



DECISION

Fair Work Act 2009

Sch 1, cl 95—FWC to vary certain modern awards

s.160—Variation of modern awards to remove ambiguity or uncertainty or correct error

Variation of modern awards to include a delegates' rights term

(AM2024/6)

Variation of delegates' rights term in modern awards

(AM2025/28)

JUSTICE HATCHER, PRESIDENT

VICE PRESIDENT GIBIAN

COMMISSIONER MATHESON

SYDNEY, 23 JANUARY 2026

Variation of modern awards to include a delegates' rights term for workplace delegates— Fair Work Legislation Amendment (Closing Loopholes) Act 2023 – Proceedings initiated to consider varying delegates' rights terms – Construction, Forestry and Maritime Employees Union v Australian Industry Group [2025] FCAFC 187 – variation of all modern awards to include a modified delegates' rights term.

Introduction and background

[1] The background to these matters was set out in the statement and direction which we published on 23 December 2025: [\[2025\] FWCFB 293 \(Statement\)](#). In summary, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (**Closing Loopholes Act**) amended the *Fair Work Act 2009* (Cth) (**FW Act**) to provide, in s 350C, for certain rights for workplace delegates and, in s 350A, for protection of workplace delegates in the exercise of those rights. Additionally, the Closing Loopholes Act added s 149E, which requires that a modern award must include a delegates' rights term for workplace delegates covered by the award. Section 12 was amended to define 'delegates' rights term' as follows:

delegates' rights term means a term in a fair work instrument that provides for the exercise of the rights of workplace delegates.

Note: The rights of workplace delegates are set out in section 350C, and a delegates' rights term must provide at least for the exercise of those rights.

[2] To effectuate this scheme, clause 95 was added to Schedule 1 to the FW Act. Clause 95 relevantly provides:

95 FWC to vary certain modern awards

(1) This clause applies in relation to a modern award if the award:

- (a) is made before 1 July 2024; and
 - (b) is to be in operation on that day.
 - (2) The FWC must, by 30 June 2024, make a determination varying the modern award to include a delegates' rights term.
 - (3) A determination made under subclause (2) comes into operation on (and takes effect from) 1 July 2024.
- ...

[3] A Full Bench of the Commission (Asbury VP, Binet DP and Lim C) was constituted in matter AM2024/6 to discharge the Commission's obligations under s 149E and clause 95 of Schedule 1. On 28 June 2024, the Full Bench issued a statement which indicated that a majority of the bench had decided to vary all modern awards to include a delegates' rights term in the form set out in an attachment to that statement: [\[2024\] FWC 1699 \(standard term\)](#). Determinations varying all 155 modern awards to include the standard term were issued on the same day and commenced operation on 1 July 2024 in accordance with clause 95 of Schedule 1. The standard term is set out in **Attachment 1** to this decision.

[4] On 18 September 2024, proceedings were initiated in the Federal Court of Australia by the Construction, Forestry and Maritime Employees Union (**CFMEU**), the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**) and the Mining and Energy Union (**MEU**). The applicants in those proceedings sought writs of certiorari to quash the orders of the Commission with respect to the standard term inserted into nine modern awards and consequential writs of mandamus. The nine awards concerned were:

Black Coal Mining Industry Award 2020 (Black Coal Award)
Building and Construction General On-site Award 2020
Coal Export Terminals Award 2020
Electrical Power Industry Award 2020
Electrical, Electronic and Communications Contracting Award 2020
Joinery and Building Trades Award 2020
Manufacturing and Associated Industries and Occupations Award 2020
Mining Industry Award 2020
Mobile Crane Hiring Award 2020

[5] On 17 December 2025, the Full Court delivered its decision in the proceedings: *Construction, Forestry and Maritime Employees Union v Australian Industry Group* [2025] FCAFC 187 (**Full Court decision**). The Full Court determined that, in varying the nine subject awards to include the standard term, the Full Bench had misunderstood the statutory task set out in clause 95 of Schedule 1 to the FW Act and impermissibly limited the rights conferred by s 350C in three respects. These jurisdictional errors are summarised at [109]-[112]. The first error is described as follows:

First, the Commission impermissibly confined the scope of the rights of workplace delegates to represent members of the relevant employee organisation and any other persons eligible to be such members. It confined those rights to representation only of such persons if they are employed by the employer of the delegate. The workplace delegates' rights conferred by s 350C of the Act are not so confined. It follows that the delegates' rights terms must also not be confined in that way. Rather, the delegates' rights terms must proceed on the basis that the workplace delegate is entitled to represent the industrial interests of all members of the

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.

