

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES' RIGHTS TERM

1 March 2024

Background

1. The Australian Workers' Union (**AWU**) is a diverse union of approximately 72,000 workers across numerous industries including construction, manufacturing, steel, glass, aluminium, hydrocarbons, mining, quarrying, agriculture, aviation and many more.
2. The Fair Work Commission (**Commission**) has recently commenced a process for all modern awards to contain a delegates' rights term in response to amendments to the *Fair Work Act 2009 (Act)* made by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.
3. On 30 January 2024, Justice Hatcher published a Statement that set out a timetable for this process, which included a direction for parties to file submissions and proposed terms by 1 March 2024.
4. These submissions of the AWU respond to that direction.

AWU Interest

5. Owing to its broad constitutional coverage, the AWU has an interest in dozens of modern awards.
6. The modern awards in which the AWU has an interest include:
 - *Aged Care Award 2020*
 - *Airline Operations – Ground Staff Award 2020*
 - *Alpine Resorts Award 2020*
 - *Aluminium Industry Award 2020*
 - *Amusement, Events and Recreation Award 2020*
 - *Animal Care and Veterinary Services Award 2020*
 - *Aquaculture Industry Award 2020*
 - *Asphalt Industry Award 2020*
 - *Building and Construction General On-site Award 2020*
 - *Cement, Lime and Quarrying Award 2020*
 - *Cemetery Industry Award 2020*
 - *Cleaning Services Award 2020*
 - *Concrete Products Award 2020*
 - *Cotton Ginning Award 2020*
 - *Dredging Industry Award 2020*
 - *Dry Cleaning and Laundry Industry Award 2020*

- *Electrical Power Industry Award 2020*
- *Fast Food Industry Award 2020*
- *Fire Fighting Industry Award 2020*
- *Fitness Industry Award 2020*
- *Food, Beverage and Tobacco Manufacturing Award 2020*
- *Funeral Industry Award 2020*
- *Gardening and Landscaping Industry Award 2020*
- *Gas Industry Award 2020*
- *General Retail Industry Award 2020*
- *Hair and Beauty Industry Award 2020*
- *Health Professionals and Support Services Award 2020*
- *Horse and Greyhound Training Award 2020*
- *Horticulture Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Hydrocarbons Industry (Upstream) Award 2020*
- *Local Government Industry Award 2020*
- *Manufacturing and Associated Industries and Occupations Award 2020*
- *Maritime Offshore Oil and Gas Award 2020*
- *Meat Industry Award 2020*
- *Mining Industry Award 2020*
- *Miscellaneous Award 2020*
- *Nursery Award 2020*
- *Oil Refining and Manufacturing Award 2020*
- *Pastoral Award 2020*
- *Pest Control Industry Award 2020*
- *Pharmaceutical Industry Award 2020*
- *Plumbing and Fire Sprinklers Award 2020*
- *Poultry Processing Award 2020*
- *Premixed Concrete Award 2020*
- *Professional Diving Industry (Recreational) Award 2020*
- *Racing Clubs Events Award 2020*
- *Racing Industry Ground Maintenance Award 2020*
- *Rail Industry Award 2020*
- *Registered and Licensed Clubs Award 2020*
- *Salt Industry Award 2020*
- *Seafood Processing Award 2020*
- *Security Services Award 2020*
- *Silviculture Award 2020*
- *Social, Community, Home Care and Disability Services Industry Award 2020*
- *Sugar Industry Award 2020*
- *Timber Industry Award 2020*
- *Waste Management Award 2020*
- *Water Industry Award 2020*

- *Wine Industry Award 2020*
 - *Wool Storage, Sampling and Testing Award 2020.*
7. The AWU additionally has an interest in several enterprise modern awards, including:
- *Australian Government Industry Award 2016*
 - *GrainCorp Country Operations Award 2015*
 - *Viterra Bulk Handling and Storage of Grains, Pulses and Mineral Award 2015.*

ACTU Submission

8. The AWU has read the submission of the Australian Council of Trade Unions (ACTU) for this matter. The AWU supports and adopts those submissions.

Model Clause

9. The AWU has had the opportunity to contribute to and consider the delegates rights clause filed by the ACTU at Annexure A to the ACTU submission.
10. The AWU supports and adopts the clause proposed by the ACTU for all awards in which the AWU has an interest, with the minor amendments below.

AWU Amendments to ACTU Model Clause

11. For reasons of clarity, the AWU proposes two amendments to the model clause filed by the ACTU.
12. The first amendment is to sub-clause 1 of the ACTU clause – Definitions – as follows (AWU amendment in red):
- “union** means an employee organisation (within the meaning of s.12 of the *Fair Work Act 2009*)”
13. This amendment will ensure consistency in the definition of ‘employee organisation’.
14. The second amendment is to sub-clause 5 of the ACTU clause – Right to use facilities – as follows (AWU amendment in red):
- “(1) An employer must provide reasonable facilities and equipment for the use of the workplace delegate to carry out their duties. Unless an employer provides facilities and equipment for the sole use of the workplace delegate, a workplace delegate has the right to make reasonable use of the employer’s facilities and equipment.**
- (2) For the avoidance of doubt, the use of facilities and equipment for the purpose of this clause shall include (but is not limited to), among other things:...”**
15. This amendment provides clarity that an employer which provides a workplace delegate with facilities and equipment for the exclusive use of the workplace delegate is compliant with the clause.