

FAIR WORK COMMISSION

**VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES' RIGHTS
TERM**

(AM2024/6)

Submissions of the WA & NSW Local Government Associations

28 March 2024

Local Government Industry Award 2020

Part 1 – Introduction

1. These 28 March 2024 submissions are made on behalf of the:
 - a. Western Australian Local Government Association (**WALGA**).
 - b. Local Government NSW (**LGNSW**).

(WA & NSW Associations).
2. The views expressed in these submissions are those of the officers of WALGA and LGNSW. LGNSW's views are subject to the endorsement of the LGNSW Board.
3. We refer to the Statements of Justice Hatcher, President of the Fair Work Commission (**Commission**), with respect to variation of modern awards to include a delegates' rights term for workplace delegates issued on 18 January 2024 [2024] FWC 150 and 30 January 2024 [2024] FWC 241 (together the **January Statements**).
4. The January Statements set out the final timetable, which includes that by:
 - a. 1 March 2024 parties may lodge submissions and proposed workplace delegates' rights terms including any specific terms required; and
 - b. 28 March 2024 parties may lodge submissions in reply.

Part 2 – Submissions

5. WALGA provides Local Governments in the Northern Territory (**NT LGs**), Shire of Christmas Island and Shire of Cocos (Keeling) Islands (together the **WA Shires**) with assistance on matters of employment and industrial relations. Many NT LGs and both the WA Shires apply the Local Government Industry Award 2020 (**LGI Award**).

6. LGNSW is the peak employer body for local government in NSW representing the interests of all NSW general-purpose councils and associate members including special-purpose county councils, joint organisations and regional organisations of councils. LGNSW is registered as an industrial organisation of employers under the *Fair Work (Registered Organisations) Act 2009* (NSW) and the *Industrial Relations Act 1996* (NSW).
7. The WA & NSW Associations have had the opportunity to read the submissions of the Australian Chamber of Commerce and Industry dated 1 March 2024 and support the principles outlined therein on the basis that they align with the views of the Local Governments that apply federal modern awards.
8. The WA & NSW Associations support maintaining the right of employees to choose to appoint their representative and oppose changes that would limit an employee's right to appoint a workplace delegate, and remove the choice from employees.

Part 3 – Proposal re: Local Government Industry Award 2020

9. With respect to the LGI Award, the WA & NSW Associations propose that:
 - a. Clause 30 (Consultation about changes to rosters or hours of work) remain unchanged.
 - b. Clause 31.10 (Dispute Resolution Training Leave) be deleted as it will be incorporated into the new delegates' rights clause.
 - c. Other than deleting clause 31.10, clause 31 (Dispute resolution) remain unchanged.
 - d. A new clause 31A (Delegates' rights) be insert as outlined below.
10. The WA & NSW Associations propose a new clause 31A as follows:

31A. Delegates' rights

Note: This section does not create an obligation on any person to become a workplace delegate nor does it create any obligation on a person to be represented by a workplace delegate.

31A.1 In this clause:

- (a) **Workplace delegate** means an employee that has been appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for members of the organisation who work for the employer.

- (b) **Nominated workplace delegate** means a workplace delegate that the employee organisation has nominated as such and has formally notified the employer of that nomination and the nomination has not been revoked.
- (c) **Members** mean employees that are members, or eligible to be members, of the employee organisation that has nominated the nominated workplace delegate.
- (d) **Industrial interests** mean matters pertaining to:
 - (i) disputes involving an employee of the employer under an industrial law (as defined under the *Fair Work Act 2009*), including an industrial instrument;
 - (ii) consultation about major workplace change or changes to the rosters of hours of work under clause 29 and clause 30;
 - (iii) enterprise agreement bargaining;
 - (iv) matters relating to formal discipline and performance processes.

31A.2 The maximum number of nominated workplace delegates an employee organisation may nominate is dependent on the size of the employer as follows:

Number of full-time and part-time employees	Maximum number of nominated workplace delegates
1 to 30	1
31 to 50	2
51 to 100	3
Over 100	4

31A.3 A nominated workplace delegate, if appointed by a member or members, may represent the industrial interests of that member or members, including in disputes raised under clause 31.

31A.4 The nominated workplace delegate is entitled to:

- (a) reasonable communication with members in relation to their industrial interests; and
- (b) for the purpose of representing those interests:

- (i) reasonable access to the workplace and workplace facilities in the control of the employer; and
- (ii) unless the employer is a small business employer – access to dispute resolution training leave in accordance with clause 31A.11.