[6] The Full Court's earlier consideration of this error was concerned with clause 29A.5 (using the clause numbering in the Black Coal Award) read together with the definitions in clause 29A.2: [23]-[24].

[7] The second error was as follows:

Second, the Commission impermissibly confined the rights of workplace delegates to communicate with members and those eligible to be members. The delegates' rights terms as they stand only authorise communications *for the purpose of representing* the industrial interests of such persons. Section 350C(3) entitles the workplace delegate to communicate with those persons *in relation to* those industrial interests. That is different to and wider than the phrase used in the delegates' rights term. The term needs to adhere to the wording of s 350C(3)(a) in this respect.

[8] This error concerns clause 29A.6(a): [73]-[86].

[9] The third error was:

Third, 29A.9(a)(i) and cl 29A.9(a)(iii) impermissibly limit the scope of workplace delegate's rights that are otherwise provided for by the delegates' rights term. Clause 29A.9(a)(i) does this by making those rights subject to an obligation on the part of the delegate to comply with their duties and obligations as an employee. If a clause seeking to preserve those duties and obligations is to be included at all, it should ensure that the delegates' rights provided for by cl 29A may be exercised in a way that is inconsistent with those other duties and obligations of an employee only where the delegate is reasonably exercising the delegates' rights provided by the clause.

Clause 29A.9(a)(iii) is beyond power because it requires the workplace delegate not to hinder, obstruct or prevent the normal performance of work, regardless of whether to do so is a reasonable exercise of the delegate's rights. If a clause directed at not hindering or obstructing the normal performance of work is to be included at all, it should ensure that the delegate's rights provided for by cl 29A may be exercised in a way that is inconsistent with that obligation not to hinder or obstruct only where the delegate is reasonably exercising the delegates' rights.

[10] The Full Court ordered that writs of certiorari be issued to quash the determinations made by the majority of the Full Bench varying the nine modern awards to include a delegates' rights term. Writs of mandamus were also issued requiring the Commission 'to exercise its function under clause 95 of Schedule 1 to the *Fair Work Act 2009* (Cth) according to law'.

[11] In the Statement, we indicated that it was necessary to further deal with the proceedings in matter number AM2024/6 with respect to the nine awards the subject of the Full Court decision in order to comply with the writs of mandamus issued by the Court. We also indicated that the Commission had initiated proceedings on its own initiative in matter AM2025/28 under s 160 of the FW Act to consider varying all other modern awards to address ambiguity, uncertainty or error arising from the jurisdictional errors in the standard term identified by the Full Court. We indicated, for the reasons stated at [10]-[11], that we considered that the Commission should act urgently to finalise both matters. We expressed a *provisional* view that

all modern awards should be varied to include a delegates' rights term in the form set out in Attachment C to the Statement (**proposed term**). This is reproduced as **Attachment 2** to this decision.

[12] The proposed term involved redrafting the standard term to address the three errors identified in the Full Court decision. In summary, this comprised the following drafting changes:

First error: The definition of 'eligible employees' in clause XX.2(c) has been replaced with a new definition of 'eligible workers', namely 'members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise'. A new definition of 'workplace delegate' has been added in clause XX.2(d) to make it clear that such a person is a delegate 'for members of the organisation who work in a particular enterprise'. In clause XX.5, the reference to 'eligible employees' has been replaced with 'eligible workers'. These changes are intended to ensure that the right of representation for which clause XX.5 provides extends to all members and eligible members working in the relevant enterprise, not just those employed by the employer of the delegate. All other references to 'eligible employees' in the clause have likewise been replaced by 'eligible workers' for consistency.

Second error: The words 'for the purpose of' in the first sentence of clause XX.6(a) have been replaced with 'in relation to'.

Third error: Paragraphs (i) and (iii) of clause XX.9(a) of the standard term have been excised, and a new subclause XX.9(b) inserted which requires workplace delegates to comply with their duties and obligations as an employee and not hinder, obstruct or prevent the normal performance of work 'other than in the reasonable exercise' of their entitlements under clause XX.

