

# Health and Safety Representative

## Pocketbook Guide

A guide to the Work Health and Safety (National Uniform Legislation) Act 2011 and implications for HSRs and workers



**UNIONS NT**

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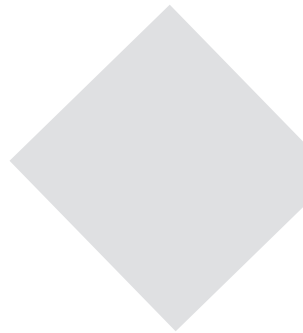
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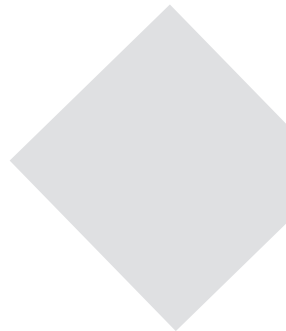
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# Glossary

<b>WHS Act / the Act</b>	Work Health and Safety (National Uniform Legislation) Act 2011
<b>WHS</b>	Occupational Health and Safety
<b>HSR</b>	Health and Safety Representative
<b>Deputy HSR</b>	Deputy Health and Safety Representative
<b>DWG</b>	Designated Work Group
<b>NOSH</b>	Notice of Safety Hazard
<b>NTWS</b>	NT WorkSafe

This HSR Pocketbook guide information is based upon the new Work Health and Safety (National Uniform Legislation) Act and Regulations which commenced in the Northern Territory from 1 January 2012.

NT WorkSafe has also developed an Information document titled 'Worker representation and participation' which will be a valuable source of information and should be read in conjunction with the appropriate legislation.



# Overview

## THE ACT PROVIDES OPPORTUNITIES FOR WORKER PARTICIPATION ENABLING IMPROVEMENTS IN WORKPLACE SAFETY

The Northern Territory *Work Health and Safety (National Uniform Legislation) Act 2011* (the Act) and Regulations have been developed to provide a consistent national approach to the regulation of workplace health and safety and a real focus on consultation between employers and workers on health and safety issues.

**Part 5, Divisions 1-8 of the Act and Part 2.1** provide particular guidance and assistance to workers and employers in the areas of:

- Consultation, representation and participation;
- Consultation, co-operation and co-ordination between duty holders;
- Consultation with workers;
- Health and safety representatives;
- Request for election of health and safety representatives;
- Determination of work groups;
- Multiple-business work groups;
- Election of health and safety representatives;
- Powers and Functions of health and safety representatives;
- Obligations of person conducting a business or undertaking to health and safety representatives;
- Health and safety committees
- Issue resolution;
- Right to cease or direct cessation of unsafe work;
- Provisional improvement notices;
- Part not to apply to prisoners.

## The Act

The Act has clear objectives providing for a balanced and nationally consistent framework to secure health and safety of workers and workplaces by:

- Protecting workers and others against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specific types of substances or plant; and
- Providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and
- Encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- Promoting the provision of advice, information, education and training in relation to work health and safety; and
- Securing compliance with the Act through effective and appropriate compliance and enforcement measures; and
- Ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under the Act; and

- Providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- Maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in the Northern Territory;
- Providing workers and other persons the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

The Act binds the Northern Territory and the Legislative Assembly in so far as the legislation permits, to the point that the Crown is liable for an offence against the Act.

The Act recognises and outlines the vital role HSRs and Deputy HSRs play in representing the health and safety interests of workers or in interviews with Workplace Safety Inspectors.

In all Australian jurisdictions it is widely acknowledged that HSRs and Deputy HSRs can and do make a real difference in having health and safety matters effectively addressed and therefore achieving better WHS outcomes.

## Regulations

The Work Health and Safety (National Uniform Legislation) Regulations at Part 2 provide guidance to employers and workers on representation and participation of workers in matters relating to health and safety in their workplaces, determination of work groups, negotiations about and agreements about work groups, election of HSRs, removal of HSRs, training of HSRs, issue resolution and cessation of unsafe work.

## Consultation

The purpose of consultation is to provide workers with the chance to have input into and influence on decisions that will effect or may affect their health and safety at work.

