

## VARIATION OF MODERN AWARDS TO INCLUDE A WORKPLACE DELEGATES' RIGHT TERM

### CLUBS AUSTRALIA REPLY SUBMISSION

#### Introduction

1. This submission seeks to reply to the submissions made by other parties regarding the Workplace Delegates' Provision in Modern Awards conducted by the Fair Work Commission (**Commission**). It should be read in conjunction with Clubs Australia's initial submission made on 1 March 2024.

#### Model Clause

2. There appears to be differing views about whether a model clause will be inserted into all modern awards or if there will be individual award specific clauses inserted into individual awards.
3. Clubs Australia submits that if a model clause is inserted into all modern awards, the clause should be:
  - a. limited to the four provisions outlined at section 350C of the Fair Work Act (**FW Act**);
  - b. include a narrow definition of industrial interests; and
  - c. ensure that any rights introduced align with what is reasonable. This would include considering the size and nature of the business and the resources available.
4. If a specific clause is inserted into the Registered and Licensed Clubs Award 2020, we submit that the Commission considers limiting the number of delegates that may be appointed at each Club to the table below.

#### Number of Workplace Delegates

Number of employees	Max number of delegates
1-50	1
51-plus	2



Paid training days

5. We submit that the Commission should limit the paid time to attend training based on the size of the Club as outlined below:

<b>Number of Employees</b>	<b>Maximum number of paid training days per union delegate</b>
1-50	1
51-plus	2

6. We submit that these would be appropriate maximums inserted into the Registered and Licensed Clubs Award 2020, for the following reasons:
- a. all clubs are not-for-profit entities owned by their members and any surpluses are generally used to support the community, invest in the club’s facilities, or increase employee wages;
  - b. the financial costs of paying for training. Clubs take various forms and sizes from small bowling or tennis clubs to very large clubs. Therefore, the maximums implemented into awards needs to be financially suitable and sustainable for all Clubs. Many of the larger Clubs have enterprise agreements which allow for an opportunity to set higher numbers of paid trainings days and/or number of union delegates;
  - c. there are very minimum disputes in the Club industry which require union attention or assistance; and
  - d. the purpose of the training should be able to be completed in those time periods.
7. In addition, we largely support the submissions of the National Electrical and Communications Association (**NECA**) regarding the additional requirements on paid training that:
- a. training should be paid at the employee's ordinary hourly rates of pay;
  - b. 6 weeks' notice of the training must be provided;



- c. the training must be performed by a registered training organisation but should not be limited to just the Union;
- d. the Club can refuse the training on reasonable business grounds; and
- e. if requested the employee must provide employee must provide the Club with proof of attendance and completion of any training course.

### **Australian Council of Trade Unions (ACTU) Submission**

#### *Meaning and Rights of Workplace Delegates'*

- 8. Section 350C of the FW Act recognises four distinct workplace delegates right. These four provisions are the only matters that should be within the scope of the workplace delegate model modern award provisions to be implemented into awards.
- 9. Clubs Australia submits that clauses extending beyond these four provisions are outside the scope and will place additional obligations on employers. Some examples include:
  - a. Clause 2.3
  - b. Clause 2.5
  - c. Clause 3.4
  - d. Clause 4.1
  - e. Clause 4.3
  - f. Clause 4.4
  - g. Clause 5.2a)
  - h. Clause 6
  - i. Paying union delegates to represent
- 10. Further, we submit certain clauses of the proposed clauses are inconsistent with section 350C as the rights provided would not be considered reasonable. Some examples include:
  - a. Clause 2.2 which provides an unfettered ability for the union to require an employer to pay a delegate for their time to perform “*any other activities within the scope of their delegation as determined by their union.*”



- b. Clause 2.5 requires the business to consult with workplace delegates if an employer is considering a change of an economic, technological or structural nature. It would not be appropriate to involve workplace delegates in operational decisions of organisations. It would also not be reasonable to require an organisation to discuss any considered change of the nature with the workplace delegate. In some organisations these changes might be considered weekly.
- c. Clause 3.2 requires the union to nominate a workplace delegate to participate in training and the training course must be approved by the union. We are concerned that there would be a conflict of interest as some unions provide their own training which is a source of income to the business.

11. Clubs Australia opposes the ACTU's submission that the Commission should adopt an expansive conception of these rights.

#### **United Union Worker (UWU) Submission**

12. Clubs Australia notes that within the UWU's submission, reference is made to various workplace delegates' rights and modern awards across industries, including casinos.
13. Clubs Australia submits that casinos operate entirely differently to clubs with different laws and requirements. All clubs are not-for-profit entities owned by their members and take various forms and sizes, including sporting, returned service and bowling clubs. This means any surpluses are used to support the community, invest in the club's facilities, or increase employee wages.
14. Clubs Australia submits what is reasonable for a casino group to absorb in relation to workplace delegates' rights will differ from that of a not-for-profit registered club.

#### **Australian Chamber of Commerce Submission (ACCI) Submission**

15. In addition to these submissions, Clubs Australia supports the submission by ACCI in reference to the following:
  - The principles that should apply when the FWC is exercising its statutory function to include a delegates' rights term in modern awards, specifically;



- A workplace delegate is first and foremost an employee;
- Including a definition of 'industrial rights' in the modern award provision;
- The modern award provision(s) should be limited to the delegate rights outlined in s 350 (c) of the Fair Work Act;
- The modern award provision(s) should ensure that any right introduced aligns with what is reasonable, as contemplated in s 350 (c) of the Fair Work Act; and
- A majority of the proposed modern award(s) provision by ACCI.

16. Clubs Australia proposes a different number of workplace delegates per number of employees and training days which they have outlined above.