

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 UNITED WORKERS UNION

1. The submissions are made pursuant to the Statement and Direction of the Full Bench on 23 December 2025 (the Full Bench's Statement'), which was in response to the Full court of the Federal Court's decision in *Forestry and Maritime Employees Union v Australian Industry Group* [2025] FCAFC 187, with respect of 9 modern awards ('the Delegates Rights Decision').
2. The United Workers Union ('the UWU') has had the opportunity to review the submissions of the Australian Council of Trade Unions ('the ACTU') in this matter. The UWU supports and endorses the submissions made by the ACTU in this matter, and does not seek to replicate their submissions.
3. The draft determination issued by the Full Bench covers five key matters of amendment, summarised in the ACTU submissions as:
 - (a) Proposed Variations to the Definition of Eligible Employee / Eligible Worker
 - (b) Proposed Variation from "for the Purpose of" to "in Relation to"
 - (c) Proposed Variation to Insert Definition of Workplace Delegate

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- (d) Proposed Variation to Obligations of Workplace Delegates' Duties etc; and
 - (e) Corresponding Obligations on Employers for Workplace Delegates Employed by Other Employers.
4. The UWU supports the ACTU's submissions in respect of all five matters.
 5. In respect of the proposed clause XX.9(b), which concerns the proposed variation to obligations of a workplace delegates duties, and is proposed as follows:
 - (b) *A workplace delegate must, other than in the reasonable exercise of the entitlements under clause XX:*
 - (i) *comply with their duties and obligations as an employee; and*
 - (ii) *not hinder, obstruct or prevent the normal performance of work.*
 6. The UWU agrees with the submissions of the ACTU that the wording proposed in the draft determination is not consistent with paragraphs [111] and [112] of the Delegates Rights Decision.
 7. In addition to the ACTU's submissions at [20] to [23], the wording proposed wording creates an obligation on delegates that otherwise does not currently exist, outside of the general common law obligations of an employee in respect of their contract of employment. If a delegate does not "*comply with their duties as an employee*", or "*prevent[s] the normal performance of work*" they would be in contravention of the relevant modern award. The clause creates a new obligations, which opens the delegate up to penalties for contraventions and damages. It is the UWU's view that this goes far beyond a change needed to capture the concerns raised in the Delegates Rights Decision.
 8. The UWU agrees with the ACTU that the wording should removed, and in the alternative, what is suggested at [24] of the ACTU's submission.

9. The UWU also supports the ACTU's commentary regarding the necessary consequential amendment to provide for the exercise of entitlements contained in section 350C of the *Fair Work Act 2009* (Cth) in relation to an employer who is not the employer of the workplace delegate and supports the draft wording provided.

**Filed on behalf of the
United Workers Union
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