A person who conducts a business or undertaking (PCBU) must consult, so far as is reasonably practicable, with workers who carry out work for the business or undertaking and who are (or are likely to be) directly affected by a work health or safety matter. Part 5 of the Act allows for workers to be consulted and represented through health and safety representatives (HSRs) and committees.

All workers' views must be valued and taken seriously by an employer.

To support and encourage more workers to be represented on WHS issues, Part 5, Divisions 1-8 of the Act offer options on how workers can be represented by HSRs and Deputy HSRs, and/or the establishment or workplace health and safety committees, provides for involvement of workers and their representatives in health and safety decisions, and outlines a process for the resolution of health and safety issues.

# Setting Up Designated Work Groups (DWGs) – Step by Step Guide

First things first, workplaces need to set up DWGs (Refer to sections 51-59 of the Act) so they know how many HSRs and Deputy HSRs need to be elected to represent workers.

## Step 1.

Map your workplace – consider the following:

- how many workers
- location of each workplace (if there are more than one)
- number of workers to form the DWG
- languages spoken
- overtime or shift arrangements to apply
- nature and type of work
- nature of risks and hazards at each workplace

*Example:*

*You work for an employer who has 150 workers across 3 workplaces who work in administration, construction, specialist fields (engineers) and industry specialist such as electricians.*

*\*You may have up to 15 HSRs (1 HSR per every 10 workers) and the same number of Deputy HSRs representing the different types of work – administration, construction, engineers and electricians –each type of work will have different associated risks, hazards and potentially industry codes of practice or health and safety compliance procedures.*

*These HSRs and Deputy HSRs may also either be representatives for a DWG in a fixed workplace (an office) or may be site specific or roving HSRs and Deputy HSRs depending on what arrangements have been agreed with the employer and where they are working.*

## Step 2.

Put together a reasonable proposal for DWGs that ensures the HSR and Deputy HSR for each work group is accessible to each member of the group (see example above \*).

When mapping and putting the proposal together you should be including as many of your co-workers as possible. Consultation is an absolute must, so you can confidently say to your employer that the majority of workers want HSRs and Deputy HSRs and to show you have taken the time to consult with all affected workers.

DWGs and electing HSRs and Deputy HSRs is about promoting health and safety in a way that builds everyone's interest, engages all workers, and encourages and educates about safety at work. This means involving all of your co-workers whenever you can.

Your Union delegate/contact or Organiser can assist you with the process of mapping and developing a proposal – they are a wealth of information and more than likely have helped other workplaces just like yours!

## Step 3.

If your employer hasn't already started negotiations, approach your employer and request the formation of DWGs. The PCBU 'the employer' has 14 days within which to take reasonable steps to commence negotiations with the workers' representatives after a request has been made. (Refer to section 52(2) of the Act)

Remember:

DWGs should ensure that the HSR and Deputy HSR for each work group is accessible to each member of the group. DWGs need to be negotiated and agreements must BE EVIDENCED IN WRITING!! Your employer has 14 days to start negotiations over work groups and must as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups (DWGs) determined by the agreement. (Refer to section 53 of the Act).



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#### **Step 4.**

Election of HSRs and Deputy HSRs. (Refer sections 60-65 of the Act)

Once you know how many DWG there are in your workplace then you know how many HSRs and Deputy HSRs need to be elected to represent the workers in each DWG.

If the DWG decides to elect a HSR and a Deputy HSR, a Returning Officer must be appointed and who comply with the WHS (National Uniform Legislation) Regulations 2011 in running elections.

Once again, your Union can assist you with this process and in many cases the Union: a Union organiser or official is nominated by the workers (with agreement by the employer) to act as the Returning Officer.



# CHECK LIST

1. Have you mapped your workplace?
2. Have you developed a proposal of DWGs?
3. Have you consulted with your co-workers?
4. Have you contacted your Union?
5. Start negotiations with your employer – take your DWG proposal & consultation information.
6. Make sure negotiations are happening within the timeframe stipulated by the Act.
7. Conduct elections of HSRs and Deputy HSRs – make sure you contact your Union for help and assistance.

