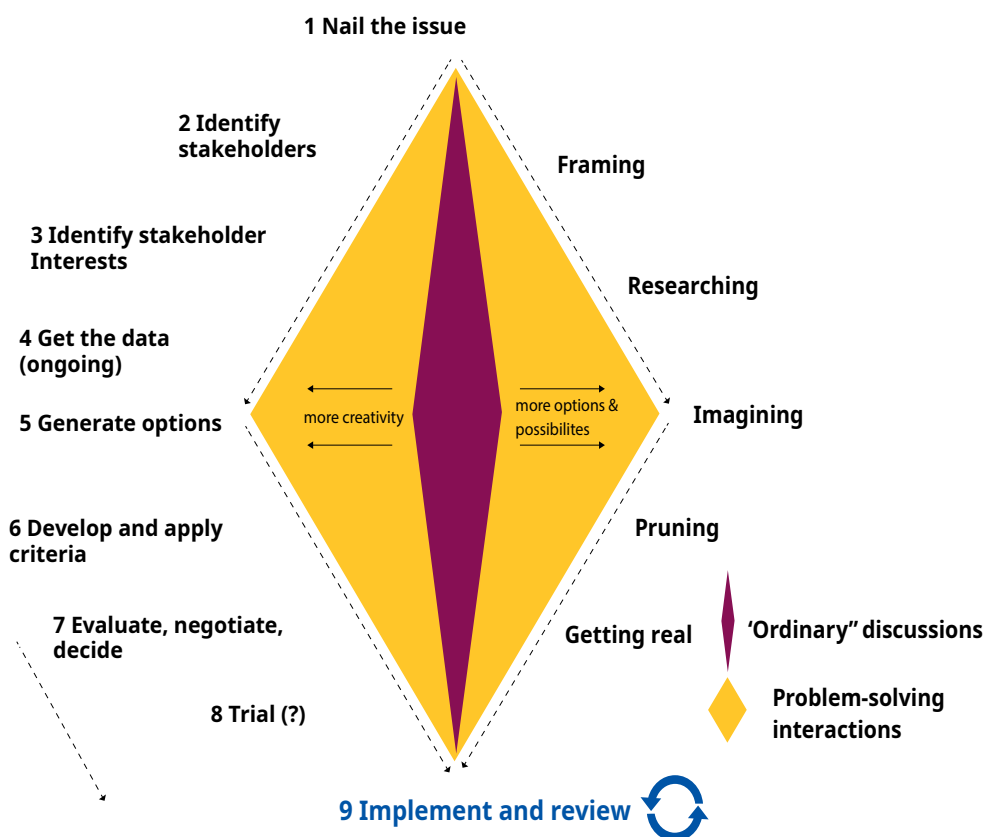
People are often reluctant to trial, especially if there is a history of trials having been manipulated to be seen as 'acceptance.' It is important to break through this thinking because evidence-based decision making cannot occur without experience, and the full implementation of an option may be too expensive or too risky.

Step 9: Implementation and monitoring

Develop an implementation plan in the form of a project plan, with actions by whom, by when and at what cost to ensure implementation takes place.

Establish an *implementation oversight* group to assist in maintaining momentum and providing a forum for new problems to be solved along the way. When obstacles emerge, they are visible and have a forum where they can be addressed.

IN SUMMARY: THE PROBLEM-SOLVING DIAMOND



The key features of Collaborative Problem-Solving

Ground rules are important in establishing the climate and the context for problem-solving. However, new ground rules speak to the kind of behaviours participants are expected to show in the group atmosphere of collaborative problem-solving. These would include the following:

- ▶ **Focus on issues, not personalities.** Try to ‘separate the people from the problem’; deal with the people as fellow human beings with legitimate needs and concerns, and deal with the problem on its merits.
- ▶ **Focus on interests, not positions.** Address both mutual and separate interests in reaching agreement. Use interests and mutually acceptable criteria, rather than power, to reach the best solution.
- ▶ **Share information early and fully.**
- ▶ **Listen actively to all involved.** Show you are really listening and that you care about other’s needs by asking clarifying and confirming questions, showing empathy on occasion, and gathering input from all those involved.

Remember that sometimes the most reserved – but perhaps most thoughtful – person in the room can provide new and different insights, perspectives and ideas.

- ▶ **Don’t dismiss.** What may seem minor to you may indeed be major to someone else. Recognize that everyone’s concerns are valid, and that by disrespecting someone’s ideas or values, you are damaging the process. Everyone at the table is an equal participant.
- ▶ **Respect differences.** All of us have differences, and those differences are valuable, critical even, to the process. Differing viewpoints help shed different lights on issues and help us see things from a new vantage point, or see things we have not seen before. It is critical to let others know that you value their opinion even though you might view things differently or place a different value on certain interests – and to hear out what they have to say.
- ▶ **Challenge perceptions – your own and others’ (get above your personal ‘confirmation bias’).** It’s important not to walk into a problem-solving process with a fixed idea regarding outcomes or others’ point-of-view. Avoid the ‘us and them’ mentality. You might just find through listening that your needs and interests are closer than you think. Also, challenge perceptions of what the ‘right’ answer is, using data, metrics and problem-solving skills to test possible solutions and ensure that your ultimate solution is one that is viable.
- ▶ **Recognise that the relationships involved in the process had a life before this problem-solving exercise was convened – and will have a life after this process has concluded.** It’s a choice: Are you going to behave in ways that only help you ‘win’ short-term? Or are you going to work to ‘win’ together... and win future battles in the long run.
- ▶ **Everyone needs to participate – fully.**
- ▶ **Adopt an unconditionally constructive strategy.** Conduct yourself in a way that is both good for the relationship and advances your concrete interests, regardless of whether the other party reciprocates. The starting point is that the best way to change someone else’s behaviour is to change your own (you can only directly control your own behaviour, after all). Particularly in a problem-solving context, you want to behave in ways that make you better off, regardless of how the other party is behaving. Therefore:

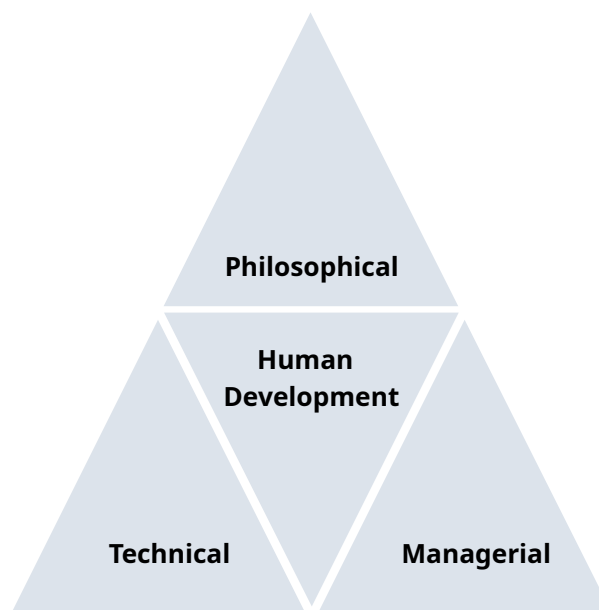
▶ 8. A word about ‘Lean Manufacturing’: process improvement through engagement with staff

‘Lean manufacturing’ it is perhaps not you think it is. It is not about being mean and it is not only about manufacturing.

It began with the Toyota Motor Corporation, who developed what became to be known, famously, as the Toyota Production System or, simply, ‘TPS’. It is essentially about working with people to eliminate waste — meaning, anything that does not add value in the production or delivery of goods and services.

