

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

Variation of modern awards to include a delegates' rights term

UNITED WORKERS UNION'S SUBMISSIONS REGARDING "ENTERPRISE"

1. Pursuant to the Statement issued on 16 April 2024, the Commission has posed two questions:
 - (a) **Question 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?
 - (b) **Question 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)?
2. The way the definition of "enterprise" in s 12 of the *Fair Work Act 2009* (the **Act**) interacts with the provisions in s 350C is that it defines that term. For the purposes of s 350(1), "enterprise" means a "means a business, activity, project or undertaking". Thus, for the purposes of s 350C(1), 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 business, activity, project or undertaking.

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3. Any suggestion that the term “enterprise” in s 350C carries a different meaning than that provided for in s 12 is wrong. The term is a defined term and should be given the same meaning as in other parts of the statute.¹
4. The practical result is that a workplace delegate may be appointed or elected for members of an employee organisation who are not employees of the workplace delegate’s employer, but work in the same business, activity, project or undertaking the workplace delegate is engaged in. These may be employees of labour hire providers or other employees of employers working in the business, activity, project or undertaking.
5. Section 350C(2) of the Act references s 350(1) by providing that a workplace delegate is entitled to represent the industrial interests of *those members*, meaning the members of the employee organisation referred to in s 350(1), which may not be employees of the workplace delegate’s employer, but may also include employees of other employers working in the business, activity, project or undertaking (such as employees of labour hire providers).
6. Section 350(2) also extends the right to represent to other persons eligible to be *such members*. The use of the word “such” connects, by way of reference, the conferral of the right to the definition in s 350(1) which extends beyond people who work for the same employer as the workplace delegate, to other employees working in the business, activity, project or undertaking. In other words, workplace delegates do not simply have the right to represent employees of their employer who are eligible to be members of their employee association – they are entitled to represent the industrial interests of any employee of the business, activity, project or undertaking they are engaged in who is eligible to be a member of their employee association.

¹ *Tabcorp Holdings Limited v Victoria* [2016] HCA 4, [50].

7. Similarly, s 350(3)(a) creates a right to reasonable communication with *those* members, and any other persons eligible to be *such* members, in relation to their industrial interests. *Those* members and persons eligible to be *such* members are the persons referred to in s 350(2). Thus, the right to reasonable communication may also be exercised in respect to any employee engaged in the workplace delegate's business, activity, project or undertaking.
8. Section 350(3)(b) establishes two further rights – to reasonable access to facilities and paid time to attend training for the purposes of representing those interests. The term *those* interests refers to the industrial interests referred to in s 350(3)(a), which are the industrial interests of those members, and any other persons eligible to be *such* members – the persons referred to in s 350(2) defined with reference to s 350(1). This means a workplace delegate is entitled to reasonable access to facilities and paid time to attend training for the purposes of representing the industrial interests of members of their employee organisation, and persons eligible to be members, who work in the business, activity, project or undertaking they are engaged in.
9. Of course, the creation of multiple enterprise agreements covering different work and/or employers at what was once a *particular enterprise*, would arguably have the effect of creating multiple *particular enterprise(s)* at a single worksite or employer. However, the Full Bench here only need concern itself with enterprises to which a Modern Award applies.

**Filed on behalf of the
United Workers Union
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