



STATEMENT

Fair Work Act 2009

cl.95, Schedule 1 - FWC to vary certain modern awards

Variation of modern awards to include a delegates' rights term

(AM2024/6)

VICE PRESIDENT ASBURY
DEPUTY PRESIDENT BINET
COMMISSIONER LIM

BRISBANE, 16 APRIL 2024

Variation of modern awards to include a delegates' rights term for workplace delegates – Fair Work Legislation Amendment (Closing Loopholes) Act 2023.

[1] From 10 April to 12 April 2024, we conducted public consultation sessions with interested parties in relation to the variation of modern awards to include a delegates' rights term.

[2] In the course of the consultation sessions, we raised with interested parties the interaction between the definition of an “*enterprise*” in s. 12 of the *Fair Work Act 2009* (the Act) and the meaning of “*workplace delegate*” set out in s. 350C(1) of the Act. We indicated that an opportunity would be provided for interested parties to provide further comment on the implications of this interaction for their submissions.

[3] In summary, s. 350C(1) provides that a “*workplace delegate* is a person appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for members of the organisation who work in a particular enterprise” (emphasis added). Section 12 defines an *enterprise* to mean a business, activity, project or undertaking.

[4] The issue was raised at the consultation sessions in response to submissions from certain interested parties and in recognition that in certain industries, workplaces or worksites may be populated by a workforce comprised of employees of different employers under a multiplicity of employment and/or labour-hire arrangements.

[5] In this context, we provide an opportunity for interested parties to comment on the following matters:

- (1) In a workplace where the workforce is comprised of employees of different employers, including employees of labour hire providers, how does the definition of an “*enterprise*” in s. 12 interact with the provisions in s. 350C?

- (2) How does the meaning of an “*enterprise*” in s. 12 interact with the rights of a workplace delegate in ss. 350C(2), 350C(3)(b)(i) and 350C(3)(b)(ii)?

[6] Any comments from interested parties on the above issues should be provided to the Chambers of Vice President Asbury at chambers.asbury.vp@fwc.gov.au by no later than **12.00 pm on Wednesday 17 April 2024**.

[7] Responses to comments from interested parties on the above issues should be provided to the Chambers of Vice President Asbury at chambers.asbury.vp@fwc.gov.au by no later than **4.00 pm on Friday 19 April 2024**.



VICE PRESIDENT

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