



WORKING WITH UNIONS

Commissioner's Guideline

1. Introduction

The Northern Territory Public Sector (NTPS) has a long history of working with trade unions to ensure effective representation for employees and ongoing management of the terms and conditions of service for NTPS employees. This guide is intended to provide NTPS managers with advice about the best practice when working with the relevant trade unions in their workplaces.

Nothing in these guidelines supplants an NTPS employee's obligation to observe the principles and obligations that fall to them under the *Public Sector Employment and Management Act 1993* (the PSEM Act).

2. Union Encouragement

The Northern Territory Government is committed to encouraging union membership among its employees in NTPS. Unions play an important role in representing employees. NTPS enterprise agreements contain many provisions aimed at facilitating the role of unions and their representatives.

While recognising that the decision to join a union remains the discretion of individuals, the NT Government encourages and supports this right.

Information on relevant unions is to be made available to employees at the point of engagement, including up-to-date membership material, application forms, details of fees and general information about the union.

Union officials or authorised representatives are to be given the opportunity to discuss union membership with new employees and provide employees with relevant union material, including membership forms. These discussions may be held during working hours, provided that work is not unreasonably disrupted. Where inductions are held in person, unions will be invited to address new employees as an integral part of those inductions.

All executives, managers and supervisors should cooperate to ensure the NTPS continues to encourage union membership. Encouragement requires executives, managers and supervisors to adopt a positive and supportive role, not simply passively accept membership recruitment and representative activity by unions.

The personal views of executives, managers and supervisors are not to be used to discourage employees from union membership or neglect to facilitate union membership in the ways provided for in this policy or enterprise agreements. Executives, managers and supervisors are not to directly or indirectly impede legal union activity.

Executives, managers and supervisors will ensure that this policy is accessible to all current employees. New employees are also to be informed of the NT Government's commitment.



3. Facilitating the role of union delegates

Democratically elected union delegates undertake a constructive role in the workplace in relation to union activities that support and assist members. That role is to be formally recognised, accepted and supported, on condition that union delegates notify their work unit manager that they have been appointed as a union delegate. Delegates are entitled to perform their roles without fear of victimisation.

A union delegate shall be allowed reasonable time during working hours to consult with members, or employees eligible to become members, on employment matters affecting employees.

Delegates are to have access to reasonable facilities for the purpose of undertaking union activities on the condition that service delivery and work requirements are not unreasonably affected. Local arrangements may be entered into with unions at agency level, but will not be less beneficial than what is provided for in the enterprise agreements.

Delegates will be able to communicate with members and non-members alike using email, subject to NTG email policies and its Code of Conduct.

The rights and obligations of union delegates are described further below.

4. Consultation

An integral part of any good decision making process is consultation with those potentially affected by decisions. Recognising the important role unions play in the workplace, unions must be involved in consultation on matters potentially having a significant effect on their members and other employees.

Consultation should occur on an as needs basis, but there are formal structures in place which ensure effective consultation with unions.

The Public Sector Consultative Council, established under the *Public Sector Employment and Management Act 1993*, which meets at least twice yearly, brings together officials from unions and the NTPS for the purpose of consulting on whole of government matters and other issues with service-wide implications.

NTPS enterprise agreements also make provision for the establishment of Consultative Committees, which facilitate consultation with unions at the agency or workplace level. These committees are pivotal to achieving effective and structured ongoing consultation and workplace relationships. The frequency of meetings, the content of meetings and membership of Consultative Committees are determined by agreement with the relevant unions. Managers are required to be aware of and use these consultative committees.

The NTPS is committed to consulting on any matter that is likely to significantly affect employees and remains open to consult on any other matter raised by unions.



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5. Collaborative engagement with unions and employees

The NTPS is committed to working collaboratively with unions and with employees in relation to employment matters in the NTPS. The NTPS will strive to address issues early to avoid disputation.

6. Union Delegates' Rights and Obligations

The role of the union workplace delegates and other elected union representatives is to be respected and facilitated.

