



WORKING WITH UNIONS

Commissioner's Guideline

1. Introduction

The Northern Territory Public Sector (NTPS) has had 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* (the PSEM Act).

2. 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, Fair Work Australia 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 its members or those employees who are eligible to become its members, including through the election or appointment of NTPS employees as union delegates in their workplaces.

Subject to prior approval from their Chief Executive Officer (CEO), 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 trade 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



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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. At the same time, the enterprise agreements create an obligation on trade unions to “properly and resource and facilitate, meaningful consultation”.

NTPS managers should ensure that consultation with unions should be in compliance with the terms in the relevant enterprise agreements, explained in [“Change Management in the NTPS: Industrial Obligations and Considerations under NTPS Enterprise Agreements”](#).

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

3. 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.

4. 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.



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5. 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](#).

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

6. Workplace Delegates

Workplace delegates are NTPS employees who have been elected by members of the union in their workplace. They have a dual role. First they act as a representative of their workplace, both with local management and with the union. Second, they provide a means through which the union can communicate with its members in individual workplaces.

Subject to operational requirements, NTPS managers should provide recognised and accredited workplace delegates with reasonable:

- paid time to consult with members about matters affecting the workplace, subject to the proviso that normally meetings would be held within the employees' own time and that paid time meetings would be subject to CEO approval and operational requirements;
- access to managers and senior managers to consult about matters affecting the workplace; and
- access to email to consult with members and non-members about employment matters (subject to an election to opt-in) in the workplace; use of the NTG email system would remain subject to [NTG email policies](#), including limitations on the size of attachments and the appropriateness of the content (in other words, the NTG email system should not be used to critique NTG policy or operations or contain material that could be construed as either offensive or defamatory).

It is expected that workplace delegates will be treated fairly and that their role in the workplace will be respected.



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7. 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.

8. Legal basis for Union Participation in NTPS Workplaces

This section will provide 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 Fair Work Australia and comply with the relevant notice requirements that relate 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.



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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 permits from Fair Work Australia, 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*

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](#) the PSCC considers matters referred to it by the Commissioner and reports on, and make recommendations about, those matters to the Commissioner.

9. Side Deeds

Some agreements are supplemented by side deeds that contain matters agreed with the relevant union that are not permitted in enterprise agreements under the FW Act, such as:

- entering workplaces to hold discussions with employees who are members or who are eligible to be members of the union; and
- entering workplaces to investigate suspected breaches of the FW Act; or any instruments made under the FW Act.

10. 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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