## Principle

Workers have a *right*, and should be encouraged, to be represented in relation to health and safety issues.

While HSRs and Deputy HSRs work for the employer they represent workers

## Overview

Workers have the right to ask their employer to set up designated work groups so HSRs and Deputy HSRs can be elected. (Refer to sections 52(3) and 61 of the Act).

A DWG is a group of workers (the size of which the DWG is agreed between the employer and workers) who are able to elect HSRs or Deputy HSRs to represent them.

A DWG is negotiated between the employer and workers and can be formed in a number of ways and should be relevant to the size, type, demographics, etc of the workplace

# Worker Representation – Health and Safety Representatives (HSRs) and Deputy HSRs

## Principle

A HSR and Deputy HSR is a representative of the Workers in their DWG

HSRs and Deputy HSRs are not an arm, function or representative of the employer

## Section 68

A HSR and Deputy HSR have roles function and powers under the Act. (Refer to section 68 of the Act)

HSRs and Deputy HSRs at all times represent the WHS Concerns of the workers that elected them

## Overview

A DWG elects their HSR, and Deputy HSR who must be workers in that DWG. A HSR and Deputy HSR is elected for a period of 3 years

Elected HSRs under the old laws will be considered a HSR under the new law. Trained HSRs (Refer section 72) elected under the old laws are required to complete refresher training within 12 months of the commencement of the new laws.

HSRs that have not completed approved training will not be able to exercise many of the powers of an elected HSR until approved Training is completed.

A HSR and Deputy HSR's role is to represent the workers who elected them in their work group on health and safety matters to their employer.

A HSR and Deputy HSR still performs the job they are employed to do but in addition to this they undertake the representative role on behalf of their workmates.

It is not the HSR or Deputy HSRs' role to be responsible for health and safety at the workplace. The primary responsibility for providing and maintaining a safe and healthy workplace rests with the employer.

Functions of a HSR and Deputy HSR (section 68) relate to inquiring into and ensuring WHS concerns of the workers are brought up with employers and assisting and mediating for workers in the resolution of WHS matters.

HSRs and Deputy HSRs when trained have the power to gather information, issue Notice of Safety Hazards and issue Stop Work Directions.

HSRs and Deputy HSRs are entitled to be trained (Section 72). If they request such training from their employer, the employer must allow them to *attend training of their choice* by an approved NT WorkSafe training provider.

HSRs and Deputy HSRs are entitled to perform their functions in paid time and the employer must provide facilities for HSRs/Deputy HSRs to carry out their duties

# Worker Representation – Your functions and Powers

## Principle

Section 68 of the Act sets out your powers as a HSR or or Deputy HSR

## Section 80-82

You have an important role to play in representing members of your DWG, including bringing issues to the attention of the employer, attempting to resolve these issues and taking information back to your DWG on health and

## Inspect & Inquire into health and safety issues affecting

## Assist workers in their dealings with management

## Section 68 (2) c

## Overview

Your powers enable you to:

- Speak up and act on behalf of the workers your represent on WHS issues
- Monitor the health and safety actions taken by the employer
- Look into anything that might be a risk to the workers you represent.
- Attempting to resolve health and safety issues with your employer

You have the right to do any of the following:

You have the right to inspect and inquire into any part of the workplace where you represent members of your DWG.

It is always best to give your employer reasonable notice and depending on the type of industry or workplace, you may want to agree on the number and type of inspections you will carry out.

High risk industries or workplaces that change often may require more frequent inspections. Any health and safety issues identified during inspections should be reported to your employer and members of your DWG should be informed about any hazards or potential risks.

You have the right to assist any worker from your DWG in their dealings with management on WHS issues.

This could range from raising matters of concerns with management on behalf of your DWG, assisting in the resolution of problems affecting health and safety or mediating between workers and management on health and safety issues.

## Attend a health and safety interview

You have the right to attend an interview about health and safety between a member of your DWG and an inspector, or that member and your employer, if the member agrees to, or requests, your attendance.