An employee may have a union representative to represent the employee in a dispute or significant workplace matter and make representations on behalf of the employee.

Agencies and union workplace delegates must deal with each other in good faith.

The rights and obligations of union workplace delegates will be underpinned by the following principles:

- (a) workplace delegates will be able to perform their role without any discrimination in their employment;
- (b) ability for delegates to represent their members in the workplace (eg during enterprise agreement bargaining, on joint consultative committees, for consultation during change, and/or to represent members generally);
- (c) ability for delegates to have access to paid time to consult with employees;
- (d) reasonable access to agency facilities (including telephone; facsimile, photocopying, internet and email facilities, meeting rooms) for the purpose of work as a delegate;
- (e) opportunity to inform staff about union membership;
- (f) ability to represent employees at an industrial tribunal;
- (g) maintaining the confidentiality of agency information as well as information about NTPS employees;
- (h) all parties will behave in a professional, productive and ethical manner;
- (i) a delegate would be expected to carry out their normal duties; and
- (j) ability for an official to "walk around" a workplace to hold individual discussion contingent on the nature of the work being performed in the workplace subject to discussion with and prior approval of the CEO. Approval for "walk around" will not be unreasonably withheld.



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7. *Dispute Settlement, Union Rights and Consultation Provisions in Enterprise Agreements*

Dispute Settlement Provisions

For disputes that cannot be resolved informally or at the local level, the dispute settlement clauses in the [relevant enterprise agreement](#), should be followed.

It is important that NTPS managers follow the steps set out in the relevant agreement.

The dispute settlement provisions enable NTPS employees to appoint “another person, organisation or association to accompany or represent them at any stage of the dispute”. The dispute settlement provisions also create a mechanism to refer a dispute to the industrial relations tribunal, the Fair Work Commission, in the event that the parties to the dispute cannot resolve it by themselves.

Union Rights

NTPS enterprise agreements also recognise the legitimate right of trade unions to represent their members or those employees who are eligible to become their members, including through the election or appointment of NTPS employees as union delegates in their workplaces.

Accredited union delegates may have reasonable time, during working hours, to consult with members or NTPS employees who are eligible to become members on employment matters affecting them in their workplaces.

Subject to the operational needs of their Agencies and their CEO's approval, accredited union delegates may use up to five days of paid leave a year (or as provided in the relevant enterprise agreement) to attend approved union training courses.

NTPS enterprise agreements set down notice periods for requests to attend this training. Normally, these should be adhered to, but there may be occasions when it is reasonable, under the circumstances, to provide shorter notice periods. Consideration of these requests should include all relevant circumstances, such as the operational requirements of the Agency.

Where practicable, CEOs will make facilities available to assist unions to display notices that are relevant to employment matters on general staff notice boards.

Consultation

All NTPS enterprise agreements require consultation with unions and employees about substantial organisational and technological change that may be required in the NTPS.

NTPS managers should ensure that consultation with unions should be in compliance with the terms in the relevant enterprise agreement.



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These provisions, however do not convey an unlimited right to be consulted on all matters, such as business plans or other operational activities.

8. Leave to Attend Arbitration Business

By-law 17 enables a CEO to grant leave to an employee who is required to attend an arbitration proceeding as a member of a trade union on the following conditions:

- leave is not granted to more than two employees who are representatives of the trade union at the one time in respect to the proceeding;
- leave will be with full pay;
- leave for case preparation will be without pay and will not exceed three months in any 12 months;
- leave with pay will count as service for all purposes; and
- leave without pay will not count as service, but will not break continuity of service for long service leave purposes.

9. Union Walk Throughs

Subject to CEO approval, trade unions officials may be permitted to conduct walk throughs of NTPS workplaces. They are:

- negotiated in advance;
- conducted with minimum disruption to the normal operations of the workplace; and
- subject to employees being free to decline to talk to the visiting trade union official or organiser.

