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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 FWC issued a Statement of 10 May 2024 inviting interested parties to file submissions concerning its “Draft modern award delegate’s rights term” (draft term) included as "Attachment A" to that Statement¹.
3. The AMWU has filed two submissions in this matter as follows:

¹ Variation of modern awards to include a delegates’ rights term (AM2024/6) JUSTICE HATCHER, PRESIDENT SYDNEY, 10 MAY 2024 at <https://www.fwc.gov.au/documents/decisionssigned/pdf/2024fwc1214.pdf>

- AMWU submission dated 1 March 2024 ²
 - AMWU submission in reply dated 28 March 2024 ³
4. We generally support the ACTU submission filed on 22 May 2024, and support the direction and intent of the proposed amendments to the draft Model Clause.⁴ We believe the ACTU proposed clause provides a robust framework that aligns with the legislative intent to enhance the capabilities of workplace delegates.
 5. The AMWU, however, believes that both the draft term and the ACTU's proposed amendments do not fully address the specific needs and circumstances of our members. As such, we have proposed additional provisions to address those needs, which are, in the AMWU's view, essential to ensure comprehensive protection and support for workplace delegates, especially those employed in industries where the AMWU has significant representation.
 6. We have attached our proposed clause as "Attachment A" to this submission.

Definition of "Eligible Employees"

7. The AMWU shares the concerns articulated by the ACTU in their submission⁵ regarding the definition of "eligible employees" as stipulated in clause X.2 of the draft term⁶. This definition, as it currently stands, restricts

² AMWU submission dated 1 March 2024 at <https://www.fwc.gov.au/documents/awards/variations/2024/am20246-sub-amwu-010324.pdf>

³ AMWU submission dated 28 March 2024 at <https://www.fwc.gov.au/documents/awards/variations/2024/am20246-sub-reply-amwu-280324.pdf>

⁴ ACTU submission dated 22 May 2024

⁵ ACTU submission dated 22 May 2024

⁶ Clause X.2(c) of the FWC draft term

the practical ability of workplace delegates to effectively represent the industrial interests of members and potential members.

8. The draft's definition of "*eligible employees*" as those "*employed by the employer in the enterprise*"⁷ severely restricts a delegate's ability to represent and communicate with other union members who are based at the site, but who may be employed by other employers – including labour hire workers, apprentices engaged through group training companies, or employees of contractors. These workers are integral parts of the operational workforce within an enterprise.
9. In the AMWU's submission, this restrictive definition goes against the expansive definition in the Act that allows for delegates to represent and communicate with employees based on their eligibility to be a member of a particular union, not their employer.
10. Section 350C(1) of the Fair Work Act ("the Act"): defines "workplace delegate" as:

*"a 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) of members of the organisation who work in a particular enterprise."*⁸

Further, Section 350C(2) of the Act states that workplace delegates:

*is entitled to represent the industrial interests of members, and any other person eligible to be such members."*⁹

⁷ Clause X.2(c) of the draft term

⁸ Section 350C(1) Fair Work Act 2009

⁹ Section 350C(2) of the Fair Work Act 2009

11. The Act ensures that the workplace delegate is broadly defined and extends their representative capacity to cover members and potential members of their union within a workplace. The legislature has intended a broadly interpretative scope in relation to union representation in the workplace. The Act does not create unnecessary demarcations between employees of different employers who may be performing the same work, under the same supervision and subject to similar physical working conditions. The AMWU would argue that such a demarcation effectively ties “industrial interests” to a definition based on who pays the employee for the work, when the concept should be more broadly and beneficially defined.
12. The draft term’s restrictive interpretation of “eligible employees” is in potential conflict with the Act’s broader mandate. By limiting the scope to only those employed directly by the same employer, it effectively excludes a significant portion of the workforce that a delegate under the FW Act is entitled to represent.
13. Workers engaged at a particular site, regardless of employer, may share common issues surrounding supervision, training, workplace amenities and facilities. It may be more relevant to raise an issue with a delegate at that site, rather than try and raise an issue with a remote employer, through a delegate that may be similarly based at a third-party employee’s site. As such, the AMWU also believes that a more appropriate description for the purposes of the term is “eligible worker”.
14. The use of the term “workplace delegate” in the Act, rather than just a generic “delegate” surely points towards an interpretation that is built around where an employee is working, rather than a union delegate employed by a labour hire company having to cover numerous sites wherever those employees may be based.

