



Ground Floor, 133 Parramatta Rd  
Granville NSW 2142

## **IN THE FAIR WORK COMMISSION**

### **Fair Work Act 2009 cl.95, Schedule 1– FWC to vary certain modern awards**

**Matter no: (AM2024/6)**

**Party:** “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Union (AMWU)

### **VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES’ RIGHTS TERM (AM2024/6)**

#### **Introduction**

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union (“AMWU”) represents over 55,000 workers across a variety of industries across Australia.
2. The AMWU submission is directed in response to the requirement for the Commission to vary all modern awards to include a new delegates’ rights term.
3. The AMWU has reviewed a preliminary version of the Australian Council of Trade Unions (ACTU) submission<sup>1</sup>, and we strongly endorse the delegate’s right clause proposals put forth by the ACTU. We will also be putting forward some additional provisions in relation to the Model Clause, which are likely to be relevant to the following Awards where the AMWU has a significant interest:
  - *Manufacturing and Associated Industries and Occupations Award 2020 (MA000010)*
  - *Graphic Arts, Printing and Publishing Award 2020 (MA000026)*
  - *Food, Beverage and Tobacco Manufacturing Award 2020 (MA000073)*
  - *Vehicle Repair, Services and Retail Award 2020 (ma000089)*

---

<sup>1</sup> Submission by the Australian Council of Trade Unions dated 1 March 2024.

4. The additions to the ACTU clause we are proposing have also been replicated, (bolded and underlined) in Annexure A of this submission.
5. The AMWU is also aware that a specific clause may be proposed for the *Building and Construction On-site General Award 2020* by the CFMEU<sup>2</sup> that reflects an industry wide practice for delegates in construction. As a union with members who are employed in that industry, we broadly support the CFMEU's approach.

### **AMWU delegates and the characteristics of AMWU workplaces**

6. AMWU delegates are employed in a variety of industries and their employment is underpinned by a range of Awards. For many of these workers, particularly those employed in the manufacturing of goods or the maintenance of machinery and equipment, they are employed as shift-workers. Workers may also be located in regional, rural and remote locations as well as in metropolitan areas.
7. For these delegates, they may be rostered to work at times that do not neatly fit in with the hours that the Fair Work Commission (or other Courts and Tribunals) sits, or the hours when training courses may be held. As such, the AMWU is advocating for any model clause to contain provisions that recognise the needs of shift workers.
8. Further, particularly in sites with shift work rosters, the delegate structure might be based around hours of work as well as work groups and/or numbers of employees. For example, there might be at least one delegate for each shift (day, afternoon, night) within a particular work area, regardless of the numbers of employees who are rostered on that shift. As such, the AMWU is opposed to any entitlement to training leave being determined according to the number of employees on site.

### **AMWU additions to the ACTU proposed clause**

9. The AMWU will propose that the following should be included in the new delegate's right clause in modern awards.
10. In the "Right to represent Section" of the ACTU proposed clause the AMWU submits that the following words should be added:

---

<sup>2</sup> Construction, Forestry and Maritime Employees Union (CFMEU) submission dated 1 March 2024

**“If a Delegate is attending the Fair Work Commission, a Court or Tribunal at a time when they would not usually be rostered on to work, they will not be required to attend for a shift that commences later that day without any loss of pay”.**

11. Similarly, we propose the following to be inserted in the “Right to paid Training Leave” section of the ACTU proposed clause:

**“If a Delegate is attending Training at a time when they would not usually be rostered on to work, they will not be required to attend for a shift that commences later that day without any loss of pay”.**

12. These additions, are meant to ensure that the right perform the role of a Union delegate, including the right to be trained as a delegate, are not curtailed for those workers who do not work the standard five-day 38 hour working week. It is not the intent of the legislation for workers who are rostered on night shift to clock off, attend a conference in the Fair Work Commission and then return to work later that afternoon or evening. This largely means that their role is being carried out in their own time and creates issues for fatigue management. While it is hoped that employers would be able to be flexible with rostering, this is not guaranteed. Our proposed amendment ensures that workers can take the necessary time off to carry out their role as delegate without using their own leave to do so.
13. As well as ensuring that Delegates who are shift workers have access to paid time to perform their role (or compensate them if they do not), this addition recognizes the physical and mental demands of participating in legal proceedings and/or training sessions. It aims to prevent undue stress and fatigue, which can compromise safety and performance at work.
14. Delegates should also have an appropriate time release for proper travel time to and from the training venue. This travel time should also be considered paid time. This change is justified by the fact that often venues where the training is held can be quite far from the place of work.
15. The AMWU also argues that every delegate in the workplace should not have less than 5 days of training. The necessity for a minimum of 5 days is based on the complexity of the industrial relations and the need for delegates to have a clear understanding of the current laws, negotiations techniques, and dispute resolution to effectively represent the members.
16. Providing a minimum of 5 days will ensure that the delegate can provide informed and reliable guidance to the members facilitating a fair and productive workplace for the benefit of the members and the employer.