Although subject to CEO approval; it is not anticipated that approval would be unreasonably withheld.

10. Leave for Full-time Duties in an NTPS-Affiliated Trade Union

Subject to CEO approval and the operational requirements of the Agency, an NTPS employee may be granted special leave without pay to cover:

- election as a full-time official;
- appointment as an organiser or industrial officer; or
- short periods of special leave without pay to work for a relevant union.

In addition to special leave without pay the employee would need to seek approval for outside employment under section 61 of the PSEM Act. When carrying out duties as an NTPS-Affiliated Trade Union Official the NTPS employee must not disclose information or documents acquired in the course of his or her employment, other than required by law or where proper authority has been given, and must continue to exhibit all other professional and ethical standards as stated in [Employment Instruction 12: Code of Conduct](#).



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Although subject to CEO approval and operational requirements, it is not anticipated that approval would be unreasonably withheld.

11. What can an NTPS Manager expect from a Union or Union Delegate?

NTPS managers can expect that:

- workplace delegates will respect the fact that they are also expected to carry out their normal duties;
- workplace delegates will respect the confidentiality both of NTPS employees and any Departmental information that comes to their knowledge during the course of their union activities in the workplace;
- union officials and workplace delegates will extend all the usual courtesies in relation to reasonable access to workplaces, consultation or other activities during work time or within the workplace;
- union officials and workplace delegates will behave in a professional, productive and ethical manner; and
- union officials and workplace delegates will not distort the views of management when reporting back to their membership about matters affecting their workplace.

Managers can also expect that they will receive official advice from the union (often through a letter to the CEO) of the names of accredited union delegates in their workplaces.

If disputes arise about working with unions, NTPS managers should contact their HR units, in the first instance.

12. Legal basis for Union Participation in NTPS Workplaces

This section provides an overview of the legal framework that governs the role of unions in NTPS workplaces.

The Fair Work Act 2009

The overarching law governing the role of trade unions in NTPS workplaces is the *Fair Work Act 2009* (FW Act). It provides unions with a number of rights, especially in relation to being the default bargaining representative when the Office of the Commissioner for Public Employment (OCPE) is negotiating new enterprise agreements and in relation to unions' right of entry to NTPS workplaces. Under the FW Act, unions have statutory rights to enter NTPS workplaces to:

- investigate a suspected contravention of the FW Act or a fair work instrument, which would include an NTPS enterprise agreement; or
- hold discussions with one or more employees;

In exercising these rights, the union representatives need to hold a valid right of entry permit from the Fair Work Commission and comply with the relevant notice requirements that relate



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to the type of entry being sought. It is important to remember that the FW Act provisions are minimal provisions and that the practice in the NTPS exceeds these rights.

The *Work Health and Safety (National Uniform Legislation) Act 2011*

Similarly, the Northern Territory *Work Health and Safety (National Uniform Legislation) Act* (WHS Act) also provides representatives of trade unions who hold both a WHS entry permit issued by NT WorkSafe and a right of entry permit from the Fair Work Commission, to enter NTPS workplaces to:

- inquire into suspected contraventions of the WHS Act; or
- consult and advise workers.

As with the FW Act, the WHS Act and its regulations stipulate how notice is to be given and the rights and obligations of WHS entry permit holders when they are exercising these rights of entry as WHS entry permit.

The *Public Sector Employment and Management Act 1993*

In addition to these provisions, section 64 of the PSEM Act provides for the establishment of a Public Sector Consultative Council (the PSCC). The PSCC is a representative body for the Commissioner for Public Employment, NTPS Agencies and trade unions who represent NTPS employees.

In accordance with section 17.2 of the [Public Sector Employment and Management Regulations 2011](#) the PSCC considers matters referred to it by the Commissioner and reports on, and make recommendations about, those matters to the Commissioner.

13. Further Information

Further information about working with trade unions in the NTPS can be obtained from the Employee Relations Division of the Office of the Commissioner for Public Employment on 08 8999 4282.

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