‘Lean is about the total elimination of waste and showing respect for people.’

‘Lean is an integrated system of human development, technical tools, management approaches, and philosophy that creates a lean organisational culture.’



Human development stands at the centre. Toyota uses the phrase ‘Building people before building cars’, meaning that developing its employees is the key to improving its products and processes.

Moving on to services, with a focus on hospitals:

‘Lean is a toolset, a management system, and a philosophy that can change the way hospitals are organised and managed. Lean is a methodology that allows hospitals to improve the quality of care for patients by reducing errors and waiting times. Lean is an approach that can support employees and physicians, eliminating roadblocks and allowing them to focus on providing care. Lean is a system for strengthening hospital organisations for the long term – reducing costs and risks by also facilitating growth and expansion. Lean helps break down barriers between disconnected departmental “silos”, allowing different hospital departments to better work together for the benefit of patients.

Mark Graban, Lean Hospitals - Improving Quality, Patient Safety, and Employee Satisfaction

‘Lean is a system that demands employees do their best, but does not overwork them. The sense of trust created between management and the workers can promote efficiency and at the same time a relaxed feeling.’

‘Part of the respect for people approach is that we engage and trust our employees to participate in solving problems and eliminating waste.’

Some key lean tools

- ▶ **5S:** Method for organising workplaces to reduce wasted time and motion for employees, making problems more readily apparent
- ▶ **Kaizen:** Japanese terms meaning ‘continuous improvement’, focused on workplace improvement by employees
- ▶ **Error proofing:** Method for designing and improving processes so errors are less likely to occur
- ▶ **Visual management:** Method for making problems visible, providing for fast response and problem-solving

What would it be like to work in a Lean Hospital?

‘Working in a Lean hospital should be a positive experience for employees. After seeing many cases where morale and employee engagement improved with Lean, employees should not want to leave a Lean hospital to go work someplace else. In some cases, work life has become so fundamentally different (and better) that employees who left to go to a traditional hospital or clinic have come running back, no longer able to (or wanting to) operate in a non-Lean environment and culture.’

An employee in a Lean environment should expect, amongst other things:

- ▶ To be listened to by supervisors, to have their ideas solicited, to have the freedom to make improvements for the betterment of the system, and be treated with respect
- ▶ To develop the discipline to work within the system, but also to maintain the creativity required for *kaizen*
- ▶ To not be overburdened with more work than be done in a high-quality manner, nor to be standing around with nothing to do
- ▶ To be challenged to grow, personally and professionally, striving to learn and improve his or her technical, leadership, and problem-solving skills
- ▶ To feel a sense of pride for contributing to the high-performance organisation, for understanding his or her role, and how his or her work impacts patients, coworkers, the hospital’s bottom line, and the community

Mark Graban

Workplace Forums can and should play the part in promoting Lean, and Lean principles are entirely consistent what is being advocated in this Manual.

That said, once the public service in Sri Lanka becomes more mature and demanding in its approach to excellent service delivery, Lean is a system that needs to be introduced from top to bottom across the entire workforce and all the services’ operations.

This would be a major exercise, well beyond the scope of this Manual and the targeted group of people drawing on it. But an investment that probably deserves to be made.

See: www.lean.org
and www.lean.org.au

▶ 9. A word about ‘business literacy’: understanding what counts in service delivery to the public

Linked to the previous section on Lean Manufacturing (as might be applied to public services) is the matter of business literacy.

If employees/workers are to make a contribution to better service delivery – better productivity – they need to have a good sense of the particular operation’s ‘service metrics’. The need to know how performance is measured, and they need to know what goes into any particular service’s performance. How are things tracking? Getting worse, staying the same, improving?

Within any business unit there would be a number of key business health indicators (‘metrics’), whether they are known to everyone or not. Some indicators give a picture of the recent past. That means they are ‘lag’ indicators: they show what has happened, not what lies ahead.

Examples:

- ▶ How many public transport buses were successfully serviced on schedule in the last three months? How does the last quarter compare to the same quarter last year?
- ▶ How many complaints from the public were received regarding the removal of refuse from their houses last year? How does this compare to last year?
- ▶ How many post-operative infections came up in the operating theatres of our hospital in the first six months of this year. How does this compare to the previous half-year?

Predictive indicators are called ‘lead indicators’: they point to likely future developments, good or bad.

Examples:

- ▶ Last year we completed seven courses in safety training across all staff. We expect the number of accident and injuries to be reduced this year as a result.
- ▶ The department bought six new laminating machines last month (a capital investment). This means that we should be able to half the time it takes to issue new drivers licence cards in our district this year.

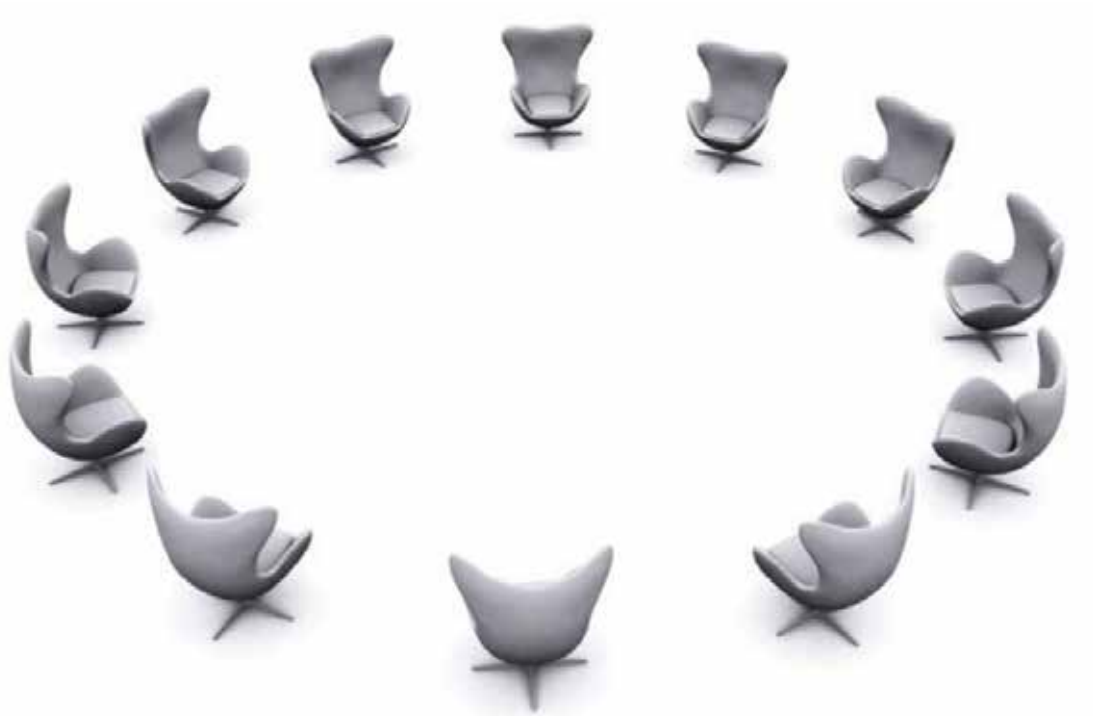
Here are some typical high-level metrics for most organisations. What they mean in practical terms will be different for each public service operation:

Examples:

1. Safety (eg, lost time injuries)
2. Service (eg, do members of the public get the services they need when they need them?)
3. Quality (is the service up to standard?)
4. Direct Labour Costs (eg, absenteeism)
5. Machine/system performance (eg, is the machine or system reliably delivering outputs at the expected rates?)