15. The restrictive definition does not align with the policy objectives of the Act, which aims to enhance collective representation and industrial harmony by ensuring that all members (and those eligible to be members) have access to union representation, irrespective of the complexities of their employment arrangements within an enterprise.
16. The AMWU endorses and adopts the amendments to the draft term proposed by the ACTU.

Notification Requirement and Delegate Rights

17. A workplace delegate is entitled to the rights provided under the Act once they have been elected or appointed within the Rules of the employee organisation they represent. While the requirement in clause X.3¹⁰ for workplace delegates to notify employers of their status is sensible for operational harmony, the entitlement to produce written evidence that would satisfy a reasonable person may restrict or hamper the ability of a delegate to act in accordance with their statutory rights, due to factors that may be outside the Delegate's control.
18. For example, if a Delegate is required to be endorsed by a governing body of their union to fulfil the necessary requirements of their union's rules, a delegate may not receive formal notification from the union confirming their election until days later – depending on scheduling of meetings, the number of delegates endorsed at a particular meeting and then any delay in the receipt of that confirmation.
19. The ability for this requirement to invalidate a delegate's role due to procedural errors or delays is concerning. Such a stipulation could be

¹⁰ Clause X.3 of the FWC draft term

leveraged unfairly against delegates, particularly in scenarios where the delay or error in notification is unintentional or minor.

20. To safeguard against such scenarios, it is critical to include a provision that ensures minor procedural discrepancies do not invalidate a delegate's legitimate rights. We endorse and adopt the changes to this clause proposed by the ACTU.

Limitation on Number of Training Days After the First Year

21. Workplace delegates take on the responsibilities akin to a workplace leader, industrial instrument interpreter, case law applicator, and custom and practice expert. Their duties extend broadly, impacting not only union members but often the broader workforce.
22. Providing only one day of training per year for workplace delegates after their initial year, as stated in clause X.8¹¹, is therefore insufficient and does not adequately support the continuous development required for effective representation. Workplace regulations and industrial relations environments are dynamic, with frequent changes that delegates must stay abreast of to effectively represent their members.
23. The AMWU recognises the ongoing need for training to both update and build on delegates' skills in additional training that takes place in the years after their election and initial training. Such training ensures delegates are well prepared to tackle emerging challenges and complexities in workplace relations. Limiting this training to just one day per year undermines the ability of a Delegate to perform their role.

¹¹ Clause X.8 of the FWC draft term

24. Our training structure, for example, is designed to provide delegates with progressive learning opportunities. This includes, for example, training in relation to enterprise bargaining and global trends in industries where our members work. These more advanced training modules are conducted over a three-day period and is structured so delegates can apply what they learned in the workplace.
25. Continuous training also enables delegates to enhance their skills and confidence, which is crucial for resolving workplace issues proactively. Learning from peers in training sessions often leads to the resolution of minor misunderstandings or misinterpretations that could otherwise escalate into significant disputes requiring formal intervention.
26. The comprehensive training of delegates not only benefits the employees they represent but also contributes positively to the workplace as a whole. Well-trained delegates are equipped to handle negotiations and resolve conflicts efficiently, reducing the need for external intervention and promoting a cooperative work environment. This ultimately benefits employers by maintaining industrial harmony and reducing potential disruptions.
27. The AMWU also notes that learning does not only occur in a training room. Training can also occur through observation of union work being performed, such as attending conferences and hearings in relevant Courts and Tribunals. As their role of representatives may involve delegates being called as witnesses in Commission proceedings, the ability to observe such matters and ask questions of industrial relations practitioners in that setting is also important training for delegates.
28. Given the complexity and the critical role that trained delegates play in maintaining workplace relations, it is imperative that the Fair Work Commission revisits the training provisions in its draft clause. We strongly

advocate for maintaining the provision of up to 5 days of training annually for delegates in all subsequent years, not limited to the first year. This approach will ensure that delegates remain well-informed and effective in their roles, fostering a stable and productive industrial environment. At the very least, if the Commission is not minded to remove this limitation, then the AMWU submits that the Commission should consider increasing the entitlement in subsequent years, as proposed by the ACTU draft clause, to enable delegates to undertake advanced training modules of more than one days' duration. We propose the following amendment to clause X.8:

AMWU Recommendation 1: Amend clause X.8 as follows:

“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 each year ~~for initial training and 1 day each subsequent year~~, to attend training related to representation of the industrial interests of eligible employees (which can include attendance at a Court or Tribunal) subject to the following conditions.....”

Limit on the Number of Delegates Attending Training

29. The restriction of training opportunities to one delegate per 50 eligible employees assumes a homogenous workplace that is composed largely of day workers. In these instances, does not consider the actual needs of larger, more complex workplaces where multiple delegates may be required to handle diverse issues across different shifts or departments or work sites. This arbitrary cap could leave significant portions of the workforce underrepresented if their designated delegates cannot access the necessary training due to these restrictions.

30. For example, the AMWU has members (and workers eligible to be members) in workplaces where:
- a. The AMWU, by virtue of our Rules, is the sole Union or covers all but a small proportion of specialist workers;
 - b. Sites where the eligibility Rules of the AMWU and other unions overlap, and workers have exercised their right to choose a particular union to represent them; and
 - c. Sites where there are different types of work being performed and Unions' Rules (including the AMWU's Rules) cover specific trades or occupations performing that work.
31. These arrangements, together with different work arrangements (such as shift work or different sites) can result in no correlation between the number of Delegates and the number of workers employed within an enterprise. The AMWU has a delegate structure that reflects the needs and arrangements within a workplace. A consistent ratio of 1 delegate per 50 employees, regardless of site characteristics, is unmanageable from both the AMWU's, the delegates and, in some cases, the employers' point of view.
32. The AMWU's previous submissions on this emphasize the practical needs for having adequately trained delegates accessible to all employees, regardless of the size of the workforce.
33. The approach of the Commission is also at odds with an existing entitlement available under some Awards for Dispute Resolution Procedure Training Leave. Noting that this leave is more specifically targeted than "Delegate Training", there does not appear to be a justification to reduce the entitlement contained in the *Manufacturing and Associated Industries and Occupations*

Award 2020 (“Manufacturing Award”)¹² and the *Graphic Arts, Printing and Publishing Award 2020*¹³ where up to 3 delegates in a workplace of 50 employees, 4 delegates in a workplace between 51-90 employees and 5 delegates in a workplace with more than 90 employees can access five days leave per year. While the position of the AMWU is that the number of delegates who could potentially access such leave should be uncapped, the Award entitlement better reflects the diversity of union representation in particular industries.

Case studies highlighting the different workplaces our delegates operate in:

Vaccine Manufacturing Facility: This facility has around 450 employees at its main site, with additional staff at other sites connected to the facility. There are a total of four unions on site, each representing distinct groups such as maintenance, electricians, production workers, and technical staff. Each union has at least one delegate with roles spread across different operational aspects and different shifts.

Packaging and Recycling Facility: This site operates continuously and has a morning, afternoon and night shift. The AMWU is the sole union and has 8 delegates representing over 120 workers (roughly 1 delegate per 15 members).

Home appliance manufacturing and distribution centre: On this site there are about 200 employees operating on three shifts, the AMWU has one delegate while another union has one delegate.

¹² Manufacturing and Associated Industries and Occupations Award 2020 at Clause 44.7

¹³ Graphic Arts, Printing and Publishing Award at Clause 40.2

Ship repair and maintenance: There are about 540 workers across three different sites. There are 5 unions on site. The AMWU has four delegates in three different sites (a ratio of about 1:35 members). There are at least 4 other delegates from other unions.

Elevator and Escalator manufacturing and maintenance: The workers are based at different construction sites or perform maintenance at different locations. There are two unions represented, each dealing with a specific occupation or calling in the workplace. The AMWU has a ration of 1:10 delegates in the Sydney based operations of this employer, as well as delegates in different states.