## Division 6 sections 83-89

### Right to Cease or direct cessation of unsafe work

A worker may cease or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

An HSR may direct a worker who is in the Work Group represented by the HSR to cease work. However the HSR must not give a worker a direction to cease work unless the matter is not resolved after consulting the employer or after attempting to resolve the matter under Division 5 or...if the risk is so serious imminent and immediate that it is not reasonable to consult before giving the direction

## Provisional Improvement Notices

### Section 90

As a trained HSR or Deputy HSR you have the right to issue a Provisional Improvement Notice (PIN) **in writing** if you believe that a person is contravening the Act or might continue to contravene provisions of the Act. The HSR or Deputy HSR may issue a PIN requiring the person to remedy or prevent the contravention from occurring or remedy the things that might cause a contravention.

## Content of a PIN

### Section 92-100

The content of a PIN must state the reasons an HSR or Deputy HSR believes the person is contravening the Act, how the Act is being contravened and providing up to 8 days after the PIN has been issued to remedy the contravention. An HSR may cancel a PIN by written notice to the person.

A PIN is required to be displayed in a prominent place at, near or the part of the workplace at which work is being carried out that is affected by the notice

A person must not intentionally remove, destroy, damage or deface the displayed notice.

Within 7 days the PCBU to whom the PIN has been issued may ask NT WorkSafe to appoint an Inspector to review the notice

An HSR or Deputy HSR must not issue a PIN to a person unless he or she has first consulted the person.

An HSR or Deputy HSR cannot issue a PIN unless they have completed initial training prescribed by the regulations in section 72 (1) (b) or previously completed that training when acting as an HSR of another DWG or completed training equivalent to that training under a corresponding WHS law.

If the hazard is not eliminated or mitigated to your satisfaction, within an allotted timeframe you must report the matter to NT WorkSafe.

A PIN can be obtained from your Union or downloaded from [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

Nothing in Part 5 regarding HSRs, Deputy HSRs, their functions and powers apply to prisoners in custody as defined in section 5 of the Prisons (Correctional Services) Act.

## Division 8

### Part not to apply to Prisoners

# Worker Representation – Your Entitlements

## Principle

The Act sets out your entitlements as a HSR.

Your employer has obligations to you as a HSR or Deputy HSR to involve you in the consultation process, assist you in the performance of your duties and facilitate the effective exercise of your powers in the performance of your duties and facilitate the effective exercise of your powers and functions

## Obligations of your employer

An employer must:

- Give you access to information about actual hazards in the workplace
- Give you access to any part of the workplace in which a member of your DWG works.
- Allow you to attend an interview about health and safety between a member of your DWG and an inspector, or that member and your employer.
- Give you time off work with pay so that you can exercise your powers/functions or take part in training.
- Provide facilities and assistance to help carry out your role as an HSR or Deputy HSR for example access to a telephone and somewhere to meet etc.
- Display a current list of HSRs and Deputy HSRs at every workplace under the employer's control.

**Lists of HSRs and Deputy HSRs and any updates on these positions must also be provided to NT WorkSafe.**

Approved training is available for HSRs and Deputy HSRs to assist and support them in performing this representative role.

As an HSR and/or Deputy HSR you are entitled to:

- An initial WHS training course after being elected – currently 5 days.
- Refresher training - once a year.

## Section 74

### Training Obligations

You have the right to choose the initial and refresher training course in consultation with your employer and it must be delivered by a training provider approved by NT WorkSafe.

If you cannot agree on a course, or your employer does not allow you to attend your chosen training course you can ask NT WorkSafe to intervene.

### **Your employer must not discriminate against you**

Your employer must not discriminate against you, or any other employee or prospective employee, because of involvement in health and safety. Your employer must not threaten, dismiss or refuse to hire someone because of their involvement in health and safety. If they do, it is an offence and they risk major penalties, including up to 12 months jail.

### **Your right to be consulted**

#### **Your right to be consulted**

Employers have a duty to consult have an affect or in all matters

Employers must consult with workers to enable them to contribute to making decisions affecting their health and safety at work.

#### **What you must be consulted on**

For example, the employer is required to consult on matters such as:

- The identification of risks.
- The appropriate risk management measure to be adopted at a workplace.
- The facilities provided at a workplace for health and safety (including first aid).
- Monitoring the health of workers and their fitness for work.
- The provision of information and training for workers
- Changes to work practices or the workplace that may have an impact on health and safety (this could be for anything from changes to shift rosters to the introduction of large machinery).