17. The AMWU also propose the following addition to the training clause of the ACTU:

5) An employer must not refuse the request for leave, except where it can demonstrate that:

a) it has already provided the maximum amount of leave under this clause; or

b) it would cause unjustifiable hardship to the business to grant the leave at that time.

**c) For the avoidance of any doubt, the onus shall rest with the Employer to demonstrate unjustifiable hardship to grant leave when an eligible Union Delegate is otherwise entitled.**

18. This addition to the clause address issues that can arise regarding the timing of the training leave. While the time of taking leave for training shall be arranged to minimise any adverse effect on the Employer's operations, the onus shall rest with the Employer to demonstrate an inability to grant leave when an eligible Union Delegate is otherwise entitled.

19. The AMWU also strongly supports the provision advanced in the ACTU submission that every union member employed by the employer should be able to attend a reasonable number of union meetings in each calendar year. The AMWU's practice is for quarterly meetings; and we would support this being included in the Model Clause. Similarly, for delegates who hold an office in their Union, we would support a minimum of four days leave to enable them to attend quarterly meetings of elected bodies (such as Union Councils).

**Luigi Amoresano**

1 March 2024

# Annexure A

## AMWU Model Clause – Delegates’ Rights

### Definitions

In this clause –

**confidential communication** means a communication made by or to a delegate in the expectation that the employer or a third party would not be privy to the communication, and where the contents of the communication are not already in the public domain.

**employer** means the employer of a workplace delegate

**union** means an employee organisation.

**union member** means a member of an employee organisation of which the workplace delegate is appointed or elected.

**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

**Paid Time** means time paid at the full rate of pay (within the meaning of the FW Act s 18).

### Right to represent

- 1) A workplace delegate, acting on behalf of their union, is entitled to Paid Time, to represent (including but not limited to in disputes or grievances with the employer):
  - a) their union,
  - b) union members, and
  - c) persons eligible to be union members

Note: the Fair Work Act 2009 (Cth) s 350A(1) provides that an employer may not unreasonably fail to refuse or deal with a delegate, knowingly or recklessly make a false or misleading statement to a delegate or unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate.

Note 2: the Fair Work Act 2009 (Cth) s 350C(2) provides that a workplace delegate is entitled to represent the industrial interests of union members and persons eligible to be union members, including in disputes with the employer.

- 2) Without limiting sub-clause (1), a workplace delegate is entitled to, among other things:
  - a) reasonable access to the workplace (or workplaces);
  - b) be provided with information relevant to the exercise of their right to represent. Provision of information to a workplace delegate or provision of information by a workplace delegate to their union will not constitute a breach of confidentiality;
  - c) participate in any dispute or grievance in the workplace;
  - d) participate in any consultative process;
  - e) participate in collective bargaining;
  - f) participate in any matters or proceedings in the Fair Work Commission or a court, tribunal or administrative or regulatory body;
  - g) communicate with persons eligible to be union members about joining the union.
  - h) advocate for and make submissions on behalf of their union, union members and persons eligible to be union members to any third party, tribunal or forum.
  - i) represent supported employees and assist in decision-making.
  - j) Identify to [union members, persons eligible to be union members and other persons] that they are a workplace delegate, including by wearing a badge, apparel, sticker or other mark, or to use a sign, or other forms of communication;.
  - k) Access to shift, roster and other flexible work changes where necessary to facilitate the exercise of their right to represent during work time;
  - l) All other rights provided for in this clause or by legislation;

for the purpose of exercising the rights in (1) above, or for related purposes, to Paid Time.

- 3) Where an employer is a party to Fair Work Commission, court, or employment-related tribunal proceedings (including conciliation, mediation, arbitration) involving union, members, or persons eligible to be union members, the employer must allow all workplace delegates to attend all related Fair Work Commission, court, or employment-related tribunal listings, meetings, and conferences without loss of pay. Appropriate time release must allow for appropriate travel time to and from the Fair Work Commission, court, or employment-related tribunal.
- 4) **If a Delegate is attending the Fair Work Commission, a Court or Tribunal at a time when they would not usually be rostered on to work, they will not be required to attend for a shift that commences later that day without any loss of pay.**
- 5) An employer must not:
  - a) induce a delegate not to exercise their rights.
  - b) prevent a delegate from participating in collective bargaining.
  - c) deal directly with a person who is being represented by a delegate about a dispute, bargaining for a collective agreement, their industrial interests, a disciplinary matter, a performance matter, or any other workplace or industrial matter unless by express grant of the person or persons consent, after having had a prior opportunity to consult the delegate.
- 6) An employer that is considering changes of an economic, technological or structural nature which

may have a significant impact upon employees must consult with the relevant delegates in good faith before a final decision is taken.

Note: Clause X sets out further obligations in relation to consultation on major change.

