



Australian Government
Australian Public Service Commission

BEFORE THE FAIR WORK COMMISSION

VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES' RIGHTS TERM (AM2024/6)

SUBMISSIONS BY THE AUSTRALIAN PUBLIC SERVICE COMMISSION FOR THE:

- **Australian Public Service Enterprise Award 2015 [MA000124]; and**
- **Australian Government Industry Award 2016 [MA000153]**

Introduction

1. The Australian Public Service Commission (APSC) refers to the directions issued by the President of the Fair Work Commission (FWC) on 18 January 2024, directing interested parties to make submissions with respect to the Variation of modern awards to include a delegates' rights term by **1 March 2024**.
2. As an interested party with respect to the *Australian Public Service Enterprise Award 2015* (Australian Public Service Award) and the *Australian Government Industry Award 2016* (Australian Government Industry Award), the APSC makes the following submission.

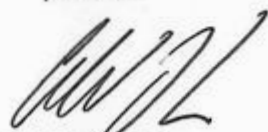
Background

3. The APSC has statutory responsibilities detailed in the *Public Service Act 1999* and policy responsibility for Commonwealth employment more generally. It acts on behalf of the Australian Public Service (APS) and other Commonwealth employers with respect to the legislative framework for the APS, the Australian Public Service Award and the Australian Government Industry Award.
4. On 15 December 2023, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (the Closing Loopholes Act) received Royal Assent. The Closing Loopholes Act introduces a general protection for workplace delegates when carrying out their role. It also requires that from 1 July 2024, all modern awards, enterprise agreements and workplace determinations must include a delegates' rights term.
5. On 20 December 2023, the Fair Work Commission (FWC) issued a Presidents statement outlining the impact of the amended legislation on the Commission functions and processes including; key dates to make determinations that vary modern awards to include a delegates' rights term by 30 June 2024; all workplace determination made on or after 1 July 2024 must include a delegates' rights term; and all enterprise agreements approved after 1 July 2024 must include a delegates' rights term.

6. The Presidents Statement also highlighted the need for significant consultation and engagement with stakeholders for the creation of delegates' rights terms for inclusion in modern awards. The APSC appreciates the opportunity to provide the following submission to the FWC.

Summary of position

7. The *Public Sector Workplace Relations Policy 2023* (the Policy) was released on 28 March 2023 and established expectations for service wide bargaining in the Australian Public Service (APS), moving away from a decentralised approach to APS agency level bargaining that had been in place for decades. Broad consultation on the development of the Policy was undertaken with APS agencies, unions and APS employees.
8. APS-wide centralised bargaining had the clear intention of addressing pay and conditions disparity across APS agencies.
9. APS-wide bargaining commenced on 30 March 2023. All APS agencies appointed a single negotiator to represent them in centralised negotiations, culminating in a Statement of Common Conditions (SOCC) outlining the outcomes of negotiations on over 90 matters raised in APS-wide bargaining. This includes over 50 matters that achieved agreement. The SOCC was released on 30 November 2023. APS agencies then finalised negotiations at the agency level, incorporating the clauses in the SOCC.
10. A common term for Delegates' Rights is a matter that achieved agreement. This term either has been, or will be adopted by all APS agencies in new Enterprise Agreements. Non-APS agencies are encouraged to adopt this term also, noting some elements of the SOCC term are APS specific.
11. As a recent outcome of genuine bargaining, the APSC considers that the Delegates' Rights term established in the SOCC during APS-wide bargaining is a relevant and suitable inclusion in both the Australian Public Service Award and the Australian Government Industry Award (with minor amendment). Draft terms for consideration by the FWC are found at Attachment A & B of this submission.
12. The APSC notes that these draft terms are appropriately adapted for APS and Commonwealth employment arrangements, and support the intent of the Closing Loopholes Act.
13. The APSC has engaged with the Community and Public Sector Union in the development of this position.



Craig Johnson
A/g Assistant Commissioner
Workplace Relations Group
On behalf of the Australian Public Service Commission

1 March 2024

Proposed term for the Australian Public Service Enterprise Award 2015

Delegates' rights

1. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials, and providing employee views to the employer.
2. The role of union delegates is to be respected and supported.
3. The employer and union delegates will work together respectfully and collaboratively.

Supporting the role of union delegates

4. The employer respects the role of union delegates to:
 - 4.1 provide information, consult with and seek feedback from employees in the workplace on workplace matters;
 - 4.2 consult with other delegates and union officials, and get advice and assistance from union officials;
 - 4.3 represent the interests of members to the employer and industrial tribunals; and
 - 4.4 represent members at relevant union forums, consultative committees or bargaining.
5. The employer and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.
6. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.
7. To support the role of union delegates, the employer will, subject to legislative and operational requirements, including privacy and security requirements:

7.1 provide union delegates with reasonable access to the employer's facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;

7.2 advise union delegates and other union officials of the employer's facilities and resources available for their use, which may include telephone, photocopying, internet, and email;

7.3 allow reasonable official union communication appropriate to the employer from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include an employer vetoing reasonable communications;

7.4 provide access to new employees as part of induction; and

7.5 provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.

8. Where employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or employer before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

Proposed term for the *Australian Government Industry Award 2016*

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