In time, members of Workplace Forum will need at least basic training in the business metrics of the operations in which they work. How else can they select good projects to work on to improve productivity? How else can they know if Workplace Forums are succeeding in their mission?

The content of that training will depend on the nature of the public service operation in question.



► 10. Workplace forums in action: meetings

Some basics

Forums are meant to:

1. Build and maintain personal relationships between employees/workers and managers on site (for their own sake, and to help with the next item).
2. Get things done: Identify matters that need attention on site, come up with ways of addressing them, take decisions and see that decisions are carried out.

Forums don't have to have a meeting to get things done. If relationships are strong, Forum member can discuss things informally, take decisions and act on them. No time wasted, no unnecessary energy burnt.

But generally, Forums will do their stuff though meetings, so let's turn to these.

Meetings come in different shapes and sizes:



Let's hear it: To meet or not to meet?

What are the top three or four things you don't like about meetings, whether Forum meetings or any other type of meeting?

1.	
2.	
3.	
4.	

When you've come away from a meeting that went well, what was it that that made you think: 'Yes, that session was worth it'?

1.	
2.	
3.	
4.	

Next page: Handout - answers other people have given

Handout

The top five things that other people have said they really dislike about (some) meetings: *

1.	They don't start or finish on time.
2.	They take too long. We could do everything in half the time.
3.	Airtime is taken over by one or two dominating people. Things aren't run in a way that gives me a decent chance to speak.
4.	They're really not interesting or important or engaging. I nearly fall asleep sometimes.
5.	Nothing effective gets decided. Nothing much happens afterwards. So, they're not really worthwhile.

* Adapted from Paul Timm, *How to Hold Successful*

The top five things that other people have said they really like about (some) meetings:

1.	The meetings are fit for purpose: they are not too long, and they deal with the rights things.
2.	We all get a proper chance to share our views.
3.	The subject matter is clearly presented.
4.	The whole session is engaging, sometimes even fun.
5.	Things get decided. Things happen afterwards.

Forum Meetings

Pre-conditions for successful meetings: good local relationships and goodwill

Forums have been created to encourage local leaders to engage with one another over, essentially –

- improving business processes – making them more productive
- improving the work experience of employees.

They are not meant to deal with other subjects (except perhaps grievances, if provided for in the constitution).

However, ‘other things’ can get in the way of Forum meetings focussing squarely on what is meant to be their mission. General things, and specific things.

If workplace relations are generally poor between local managers and employee/worker members, then it’s not easy for everyone to arrive at a meeting with the necessary goodwill for the agenda to flow smoothly and productively.

The same can be true if a particular dispute is burning in the background over, for instance, a dismissal case.

That’s where professionalism and maturity come into the picture. The parties must always be looking for ways to strengthen inter-personal relationships, and on settling issues which arise from time to time in all workplaces.

But in the meantime and in any event –

The Forum members must look at the big picture and over the horizon. Forums were set up to promote big and important goals vital to the well-being of the organisation and employees. That work should continue regardless of what else is happening in the background (or even the foreground).

Or nearly regardless.

If relationships are so bad that normal business simply can’t go on, then it’s time to ask more senior people to help – if need be, union leaders and public service leaders outside the particular workplace.

Even then, one way of getting wider relationships back on track is to get some success on applied things, such as the very work of the Forums.

If the work of Forums had to be placed on hold each time some local issue flared up, not a lot of it would get done. Vital work.

How are the ‘pre-conditions’ looking at your site this year? In place or not? If not, who should do what to get things back on a productive track?

Steps to make meetings productive and worthwhile

1. Only meet when you need to

It may make sense for Forum meetings to take place monthly, at diarised times. Fine, if this is the case. But if there is nothing really important to put on the agenda for a particular meeting, rather shelve the meeting. Team members must know that meetings are only held because there are important things to deal with.

In the first year of its life, a Forum probably does need to meet often. But this may change as the things mature.

2. Have an agenda

The idea with an agenda is that –

- i. it gives the meeting structure, something that makes it more effective and efficient
- ii. people can see what the business of the upcoming meeting is all about
- iii. people can prepare by reading up relevant reports in advance and thinking about matters in advance, saving time at the meeting
- iv. no one is taken by surprise at the meeting.

There will normally be some ‘standing items’ on the agenda, for instance, regular features such as current figures on service delivery. And then there will be specific things, such as feedback on, for instance, a waste reduction initiative.

There may be late items on an agenda for urgent stuff that has arisen at short notice – but that should be the exception.

Get the agenda out to all meeting participants in good time – say, three or four days in advance. Perhaps even a week.

3. ‘Right-size’ the length of the meeting

What’s on the agenda? The meeting should go on for only as long as is required to deal with all items on the agenda effectively and efficiently. And this assumes that people have done their homework before coming into the meeting – like reading the agenda, and any supporting reports.

4. Start on time

When nine people arrive on time but have to wait for the last and tenth person to join the meeting –

- nine people are wasting their time
- nine people are probably being treated disrespectfully.

The workplace culture should be that meetings start precisely on time.

Stuff happens, of course. People can be late for unavoidable and major reasons. Sometimes the missing person is needed to speak to the first item on the agenda. Sometime the missing person may be a key manager or union figure.

But the expectation and the general practice should be that meetings start on time.

5. Have other grounds rules

Such as:

- ▶ Stick to the agenda and stay on point
- ▶ No one should take over the meeting
- ▶ Be respectful to one another
- ▶ Give whoever is chairing the meeting due courtesy and the licence to control the flow (respect the chair)

6. Make sure the meeting is efficiently chaired

The chair should have the authority and skill to chair:

- ▶ Keeping the exchanges civil and productive
- ▶ Facilitating participation by everyone
- ▶ Keeping people on point
- ▶ Keeping to time

7. Do as much work as you can offline, between meetings.

At best, things are decided in meetings, not done. Researching, reading up, writing up, getting other involved and getting things implemented are all things that happens outside.

The more that individual team members can do outside meetings, the more efficient meetings can be. The more other Forum members' time can be saved.

8. Deal differently with different types of agenda items

Some items are mainly about information-sharing – keeping people up to date:

- ▶ How are lost time injuries going?
- ▶ What's happening with machine productivity?

And so on

These items just need brief, informative presentations, with some pointed follow-up questions and answers.

Other items are to do with problem-solving:

- ▶ What are we to do about bottlenecks in file processing?
- ▶ How can we limit customer complaints?

These items need some research, some brainstorming, some decision-making and then follow-up action. They will take up more meeting bandwidth.

9. The best results follow when Forums involve employees/workers outside the meeting room

When things need to be done as part of problem-solving, it nearly always means that other will need to be involved.

The action plans should build this in.

10. Stale items

If any item on the agenda keeps coming back on the agenda at later meeting –

meaning, things are either not being actioned or are going nowhere – escalate it or abandon it. Get it off the agenda by acting on it or removing it.

11. Keep short and useful meeting minutes

Best to follow a template (see below). Topics, main points, action items.

Get the minutes out to all Team members – and to all employees on site – within a day or two of each meeting.

12. End the meeting on time

End the meeting on schedule – people have other things to get on with. Unless something is really important to finish and people are able to stay on without too much inconvenience.

If the agenda is dealt with before the allotted finish time, finish early! Everyone will be grateful.

Meetings in a real world

(in practice, keeping things civil and orderly is hard)&

It's often not easy to chair and stick with the ground rules across all working environments. Some will be tough places with robust workplace cultures.

