

## IN THE FAIR WORK COMMISSION

MATTER No: AM2024/6 AND AM2025/28

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

Re Variation of delegates rights term in modern awards

### SUBMISSIONS OF THE HEALTH SERVICES UNION

#### INTRODUCTION

1. The Health Services Union (“**HSU**”) represents over 100,000 members working in, amongst other things, aged care, disability services, community health, mental health, alcohol and other drugs services, private medical practices, and hospitals.
2. These submissions are made by the HSU pursuant to the Statement and Direction of the Full Bench of the Fair Work Commission (“**the Commission**”) of 23 December 2023 (“**the Statement and Direction**”).<sup>1</sup> The Statement and Direction was made in response to the recent Full Federal Court decision in *Construction, Forestry and Maritime Employees Union v Australian Industry Group* [2025] FCAFC 187 (“**the Decision**”) to make orders quashing determinations made by a Full Bench of the Commission to insert a delegates' rights term into nine modern awards.
3. In the Statement and Direction, the Full Bench indicated at [12] that it had formed the provisional view that all modern awards should be varied to include a delegates' rights term in the form set out at Attachment C to the Statement and Direction to address the deficiencies identified in the Decision. With respect to the nine awards the subject of the Decision, the Full Bench proposes at [13] of the Statement and Direction to make determinations giving effect to that variation in accordance with clause 95(3) of Schedule 1 of the *Fair Work Act 2009* (Cth) (“**the Act**”). Regarding the 146 other modern awards, the Full Bench proposes at [14] of the Statement and Direction to vary those awards on its own initiative under s 160(1) of the Act. All variations are proposed to take effect retrospectively from 1 July 2024.
4. The HSU has an interest in a number of modern awards which fall within the 146 awards the Full Bench proposes to vary pursuant to s 160(1), namely, the:

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<sup>1</sup> [2025] FWCFB 293.

- a. *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020.*
  - b. *Aged Care Award 2010.*
  - c. *Ambulance and Patient Transport Industry Award 2020.*
  - d. *Health Professionals and Support Services Award 2020.*
  - e. *Nurses Award 2020.*
  - f. *Social, Community, Home Care and Disability Services Industry Award 2010.*
  - g. *Medical Practitioners Award 2020.*
5. For reasons that follow, the HSU submits that the Full Bench should proceed to vary those awards under s 160(1) to include a delegates' rights term in the form set out in Attachment C to the Statement and Direction, subject to amendments referred to below and set out in the ACTU Submission. Such variations should operate retrospectively from 1 July 2024 pursuant to s 165(2).

#### **COURSE PROPOSED BY THE FULL BENCH, DRAFT DELEGATES' RIGHTS TERM, AND OPERATIVE DATE**

6. The HSU has had the opportunity to review the submission by the Australian Council of Trades Unions ("**the ACTU Submission**") in response to the Statement and Direction. The HSU endorses the ACTU Submission which addresses the scope and operation of the Commission's jurisdiction to vary modern awards to include a delegates' right term, the appropriate operative date for such variations and the content of the proposed standard term.

#### The Proposed Approach by the Fair Work Commission and Operative Date

7. With respect to the awards in which the HSU has an interest, the HSU agrees with the approach proposed by the Full Bench at [13] of the Statement and Direction to vary those awards under s 160 of the Act to remove an ambiguity or uncertainty or to correct an error following the Decision of the Full Court of the Federal Court. The HSU agrees with the provisional view of the Full Bench at [14] of the Statement and Direction that exceptional circumstances exist justifying the operative date of those variations being set retrospectively at 1 July 2024 in accordance with s 165(2).

8. The HSU agrees with and adopts the submissions made in the ACTU Submission in relation to these matters, particularly at [10] – [13].

#### The Draft Delegates' Rights Term

9. The HSU agrees with the provisional view of the Full Bench at [12] of the Statement and Direction that the modern awards in which it has an interest as set out at [4] above (and indeed all modern awards) should be varied to include a delegates' rights term in the form set out in Attachment C to the Statement and Direction, subject to two amendments which have been proposed in the ACTU Submission and with which the HSU agrees. The proposed amendments relate to:
  - a. The Full Bench's proposal to insert a new cl XX.9(b) which places an obligation on workplace delegates to comply with their duties and obligations as employees and to not hinder, obstruct or prevent the normal performance of work. The HSU agrees with the primary position set out in the ACTU Submission that the delegates' rights term ought contain no reference to the matters contained in proposed cl XX.9(b) or in the alternative, that such clause should be amended in the manner set out at [24] of the ACTU Submission; and
  - b. The inclusion of an additional cl XX.11 as set out at [28] of the ACTU Submission to deal with the exercise of entitlements contained in s 350C with respect to an employer who is not the employer of a workplace delegate.
10. The HSU agrees with and adopts the submissions made in the ACTU submission in relation to these matters and the content of the delegates' rights term more broadly, in particular at [14] – [30].

**Health Services Union**

16 January 2026