

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6 Variation of modern awards to include a delegates' rights term

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

SUBMISSIONS OF THE ELECTRICAL TRADES UNION

Introduction

1. The **Electrical Trades Union** of Australia is a division of the **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union** of Australia.
2. The ETU is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over 60,000 electrical workers around the country.
3. On 17 December 2025, the CEPU, **Construction, Forestry and Maritime Employees Union** and the Mining and Energy Union successfully obtained orders from the Full Federal Court quashing determinations made by a Full Bench of the Fair Work Commission to vary 9 modern awards to include a delegates' rights term: *CFMEU v Australian Industry Group* [2025] FCAFC 187 (**Initial Decision**).
4. On 23 December 2025, a differently constituted Full Bench of the Fair Work Commission issued a **Statement and Direction** indicating a provisional view that it proposes to retrospectively vary modern awards to include a new delegates' rights term from 1 July 2024: *Statement and Direction* [2025] FWCFB 293. A copy of a **Draft Variation** is included in the Statement.
5. The ETU makes these submissions pursuant to the Statement and Direction.
6. The ETU welcomes the Full Bench's prompt action to retrospectively vary modern awards to include a delegates' rights term, however it seeks to provide feedback regarding the Draft Variation.

Draft Variation

7. The ETU supports the Full Bench's proposed variations to:
 - (a) the definition of eligible employee/eligible worker;
 - (b) from "for the Purpose of" to "in Relation to"; and
 - (c) insert a definition of "workplace delegate".

Variation to Obligations of Workplace Delegates' Duties etc

8. Further, the ETU supports the Full Bench amending clause XX.9(a) to remove subparagraphs (i) and (ii) but does not support the inclusion of proposed new clause XX.9(b).
9. Proposed clause XX.9(b) seeks to modify the obligations inserted by the Initial Decision of workplace delegates to comply with their duties and obligations as an employee and not hinder, obstruct or prevent the normal performance of work – except where the workplace delegate acts reasonably in exercising rights conferred by clauses XX.6, XX.7 and XX.8.
10. Such obligations expose workplace delegates to award contravention proceedings.
11. The ETU is concerned that the wording presently proposed by the Full Bench is convoluted, legalistic and difficult for workplace delegates to understand notwithstanding exposing them to serious contraventions.
12. Such obligations were not included in modern awards prior to the Initial Decision, are founded in common law and are not logically connected to Division 3 of Part 2-3 of the Act. Elevating such obligations to award obligations capable of contravention by workplace delegates is neither necessary nor incidental to the Commission's function under clause 95 of Schedule 1 to of the *Fair Work Act 2009* (Cth), nor mandated by section 149E of the Act.
13. The ETU's preference is therefore that no reference be made to the matters contained in subparagraphs (i) and (iii) of the proposed XX.9(b).
14. In the alternative, should the Full Bench determine to impose such obligations on workplace delegates except where the workplace delegate acts reasonably in exercising rights conferred by clauses XX.6, XX.7 and XX.8, the ETU submits that a more appropriate formation would be:
 - (b) A workplace delegate may exercise the rights conferred by cls.XX.6, XX.7 and XX.8, even if that exercise is inconsistent with:
 - (i) other duties or obligations of the employee; or
 - (ii) any requirement not to hinder, obstruct or prevent the normal performance of work;provided the delegate is acting reasonably in exercising those rights.
15. The ETU's proposed wording will be more easily understood by workplace delegates and will not unnecessarily expose them to serious contraventions.
16. Further, it does not apply to the general right to represent contained in section 250C(2) of the Act which cannot be displaced by the award.

Corresponding Obligations on Employers for Workplace Delegates Employed by Other Employers

17. The ETU respectfully submits that a necessary consequential amendment must be made to provide for the exercise of section 350C entitlements in relation to an employer who is not the employer of a workplace delegate.
18. Such an amendments is necessary to permit, as required by the Full Court,¹ workplace delegates to represent the industrial interests of all members of their organisation, and persons eligible to be members, who work in the enterprise or regulated business in which the delegate works regardless of whether they are employees of the delegate's employer.
19. The ETU recommends the inclusion of a supplementary clause as follows:

XX. 10 Workplace Delegates Not Employed by Employer

- (a) This subclause applies to an employer who is not the employer of a workplace delegate in circumstances where that workplace delegate seeks to exercise rights in relation to the industrial interest of eligible workers.
 - (b) The employer must not:
 - (i) unreasonably fail or refuse to deal with a workplace delegate; or
 - (ii) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
 - (iii) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under section 350C of the Act.
20. Noting the urgency of the task presently before the Full Bench, the ETU does not submit that the proposed clause necessarily be a permanent or substantive solution but rather a means of efficiently providing for a complete award delegates' rights term with minimal change in the time available.
 21. Accordingly, should the Full Bench adopt this proposal, the ETU respectfully requests, that any decision of the Commission explain the circumstances in which the clause has been included and note that its terms may be subject to future review, including on application by an interested party.

Electrical Trades Union

16 January 2025

¹ *CFMEU v Australian Industry Group* [2025] FCAFC 187 at [109].