



**Submission on draft delegates'
rights term in modern awards
(AM2024/6; AM2025/28)**

16 January 2026

Introduction

1. On 23 December 2025 the Fair Work Commission (“FWC”) issued a Statement¹ seeking submissions on a draft determination to insert a Delegates’ Rights term into 9 modern awards and to vary the Delegates’ Rights term in a further 146 modern awards. The AMWU welcomes the opportunity to make a submission on the draft determination.
2. The AMWU has over 50,000 members engaged in a multitude of industries, occupations and callings with a strong workplace delegate network. Throughout our history we have placed significant value on the role that workplace delegates play and have fought for their roles to be recognised.
3. The AMWU is also mindful that the inclusion or variation of the modern award term will also have an impact on enterprise bargaining. It is already the AMWU’s experience that some employers rely on the modern award term as a de facto default term, regardless of the existence and content of previously negotiated AMWU delegates’ rights terms. As such, the AMWU believes that the modern award term should reflect the benefits of the legislation and not include extraneous matters which seek to limit the effectiveness of the delegate in performing their role. It is with these factors in mind that the AMWU makes its submission.
4. The AMWU has also viewed the draft submission of the Australian Council of Trade Unions (“ACTU”) and broadly endorses the ACTU’s position.

Background

5. On 18 January 2024 the Fair Work Commission (“FWC”) issued a statement setting out a process to vary all modern awards² (including modernised enterprise awards) to include a delegates’ rights term. This process was administered by a Full Bench consisting of Vice President Asbury, Deputy President Binet and Commissioner Lim.
6. On 28 June 2024 the FWC issued a Statement and Determinations to vary 155 modern awards to include the Delegates’ Rights term.³ It reflected a majority decision of the Full Bench. To date, no reasons were published as to how the final term was determined.
7. On 18 September 2024 proceedings were commenced in the Federal Court seeking judicial review of nine determinations varying modern awards, including the *Manufacturing and Associated Industries and Occupations Award 2020* and the

¹ [2025] FWCFB 293

² [2024] FWC 150

³ [2024] FWC 1699

Building and Construction General On-site Award 2020.⁴ The AMWU was named as a Respondent to those proceedings and supported the unions' applications for relief. In its decision on 17 December 2025⁵ the Full Court ordered that the determinations be quashed and that the FWC be required to exercise its function under clause 95 of Schedule 1 to the *Fair Work Act 2009* ("the Act") according to law.⁶

Powers of the Commission to make the proposed determinations

8. The AMWU endorses and adopts the submissions of the ACTU in relation to the Commission's powers under Clause 95 of Schedule 1 and sections 160 and/or 165 of the Act.

The proposed Term

9. In the proceedings before the FWC⁷, the AMWU has consistently argued that the Delegates' Rights term had to reflect the beneficial nature of the rights, protections and entitlements contained in section 350A and 350C of the *Fair Work Act 2009* ("the Act"). In particular our submissions argued for a term that allowed delegates to:
 - a. be able to exercise the rights provided for in the Act for and on behalf of all members and potential members of the organisation who worked in an enterprise;⁸
 - b. not be hindered in the performance of their roles as delegates by constraints that were not included in the Act;⁹ and
 - c. have access to paid leave for training, taking into account the different work arrangements performed by our delegates, to ensure that they were able to

⁴ Two proceedings were heard concurrently: *Construction, Forestry, and Maritime Employees Union of Australia and Anor v Australian Industry Group and Ors* VID 960 of 2024 sought relief in relation to six determinations, including determinations pertaining to the named Awards. In addition, *Mining and Energy Union of Australia v Australian Industry Group and Ors* NSD 1319 of 2024 sought relief in relation to three determinations

⁵ *Construction, Forestry and Maritime Employees Union of Australia v Australian Industry Group* [2025] FCAFC 187

⁶ Orders 1 and 2 made in VID 960 of 2024 and NSD 1317 of 2024

⁷ In proceedings AM2024/6 the AMWU made four submissions: Submission (dated 1/3/2024); Submission in Reply (dated 28/3/2024); Further Submission (dated 17/4/2024) and Submission on Draft Term (22/5/2024)

⁸ For example: Further Submission and Submission on Draft Term at [7] – [16]

⁹ For example Submission in Reply [6] – [8], [14]-[16]

carry out their role effectively – which included a more efficient management of grievances and issues in their workplaces.¹⁰

10. The AMWU submits that the proposed term addresses many of the concerns that we have raised in our past submissions to the FWC, as well as the concerns of the Full Court. As such, we broadly support most of what has been proposed.
11. We also acknowledge that the FWC has limited the proposed variations to the existing Delegates' Rights term to those issues that were raised in the judicial review and therefore there has been no change to the entitlements to access to the workplace and workplace facilities and reasonable access to training. The AMWU continues to press our submissions that the provisions concerning access to training are inadequate for the role of workplace delegate within our industries and we look forward to later opportunities to make further submissions on these matters.

Proposed Clause X.X.2

12. The use of the term “eligible worker”, and its definition encompassing those workers who “work in a particular enterprise” is, in the AMWU’s submission, an appropriate way to address the reality of the workplace. It ensures that workplace delegates can represent any eligible worker within the enterprise, regardless of who employs them. This is of particular assistance as it will ensure that workplace delegates can represent labour hire workers and apprentices engaged by Group Training Companies across both collective and individual matters.
13. The AMWU also supports the inclusion of a definition of “Workplace delegate” in the clause as it is likely to reduce the potential for confusion and misunderstanding over who is entitled to exercise rights under the clause.

Proposed Clause X.X.6

14. The AMWU submits that the proposed Clause X.X.6 sufficiently represents the right of a workplace delegate to communicate with its organisation’s members and therefore we support the proposed clause.

Proposed Clause X.X.9

15. The AMWU does not support the proposed Clause X.X.9(b) and questions whether such a clause is required at all. The AMWU endorses and adopts the submissions of the ACTU with regard to this clause, including the ACTU’s proposed alternative Clause.

¹⁰ For example Submission [11] – [18], Submission in Reply [20] – [24],

Proposed ACTU Clause

16. The AMWU supports the proposed Clause X.X.10 advanced by the ACTU.

17. Just as an enterprise may include workers who are employed by different employers, it is possible that a workplace delegate may not be employed by the employer who has control of the workplace. Such a clause will ensure the recognition of the delegate's rights to represent and communicate with eligible workers in the enterprise, but not necessarily require the provision of facilities and paid training leave where there is no employment relationship. Such recognition will allow a delegate to carry out their role as was intended in the Act.

Conclusion

18. The AMWU is broadly supportive of the proposed Delegates' Rights term. The proposed term addresses some, but not all, of our concerns with the previous term, particularly the limitation on the ability of delegates to perform their roles as envisaged in the Act, for all eligible workers in an enterprise. However, the AMWU remains concerned that the proposed term does not address all our concerns and supports the ACTU's proposed additional clause to ensure that all workplace delegates covered by Awards (and enterprise agreements) will be able to carry out the roles with the rights and protections envisaged by the Parliament.

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16 January 2026