'Vigorous' language may common. There is nearly always some or other issues bubbling away on the shop floor. Many of the personalities are strong-willed and not into niceties. The workers and management often have quite different interests.

Sometime the chair has to take the decision to let someone run with an issue even though it may take up time and unsettle the agenda. The person may be so upset about something they just have to get something of their chest. They may want – and they may need – to vent. Meetings are about emotions (and relationships) as well as practical business.

But every step away from the ground rules and every bit of bad behaviour makes it that much more difficult for Forum meetings to deliver what they're meant to:

1. improve business processes – making them more productive
2. improve the work experience of employees.

Forum Meeting Agenda and Minutes – a possible template

AGENDA

Time: <start time> to <finish time>
 Venue: <Venue>
 Attendance: <List of names of members attending the meeting>
 Visitor: <List of names of any observers/visitors>
 Apologies: <List of names of members unable to attend the meeting>

The previous meeting was held on <date of previous meeting>.

1. Site Performance Review – standing agenda item

Discussion at this meeting:

- (1) Safety
- (2) Other metrics

2. Confirmation of agenda for this meeting

(This is a chance to revisit the planned agenda for this meeting in light of the review of site performance, progress on existing items and any other items that are raised by members – It is strongly recommended that Workplace Forums focus on a good discussion on about 2 or 3 issues each meeting rather than it being a ‘tick and flick’ session covering numerous items)

Planned items for this meeting:

3. '
4. '
5. '
6. Better workplace

3. <Item title>

Previous notes on this item:

7. <Notes and actions from the previous notes on this item – typically a ‘cut & paste’ from previous notes. This information helps the Forum build on progress made and monitor actions completed. It is then deleted once the item is discussed>

Action(s) from previous meeting & when	Accountability (Who)

Discussion at this meeting:

Action(s) from this meeting & when	Who

4. <Item title>

Previous notes on this item:

9. <Notes and actions from the previous Forum notes on this item>

Action(s) from previous meeting & when	Who

10. Discussion at this meeting:

Action(s) from this meeting & when	Who

5. <Item title>

Previous notes on this item:

11. <Notes and actions from the previous Forum notes on this item>

Action(s) from previous meeting & when	Who

12. Discussion at this meeting:

Action(s) from this meeting & when	Who

6. Better Workplace

Discussion at this meeting:

13. <Forums are encouraged to have a standing agenda item for the members to spend a few minutes considering how well the Forum itself is working. Specifically, consideration could be given to:

Specifically, consideration could be given to:

1. Are items being discussed using a problem-solving approach?
2. Are people across site being engaged?
3. Are items being progressed and not getting bogged down?
4. Are items and concerns of the workforce being considered and respected by the Forum

Action(s) from this meeting & when	Who

7. Next meeting of the Site Change Team

In addition to the standing agenda items (being site performance, etc.), we plan to discuss the following at our next meeting:

1. ' '
2. ' '

The next meeting will be on <Day & Date> from <start time> to <end time>

Specific 'quality control' questions every Forum meeting:

1. Have any items failed to progress after discussion at several meetings?
(If 'Yes', the item should be escalated for help or guidance)
2. Are items being discussed by the Forum members using a problem-solving approach?
3. Are people across site being engaged more than six months ago?
4. Are items being progressed and not getting bogged down?
5. Are items and concerns from the workforce being considered and respected by the Forum?

The Forum should decide on actions to address any 'No' responses to these questions.

In addition to the standing agenda items (being site performance, etc.), we plan to discuss the following at our next meeting: A, B, C

Discussion on agendas, minutes and this template



Forum Meeting situations: What would you as facilitator or chairperson do?

Discuss each of these situations in pairs. What are your options to get things back on track?

1. You are the chair of Forum meetings for a six-month stint. For the last three meetings, a departmental manager, who always speaks to the first main item on the agenda – business metrics – has arrived late. Anything between five and fifteen minutes late. It's a battle to get away from his office, he always says. What's to be done?
 - Just let things be?
 - Have a quiet word with him on the side?
 - Raise the matter in the meeting if it happens again: bring on a bit of peer pressure?
 - Something else?
- 2' regularly get personal with one another at meetings: a bit of verbal abuse, a bit of finger pointing and then raised voices. When it happens, it changes the meeting atmosphere, for the worse. What's to be done?
3. A couple of strong personalities tend to dominate all meeting discussions. Some more reserved Forum people seldom speak. How can the meeting dynamics be made a bit more inclusive?



4. Most Forum members don't read the agenda and the lead-in documents (reports on work done, and so on) before meetings. This means a fair amount of time at meetings is used up taking people through the meeting papers. Some members don't read very well in English. Some don't read very well in any language. What's to be done?

5. Sara dominates the discussions and is always the first one to answer when the facilitator asks a question. She gives long rambling answers which are often off the point. As the facilitator or chair, how would you deal with the situation?
6. Ravindu, one of your Forum members, is continually making sexist remarks. Most participants laugh when he makes a comment, but you personally feel uncomfortable, and you can see that some of the older women are upset by his jokes even though they do not say anything to him. As the facilitator or chair, how would you deal with the situation?
7. Several Forum members, mainly but not only management people, leave their phones on at meetings and often look at them, sometimes texting as well. As the facilitator or chair, how would you deal with the situation?



Some guidelines for managing interaction and participation

In dealing with difficult Forum people, eg, disruptive, dominating, uncooperative, etc, the facilitator or chair should:

- ▶ Maintain professionalism
- ▶ Control the process without being authoritarian
- ▶ Manage difficult characters without attacking them personally or undermining their self-esteem; so, focus on the behaviour that is causing a problem, not the personality
- ▶ Establish the cause of the problem and whether there is something you, as the facilitator or chair, could be doing differently
- ▶ Refer back to the ground rules and check whether they are still relevant and supported
- ▶ Use the group where possible to enforce the ground rules and maintain acceptable standards of conduct
- ▶ Add new ground rules where appropriate. Eg, respect, non-discrimination
- ▶ Manage time effectively
- ▶ Make procedural suggestions and get buy-in

In managing diversity effectively, facilitators should:

- ▶ Be aware of the role diversity plays when facilitating a session to ensure appropriate behaviour and facilitation techniques
- ▶ Be mindful of cultural 'norms' that might affect people's interaction, e.g. respect for authority, focus on group not individual, value placed on harmony, perceptions relating to (gender) roles in society and the extent to which these have been internalised
- ▶ Be aware that their language might not be understood by all
- ▶ Not assume that meeting participants who cannot understand are stupid
- ▶ Not stop listening to meeting participants we find difficult to understand
- ▶ Appreciate that the processing time for learners who speak a different language from the course language may be longer and slow the pace of the proceedings
- ▶ Be aware that meeting participants might say that they understand when they do not

Managing group dynamics and cultural norms is particularly important at the beginning of the life of a Forum when members are finding their feet.

▶ 11. Dispute prevention and dispute resolution

The best way to prevent disputes from arising is for Forum members to focus on their prime job of selecting and working in good faith on matters that will improve things in the workplace. Progress and success are great conflict reducers!

