



HSU SA/NT MEMBER REPRESENTATION POLICY & PROCEDURE

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Approved by:	SA/NT Branch Committee of Management
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Scope:	This policy applies to the benefit of HSU SA/NT Branch members and is read in conjunction with the HSU National Financial Management Policy and Procedures

1. Purpose

The purpose of this policy is to document the level of industrial assistance the HSU SA/NT Branch will provide to members and to provide clarity to members and staff about expectations of service.

2. Policy Details

2.1 Levels of Industrial Assistance

HSU SA/NT membership provides many benefits which are funded by union fees paid by members. This includes expert industrial assistance by specialist staff (some legally qualified) on a range of industrial matters like workplace disputes, disciplinary processes, termination of employment, workplace discrimination, performance reviews, underpayments, workplace injuries and illness, workplace health and safety, and restructures.

Unfinancial members or members who join the HSU SA/NT with a pre-existing industrial issue may not be entitled to receive industrial assistance (see clause 2.11).

The HSU SA/NT may not be able to provide, or may only provide limited, assistance in relation to matters that are not strictly industrial (see 2.12).

To guarantee the most effective use of resources for all members, the HSU SA/NT reserves the right to determine the level and extent of industrial assistance that will be provided to members in each instance.

The levels of industrial assistance that can be provided by the HSU SA/NT are described in the table below.

Levels of Industrial Assistance	
Information	All financial members are entitled to contact the HSU SA/NT for general industrial information related to workplace rights and referrals to external agencies. Information may take the form of verbal information, fact sheets and referrals to external agencies regarding employment and work life matters and is general in nature.
Advice	Advice is the provision of specific industrial information in relation to a member's particular industrial issue or situation. Advice includes interpretation about how Awards, Enterprise Agreements and other industrial instruments apply to members. All members are entitled to contact HSU SA/NT to seek advice about their workplace rights or a particular industrial matter. See further at clause 2.2 below.
Advocacy	Advocacy is an extension of an advice service and may include writing documents, completing forms, and making phone calls on behalf of members. Advocacy may also include face to face support by an industrial officer at a workplace meeting. Advocacy is part of a continuum of assistance to resolve matters at the local level, but which may progress to the SA Employment Tribunal (SAET), the Fair Work Commission (FWC) or another tribunal or agency.
Court or Tribunal Representation	HSU SA/NT retains the ultimate discretion regarding representation of members before Courts or Tribunals. See further at clauses 2.3-2.7.

2.2 Legal advice

HSU SA/NT industrial staff provide quality industrial advice about workplace related issues. They do not provide legal advice.

Members may choose to seek alternative advice or representation, in which case clause 2.8 applies.

2.3 Commencement of Court or Tribunal Proceedings

The HSU SA/NT will assess each matter on its industrial merits. After discussion and consultation with the member(s) involved, the HSU SA/NT will advise of the appropriate course of action in relation to the matter.

The decision to take an industrial dispute or grievance, or any other industrial application to the SAET, the FWC, or any other jurisdiction in the Union's name or on behalf of an individual member is wholly reserved to HSU SA/NT and is not the decision of an individual member or members.

Applications to tribunals or courts will be made in the name of the Union and not the name of the individual member unless determined otherwise by the Branch Secretary. Some matters may be required to be filed in the individual's name, for example, matters relating to unfair dismissal.

Prior to lodging any application in a court or tribunal on behalf of a member, the HSU SA/NT industrial officer will provide a copy of the Terms and Conditions of Union Representation (a copy of which is annexed to this policy document at appendix 1) and ensure the member understands the contents of that document. The member must complete and return a copy of the Terms and Conditions of Union Representation before any application is lodged. A copy of the Terms and Conditions of Union Representation duly signed by the member will be kept on the Union's file for the matter.

The HSU SA/NT reserves the right not to pursue any matter which we believe to be unreasonable, lacking in substance, unlawful, frivolous, vexatious or has no reasonable prospects of success. We will advise a member the reasoning for not pursuing a matter when it occurs.

2.4 Application Fees

Where the HSU SA/NT makes an application to a court or tribunal on behalf of a member which attracts an application fee (for example, an Unfair Dismissal application in the FWC), the member is responsible for the cost of the application fee.