[13] The Statement also expressed the *provisional* views that:

- (1) with respect to the nine modern awards the subject of the Full Court decision, because the writs of mandamus issued by the Court required that the Commission exercise its function under clause 95(2) of Schedule 1 to the FW Act according to law, any determination varying those modern awards in accordance with the Court's order would come into operation and take effect from 1 July 2024; and
- (2) with respect to the 146 other modern awards, the determination varying those awards should come into operation on 1 July 2024 under s 165(2) of the FW Act on the basis that exceptional circumstances exist justifying that course.

[14] Interested parties were directed to file any submissions concerning the *provisional* views by 16 January 2026.

[15] Submissions were subsequently filed by the following parties:

- Australian Business Industrial and Business NSW (ABI)

- Australian Chamber of Commerce and Industry (ACCI)
- Australian Council of Trade Unions (ACTU)
- Australian Industry Group (Ai Group)
- Australian Manufacturing Workers' Union (AMWU)
- Australian Maritime Officers Union (AMOU)
- Australian Nursing and Midwifery Federation (ANMF)
- Australian Resources and Energy Employer Association (AREEA)
- Australian Services Union (ASU)
- CEPU
- CFMEU
- Community and Public Sector Union (CPSU)
- Council of Small Business Organisations Australia (COSBOA)
- Health Services Union (HSU)
- Master Builders Australia (MBA)
- Minerals Council of Australia (MCA)
- MEU
- United Workers' Union (UWU)

Consideration

General approach

[16] As indicated in the Statement, these proceedings have a narrow purpose: to comply with the orders issued by the Full Court with respect to the nine awards the subject of the Full Court decision, and to rectify the jurisdictional errors in the standard term identified by the Full Court in the remaining 146 modern awards. To achieve that purpose, an expedited process has been adopted to ensure that all modern awards contain a delegates' rights term as required by s 149E and clause 95 of Schedule 1 of the FW Act that accords with the law as stated in the Full Court decision.

[17] These proceedings are not intended to constitute an opportunity for parties to seek a revisitation of policy issues which were determined in the 2024 Full Bench proceedings. Those proceedings provided parties with multiple opportunities to file submissions and involved an extensive process of direct consultation with parties in an iterative process of consideration of all the issues associated with making a standard delegates' rights term. The standard term was the outcome of that process. These proceedings will not provide, and are not intended to provide, any comparable opportunity for parties to be heard in relation to the merit issues associated with establishing a standard delegates' rights term which provides for the practical exercise of the rights conferred by s 350C. Nor are these proceedings intended to be a means by which parties may contend that the provisions in the standard term which were not the subject of any consideration in the Full Court decision are attended by error in some way.

[18] It is open for parties, separate from these proceedings, to make applications for the variation of delegates' rights terms in modern awards under s 158(1) of the FW Act. Such applications may seek to address any perceived issues in delegates' rights terms generally and, if made, will be considered and determined in the normal way. It is also open for parties to apply for the variation of delegates' rights terms in particular modern awards to tailor them for

the circumstances of specific industries, occupations or enterprise. It was contemplated by the legislature that this would occur: the Revised Explanatory Memorandum for the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) stated at [827] in relation to the rights conferred by ss 350C(2) and (3):

These rights are specified at the level of principle, with the expectation that for most employees, modern awards and enterprise agreements would provide greater detail for particular industries, occupations, or enterprises.

[19] Unsurprisingly, no party submitted that it was other than necessary for us to re-determine the delegates' right terms in the nine modern awards the subject of the Full Court decision under clause 95 of Schedule 1 to the FW Act. Nor did any party take issue with our *provisional* view that the Full Court decision has resulted in the delegates' rights terms in the 146 other modern awards being the subject of an ambiguity, uncertainty or error within the meaning of s 160(1). We confirm the *provisional* view in this respect: it must follow from the Full Court decision that the standard term in each of these modern awards is subject to jurisdictional error, and this has created uncertainty as to the legal status of the terms.

