

IN THE FAIR WORK COMMISSION

AM 2024/6

AM 2025/28

VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES' RIGHTS TERM

SUBMISSIONS OF ABI AND BNSW

1. These submissions are filed on behalf of Australian Business Industrial (**ABI**) and Business NSW (**BNSW**) in response to the Statement and Direction issued by the Full Bench on 23 December 2025 (**Statement**).
2. As outlined in paragraph [8] of the Statement, the Federal Court has identified in *Construction, Forestry and Maritime Employees Union v Australian Industry Group* [2025] FCAFC 187 (**Full Court Decision**) that the delegates rights terms inserted into nine modern awards exceeded the Fair Work Commission's powers in three respects.
3. However, ABI and BNSW agree with the Commission's provisional view that the issues in the Full Court Decision with respect to these nine awards will apply equally with respect to the delegates rights terms that have been inserted into 146 other modern awards.

Appropriate course to redress issues identified by Federal Court

4. The development of the delegates rights terms in all 155 modern awards was the subject of extensive consultation and submissions. This included, amongst other things:
 - (a) consultation with peak councils in the week beginning 19 February 2024¹
 - (b) the lodging of submissions by 27 industrial parties;²
 - (c) the lodging of 22 submissions in reply;
 - (d) consultation sessions on 10, 11 and 12 April 2024; and
 - (e) the provision of an invitation to additional consultation sessions regarding the meaning of the phrase "workplace delegate", which resulted in a further 8 submissions on 17 April 2024 and a further 3 submissions in reply on 19 April 2024.³
5. The delegates rights term developed by the Full Bench for each of the 155 modern awards was accordingly the subject of substantial consideration and was the product of a process that afforded procedural fairness to all parties. It was only following such a process that the Commission determined what should be included in the delegates rights term as a matter of merit.
6. Having regard to the considerable process that gave rise to the determination of the delegates rights term, BNSW and ABI submit that the term should be rectified to address the issues identified by the Federal Court, but that there is otherwise no basis upon which

¹ See Statement: <https://www.fwc.gov.au/documents/decisionssigned/pdf/2024fwc241.pdf>

² See Statement: <https://www.fwc.gov.au/documents/decisionssigned/pdf/2024fwc1214.pdf>

³ See Statement: <https://www.fwc.gov.au/documents/decisionssigned/pdf/2024fwc1214.pdf>

to review the merits of the term more broadly, given the merits of the term have been the subject of such extensive consideration to date.

7. BNSW and ABI consider that the variations proposed in Attachment C to the Statement are consistent with the course BNSW and ABI propose at paragraph 6 above. That is, the variations in Attachment A rectify the issues identified in the Full Court Decision but do not otherwise seek to re-litigate the merits of the term more broadly.

Effective date

8. BNSW and ABI are supportive of the terms in all 155 modern awards being varied with effect from 1 July 2024, consistent with the provisional view expressed in the Statement.