By agreement and at the discretion of the Branch Secretary, the HSU SA/NT may cover the costs of application fees for members who are experiencing financial hardship or other exceptional circumstances.

2.5 Representation in Court or Tribunal Proceedings by HSU SA/NT

The HSU SA/NT objective is to secure settlement without the need for costly litigation, accordingly HSU SA/NT will normally not act for an individual member beyond a conciliation conference within the relevant employment tribunal or court. If it is necessary to consider advancing a matter to formal hearing, it is the sole discretion of HSU SA/NT as to whether or not the HSU SA/NT will provide any further assistance.

2.6 HSU SA/NT May Seek External Legal Representation

In limited cases, HSU SA/NT may brief external lawyers for the purpose of advising and/or representing it, or a member, in or in relation to court or tribunal proceedings.

As a general principle, HSU SA/NT does not brief external lawyers in relation to individual matters unless the matter is an issue of important principle or policy which achieves strategic objectives or has obvious flow on effects to reasonably larger groups of members.

The decision to brief external lawyers for advice or representation is wholly at the discretion of HSU SA/NT. The decision and authorisation must be taken in accordance with the HSU Financial Management Policy and Procedure.

Should the HSU SA/NT decide to engage external lawyers in a matter it has brought in its own name or on behalf of a member in a court or tribunal, decisions about the conduct of the matter and the instruction of external lawyers will fall to the HSU SA/NT. However, a member/s may express a view about the conduct of a matter or instruction of external lawyers and this view must be reasonably considered by the HSU SA/NT.

Determining responsibility for the costs of briefing external lawyers, and other costs associated with court and tribunal proceedings, will be done in accordance with clause 2.7.

2.7 Responsibility for Legal Costs

2.7.1 Representation – Fees and Charges

Provided a member is a financial member of the HSU SA/NT, they will not be required to pay any fees and charges (with the exception of any application fee in accordance with clause 2.4 above, where applicable) in respect to industrial assistance provided up to and including: the first conciliation conference in dismissal matters; or the mediation/settlement conference in other matters; or, in any other matter, when the matter is set down for hearing.

Should the matter proceed to a hearing, and the HSU SA/NT determines to continue providing assistance, the HSU SA/NT may determine to pay all costs associated with the proceedings, or the costs up to a maximum amount with all remaining costs of the proceedings being the responsibility of the member. Costs of proceedings may include fees charged by courts, doctors, experts, and barristers.

Should there be any financial compensation or damages paid to a member by way of either settlement or judgment, a portion of the same may be paid to the HSU SA/NT to contribute to the costs incurred in providing assistance. Such payment will be determined on factors such as the amount of internal resources utilised and/or the cost of external lawyers if applicable.

2.7.2 If Costs are Awarded Against You

In rare cases, a court or tribunal may make an order that an applicant pay another party's legal costs (e.g., if a case is lost).

If HSU SA/NT considers there is a prospect it or a member may be ordered to pay legal costs, HSU SA/NT may ask members to fully indemnify it if costs are ordered.

Depending on the matter, members legal costs may be covered by their professional indemnity insurance cover.

2.8 Member's Choice to Seek Alternative Representation

Members are advised that it is their choice as to whether they choose HSU SA/NT industrial staff, or someone else such as a lawyer (at their own expense), to act as their representative. They cannot have two representatives for the same matter with their employer. This avoids possible conflicts.

If a member chooses, the HSU SA/NT may refer them to our preferred lawyers. However, once the referral is made the carriage of the matter and any resultant costs or actions, etc., are entirely a matter between the member and the law firm.

HSU SA/NT industrial staff may provide information to the member's chosen representative regarding details known to the union official, but only if the member has provided written permission to the union to provide such information and the extent of the information.

No documentation held on HSU SA/NT files will be released to a member's chosen alternative representative unless with the express permission of the Branch Secretary and/or HSU SA/NT Executive, where appropriate.

No assistance should be rendered to the HSU SA/NT member and their chosen alternative representative if it is contrary to, and not in the best interests of, the overall HSU SA/NT membership.