[20] All parties' submissions proceed on the premise that the determinative task involves variations to the standard term developed by the 2024 Full Bench to apply in all modern awards. No party submitted that we should start afresh in drafting a standard delegates' rights term, nor did any party submit that there should be a departure from a standard approach for any particular modern award in the context of the current proceedings.

First error

[21] No party opposed the replacement of the definition of 'eligible employees' in the standard term with the proposed new definition of 'eligible workers' in clause XX.2 and the replacement of 'eligible employees' with 'eligible workers' in clause XX.5. However, the ACCI, the COSBOA and the AREEA opposed the proposed new definition of 'workplace delegate' and submitted that, instead, the definition should simply refer to s 350C(1) of the FW Act. In this regard we note that modern awards already contain a definition of 'workplace delegate' at clause 2 which assigns the term the meaning given to it by s 350C(1) of the FW Act. Adopting the statutory definition would ensure the definition does not operate to limit or detract from the rights conferred by s 350C. Further, we consider multiple definitions to be unnecessary and potentially confusing. We have therefore decided to delete clause XX.2(d) from the proposed term.

[22] In relation to clause XX.5, the CFMEU submitted that the reference to a 'policy of the employer' in clause XX.5(f) may constitute an impermissible limitation on a workplace delegate's right to represent all eligible workers in an enterprise. We accept this submission, and the words 'policy of the employer' will be replaced by 'workplace policy'. The CFMEU also made a more expansive submission that clause XX.5 should be amended to include a provision which confers on eligible workers a corresponding right to be represented by a workplace delegate. This submission is rejected. Such a provision is not authorised by clause 95 of Schedule 1 because it is not a delegates' rights term as defined in s 12. Section 350C only confers rights upon workplace delegates; it does not confer rights upon workers who might be represented by a workplace delegate. Nor is the CFMEU's proposed amendment necessary to address the jurisdictional errors identified in the Full Court decision. A similar amendment to

clause XX.6 proposed by the CFMEU is rejected for the same reasons. The CFMEU accepts, correctly, that clauses XX.5 and XX.6 of the proposed term extend the entitlements of a workplace delegate such that the delegate can represent, and communicate with, all workers who perform work in a particular enterprise who are members, or eligible to be members, of the delegate's organisation.

[23] In respect of the replacement of 'eligible employees' with 'eligible workers' in clause XX.8, which concerns the provision of paid time for delegates' training, the ACCI and MBA submit that this change in clauses XX.8(a) and (b) would have the unintended consequence of expanding the number of workplace delegates who may be entitled to such paid training time. They submit that clause XX.8(b) should operate only by reference to eligible workers who are employed by the employer of the delegate.

[24] Subject to the exemption of small businesses, clause XX.8 requires employers of workplace delegates to provide a prescribed minimum period of paid training time for at least one workplace delegate. Clauses XX.8(a) and (b) are concerned with the circumstances in which such paid training time must be provided to additional delegates, and currently operate according to a formula of not requiring this for more than one delegate per 50 eligible employees. The ACCI and MBA are correct that altering these provisions so that 'eligible employees' is replaced by 'eligible workers' may have the effect of expanding the scope of the obligation in clause XX.8 in enterprises with larger numbers of workers. However, we consider that the formula in clauses XX.8(a) and (b) was intended to confer a paid training time entitlement for delegates which corresponds to the number of persons which the delegates might be required to represent. Thus, once it is understood, consistent with the Full Court decision, that the representational rights of delegates extend beyond direct employees of the delegates' employer and includes all workers in the relevant enterprise, then the formula must be adjusted to operate with respect to 'eligible workers', not just 'eligible employees'. Therefore, we do not accept the submissions.

[25] We note that, in the proposed clause XX.9(d), a reference to 'the employee's agreement' was retained inconsistently with the intended replacement of all references to 'eligible employees' with 'eligible workers'. This will be altered to 'the worker's agreement'.

Second error

[26] All parties accepted that the second error identified in the Full Court decision would be appropriately addressed by replacing the words 'for the purpose of' in clause XX.6 with 'in relation to'.

