

VARIATION OF MODERN AWARDS TO INCLUDE A WORKPLACE DELEGATES' RIGHT TERM CLUBS AUSTRALIA SUBMISSION

Clubs Australia refers to the directions issued by the President of the Fair Work Commission (the **Commission**) on 18 January 2024. Clubs Australia welcomes the opportunity to make submissions with respect to the variation of modern awards to include a delegates' right term.

THE CLUB INDUSTRY AND WORKFORCE

Clubs Australia represents over 6,000 licensed, not-for-profit clubs that employ more than 140,000 people (the **Club Industry**). All clubs are owned by their members and take various forms and sizes, including sporting, returned service and bowling clubs.

Clubs have a diverse workforce, including hospitality workers such as bar attendants and chefs and those working in areas ancillary to the hospitality operations, like green keepers, leisure attendants, fitness instructors, and childcare workers.

Clubs Australia has an interest in respect to the *Registered and Licensed Clubs Award 2020* and makes the following submissions.

SUMMARY OF RECOMMENDATIONS

Clubs Australia:

- **Recommends that model modern award provisions should only include the 4 matters within the scope of the definition of 'workplace delegate rights' provided for under the Fair Work Act.**
- **Recommends that the model modern award provisions must be drafted only to the extent necessary to enliven the purpose of the objects in the Act.**
- **Recommends that a definition of 'industrial interests' be included within the modern award provisions and should clearly articulate what matters a workplace delegate can deal with during their working hours.**
- **Recommends that a definition of 'industrial interests' be included within the modern award provisions and should clearly articulate what matters a workplace delegate can deal with during their working hours.**
- **Wishes to convey its support for the Australian Chamber of Commerce and Industry's submission to this consultation.**

WORKPLACE DELEGATE RIGHTS

Modern Award Provisions

Clubs Australia supports employees having access to resources and support through their union and workplace delegates, where they choose to be affiliated with one. However, workplace delegate rights are not unfettered and must be proportionate.

Club Australia recognises that the meaning of workplace delegate has been provided for as per s 350 (c) of the Act. This definition will need to be inserted into all modern awards, including the *Registered and Licensed Clubs Award 2020*, by 30 June 2024.

Clubs Australia notes that, per this definition, four distinct workplace delegate rights have been provided for. These four provisions are the only matters that should be within the scope of the workplace delegate model modern award provisions (model modern award provisions) to be inserted into awards. Clubs Australia believes that proposed clauses extending beyond these four matters will place additional obligations on employers and should be excluded.

Clubs Australia recommends that model modern award provisions should only include the 4 matters within the scope of the definition of ‘workplace delegate rights’ provided for under the Fair Work Act.

Implied Constraints

As noted above, workplace delegate rights are not unfettered, and the Fair Work Commission must ensure that the scope of their rights is only to the extent necessary to enliven the objects of the Act as per s 336.

It is an implied constraint that a right must be exercised to promote the objects of the Act. Clubs Australia believes it would be necessary to ensure that ‘industrial interests’ are clearly prescribed in the model modern award provisions to ensure employers can still exercise their necessary rights, including the right to direct employees to undertake their duties in a particular way.

Clubs Australia recommends that the model modern award provisions must be drafted only to the extent necessary to enliven the purpose of the objects in the Act.

'Industrial Interests'

As per s 350(c) of the Act, 'industrial interests' have not been defined. Clubs Australia submits that a definition of an 'industrial interests' should be included within the model modern award provisions.

This will ensure that both employers and workplace delegates understand the appropriate representation of union members' 'industrial interests'.

Furthermore, as currently drafted, s 350(c)(2) of the Act states that the workplace delegate is entitled to represent the 'industrial interests' of those members, and any persons eligible to be such members, including in disputes with their employers. Clubs Australia notes that 'industrial interests' should be clearly defined within the scope to ensure that the interpretation of "including of" cannot be extended to include additional circumstances.

Clubs Australia also suggests that matters that are not directly relevant to an employee's employment should not be dealt with during their ordinary working hours.

Clubs Australia recommends that a definition of 'industrial interests' be included within the modern award provisions and should clearly articulate what matters a workplace delegate can deal with during their working hours.

Reasonableness

As per s 350(e) of the Act, when determining what is reasonable for the purpose of workplace delegates rights stipulated in s 350(c) which are:

- The size and nature of the enterprise;
- The resources of the employer of the workplace delegate;
- The facilities available at the enterprise.

Reasonable in the context of a workplace delegate in the club industry will likely be different from what is reasonable in a different industry and consequent award. Clubs Australia, therefore, recommends that 'reasonable' should be determined at a workplace level, and where possible, the model modern award provision(s) should set out a process for both the employer and employee/delegate to agree on this.

Clubs Australia recommends that the modern award provision should allow for the definition and application of 'reasonable' to be determined at a workplace level.

OTHER MATTERS

Clubs Australia otherwise supports the Australian Chamber of Commerce and Industry's submission to this consultation, except in relation to the proposed number of delegates and training days. Clubs Australia expresses an interest to submit further for these matters.

CONCLUDING REMARKS

In conclusion, Clubs Australia appreciates the opportunity to provide a submission on this matter. Should you wish to discuss this submission further, please contact Joanne Ede, Executive Manager of Workplace Relations, at jede@clubsaustralia.com.au.