The second most important preventative measure is respecting the Forum's ground rules (see above). But –

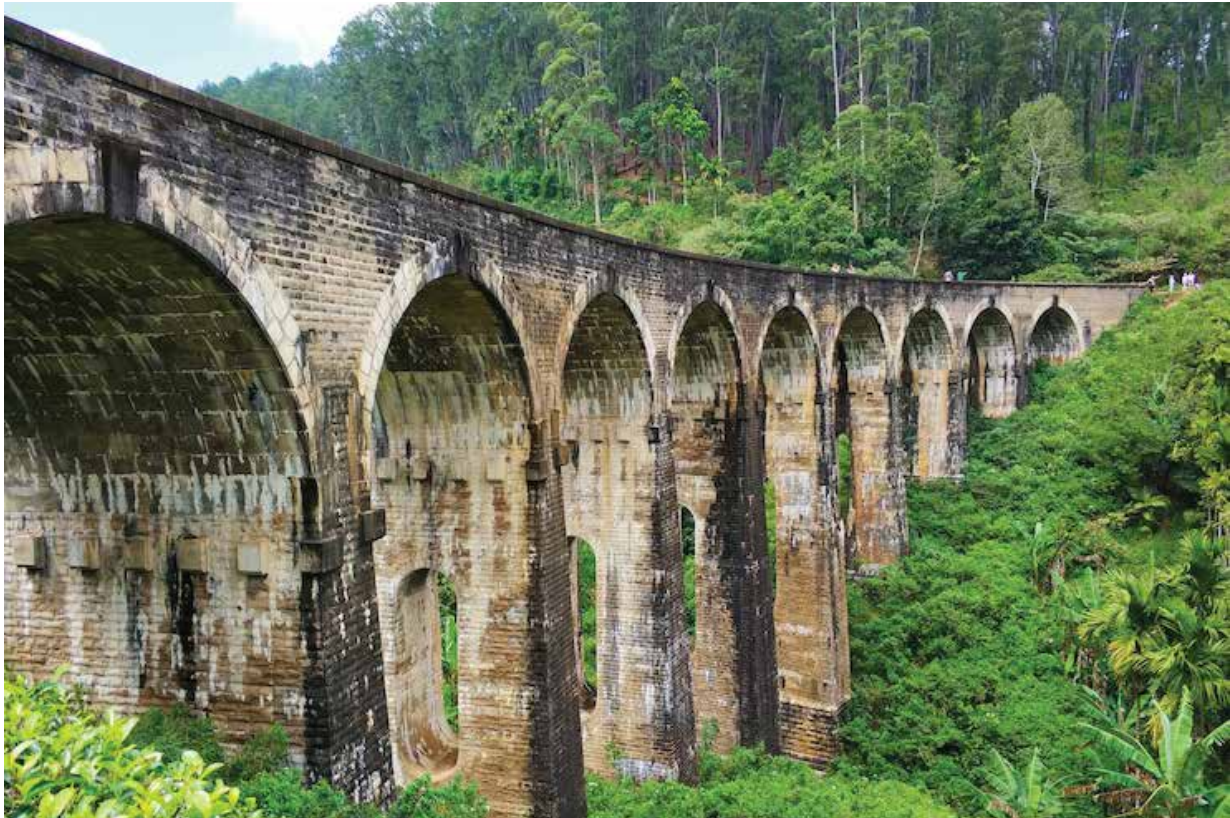
- ▶ there just are some inherent conflicts of interest in the workplace
- ▶ there just are personality differences that will come up, and
- ▶ differences of opinion, disagreements and even outright disputes will arise.

What then?

Before turning to the Forum's formal dispute resolution provisions, the parties at the Forum, including the facilitator or chair, should make every effort to sort things out amongst themselves.

Whether the disagreement is over concrete proposals and potential outcomes, or more personality-driven, try the following:

1. **Go to the Balcony.** The first step is to control your own behaviour. When they say 'no' or launch an attack, you may be stunned into giving in or counterattacking. So, suspend your reaction by naming the game. Then buy yourself time to think. Use the time to figure out your interests and your alternatives. Keep your eyes on the prize. Instead of getting mad or getting even, focus on getting what you want. In short, go to the balcony.
2. **Step to Their Side.** Before you can proceed, you must create a favourable climate. You need to defuse their anger, fear, and suspicions. He expects you to attack or to resist. So do the opposite: Listen to him, acknowledge his point, and agree with him wherever you can. Acknowledge his authority and competence, too. Disarm him by stepping to his side.
3. **Don't Reject... Reframe.** The next step is to change the game. Instead of rejecting to their position – which usually only reinforces it – direct his attention to the problem of meeting each side's interests. Take whatever he says and reframe it as an attempt to deal with the problem. Ask problem-solving questions, such as 'Why is it that you want that?' or 'What would you do if you were in my shoes?' or 'What if we were to...?' Rather than trying to teach him yourself, let the problem be his teacher. Reframe his tactics, too: Go around stone walls, deflect attacks, and expose tricks. To change the game, change the frame.
4. **Build Them a Golden Bridge.** At last you're ready. They, however, may stall, not yet convinced of the benefits of agreement. You may be tempted to push and insist, but this will probably lead him to harden and resist. Instead, do the opposite – draw him in the direction you would like him to go. Think of yourself as a mediator. Involve him in the process, incorporating his ideas. Try to identify and satisfy his unmet interests, particularly his basic human needs. Help him save face and make the outcome appear as a victory for him to say yes by building him a golden bridge.



5. **Bring Them to Their Senses, Not Their Knees.** If he still resists and thinks he can win without working with you, you must educate him to the contrary. You must make it hard for him to say no. You could use threats and force, but these often backfire; if you push him into a corner, he will likely lash out, throwing even more resources into the fight against you. Instead, educate him about the costs of not agreeing. Ask reality-testing questions, warn rather than threaten, and reveal your alternatives. Use the alternatives only if necessary and minimize his resistance by exercising restraint and reassuring him that your goal is mutual satisfaction, not victory. Make sure he knows the golden bridge is always open. In short, use power to bring him to his senses, not his knees.

Adapted from *Getting Past No* William Ury

Unresolved matters

If the disagreement still remains, and the issues at stake are important, then the Forum's dispute resolution procedures may need to be triggered. This is what the model Constitution provides for:

Dispute resolution on consultative and co-determination matters

1. *Any disputes over an employer's decision to implement a proposal that has not been agreed may be referred to mediation by a mediator of the Research Unit of the Public Service Ministry.*
2. *If such a dispute remains unresolved, the employer is not stopped from proceeding with the implementation of its proposal.*
3. *The parties may, however, agree in advance and specify in the Bye-Laws that where any proposal by the employer is not consented to but the employer intends none the less to proceed with its implementation, then in the event of a dispute being referred to mediation the status quo will remain in place until the matter the mediation has run its course.*
4. *Where a matter has been agreed in advance as a co-determination one, and in the absence of consensus that matter has been referred to mediation or arbitration, the status quo will remain in place until mediation and, if need be, arbitration, have run their course.*
5. *In the event of a dispute over a co-determination matter, the arbitrator, if called upon, must make a final and binding determination in accordance with any particular terms of reference supplied by the parties to the dispute or the By-Laws, failing that in accordance with what the arbitrator believes is fair, reasonable and lawful in all the circumstances and given the objectives of the Forum.*

Interpretation and application disputes

Any disputes over the application and interpretation of any of the provisions of this charter will may be referred by any Forum representative to the Research Unit of the Public Service for mediation and, if need be, final and binding arbitration.

Arbitration decisions are binding

The employer, employee/workers and unions involved in this Forums are bound by the decisions of an arbitrator for all purposes under this Charter.

▶ 12. Grievance handling

In other comparable systems elsewhere in the world, works councils – Forums in our case – would not usually have anything to do with workplace grievances. But there are gaps and needs in Sri Lankan public service, so the Model Constitution does allow a Forum to go beyond workplace improvement matters to deal with other issues of concern, in particular, grievances.