2.9 Discontinuance and Cessation of Support

- In representing its members, HSU SA/NT will provide the highest quality service in a professional and courteous manner. However, HSU SA/NT reserves the right to cease providing industrial support for members in certain circumstances. This can include, but is not limited to, circumstances where a member: ignores or acts contrary to the advice we provide;
- makes unreasonable demands on HSU SA/NT staff;
- fails to provide HSU SA/NT with all relevant information;
- seeks alternative advice or representation, at the same time as seeking our

advice, without our authorisation;

- has been dishonest to us about the facts and circumstances of their matter;
- where the matter has no reasonable prospects of success;
- fails to accept an offer of settlement which we think is reasonable;
- acts in an abusive, hostile or threatening manner towards HSU SA/NT staff;
- the cost is prohibitive and/or not in the best interest of HSU SA/NT membership.

2.10 APHRA Matters

In the first instance, these matters will be assessed by a union official. Notwithstanding the matter must also be notified immediately to the Union's Insurance Broker as a potential claim under the members professional indemnity insurance cover.

A case management assessment will then be as to whether external legal representation is required and the necessity for a formal claim against the insurance policy.

The Union's external lawyers will be requested to provide an assessment report to the Union on whether they consider a member should be legally represented, the reasons and the estimated cost of representation.

The Union will then liaise with the insurance broker and will assist and work in partnership with the broker on the claim and if the claim is approved, advise if the claim is approved and legal representation is authorised.

2.11 Circumstances in Which Members May Not be Entitled to Receive Industrial Assistance

2.11.1 Members Who Join the HSU SA/NT with Pre-existing Issues

Resolving individual matters can use up a lot of HSU SA/NT resources and the union would be financially unviable if members only joined when they had problems to be resolved.

The underlying principle is that income derived from HSU SA/NT fees should be spent on members who are committed to unionism and not on people who join the Union for convenience purposes only.

Members who join with a pre-existing issue may receive general industrial information and advice but will not be entitled to advocacy or representation in relation to their matter.

In very rare and extenuating circumstances, the HSU SA/NT may agree to advocate for or represent a member with a pre-existing issue. The level of assistance will be at the complete discretion of the Branch Secretary (or delegate) and the decision will be final.

2.11.2 Unfinancial Members/Non-members

Under HSU SA/NT rules a member whose subscription is three months in arrears shall be deemed to be, and remain, an un-financial member until payment of the amount in arrears is made.

Un-financial members and non-members shall not be entitled to any of the benefits and privileges of membership, including access to any level of industrial assistance.

2.12 Matters About Which the HSU SA/NT Cannot Provide Assistance or Can Provide Only Limited Assistance

2.12.1 Financial Advice

HSU SA/NT industrial staff cannot give financial advice to members in any circumstance. Members should contact their Superannuation fund or other financial institution or financial planner for financial advice.

2.12.2 Coronial Matters

HSU SA/NT industrial staff do not act or provide representation for members at a Coronial Inquest. However, the attendance of HSU SA/NT staff at a coroner's inquiry to provide moral support will be considered.

For any incident that involves the death of a person who is or has been in the care of a member, an incident notification must be provided to the Union's Insurer Broker as per the requirement of the Union members professional indemnity insurance policy. HSU SA/NT industrial staff will facilitate the notification process.

Where a member has been or expects to be subpoenaed to a coronial inquiry the member is to be referred to the Union's preferred external lawyers who will assess the situation and advise if the member requires separate representation to what would be expected to be provided by the employer in the context of vicarious liability.

HSU SA/NT industrial staff may be required to provide representation to the member's employer to establish that the employer is providing the necessary legal representation where no conflicts exist.

2.12.3 Freedom of Information (FOI) Requests

Normally, should an individual member seek to discover documents from an agency, it will be at their own expense and the application will be in the member's name and submitted by the member. HSU SA/NT industrial staff may assist a member with the making of an application.

2.12.4 Criminal Matters

HSU SA/NT industrial staff do not act or provide advocacy for members in relation to any crimes related matters.

2.10 Conduct

A positive and collaborative approach facilitates communication between members and HSU SA/NT staff.

HSU SA/NT staff will treat all members with dignity and respect. Likewise, HSU SA/NT staff expect to be treated with dignity and respect by members. Abusive, hostile, or threatening behavior towards union staff will not be tolerated, nor will sexual harassment of HSU SA/NT staff.

Industrial assistance for a member may be withdrawn if it is considered the member's conduct towards HSU SA/NT staff is inappropriate.