31A.5 What is reasonable for the purposes of clause 31A.4(a) and (b)(i), may depend on the following:

- (a) the size and nature of the employer;
- (b) the resources of the employer;
- (c) the facilities available at the workplace.

31A.6 A nominated workplace delegate should, where practicable, represent the industrial interests of member(s) and communicate with member(s) in relation to their industrial interests (**delegate activity**) outside of their work hours. Where it is impracticable for to do so, a nominated workplace delegate may, with agreement from the employer, engage in delegate activity during work hours without loss of pay.

31A.7 An employer will not unreasonably withhold agreement under clause 31A.6. In considering whether it is reasonable to withhold agreement the following factors will be relevant:

- (a) the impact on the employer's operations or output;
- (b) whether such agreement will result in the employer needing to put on additional resourcing;
- (c) cost pressures on the employer, which may depend on the size and other available workers;
- (d) whether there would be a more appropriate time for the nominated workplace delegate and the member(s) involved to engage in the delegate activity;
- (e) whether the member interests are already being represented by another nominated workplace delegate;
- (f) the amount of time already provided by the employer for a particular delegate activity;

- (g) the ease with which facilities can be provided and at what cost;
- (h) the maximum number of members likely to be represented by the nominated workplace delegate (if known);
- (i) the extent to which members have participated in the process to elect or otherwise appoint the nominated workplace delegate.

31A.8 For the purposes of clause 31A.4(a) communication should be conducted in private and directly with the member(s) concerned.

31A.9 For the purposes of clause 31A.4(b)(i):

- (a) If an employer provides a space for nominated workplace delegates to communicate with members in relation to their industrial interests, then that space must be used, unless the employer agrees otherwise.
- (b) If an employer does not provide a space, then the nominated workplace delegate may use any other suitably equipped and private room or area that both the nominated workplace delegate and member(s) are authorised by the employer to enter.
- (c) A workplace delegate must not, in their capacity as a workplace delegate, enter any premises or any part of a premises that is used mainly for residential purposes without the express permission from the residential occupier of those premises.

31A.10 Nothing in this clause prevents the employer from monitoring communications and use of information technology tools.

31A.11 **Dispute Resolution Training Leave**

- (a) A nominated workplace delegate that is a full-time or part-time employee who has completed 12 months continuous service with the current employer may access dispute resolution training leave in accordance with this clause.
- (b) A nominated workplace delegate shall be entitled to a maximum of 5 days paid leave to attend courses which are specifically directed towards effective resolution of disputes regarding industrial matters under this award and/or industrial issues which arise at the workplace.
- (c) A nominated workplace delegate is only entitled to leave in accordance with clause 31A.11 for accredited courses.

- (d) Such leave will be available to an individual nominated workplace delegate once only during their employment. The employer and nominated workplace delegate may reach an agreement on any requests for refresher training.
- (e) For the purpose of clause 31A.11 an accredited course means a Dispute Resolution Training Course conducted by or on behalf of a registered training organisation whose scope of registration includes industrial relations training.
- (f) Nothing in clause 31A.11 will prevent the employer and the nominated workplace delegate from reaching agreement that such training can be provided by a union or other accredited training provider(s).
- (g) A nominated workplace delegate must comply with the following notice requirements:
 - (i) provide the employer with at least 5 weeks prior notice in writing of their request to attend a dispute resolution training course;
 - (ii) outline details of the type, content, venue and duration of the course to be attended in the written notice provided in accordance with clause 31A.11(g)(i)
- (h) The employer will consider a request for leave in accordance with clause 31A.11 having regard to:
 - (i) the operational requirements of the employer; and
 - (ii) the capacity of the employer to make adequate staffing arrangements among current employees during the proposed period of leave.
- (i) An employer must not unreasonably refuse to agree to a request by the nominated workplace delegate to take dispute resolution training leave.
- (j) An employer will not be liable for any additional expenses associated with an employee's attendance at a course other than the payment of the minimum hourly rate for such absence.
- (k) A nominated workplace delegate will be required to provide the employer with proof of attendance at, and satisfactory completion of, the course to qualify for payment of leave.

- (l) Leave granted pursuant to clause 31A.11 counts as service for all purposes of this award.

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On behalf of the WA & NSW Associations
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