Railway infrastructure and system solutions site: On this site we there are 35 employees and the AMWU have 17 members with one delegate and there are another 2 Unions on site.

Mining site: On this site there are 250 employees in total and the facility operates 24/7. We have 3 delegates while the other Union has 5 (roughly 1 delegate per 30 employees)

Food Manufacturing: This site operates 24/7 and work is conducted in shifts. One union covers production and two others (including the AMWU) cover maintenance. Of two sites in different states there are approximately 600 employees. The production-based union has approximately 16 delegates, while the maintenance unions have 10, ensuring that various shifts are covered.

34. These examples illustrate how the proposed cap could prevent effective coverage and representation, particularly in larger, multi-union sites where different shifts and operational needs may require the active involvement of several trained delegates.

35. Delegates at these sites must have a deep understanding of specific legal, safety, and operational requirements that vary significantly across trades and shifts. Given the round-the-clock operations and the necessity for delegate availability across all shifts, a cap on the number of delegates who can attend training means that some shifts may not have trained representatives. This gap can lead to delays in addressing grievances and safety issues, which can escalate into more significant problems.

36. In environments like the ones described above, where multiple unions represent different sections of the workforce, delegates often need to collaborate to address site-wide issues effectively. Training together can foster better understanding and cooperation among different union delegates, enhancing their ability to work together in resolving complex issues.

37. In those kinds of arrangements, which are very common in our industry, if only a limited number of delegates are allowed training, crucial issues might not be addressed promptly during certain shifts, particularly if those shifts lack appropriately trained delegates from the necessary unions. This limitation could lead to operational disruptions or even legal and safety non-compliance.

38. The AMWU also notes that, from a practical perspective, the use of “50 eligible employees” could create confusion when dealing with workplaces where an employee has the ability to join more than one union. This occurs

where an employee can join a union based on their occupation, trade or calling and is also able to join a union based on the industry in which they work. It creates the potential for disputes, and possible breaches of the Act for employers to favour one union over another or try to interpret what exactly is the “eligible employee” ratio for their workplace.

39. For the reasons above, the AMWU submits that Clause X.8(a) be deleted. If the Commission is not minded doing so, the AMWU submits that the number of delegates eligible to access such training be equivalent to that provided for in the *Dispute Resolution Procedure Training* clauses in the *Manufacturing Award* be replicated in the Model Clause.
40. If none of the AMWU suggested approach is taken by the Commission, then we support the wording and the proposed ratio put forward by the ACTU in their proposed clause. In particular, if there must be a ratio, the use of a headcount of employees rather than trying to determine “eligible employees”, would be preferred.
41. To ensure consistency in training standards and to better supports the ongoing professional development of delegates we put forward the following recommendation:

AMWU Recommendation 2: Delete draft term clause X.8(a).

Ensuring shift workers have the right to paid training

42. The AMWU has consistently advocated for the rights and well-being of all workers, including the significant number of shift workers within our membership. The AMWU continues to press for recognition in the clause for the needs of shift workers who serve as workplace delegates.

43. As it stands, Clause X.8 (b) stipulates that "A day of paid time during normal working hours is the number of hours the workplace delegate would normally be rostered or required to work on a day on which the delegate is absent from work to attend the training."¹⁴
44. In person training courses, or attendance at a Court or Tribunal, may not always occur during a worker's usual hours. This is particularly the case for workers who are on night shift, or those on rotating shifts that do not align with typical training schedules. As such, we propose the following recommendation:

AMWU Recommendation 3 To add a new sub-clause after draft term clause X.8(b):

If a workplace delegate who is a shift worker is attending a training course or attending a Court or Tribunal that occurs outside their usual rostered hours and/or falling on a rostered day off, the employer will allow for the delegate to swap shifts to attend during rostered hours. If this is not possible, the workplace delegate will not be required to attend a shift that commences less than 12 hours after the conclusion of such training, without any loss of pay."