2.9 Complaints in relation to industrial assistance

HSU SA/NT takes its commitment to providing quality representation to members very seriously and therefore has a mechanism for resolving situations where members may be dissatisfied with the industrial assistance they have received.

Where a member has issues with the service provided to them by the Union then they can refer the issue to the Branch Secretary for review.

Terms and Conditions of Industrial Representation

You have asked the HSU to provide representation to you in your matter.

In your matter, the HSU is willing to provide representation on the following terms and conditions:

1. **The assistance we will provide**

The HSU will provide representation in accordance with these terms from our industrial team and if necessary, we may, at our sole discretion, seek legal assistance from legal practitioners, including barristers.

It is a term of this agreement that you consent to us briefing other lawyers for the purpose of representing you, should we choose to do so. Should we be required to brief other lawyers we will inform you prior to the briefing.

2. **Fees and charges**

Provided that you are a fully paid member of the HSU, you will not be required to pay any fees and charges in respect to the industrial assistance that we provide up to and including the conciliation conference/s, in dismissal matters; or the mediation/settlement conference in other matters; or, in any other matter, when the matter is set down for hearing. However, where the HSU makes an application to a court or tribunal on your behalf which attracts an application fee (for example, an Unfair Dismissal application in the FWC), you will be responsible for the cost of the application fee, unless you are provided with an exemption in accordance with the Union's representation policy.

Should the matter proceed to determination, it is the sole discretion of the HSU as to whether the HSU will provide any further industrial or legal assistance.

If further assistance is provided and should there be any financial compensation or damages paid to you in the matter by way of either settlement or verdict, then a portion of the financial compensation may be paid to the HSU to contribute to the costs incurred in providing such legal assistance. Such payment will be determined on factors such as the amount of internal resources utilised and/or the cost of external legal assistance required.

You will be advised of these determinations throughout the course of your matter.

At all times the HSU has discretion in determining whether it will fund any legal representation wholly or partially.

3. **If costs are awarded against you**

It is possible, although rare, that a court, commission, or tribunal may make an order that you pay another party's legal costs, e.g., if you lose the case.

If the HSU considers that there is a prospect that either you or the HSU may be ordered to pay legal costs, we will ask you to fully indemnify the HSU if costs are ordered. We reserve the right not to proceed with your matter if you do not agree to such an indemnity. By instructing us to proceed having considered these terms, you specifically and expressly agree to indemnify the HSU should any costs order be made against the HSU. If requested, you agree to sign an indemnity to this effect.

4. Termination of this agreement

- (a) The HSU will not continue to provide industrial/legal assistance if you:
 - (i) Fail to provide us with adequate information,
 - (ii) Give instructions that are deliberately false or intentionally misleading,
 - (iii) Fail to accept an offer of settlement which we think is reasonable,
 - (iv) Fail to accept the advice we or our legal representatives give you,
 - (v) Indicate (verbally or through your actions, such as abusive or derogatory behaviour) to us that we have lost your confidence, or if there is a conflict in interest.
 - (vi) Should you cease to be a fully paid member of the HSU at any stage during the matter, the HSU will be entitled to withdraw industrial/legal assistance from that time.
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We will give you at least 14 days' notice of our intention to terminate our industrial/legal representation, and of the grounds on which the notice is based. You may terminate this agreement in writing at any time.

5. Electronic communication

- (a) The HSU is able to communicate electronically with you and other parties using electronic mail, both direct and via the Internet, and using computer disks. If we communicate electronically with or for you, you acknowledge and agree as follows:
 - (i) There are some delivery risks in using electronic mail and you accept the risk of interception of the email by third parties or of non-receipt or delayed receipt of the message; and
 - (ii) Computer viruses and similar damaging items can be transmitted through emails and by introducing computer disks into your system. We use virus-scanning software to reduce these risks and ask that you do the same. However, it is not possible to completely eliminate the risk of introducing viruses.
- (b) If we communicate electronically with or for you, you release us from all claims, losses, expenses, and liabilities caused by any of the risks referred to above and arising directly or indirectly out of that communication.

6. Acceptance

<p>I have read, understood, and agree to be bound by the above terms</p> <p>.....</p> <p>Date:</p>
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