But grievance matters should not be allowed to dominate a Forum's Agenda. The main focus must still be on productivity and the work environment.

What follows is just a short account of what is meant by grievances and grievance handling. Workplace Forums who find themselves dealing with these matters will need further upskilling. For the most part, an employer's Human Resources department will be managing actual cases, and the Forum will just be ensuring that the relevant party's rights are being respected and perhaps also helping with matters that remain unresolved even after the employer's grievance procedure has been invoked.

What is a workplace grievance?

A Grievance is a complaint by one or more employees/workers that a right or an existing entitlement has been denied to them.

The ILO Recommendation R130 defines a grievance as –

a situation or measure that affects, or can affect, the conditions of an employee or employees, in that the situation or measure can be viewed as contradictory to an applicable collective agreement, an employee's contract of employment, workplace rules or policies, regulations, law and custom of an employee's occupation or country.

Grievances are rights-based disputes and can be classified as 'individual' where there is one employee involved or 'collective' where there is a group of employees that are dissatisfied on the same issue.

Grievances may be wide-ranging, and may include among others matters:

- ▶ Harassment and bullying
- ▶ Discrimination
- ▶ Failure of health and safety protocols in the workplace;
- ▶ Failure to abide by conditions of service

Unless they exist already at a workplace, Forums may need to create grievance procedures under their Bye-Laws. A grievance procedure should be designed to –

- ▶ create a mechanism for employees to voice their concerns whether based on fact or perception
- ▶ prevent disputes from escalating in the workplace, and y
- ▶ reduce the reliance on external disputes resolution mechanisms.

Grievance procedures are not designed to deal with interest-based matters (economic or money matters). Those should be left to collective bargaining (the province of Sectoral Councils).

Grievance procedures should be in writing and understood by all. They should –

- ▶ be simple and understandable
- ▶ be easy followed
- ▶ indicate informal and formal ways of addressing grievances
- ▶ respect confidentiality and personal data as appropriate
- ▶ allow for fact-finding
- ▶ provide for the right to be heard, to respond, to representation if appropriate, proper timing, information in the course of proceedings and on the decision itself, providing reasons for decisions and perhaps the right to appeal

Quick Tips

1. Grievances are feelings of dissatisfaction that employees have in the workplace that are related to the perceived infringement of a right.
2. Grievance procedures are internal dispute resolution processes.
3. Grievance processes must be applied fairly, efficiently, and help stabilize the workplace and reduce conflict.
4. Grievance procedures cannot be used to obtain more gains in collective bargaining.
5. No employee may be prejudiced against for using the grievance procedure.

► 13. Key takeaways from this workshop

7 'musts' if Workplace Forum are going to have a good chance of succeeding short-term and, especially, long term

- i. Representativity: the Forum members *must* be drawn from a cross-section of employees/workers on the site.
- ii. Engagement of employees/workers in Forum initiatives is a *must*.
- iii. Ongoing communication and consultation with employees/workers is a *must*.
- iv. Productivity gains *must* be the key focus.
- v. Workplace morale gains *must* be firmly on the agenda
- vi. Handling grievances intelligently and sensibly is a *must*.
- vii. Collective bargaining *must* get underway in Sectoral Councils, or the Forums work will undermined.



► 14. Next steps

1. Appoint a chair of a facilitator for your first meeting
2. Discuss and decide what should be on the first meeting agenda
3. Set dates, times and facilities for the first meeting
4. Publish the agenda so that the whole workforce can see it
5. Get information on the key metrics (performance indicators) of your workplace so that those indicators can be used to decide on process improvement projects and tracked over time
6. Take steps to get a survey done of the workplace in relation to engagement and the morale of everyone – to track those indicators over time, too
7. Choose the first projects to tackle:
 - a. Meaningful, important things
 - b. Go for low hanging fruit, if any is available (get some quick wins)
 - c. Engage employees/workers and managers outside the Forum as well
 - d. Select both 'performance improvement' projects and something which will widely benefit employees/workers on site
 - e. Put together a project plan with responsibilities and timelines
8. Develop an ongoing communication and consultation plan with the workforce
9. Make life interesting and rewarding for yourselves!

Further reading

Building a High-Quality Public Service in Sri Lanka through Workplace Reform (Thompson, Athukorala, Hewage and Wijayaratne, 2014). kindly make a request to Investigation Research and Monitoring Division at Ministry of Public Services at sddpr2021@gmail.com)

Activity: Quest

Lean Hospitals – Improving quality, patient safety and employee satisfaction, CRC Press, 2009 (www.lean.org.au)



Workplace Forum Model Charter

(with options)

to be customised to meet the objectives and needs of specific work sites

Workplace Forum Constitution of {Name of Site}

1. Preamble

This Workplace Forum is part of a national plan to reform labour relations across the Public Sector. As the reforms roll out, this Forum will become subject to the oversight of a new Sectoral Council for {Health/Transport} sector employees. In the interim, it will be subject to the oversight of the Inter-Sectoral Steering Committee of the Public Service Ministry and the Research Unit of the Public Service Ministry.

This Charter was drawn up by management and employee/worker representatives at {Site}, with assistance from {Task Team} and {unions}

The prime role of this workplace forum is to improve labour relations, workplace productivity and the work experience of employees on site, with a view to providing better public services to the people of Sri Lanka.

2. Parties

The parties to this Forum are:

- 2.1. The management of [name of site, government department], for convenience's sake described as 'the employer'.
- 2.2. The following trade unions, unless replaced under clause X:
 - 2.2.1 A
 - 2.2.2 B
 - 2.2.3 C
- 2.3. The employee/worker* representatives appointed or elected under this Constitution.
* Parties must choose whether use this double-barrelled term just 'employee' or 'worker'.

3. The objectives of the Workplace Forum

- 3.1. The main objectives of the Forum are to provide a setting and opportunities for employees/workers and employer representatives to –
 - 3.1.1. share information about the organisation's operation, performance, track record and goals;
 - 3.1.2. promote innovative thinking in the workplace;

- 3.1.3. share and develop ideas and initiatives for ongoing process improvement and general organisational efficiency and productivity;
- 3.1.4. consult with one another with a view to reaching consensus over any proposals on change including –
 - a. the introduction of new technology and new work methods;
 - b. changes in the organisation of work;
 - c. process improvement changes;
 - d. any other restructuring of the workplace;
 - e. education and training;
 - f. workplace recognition and reward schemes;
 - g. work/personal life balance;
 - h. the workplace environment;
- 3.1.5. work together to enhance every aspect of services to the public generally;
- 3.1.6. work together improve the workplace experience and morale of all employees;
- 3.1.7. diffuse improved practices across the workplace and the organisation as a whole;
- 3.1.8. share learnings on improved practices with other Workplace Forums and Sectoral Councils;

Option:

- 3.1.9. where appropriate, jointly deal with and try to resolve workplace issues and grievances;

4. Composition of the Workplace Forum

- 4.1. This Forum is bipartite body, comprising employer and employee/worker representatives with equal voice. The number of employer and employee representatives may differ, provided that there will be at least as many employee/worker representatives as management ones.
- 4.2. Management representatives are appointed by the executive management of {X Site}. There will be [twelve (12?)] management representatives or such other number as management may from time to time decide.
- 4.3. The occupational areas and/or work areas at this site for Workplace Forum representation purposes are the following:
 - 4.3.1 A
 - 4.3.2 B
 - 4.3.3 C
 - 4.3.4 D
 - 4.3.5. Some other residual categories, if need be, to ensure all remaining employees/workers, if any, are represented.