45. To further support shift workers, it is essential to consider the travel time and the need for adequate rest before returning to work, especially when training venues are located far from the workplace or their homes.

46. These changes are vital for several reasons:

¹⁴ Clause X.8(b) of the FWC draft clause

- **Fatigue management:** shift workers often operate on schedules that can contribute to greater fatigue. Ensuring they are not required to attend work immediately after training or legal duties helps manage potential fatigue, which is crucial for their safety and mental health.
 - **Fairness and accessibility:** providing shift workers with the ability to attend necessary training without penalty or loss of pay ensures equitable access to these rights, irrespective of their work schedule.
 - **Health and safety:** the physical and mental demands of participating in training sessions and legal proceedings are significant and ensuring rest and recovery time aligns with best practices in workplace health and safety.
47. The AMWU urges the Fair Work Commission to consider these necessary amendments to ensure that all delegates, especially those working non-standard hours, have equitable and safe access to their training entitlements. These changes will not only support the health and effectiveness of the delegates but also uphold the integrity and intent of the training provisions within the broader framework of workplace rights and responsibilities.

AMWU Recommendation 4: Add a new sub-clause immediately before existing draft term sub-clause X.8(c)

" The workplace delegate will be granted paid travel time of up to two hours per day of training. The workplace delegate will not be required to commence their next shift within 12 hours of the conclusion of the training and travel time"

Conclusion

48. Considering the detailed discussions and examples provided, the AMWU respectfully urges the FWC to consider and adopt all the recommendations detailed in our submission. Our suggestions are driven by a commitment to

ensure workplace delegates are equipped with the necessary tools and knowledge to effectively represent their members and eligible members.

49. Adopting these recommendations will help address some of the challenges faced by delegates, particularly those working in multi-union and shift based environments but will also promote a more harmonious and productive industrial relations climate across various sectors.

50. The AMWU remains ready to engage in further discussions and to assist in any way possible to refine these provisions, ensuring that they meet the needs of today's workplaces. We appreciate the FWC consideration of our viewpoint and look forward to seeing a positive evolution in the support and resources available to workplace delegates.

LIST OF RECOMMENDATIONS PROPOSED BY THE AMWU EITHER IN ADDITION TO, OR INSTEAD OF, THE ACTU PROPOSED RECOMMENDATIONS

AMWU Recommendation 1: Amend draft term clause X.8 as follows:

“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 each year for initial training and 1 day each subsequent year, to attend training related to representation of the industrial interests of.....”

AMWU Recommendation 2: Delete draft term clause X.8(a) in its entirety.

AMWU Recommendation 3:

To add a new sub-clause immediately after existing draft term Clause X.8(b)

“If a workplace delegate who is a shift worker is attending a training course or attending a Court or Tribunal that occurs outside their usual rostered hours and/or falling on a rostered day off, the employer will allow for the delegate to swap shifts to attend during rostered hours. If this is not possible, the workplace delegate will not be required to attend a shift that commences less than 12 hours after the conclusion of such training, without any loss of pay.”

AMWU Recommendation 4:

To add a new sub-clause immediately before existing draft term Clause X.8(c):

“The workplace delegate will be granted paid travel time of up to two hours per day of training. The workplace delegate will not be required to commence their next shift within 12 hours of the conclusion of the training and travel time.”

AMWU proposed draft modern award delegates' rights term

X. Workplace delegates' rights

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

X.2 In clause **X**:

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

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X.3 If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election as a workplace delegate, if the workplace delegate or delegate's organisation has not done so already. For the avoidance of doubt, a failure of a workplace delegate to give notice in accordance with this clause will not invalidate their rights as a delegate.

X.4 An employee who ceases to be a workplace delegate must give written notice to the employer as soon as practicable.

X.5 Right of representation

- (a) A workplace delegate may represent the industrial interests of eligible workers in matters including but not limited to:
 - (i) consultation about major workplace change;
 - (ii) consultation about changes to rosters or hours of work;
 - (iii) resolution of individual or collective grievances or disputes, or matters; including at the workplace level and in courts or tribunals including the Fair Work Commission;
 - (iv) performance management and disciplinary processes;
 - (v) enterprise bargaining;

 - (vi) any process or procedure in which the eligible workers are entitled to be represented;

- (b) A workplace delegate should get access to shift, roster and other flexible work changes where necessary to facilitate the exercise of their right under this clause.