#### **How must you be consulted**

Consultation may take place in a number of ways:

- With a HSR or Deputy HSR.
- With a health and safety committee representing the workers
- In accordance with any other arrangements agreed between the employer and workers.

As an HSR or Deputy HSR you must be involved in all consultations with or without the direct involvement of all of the workers you represent.

## **Part 6 Division 1 section 104-109**

### **Discrimination**

### **Consultation**

#### **Principle**

The purpose of consultation is to provide workers with the chance to have input into and influence on decisions that will may have an effect on health and safety at work with workers in all work.

All workers' views must be valued and taken seriously by an employer.

## Workers' Duty

All workers have a reciprocal duty to participate in consultation with their employer, must be open to suggestions and must bring to your employer's attention any risks identified in the workplace.

# Consultation

Your employer must consult you when members of your DWG are, or could be, directly affected by a range of WHS matters.

<b>WHS MATTERS YOU MUST BE CONSULTED ON</b>	<b>SOME EXAMPLES</b>
Identifying, assessing or reviewing hazards or risks arising from work.	Includes things such as a site inspection, job safety analysis (JSA), meeting or workshop to identify hazards.
Deciding about how to control risks.	Can include health and safety discussions at meetings, Committee meetings or reviewing advice from technical experts, such as engineers, hygienists or ergonomists.
Deciding about the adequacy of facilities for the health and safety of workers.	This includes decisions to ensure that there are enough toilets or that first aid facilities are adequate.
Deciding about procedure for: <ul style="list-style-type: none"><li>• Monitoring Risks</li><li>• Consultation with workers</li><li>• Resolving an WHS issue.</li></ul>	For example, you need to be consulted about whether to develop an agreed procedure or use the dispute resolution procedure for resolving WHS issues.  You also need to be consulted on the way workers will be consulted in your workplace and how you will be trained.
Proposing changes, that may affect the health and safety of workers, to the following: <ul style="list-style-type: none"><li>• The workplace</li><li>• Workplace infrastructure or equipment</li><li>• Substances used at work</li><li>• Systems or methods of work.</li></ul>	Examples of changes include introducing new equipment such as a forklift or photocopier and where it is placed within the workplace; starting to use new chemicals or changing the way work is done, for example new shift rosters or span of working hours.
Any other thing prescribed by the regulations.	Some regulations, such as the WHS Noise Regulation have specific requirements.



# Meetings

An important part of your role as a HSR and Deputy HSR is to represent the workers in your DWG – and this means communication being a two way street. Not only do you have to meet with the employer and be consulted on all relevant health and safety issues, but you also have to meet with your co-workers to pass on information and to find out about WHS concerns and issues. You may also find yourself attending a variety of other meetings regarding WHS.

Whatever the size or type of meeting, it's important to have skills that ensure workers' views are represented in the decision making process.

Meetings are important because:

- Often they provide the only opportunity for people to get together and address important matters.
- Actions and decisions that come out of meetings have a status that gives them more weight than an individual decision or effort.
- Meetings allow people to work as a team and understand their role within that team as well as the overall goal or purpose
- They provide an effective and efficient way to share and update information and provide feedback where everyone hears the same story.

## Meeting with the Employer

When meeting with your employer or when representing workers on a joint WHS Committee it is important that you are prepared. This is the forum where you can represent the issues and concerns of your DWG and present plans and or resolution to these matters.

Before you attend think about:

- What is the Purpose of the meeting?
- What are the rules?
- What do I need to bring to the meeting?
- What do I need to tell / ask people?
- Have I got all of the information?
- What do I need to bring from this meeting?

## Meeting with Workers (DWG)

As a HSR or Deputy HSR you will need to find a way to best communicate information to your co-workers and gather information / issues of concern from your co-workers. A meeting can facilitate this need and provide a good structure so information and actions are transparent and have the backing of all of your co-workers.