- 4.4. As at its formation, there will be [20?] employee/worker representatives on the Forum.
- 4.5. Employee/workers representatives are –

option 1

- 4.5.1. selected by –
 - a. the following unions:
 - i. union a: four nominees (being union members and employees at the site)
 - ii. union B: four nominees (being union members and employees at the site)
 - iii. union C: four nominees (being union members and employees at the site)
 - iv. union C: four nominees (being union members and employees at the site)*
- 4.5.2. in addition, {one} official from each of the party unions. [option]

* In making their selections, the unions must endeavour collectively to have a spread of representatives from across all major occupational groupings and/or work areas.

option 2

- 4.5.3. elected by from their fellow employee/workers on a majority basis from the employees/workers that are employed in the following occupational grouping and/or work areas –
 - a. occupational grouping A: two representatives
 - b. occupational grouping B: two representatives
 - c. work area X: one representative
 - d. Work area Y: two representatives
 - e. ...
 - f. ...
- 4.5.4. in addition, one official from each of the party unions [option]

option 3

Some other formula that ensures that the employees who actually work at the site are adequately represented (across all major occupational categories or work areas). External union officials could also be in the mix.

5. Election procedure for employee/worker representatives [If relevant, because option 2 has been chosen or 3]

- 5.1. The election of representatives will be by secret ballot of all employees/workers in the designated occupational groupings and/or work areas (except management employees {as defined}, conducted by the Research Unit of the Public Service Ministry.

6. Full-time members of Workplace Forum

- 6.1. In a workplace in which 1,000 or more employees are employed, the employee/worker representatives of a Workplace Forum may designate [option: the unions by agreement] one (or more, by agreement) full-time representatives.

- 6.2. The employer must pay a full-time member of the Workplace Forum the same remuneration that the member would have earned in the position the member held immediately before being designated as a full-time member, due regard being had to likely career and pay progression.
- 6.3. When a person ceases to be a full-time member of a Workplace Forum, the employer must reinstate that person to the position that person held immediately before election or appoint that person to any higher position to which, but for the election, that person would have advanced, unless other circumstances make such a reinstatement inappropriate.

7. Term of office of employee representatives

The term of office of an employee/worker representative should not exceed three years, although representative may be eligible for re-election.

8. Chairing of the Forum

The proceedings of the Forum will be chaired by an independent facilitator appointed by the Research Unit of the Public Service Ministry after consultation with local management, union leadership and, where available, Forum representatives.

The Forum may after the first year of its existence decide on the appointment of a different chair, chosen however the Forum sees fit.

9. Scope of the Forum

- 9.1. The Forum will deal with all matters arising from the objectives of the Workplace Forum.

option

- 9.2. For the avoidance of any doubt, it may also deal with –
 - 9.2.1. any workplace matter, issue or grievance raised by any management person, any trade union (whether involved with the formation or operation of the Forum or not) and any local employee or group of employees, provided the Facilitator of the Forum, after consultation with Forum representatives, agrees that it would be beneficial for the Forum to deal with the matter or issue.
 - 9.2.2. any other matter or issue that the {Transport/Health} Sectoral Council refers to it, including matters relating to the local supplementation, variation or implementation of collective agreements.

10. Information-sharing

- 10.1. The employer must disclose to the other Workplace Forum parties in good time all relevant information that will allow the parties to engage effectively in consultation.
- 10.2. The employer is not required to disclose information —
 - 10.2.1. that is legally privileged;
 - 10.2.2. that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - 10.2.3. that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
 - 10.2.4. that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
- 10.3. The employer must notify the other parties in writing if of the view that any information disclosed is confidential.
- 10.4. The employer may disclose information subject to assurances by the other parties on the maintenance of confidentiality.
- 10.5. If there is a dispute about the disclosure of information, it must be dealt with under the disputes procedure below.

11. Consultation

- 11.1. Consultation is the principal mode of engagement between Forum parties in dealing with one another.
- 11.2. The parties are obliged to consult with one another on all matters properly within the scope of the Forum.
- 11.3. Consultation means conferring with one another in an information-rich, problem-solving and meaningful way in an endeavour to reach consensus on proposals made and other matters and issues coming to the Forum. More specifically, 'to consult' means that –
 - 11.3.1. employer representatives must –
 - a. notify employee representatives as soon as is reasonably possible over proposals for change in the organisation likely to affect employees/workers;
 - b. explain the nature of the proposed change to employee/worker representatives;
 - c. provide employee/worker representatives with all relevant information that is reasonably available and not of confidential nature relating to the proposal;
 - d. allow the employee/worker representatives an opportunity to make representations on the proposal and to suggest alternative proposals;
 - e. consider and respond to the representations or alternative proposals made by employee/worker representatives and, if not agreeing with them, state the reasons for disagreeing;
 - f. endeavour to reach consensus with the employee/worker representatives on change;

- 11.3.2. employee/worker representatives must –
 - a. endeavour to reach consensus with employer representatives over any proposals on change in the workplace, whether employer- or employee/worker-initiated;
 - b. motivate any proposals made by employee/worker representatives;
 - c. follow the other features of meaningful consultation noted above, to the extent applicable to employee/worker representatives.
- 11.4. Consultations should be carried out in speedy and efficient manner, especially so that necessary or desirable changes can be made as soon as possible in the interests of the public.
- 11.5. There is no obligation for the representatives to reach consensus with one another, but they must in good faith endeavour to do so.
- 11.6. If no consensus is reached, then –
 - 11.6.1. the party making a proposal may drop it, permanently or until some later date; or
 - 11.6.2. in respect of any matter, issue or proposal, the Forum may use any agreed procedure such as mediation or arbitration or referral of the matter to the relevant sectoral council, or may agree a procedure just for the present matter, in an endeavour to reach a resolution;
 - 11.6.3. the employer may proceed to implement some or all of its proposal, subject to any rights employees/workers or their representatives, including unions, may have.

12. Meaning of consensus

- 12.1. 'Consensus' means –
 - 12.1.1. unanimity amongst all representatives on the Forum; or
 - 12.1.2. the agreement of all the employer representatives and a sufficient number of employee/worker representatives, namely {more than half of them; more than two-thirds of them ... ?}

13. Forms of engagement at the Forum: Co-determination

- 13.1. When any proposal, matter or issue comes before the Forum, any representative may at any stage ask that it be treated as a subject for co-determination.
- 13.2. If there is consensus amongst the representatives that proposal, matter or issue should be co-determined, then –
 - 13.2.1. In the absence of consensus, the subject must either be abandoned by the initiating representatives or party, or
 - 13.2.2. referred first to mediation and, failing successful mediation, to final and binding arbitration before an independent arbitrator appointed by the Research Unit of the Public Service Ministry.
 - 13.2.3. These provisions on co-determination do not affect an individual person's right to pursue a matter concerning them in other legal forums, unless they themselves agree to final and binding arbitration before an independent arbitrator appointed by the Research Unit of the Public Service Ministry.

14. Communications, information, inputs and feedback with respect to the whole workforce.

- 14.1. The Forum parties must keep all site employees/workers informed as appropriate of the deliberations, decisions and other activities of the Forum.
- 14.2. Representatives must meet as appropriate with site employees/and workers and provide them with opportunities, in meetings or otherwise –
 - 14.2.1. to raise ideas on workplace change and other employment-related matters;
 - 14.2.2. give their responses to changes proposed or effected.
- 14.3. The Agenda and Minutes of all Forum meetings must be made available to all employees/workers, subject to any legitimate confidentiality considerations.