X.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible workers in relation to representing their industrial interests under clause **X.5**. This includes, but is not limited to:

- (i) discussing membership of the delegate's organization with eligible workers, including by addressing induction meetings; and
 - (ii) consulting the delegate's organisation in relation to matters in which the workplace delegate is representing eligible workers

- (b) A workplace delegate may communicate with eligible workers individually or collectively, including at meetings, during working hours or work breaks, or before the start or after the end of work.

- (c) The employer must not survey, monitor, record or otherwise infringe the privacy of communications between workplace delegates and their union, and eligible persons.

X.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, unless the employer does not have them:
 - (i) a room or area to hold discussions, that, where possible, shall be fit for purpose, private and accessible by the workplace delegate and eligible workers;
 - (ii) physical and electronic noticeboards;

- (iii) electronic means of communication that are ordinarily used by the employer to communicate with eligible workers in the workplace, including a phone, and where possible, are private;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners, photocopiers and wi-fi; and
 - (vi) any other access to the workplace or workplace facilities that the workplace delegate or eligible workers would ordinarily have access to in their capacity as an employee.
- (b) Where reasonable access to the workplace or workplace facilities requires securing the consent of another person the employer will take all reasonable steps to secure such consent.

X.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 to attend training related to representation of the industrial interests of eligible workers (which can include attendance at a Court or Tribunal) subject to the following conditions:

- (a) A day of paid time during normal working hours is the number of hours the workplace delegate would normally be rostered or required to work on a day on which the delegate is absent from work to attend the training.
- (b) If a workplace delegate who is a shift worker is attending a training course or attending a Court or Tribunal that occurs outside their usual rostered hours falling on a rostered day off, the employer will allow for the delegate to swap shifts to attend during rostered hours. If this is not possible, the workplace delegate will not be required to attend a shift that commences less than 12 hours after the conclusion of such training, without any loss of pay.
- (c) The workplace delegate will be granted paid travel time of up to two hours per day of training. The workplace delegate will not be required to commence their next shift within 12 hours of the conclusion of the training and travel time.
- (d) The workplace delegate must give the employer as much notice as is practicable, and not less than 5 weeks' notice, of the dates, subject matter and the daily start and finish times of the training.
- (e) The workplace delegate must give the employer as much notice as is practicable, and not less than 5 weeks' notice, unless the parties otherwise agree to a shorter period of notice or the delegate's

organisation has already provided such notice, of the dates, subject matter and the daily start and finish times of the training.

- (f) The employer must advise the workplace delegate and the delegate's organisation as soon as is practicable, and not less than 3 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) If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of attendance at the training, within 7 days after the day on which the training ends, if the delegate's organisation has not already done this.

This entitlement in X.8 operates concurrently with, and does not override, any other existing award entitlement to training leave, including for dispute resolution.

X.9 Exercise of entitlements under clause X

- (a) Where an employee acts in their capacity as a workplace delegate the employer of the workplace delegate must not:
 - (i) Unreasonably fail or refuse to deal with the workplace delegate; or
 - (ii) Knowingly or recklessly make a false or misleading representation to the workplace delegate; or

- (iii) Unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under the Act or clause X.
 - (b) In exercising their rights under this clause, workplace delegate must as far as is reasonably practicable (and to the extent it does not impinge upon their rights as a delegate):
 - (i) comply with their duties and obligations as an employee; and
 - (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; and
 - (iii) not unreasonably hinder, obstruct or prevent the normal performance of work;
- (c) Clause X 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. For the avoidance of doubt, this does not include means of communication that are ordinarily used by the employer to communicate with eligible persons including work-related email addresses.
- (d) Clause X does not create any obligation on a person to be represented by a workplace delegate.

NOTE 1: 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 X

Definitions to be included in clause 2 of each award

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

employer has the meaning given by s.15(2) 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.

National Research Centre

22 May 2024