Third error

[27] A number of submissions were made concerning the proposed amendments to clause XX.9. *First*, the ACTU, supported by the AMOU, AMWU, ANMF, ASU, CEPU, CFMEU, HSU and UWU, submit that the proposed new clause XX.9(b) should be removed altogether. The ACTU submits that the proposed provision is inconsistent with paragraphs [111] and [112] of the Full Court decision. This is not accepted, since paragraphs [111] and [112] explicitly contemplate that a provision of this nature might be included in a delegates' rights term provided that it ensures that the delegate's rights provided for by clause 29A may be exercised

in a way that is inconsistent with the duties and obligations of an employee and the obligation not to hinder or obstruct the normal performance of work only where the delegate is reasonably exercising the delegates' rights provided by the term. The inclusion of clauses XX.9(a)(i) and (iii) in the standard term reflects a policy choice by the 2024 Full Bench and, having regard to the confined nature of these proceedings as earlier described, we consider that this policy choice should be maintained to the extent possible in light of the Full Court decision.

[28] The ACTU and the other unions submit, in the alternative, that clause XX.9(b) should be redrafted because, in the form set out in the proposed term, it would create a general obligation, enforceable as an award term, for employees who hold the position of workplace delegate to comply with their duties and obligations as employees and not hinder, obstruct or present the normal performance of work. Consequently, it is submitted, clause XX.9(b) as drafted operates in a freestanding way that is not confined to the exercise of the entitlements under the delegates' rights term. We accept this submission. In its original form in the standard term, clause XX.9(a) only operated when workplace delegates were exercising their entitlements under the term, but this limitation has not been transposed into the drafting of the proposed clause XX.9(b). Accordingly, an appropriate amendment will need to be made to the drafting of clause XX.9(b). Various proposals for the redrafting of clause XX.9(b) are proposed by the ACTU and the unions.

[29] The ACCI, AREEA and MCA also express concerns about the proposed clause XX.9(b), principally to the effect that it may authorise or permit workplace delegates to breach their duties and obligations and to hinder, obstruct or prevent the normal exercise of work while exercising their rights as delegates. They also propose various redrafts of clause XX.9(b). However, these submissions cannot be accepted in light of the Full Court's conclusions that intrinsic to the role of a workplace delegate is that the delegate may act in the interests of the employees rather than the employer (at [93]) and that inherent to the normal performance of the workplace delegate's functions is the hindering, obstructing or preventing of the normal performance of work (at [94]). This is subject only to the requirement that the delegate *reasonably* exercise their rights (at [95]).

[30] Having regard to these matters, we have decided to modify clause XX.9(b) as follows (with the additional words underlined):

- (b) When exercising any entitlements under clause XX, a workplace delegate must, other than in the reasonable exercise of those entitlements:
 - (i) comply with their duties and obligations as an employee; and
 - (ii) not hinder, obstruct or prevent the normal performance of work.

Other matters raised in submission

[31] The ACTU and a number of unions made submissions to the effect that additional provisions should be added to the proposed term to impose requirements upon any employer in an enterprise which is not the employer of the workplace delegate for the enterprise in respect of the rights of that delegate. In particular, the ACTU, with the support of the AMOU, AMWU, ANMF, ASU, CEPU, HSU, MEU and UWU, propose a new clause XX.11 which would impose upon such employers a requirement expressed in terms equivalent to s 350A(1), which applies only to the employer of the delegate. The MEU filed a witness statement in support of this

proposal made by Brodie Brunker, the Vice-President of the Queensland district of the MEU. In this statement, Mr Brunker describes the Lodge structure of the Queensland district of the MEU pursuant to which a Lodge is established for each mine, port, power station or other enterprise represented by the MEU. In mine Lodges, the delegates and the Lodge committee will typically consist of employees of the mine operator, but the Lodge will also seek to represent employees of contractors working on the mine site. The CFMEU also propose the addition of a paragraph to proposed clause XX.7 which would require employers in an enterprise who are not the employer of the workplace delegate to provide that delegate with reasonable access to the workplace and workplace facilities.

[32] We do not consider that these submissions fall within the scope of these proceedings as earlier described. The Full Court did not find that the standard term was the subject of jurisdictional error because of the non-inclusion of the additional terms proposed by the ACTU and the unions, nor did it find that the inclusion of such terms was necessary for the standard term to at least provide for the exercise of the rights in s 350C (see the note to the definition of ‘delegates’ rights term’ in s 12). The Full Court identified (at [24]) the impermissible limitation on the entitlement of a delegate to represent members, or potential members, to those who are employed by the same employer as arising from the definitions of ‘employer’ and ‘eligible employee’ in clause 29A.2 when read with the rights conferred by clause 29A.5. That limitation has been addressed in the form of clauses XX.2 and XX.5 that we propose.