As a HSR or Deputy HSR running a meeting, think about:

- What does the meeting intend to achieve?
- Where and when will the meeting be held?
- How to let people know the meeting is on?
- What do I need to tell / ask people?
- Have I got all of the information?
- How will we address / resolve any issues?

# Keeping Records

Your role as a HSR or Deputy HSR may often require you to look up your records – for example, what happened at the last safety meeting?

The usual way to keep records is by developing a filing system. It does not need to be elaborate – in fact the simpler, the better. The most important thing is that information and material should be easy to find.

Loose leaf folders are useful for filing agenda and minutes of meetings, arranged in chronological order and for storing journals, newsletters and any research you may need to undertake.

Whatever system you choose, make sure that you are able to file, as a basic list:

- List of Health and Safety Representatives and Deputy Health and Safety Representatives
- Details of training courses
- Minutes of meetings
- Notes of meetings
- Notes of interviews
- Incident reports
- Risk Assessments
- Hazard Management reports
- Safety procedures
- Correspondence
- Notice of Safety Hazards
- Stop Work Directions
- Correspondence with NT WorkSafe.

Don't be daunted, once these filing systems are set up it is going to make your role as a HSR or Deputy HSR much easier!

## USING A FILING SYSTEM

1. USE A SIMPLE SYSTEM
2. LABEL FILES CLEARLY
3. FILE MATERIAL REGULARLY
4. KEEP FILES UP TO DATE
5. PUT MATERIAL BACK IN PLACE WHEN YOU HAVE USED IT
6. GO THROUGH YOUR FILE REGULARLY
7. KEEP EACH SECTION IN CHRONOLOGICAL ORDER
8. DISCARD OUT OF DATE OR SURPLUS MATERIAL

# 10 Things Every HSR and Deputy HSR Should Know about WHS

1. Health and Safety isn't a technical issue. Technical knowledge helps. But there are plenty of places to get technical information. Workplace (job) knowledge, strategy and organisation are much more important.
2. Every workplace needs a workers' WHS Committee. You should set one up even if there is no joint (worker & management) committee.
3. It's also good to have a joint committee, with representatives from the DWG, your Union and from management. The joint committee is a good way to resolve health and safety concerns.
4. What you do with your employer on health and safety is a form of collective bargaining. Even if you don't see it that way, management do.
5. Management has different goals, even safety conscious management. They may care about safety in its own right, but are probably more concerned about workers' compensation costs.
6. You should never allow your employer to appoint your HSRs or Deputy HSRs or to veto the worker's choices of HSR or Deputy HSR, or dismiss your representatives from their positions. **Never. Ever.**
7. HSRs and Deputy HSRs should be promoting health and safety in a way that builds everyone's interest, engages all workers, and encourages and educates about safety at work. This means involving all of your co-workers whenever you can.
8. "Behaviour" contributes to some accidents. But hazards are the cause of ALL accidents. It is easier to fix hazards than to change human nature.
9. Safety programs that focus on behaviour tell workers that they are the problem. In fact workers, the HSR, Deputy HSR and their Union are the solution.
10. You're not alone. You have lots of resources through your union, union delegates/contacts, Unions NT, Union Health and Safety professionals and NT WorkSafe.

**KNOW YOUR RIGHTS**  
**To find out more contact your union:**

Australian Education Union, NT Branch  
08 8948 5399

Australian Manufacturing Workers Union, Qld & NT  
07 3236 2550

Australian Nursing and Midwifery Federation, NT Branch  
08 8920 0700

Australian Services Union, SA & NT  
08 8363 1322

Community and Public Sector Union  
08 8982 8500

Electrical Trades Union, Queensland & Northern Territory Branch  
08 8941 2300

Independent Education Union, Qld and NT Branch  
08 8981 1924

Maritime Union of Australia Northern Territory Branch  
08 8981 2135

National Tertiary Education Union, Northern Territory Division  
08 8946 8831

Rail, Tram & Bus Union SA/NT  
08 8243 2511

United Workers Union, Northern Territory  
08 8924 4700

If you are unsure of which union is your Union contact



Unions NT on 08 8941 0001

*Authorised by Erina Early, Unions NT Secretary, 38 Woods St Darwin NT 0800.*