#### Right to paid training leave

- 1) A workplace delegate has the right to reasonable Paid Time to attend training
  - a) on their role as a workplace delegate;
  - b) on workplace delegates' rights, or
  - c) related to their role in representing their union, union members and/or persons eligible to be union members.
- 2) A workplace delegate must be nominated by their union to participate in such training, and the training course must be approved by their union.

An employer and employee association must agree in writing on the total amount of Paid Time provided to each workplace delegate to attend training, provided that such time must not be less than 5 days per annum per delegate.

- 3) In addition to the Paid Time for delegates in (4) a person who is an officer of a union or who holds some other elected or appointed position in their union beyond that of workplace delegate shall be entitled to 3 days per annum Paid Time to attend training related to their role.
- 4) **If a Delegate is attending Training at a time when they would not usually be rostered on to work, they will not be required to attend for a shift that commences later that day without any loss of pay.**
- 5) An eligible delegate (or person taking Paid Time in accordance with (5) above) or their union must give the relevant employer four weeks' notice of the intention to take Paid Time for training, unless otherwise agreed.
- 6) An employer must not refuse the request for leave, except where it can demonstrate that:
  - a) it has already provided the maximum amount of leave under this clause; or
  - b) it would cause unjustifiable hardship to the business to grant the leave at that time.
  - c) **For the avoidance of any doubt, the onus shall rest with the Employer to demonstrate unjustifiable hardship to grant leave when an eligible Union Delegate is otherwise entitled.**

#### Right to communications

- 1) A workplace delegate is entitled to have reasonable communications (including discussions), including during Paid Time, with their union, union members or persons eligible to be union members in relation to any matter or subject.
- 2) For the avoidance of doubt, a workplace delegate's entitlement to reasonable communications

(including holding discussions) shall include (but is not limited to), among other things:

- a) the right to ask a person their union status and ask them to join the union; and
  - b) the right to ask an official or employee of the union to attend the workplace.
  - c) discussing relevant industrial and workplace matters with union members and persons eligible to be union members;
  - d) addressing new employees at an induction or at the commencement of their employment or shift (or to address new employees at a separately convened meeting during Paid Time of no less than 15 minutes and no more than 30 minutes where no such induction occurs); or
  - e) representing or advising an employee or employees, or otherwise discussing, in an individual or collective issue, concern, dispute, grievance, disciplinary matter, performance matter or any other workplace or industrial matter.
  - f) participating in bargaining for an enterprise agreement or other communication in connection with such bargaining;
- 3) A person who is a union member, or person eligible to be a union members, of a union has the right to have discussions with a workplace delegate that represents them.
- 4) If reasonable communications occur during work time, they must be treated and paid as work time for the workplace delegate as well as any union members or persons eligible to be union members who participate.
- 5) An employer must facilitate reasonable communications between a delegate and union members or persons eligible to be union members. This may include provision of access to the workplace and/or to means of communication used in the workplace.

Note: Access to facilities and equipment is further provided for in clause X

- 6) An employer must not knowingly or recklessly survey, monitor, record or otherwise infringe the privacy of confidential communications between workplace delegates and their union, union members or persons eligible to be union members.
- 7) An employer must not:
- a) prevent workers from disclosing information to a workplace delegate or union; or
  - b) require a worker to disclose the contents of any communications with a workplace delegate or union.
- Any term of an arrangement or contract which provides to the contrary is void and unenforceable.
- 8) An employer must not:
- a) prevent a workplace delegate from disclosing information
    - i) to their union;
    - ii) to union members or persons eligible to be union members; or
  - b) require a workplace delegate to disclose
    - i) the contents of any confidential consultations.
    - ii) confidential information to it, or make any use of such information.
- Any term of an arrangement or contract which provides to the contrary is void and unenforceable.

#### Right to use facilities

- 1) A workplace delegate has the right to make reasonable use of the employer's facilities and equipment.
- 2) For the avoidance of doubt, a workplace delegate's entitlement to make reasonable use of the employer's facilities shall include (but is not limited to), among other things:
  - a) placing a union notice on an employee noticeboard (including electronic notice boards, intranet pages and other internal electronic pages;



- b) use of computers;
- c) making photocopies of a document;
- d) making telephone calls,
- e) sending confidential (as between the workplace delegate and the recipients or senders) electronic messages, including making use of electronic address lists, using electronic communication facilities that the employer uses to communicate with its workforce;
- f) reasonable access to the workplace/s;
- g) reasonable transport and freedom of movement to or within the workplace, where this is necessary in order to provide reasonable access;
- h) holding discussions in an appropriate room or location on the premises, independent of employer representatives.

#### Right to Attend Meetings

- 1) An employer must allow every union member employed by the employer to attend a reasonable number (**at least quarterly** ~~at least 2~~) of union meetings (each of a maximum of 2 hours' duration) during Paid Time in each calendar year.
- 2) An employer must allow an employee who is an officer of a union or who holds some other elected or appointed position in their union beyond that of workplace delegate Paid Time (**at least 4 days**) for the purpose of carrying out duties or exercising rights as an officer (or holder of some other role) of an employee association.