

CONSULTATION

Authorised Union OH&S Representatives and Union Right of Entry

This information bulletin provides guidance for employers, workers and union representatives on the role of Authorised Union OH&S Representatives and union right of entry under the [Workplace Health and Safety Act](#). Please refer to Sections 49 to 54 of the Act for more detail.

Authorised union OH&S representatives (AUOHSR)

The *Workplace Health and Safety Act* establishes a legislative framework that balances the right of employee organisations (unions) to represent their members in matters concerning occupational health and safety and to discuss such matters with workers who are (or are eligible to become) their members, and the right of employers and others to conduct their businesses without undue interference or harassment.

This right of entry is in place in various forms for occupational health and safety in all states of Australia. The Act reflects the government's belief that unions have a positive role to play in supporting employees and employers in resolving workplace health and safety issues and creating a co-operative and more proactive culture when it comes to risk prevention.

The right of entry is limited to workplaces where the relevant union either has members or people entitled to be their members and they want to either discuss health and safety with workers on their breaks or to investigate a suspected contravention of the Act.

The Act requires that the rights conferred on representatives of employee organisations are confined to representatives who understand their rights and obligations and who are fit and proper persons to exercise those rights.

It also ensures that the rights of employers and others who could be adversely affected by misuse of those rights are clearly defined and the authorisation of an AUOHSR is able to be withdrawn in the event of misuse.

Appointment of authorised union OH&S representatives

NT WorkSafe may, on application by an employee organisation, appoint an officer or employee of the organisation as an authorised union OH&S representative.

Before making the appointment, NT WorkSafe must be satisfied that the prospective appointee has qualifications and experience appropriate to a person holding an appointment as an AUOHSR and is a fit and proper person to hold the appointment.

Appointments are for a period (not exceeding 2 years) but a person may be re-appointed for further terms. Appointments are made on condition that the authorised AUOHSR will:

- always comply with the requirements of the Act when they enter a workplace under the right of entry as a AUOHSR;
- comply with any relevant obligations imposed under Commonwealth legislation e.g. if they wish to examine employment records they are required to provide 24 hours notice to the employer;
- not intentionally hinder or obstruct an employer or a worker;
- not misrepresent their role or their rights in the workplace;

- not use or disclose information acquired at the workplace for a purpose not reasonably connected with the health and safety of a worker; and
- comply with any other conditions that NT WorkSafe thinks fit to impose.

Identity cards

NT WorkSafe issues AUOHSR with an identity card containing their name and photograph, the name of the employee organisation they represent and stating that the person is an authorised union OH&S representative.

When the AUOHSR enters a workplace using their power of entry under the Act they must, as soon as practicable, show their identity card to the person who is apparently in charge of the workplace and to any other person who reasonably requests to see it. This card must be returned to NT WorkSafe if the AUOHSR ceases to occupy that role.

An employer is entitled to know the identity of the person who is seeking to enter their premises and to satisfy themselves that the person has a lawful right of entry.

Duration of appointment

A person ceases to hold office as an AUOHSR if they:

- come to the end of their term of appointment and are not re-appointed; or
- cease to be an officer or employee of the employee organisation which nominated them for appointment; or
- resigns as a AUOHSR in writing to NT WorkSafe; or
- is removed from office by NT WorkSafe for contravening of a condition of appointment; or
- is disqualified by NT WorkSafe from holding office as an AUOHSR because of misuse of their powers.

Powers of authorised union OH&S representative

If an AUOHSR has members or potential members at a workplace they have a right of entry under the Act for 'an authorised purpose'.

An authorised purpose is either:

- to discuss health and safety issues with workers who are, or are entitled to become, their members, during a meal break or other break in work; or
- to investigate a suspected contravention of the Act involving a member of their employee organisation.

The conditions of entry are that:

- they must have members or potential members at the workplace;
- they must comply with relevant obligations imposed under Commonwealth law;
- the representative must, as soon as practicable after entering the workplace, produce their identity card to the person apparently in charge of the workplace;
- the entry may only be made at times when their members or potential members are working; and

- they must comply with a reasonable request by the person in charge of the workplace to comply with a requirement relevant to health or safety that applies to the workplace e.g. the use of safety equipment, protective clothing etc.

Residential premises

An authorised union OH&S representative may not enter a workplace consisting of residential premises that are currently used as a place of residence, unless the occupier consents.

Refusal or delay of entry

It is an offence against the Act for a person to refuse or unduly delay entry to premises by an authorised union OH&S representative who is entitled to enter the premises. The maximum penalty for this offence is [100 penalty units](#).

Investigations by AUOHSR

Where AUOHSR have a lawful right of entry, AUOHSR may investigate where they suspect (on reasonable grounds) that there is or has been a contravention of the Act and undertake an investigation into that suspected contravention.

The Act does not give AUOHSR any power to give directions or raise requirements in the workplace so an investigation undertaken by an AUOHSR is for the primary purpose of determining the specific nature of any contravention, identifying causal factors and preventative actions which could prevent a reoccurrence of the situation and raising these matters with the employer.

This potentially provides another input of information to a proactive employer, committed to continuous improvement in health and safety, to assist them in providing and maintaining a safe and healthy working environment for workers and others.

Whilst investigating a suspected contravention at the workplace, an AUOHSR is able to:

- observe or inspect work and systems of work, the workplace, workplace infrastructure or equipment, materials and substances;
- interview (with their consent) members, or persons who are eligible to become members, of the employee organization;
- take measurements and make records (including sketches and drawings, photographic records, and video, audio or audiovisual recordings) at the workplace;
- require the production of documents relating to health or safety at the workplace (but not confidential records relating to a worker's health unless the worker consents) and examine and copy, or take extracts from, any document produced.

(Note: The duty to preserve confidentiality as described in Section 18(3) of the Act extends to an authorised union OH&S representative).

Disputes about right of entry or the exercise of other powers of an AUOHSR

Where there is a dispute about a particular AUOHSR's right to enter a workplace or the activities they undertake while in the workplace, either the employer or the AUOHSR may contact NT WorkSafe for assistance in resolving the matter. NT WorkSafe will respond to such requests promptly and may visit the workplace if necessary.

NT WorkSafe's role in the administration of the legislation is to ensure that all parties are aware of their rights and obligations and that the law is complied with. The Authority will approach such requests for assistance in a positive and co operative way to ensure that employers understand their rights obligations in relation to AUOHSR and that the representative complies with the conditions of their appointment and the requirements of the Act.

In this way, NT WorkSafe will attempt to ensure that the potential for these provisions to have a positive impact on health and safety in NT workplaces is realised.

Compensation for improper interference

If an authorised union OH&S representative, acting in the exercise or the purported exercise of powers under the legislation, interferes improperly in another's business or affairs, and the other person suffers consequent loss or expense, the other person may claim compensation against the relevant employee organisation in a court of competent jurisdiction.

Penalties

A range of penalties applies where the provisions of the Act are not complied. Please refer to Information Bulletin [09.02.07](#).

For further information contact NT Worksafe on 1800 019 115 or go to www.worksafe.nt.gov.au