



## Variation of modern awards to include a delegates' rights term

(AM2024/6)

## Variation of delegates' rights term in modern awards (AM2025/28)

### Submission

1. The Australian Nursing and Midwifery Federation (ANMF) notes the decision of the Full Court of the Federal Court in *Construction, Forestry and Maritime Employees Union v Australian Industrial Group*<sup>1</sup> and the consequential re-constitution of a Fair Work Commission (FWC) Full Bench to deal with the issues arising from the Federal Court orders.
2. ANMF members are broadly unaffected by the Federal Court's quashing of the delegates' rights term in the nine modern awards that were the subject of judicial review. To that extent, we do not have a direct interest in the proceedings under AM2024/6 to restore a delegates' rights term to those particular modern awards. Nonetheless, we recognise the imperative for the FWC to act quickly to ensure that the large cohort of workers covered by those modern awards do not continue to operate without a modern award term that provides for delegates' rights, contrary to section 140E of the *Fair Work Act 2009* (Cth) (FWA).
3. The ANMF interest in AM2025/28 is more direct. It is clear from the FWC's statement of 23 December 2025 that modern awards may be varied to align with the orders of the Federal Court, which is accompanied by a provisional view of what those variations should be.<sup>2</sup> Such variations would obviously extend to the *Nurses Award 2020*.
4. The ANMF has read the submission of the Australian Council of Trade Unions (ACTU) in this matter, and supports the position taken by the ACTU and its affiliates. While a number of the variations to modern awards will appropriately rectify the deficiencies of the current

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<sup>1</sup> [2025] FCAFC 187.

<sup>2</sup> [2025] FWCFB 293 at 12.

wording of the standard delegates' rights term, the ANMF shares the view that the proposed variations ought to be amended in the following ways:

- a. That clause XX.9(b) be deleted, or in the alternative, be replaced by the alternate wording provided by the ACTU; and
- b. That the ACTU's proposed clause XX.10 be inserted to ensure that statutory obligations under section 350A(1) of the FWA apply in circumstances where an employer within an enterprise is dealing with a delegate who is not their direct employee, but nonetheless still an employee within that enterprise.