[33] Further, we consider that there is a significant question as to whether the Commission is authorised by clause 95 of Schedule 1 or s 149E to impose obligations upon employers who do not employ a workplace delegate as part of a delegates’ rights term. This question arises because, although (as found in the Full Court decision) the entitlements of workplace delegates in ss 305C(2) and (3) apply in respect of the representation of all members and eligible members in an enterprise, whether employed by the delegate’s employer or not, the obligations in s 350A by which these entitlements may be enforced only apply to the employer of the delegate. The FW Act does not contain any mechanism for the enforcement of the entitlements in ss 350C(2) and (3) as against any employer which is not the employer of the relevant delegate. Section 350C(4), which provides that compliance with a delegates’ rights term in a fair work instrument is taken to constitute affordance of the rights in s 350C(3), likewise only applies to the employer of the workplace delegate. Thus, on one view, the rights conferred by ss 350C(2) and (3), the exercise of which must be provided for in a delegates’ rights term, are not rights which impose any corresponding obligation upon any employer other than the employer of the workplace delegate. The determination of this question, which was not the subject of any consideration in the Full Court decision or addressed in any detail in the submissions made to this Full Bench, is plainly beyond the scope of these proceedings.

[34] The MCA submits that the proceedings should be confined to considering and making those variations that are strictly necessary in light of the Full Court’s orders but, in the alternative, proposes a range of variations to the standard clause which would involve a substantial revisit of the policy choices made by the Full Bench in 2024. Since our earlier description of the narrow scope of these proceedings is consistent with the MCA’s primary position, it is not necessary for us to give consideration to the proposals which the MCA puts in the alternative.

Operative date

[35] No party took issue with our *provisional* view that, with respect to the nine awards the subject of the Full Court decision, the re-exercise of the power in clause 95 of Schedule 1 to vary the awards to include a delegates' rights term pursuant to the writs of mandamus issued by the Court would have the consequence that such variations would come into operation, and take effect from, 1 July 2024. With respect to variations to the other 146 modern awards to vary the existing delegates' rights terms, only the MCA challenges our *provisional* view that such variations should also take effect from 1 July 2024. The MCA submits that there are no exceptional circumstances which justify retrospectivity and, as the proposed draft term would impose rights and obligations additional to those in the standard clause, this could expose parties to liability for breaches of provisions of which they had no knowledge.

[36] We do not accept the MCA's submission. We consider that exceptional circumstances within the meaning of s 165(2) exist in that the Full Court decision has exposed that the Commission has not discharged its obligation under clause 95 of Schedule 1 to vary modern awards to include a delegates' rights term by 30 June 2024 according to law. We consider that the variations which we make to 146 modern awards under s 160 should be given the proposed retrospective effect in order to achieve compliance with the FW Act. While the MCA's submission concerning potential retrospective liability upon employers has force in a theoretical sense, there is no material before us to suggest that this is likely in a practical sense. Accordingly, we confirm our *provisional* view concerning the operative date of the variations made under s 160.

Conclusion

[37] All modern awards will be varied to include a delegates' rights term in the form contained in **Attachment 3**. Clause XX.10 will be included in the 38 modern awards which currently contain this provision. A typographical error in the definition of 'employee organisation' in each award will be corrected. Determinations varying all modern awards to give effect to this decision are published together with this decision.



PRESIDENT

Attachment 1

XX. Workplace delegates' rights

XX.1 Clause XX provides for the exercise of the rights of workplace delegates set out in section 350C of the Act.

NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause XX.

XX.2 In clause XX:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and
- (c) **eligible employees** means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.

XX.3 Before exercising entitlements under clause XX, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

XX.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

XX.5 Right of representation

A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:

- (a) consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work;
- (c) resolution of disputes;
- (d) disciplinary processes;
- (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and

- (f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.

XX.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause XX.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.
- (b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.