15. Forum engagement with employees beyond communication

- 15.1. The Forum may set up committees comprising employees/workers or employees/workers and managers, and other persons, for any purpose that promotes the objectives of the Forum.
- 15.2. The further operation of any such committees may be regulated by the Bye-Laws.

16. Disclosure of information

- 16.1. A party to a workplace forum including the employer must disclose to the Workplace Forum all relevant information that will allow the Workplace Forum to engage effectively in consultation.
- 16.2. A party is not required to disclose information –
 - 16.2.1. that is legally privileged;
 - 16.2.2. that the party cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - 16.2.3. that is confidential and, if disclosed, may cause substantial harm to an employee/worker, the employer or a union; or
 - 16.2.4. that is private personal information relating to an employee/worker, unless that employee/worker consents to the disclosure of that information.
- 16.3. A party must notify the Forum in writing if it is of the view that any information referred to above is confidential.
- 16.4. If there is a dispute about the disclosure of information, any party to the dispute may refer the dispute in writing to the relevant sectoral council for mediation or a mediator appointed by the Research Unit of the Public Service Ministry and, failing mediation, to an independent arbitrator appointed by the Research Unit of. In any dispute about the disclosure of information, the arbitrator must first decide whether the information is relevant.

- 16.5. If the arbitrator decides that the information is relevant, s/he must balance the harm that the disclosure is likely to cause to an employee/worker, the employer or a union against the harm that the failure to disclose the information is likely to cause to the ability of the Forum to engage effectively in consultation.
- 16.6. If the arbitrator decides that the balance of harm favours the disclosure of the information, s/he may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee/worker, the employer or a union.

17. Forum coverage and effectiveness

- 17.1. The parties may decide in respect of a large workforce or a dispersed workforce that the Forum should consist of a Central Workplace Forum and then also area-specific subsidiary Workplace Forums.
- 17.2. The founding Workplace Forum will use the Bye-Laws or the amendment provisions of this Constitution to create and regulate any Central and then area-specific Workplace Forums.

18. Operational and procedural matters

- 18.1. The Forum must meet regularly, as provided for in its bye-laws, but in any event not less than once every three months.
- 18.2. The Forum must appoint a Secretary (who may be a Forum representative or someone outside the Forum) who must prepare agendas and keep meeting minutes, amongst other tasks that may be entrusted.
- 18.3. The Forum chair is responsible for the calling off meetings and the circulation of Minutes.
- 18.4. The Bye-Laws will set the quorum requirements for a Forum meeting.
- 18.5. The employer must present a report on its key performance indicators to the Forum on a regular basis, and in any event at least once every three months.
- 18.6. The employee/worker representatives may ask for opportunities to meet for their own caucuses purposes as is reasonable, and the employer must facilitate this.
- 18.7. The Forum must provide for meetings between employee/worker representatives of the Forum and workplace employees/workers employed at regular and appropriate intervals.
- 18.8. Caucus of employee/worker representatives and meetings with employees/workers must be held during working hours unless otherwise agreed and at a time and place agreed without loss of pay on the part of the employees/workers and the representatives.
- 18.9. Forum representatives must have reasonable time off with pay during working hours to perform their Forum functions.
- 18.10. The bye-laws must provide for the circumstances under which and manner in which representatives of a forum may be removed from office and replaced.
- 18.11. The Forum may invite any expert to attend and participate in its meetings.

18.12. The Forum may invite any employee/worker or other person to observe at and, with further permission, participate in its meetings.

18.13. Any approved office-bearers or officials of a trade union with members in the workplace may attend and contribute to meetings of the Forum.

19. Training

All representatives on the Forum must have access to training in consultation, problem-solving and meeting procedure skills.

20. Funding and resourcing

The employer must provide funding and facilities to enable the Workplace Forum to perform its functions.

21. Protection against victimisation

No adverse action may be taken against any Forum representative or employee/worker for exercising their rights or duties under this Charter.

Any Forum representative or employee/worker who believes that adverse action has been taken against them by their employer may refer their case to the Research Unit of the Public Services Ministry for mediation and, if need be, arbitration.

22. Dispute resolution on consultative and co-determination matters

22.1. Any disputes over an employer's decision to implement a proposal that has not been agreed may be referred to mediation by a mediator of the Research Unit of the Public Service Ministry.

22.2. If such a dispute remains unresolved, the employer is not stopped from proceeding with the implementation of its proposal.

22.3. The parties may, however, agree in advance and specify in the Bye-Laws that where any proposal by the employer is not consented to but the employer intends none the less to proceed with its implementation, then in the event of a dispute being referred to mediation the status quo will remain in place until the matter the mediation has run its course.

22.4. Where a matter has been agreed in advance as a co-determination one, and in the absence of consensus that matter has been referred to mediation or arbitration, the status quo will remain in place until mediation and, if need be, arbitration, have run their course.

22.5. In the event of a dispute over a co-determination matter, the arbitrator, if called upon, must make a final and binding determination in accordance with any particular terms of reference supplied by the parties to the dispute or the By-Laws, failing that in accordance with what the arbitrator believes is fair, reasonable and lawful in all the circumstances and given the objectives of the Forum.

23. Interpretation and application disputes

Any disputes over the application and interpretation of any of the provisions of this charter will may be referred by any Forum representative to the Research Unit of the Public Service for mediation and, if need be, final and binding arbitration.

24. Arbitration decisions are binding

The employer, employee/workers and unions involved in this Forums are bound by the decisions of an arbitrator for all purposes under this Charter.

25. Removal of a Forum party union

26. A union party may be removed from being a party if it is no longer sufficiently representative of employees/workers generally or of a category of employees/workers.
27. The decision to remove a union as a party may be made by consensus, where 'consensus' has the meaning set out in the Amendment clause.
28. Any party or person affected by a removal decision and who disputes the decision may refer the dispute to mediation and, if unresolved, to arbitration under clause [23].

29. Inclusion of an additional union party

30. Any union not a party to the Forum may apply to the Forum for admission as a party if it believes it is sufficiently representative of employees/workers generally or of a category of employees/workers.
31. The Forum must deal with such a request at its next meeting.
32. If agreed, the new union will be entitled to nominate employee/workers representative to the Forum and to have officials on the Forum as provided for by this Constitution and its Bye-Laws.
33. If an admission request is refused, or if there is any dispute over the form of its representation, the applicant union, or the new union, as the case may be, may refer the matter to mediation and, if need be, arbitration under clause 23.

34. Removal of a Forum representative

- 34.1. Any representative who misconducts himself or herself in his or her role as a Forum representative or is otherwise found to be not a fit and proper person, may be removed from office by a consensus resolution of the Forum.
- 34.2. Any person so removed who disputes the decision may refer the dispute to mediation and, if unresolved, to arbitration under clause [23].
- 34.3. A new representative may be appointed or elected under the provisions of this Constitution or its Bye-Laws to replace anyone removed.

35. Bye-Laws

The Forum may produce and publish Bye-Laws as needed for the proper functioning of its proceedings and work generally.

36. Amendments

The provisions of this Constitution may be amended by consensus of the parties, where 'consensus' means –

- 36.1. unanimity amongst all representatives on the Forum; or
- 36.2. the agreement of all the employer representatives and a sufficient number of employee/worker representatives, namely {more than half of them; more than two-thirds of them ... ?}

37. Dissolution

The Forum may be dissolved by consensus of the parties (as described just above) or by operation of law.

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