XX.7 Entitlement to reasonable access to the workplace and workplace facilities

- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;
 - (ii) a physical or electronic noticeboard;
 - (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause XX.7(a) if:
 - (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

XX.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working

hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.
- (b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.
- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.
- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

XX.9 Exercise of entitlements under clause XX

- (a) A workplace delegate's entitlements under clause XX are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with their duties and obligations as an employee;
 - (ii) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;

- (iii) not hinder, obstruct or prevent the normal performance of work; and
 - (iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.
- (b) Clause XX does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.
- (c) Clause XX does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the Act, the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or clause XX.

Definitions to be inserted into the definitions clause for each award

employee organisation has the meaning given by section 12 of the Act.

enterprise has the meaning given by section 12 of the Act.

small business employer has the meaning given by section 23 of the Act.

workplace delegate has the meaning given by section 350C(1) of the Act.

Attachment 2

Note: shading indicates where drafting differs from the existing standard award delegates' right clause.

XX. Workplace delegates' rights

XX.1 Clause XX provides for the exercise of the rights of workplace delegates set out in section 350C of the Act.

NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause XX.

XX.2 In clause XX:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected;
- (c) **eligible workers** means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise;
- (d) **workplace delegate** means a person 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 in a particular enterprise.

XX.3 Before exercising entitlements under clause XX, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

XX.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

XX.5 Right of representation

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

- (a) consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work;
- (c) resolution of disputes;
- (d) disciplinary processes;

- (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and
- (f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible workers are entitled to be represented and which concerns their industrial interests.

XX.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause XX.5. This includes discussing membership of the delegate's organisation and representation with eligible workers.
- (b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

XX.7 Entitlement to reasonable access to the workplace and workplace facilities

- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;
 - (ii) a physical or electronic noticeboard;
 - (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause XX.7(a) if:
 - (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

XX.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training

related to representation of the industrial interests of eligible workers, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.
- (b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.
- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.
- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

XX.9 Exercise of entitlements under clause XX

- (a) A workplace delegate's entitlements under clause XX are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
 - (ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.
- (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.
- (c) Clause XX does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.
- (d) Clause XX does not require an eligible worker to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the Act, the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or clause XX.

XX.10 Interaction with other clauses of this award

Other clauses of this award may give additional or more favourable entitlements to workplace delegates (however described). If an entitlement of a workplace delegate under another clause of this award is more favourable to the delegate than an entitlement under clause XX, the entitlement under the other clause applies instead of the entitlement under clause XX.

Attachment 3

XX. Workplace delegates' rights

XX.1 Clause XX provides for the exercise of the rights of workplace delegates set out in section 350C of the Act.

NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause XX.

XX.2 In clause XX:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected;
- (c) **eligible workers** means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise.

XX.3 Before exercising entitlements under clause XX, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

XX.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

XX.5 Right of representation

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

- (a) consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work;
- (c) resolution of disputes;
- (d) disciplinary processes;
- (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the Act or is assisting the delegate's organisation with enterprise bargaining; and
- (f) any process or procedure within an award, enterprise agreement or workplace policy under which eligible workers are entitled to be represented and which concerns their industrial interests.

XX.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause XX.5. This includes discussing membership of the delegate's organisation and representation with eligible workers.
- (b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

XX.7 Entitlement to reasonable access to the workplace and workplace facilities

- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;
 - (ii) a physical or electronic noticeboard;
 - (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause XX.7(a) if:
 - (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

XX.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible workers, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.
- (b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.
- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.
- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

XX.9 Exercise of entitlements under clause XX

- (a) A workplace delegate's entitlements under clause XX are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
 - (ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.
- (b) When exercising any entitlements under clause XX, a workplace delegate must, other than in the reasonable exercise of those entitlements:

- (i) comply with their duties and obligations as an employee; and
 - (ii) not hinder, obstruct or prevent the normal performance of work.
- (c) Clause XX does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.
- (d) Clause XX does not require an eligible worker to be represented by a workplace delegate without the worker's agreement.

NOTE: Under section 350A of the Act, the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or clause XX.

XX.10 Interaction with other clauses of this award

Other clauses of this award may give additional or more favourable entitlements to workplace delegates (however described). If an entitlement of a workplace delegate under another clause of this award is more favourable to the delegate than an entitlement under clause XX, the entitlement under the other clause applies instead of the entitlement under clause XX.

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