

IN THE FAIR WORK COMMISSION

Fair Work Act 2009 (cl.95, Schedule 1)

Matter Number: AM2024/6

Matter: Variation of modern awards to include a delegates' rights term

The Mining and Energy Union's submissions in reply

Construction of '*industrial interests*'

1. The employer groups have submitted that the phrase '*industrial interests*' in s. 350C(2) constrains the delegates' right to represent members and potential members.
2. ACCI's submissions rightly acknowledge that the right to represent extends to representation during disputes under industrial law, workplace consultation, bargaining and representation during disciplinary and performance reviews.¹ In doing so, ACCI submits that the right would be limited to the above matter because they '*lie at the heart of an employee's industrial interests*'. While this may be the case, s. 350C(2) does not confine the representation to matters '*at the heart of an employee's industrial interests*.' It allows for representation concerning all industrial interests.
3. AIG's submission encourages the Commission to identify activities, which they say clearly do not constitute representing industrial interests. Similarly, BAI suggests that industrial might distinguish between employment and collective rights. However, they do so without attempting to construe s. 350C(2). Presumably, this is because such submissions are not supported by the correct construction of s. 350C(2).
4. Self-evidently, the right to represent, outlined in s. 350(C), is confined to delegates representing the industrial interests of members and potential members. However,

¹ ACCI, [27].

this does not limit the right to representation as has been suggested by the employer groups.

5. The phrase ‘industrial interests’ is not defined by the FW Act; its meaning is a matter of construction. In construing industrial interests, the Commission would place significant weight on the context of the term. At [15]-[17] of our March 1 submission, we identified interpretive considerations that support a broad construction of s. 350C(2). The following matters serve to underscore those submissions.
6. The word *industrial* is used broadly in the FW Act, commonly as a part of a composite expression, E.g., industrial action, industrial body, industrial law, and industrial association. Each of these composite expressions are defined in the FW Act; their meaning is not determinative of the meaning of *industrial interest*. However, the use of industrial in each connotes a connection to work and/or the organisation of workers.² For example, industrial law is defined to include both the FW Act and the RO Act. Relevantly, the FW Act governs more than the relationship between an employee and their employer; it also regulates the relationship between employee-like workers and constitutional corporations. Additionally, the RO Act regulates registered organisations, including employee organisations. This reveals that industrial is used by the drafters of the FW Act when they want to convey a connection to work or the organisation of workers.
7. As in the FW Act, the FW Act’s predecessors used ‘industrial’ to indicate a connection to work or the organisation of workers. Most relevantly, until the *Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices Act)*, each of the FW Act’s predecessors contained a definition for *industrial matter or industrial dispute*. The *Commonwealth Conciliation and Arbitration Act 1904 (1904 Act)* defined *industrial matter* non-exhaustively as:

² See *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited*, PR946290 at [41] a Full Bench of the AIRC noted that while Industrial Action was a defined composite term the “definition should be read giving some weight to the word industrial”.

*“includes all matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employees, or the mode, terms, and conditions of employment or non-employment; and in particular, but without limiting the general scope of this definition, includes all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal, or non-employment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organisation, association, or body, and any claim arising under an industrial agreement.”*³

8. Section 6(b) of the *Commonwealth Conciliation and Arbitration Act 1947* amended the 1904 Act to further particularise the definition of *industrial matter*. Underscoring the breadth of the definition included by way of s. 6(b) was sub (l), which expressly extended *industrial matter* to include *“any custom or usage in an industry, whether general or in a particular locality.”*
9. The *Industrial Relations Act 1988 (Cth)* defined *industrial dispute* but not *industrial matter*. An industrial dispute was defined as a dispute about matters pertaining to the relationship of employee and employer. However, in enacting the 1988 Act, the legislature intended the phrase pertaining to the relationship of employee and employer to *“include all matters covered by the definitions of “industrial dispute” and “industrial matters” in the Conciliation and Arbitration Act 1904.”*⁴ The definition of industrial dispute remained unchanged until the *Workplace Relations Amendment (Work Choices) Act 2005* removed reference to it.
10. The MEU submits that *‘industrial interest’* would be interpreted consistently with the broad connotation associated with the word industrial as it is used in the FW Act and has been used in the FW Act’s predecessors, as well as the similarly broad historical understanding of an industrial matter. The MEU’s proposed clause provides for the *exercise of the right* in s. 305C(2).

³ 1904 Act, s. 4.

⁴ Explanatory memorandum of the Industrial relations Bill 1988, p 7.

Necessary to achieve the modern award objective

11. The employer organisations have submitted that, by virtue of s.138 of the FW Act, when undertaking the current task, the Commission may only include a term in a modern award to the extent necessary to achieve the Modern Award Objective.

12. The MEU submits that it is open to the Commission to read s.138, considering s.134(2) of the FW Act. Section 134(2) provides that the modern awards objective applies to the performance or exercise of the Commission's functions or powers under parts 2-3 and 2-6 of the FW Act. Given that the Commission is not presently exercising power under parts 2-3 and 2-6 of the FW Act, the MEU submits that it is open to read down s. 138 such that its effect is consistent with s. 134(2). However, if the Commission considers that s.138 applies to the present task (*under cl.95, Schedule 1 of the FW Act*), then the MEU submits that the term proposed by the MEU is necessary to achieve the Modern Award Objective.

13. The Modern Award Objective is that the Commission must, taking into account several considerations, ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.⁵ The MEU submits its proposed clause is necessary to achieve the Modern Award Objective in light of the following considerations:

- the need to encourage collective bargaining and
- the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation, and
- the need to promote social inclusion through increased workforce participation and
- the need to promote flexible modern work practices and the efficient and productive performance of work; and

⁵ FW Act, s. 134.

- the need to provide additional remuneration for employees working overtime; or employees working unsocial, irregular or unpredictable hours; or employees working on weekends or public holidays; or (iv) employees working shifts; and
- (the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards.

This submission will address each consideration in turn.

14. The MEU submits that its proposed delegates' rights clause achieves the Modern Award Objective by encouraging collective bargaining in the following ways;

- a. *Increasing employee awareness of the benefits of bargaining* - Expressly allowing delegates to have discussions with workers and allowing delegates to communicate with new employees during onboarding will increase employees' awareness of the benefits of bargaining.⁶

- b. *Facilitating majority support determinations* - If an employer is unwilling to bargain, the Commission can compel employers to bargain if satisfied that a majority of employees, who the proposed agreement will cover, wish to bargain for the agreement. Commonly, bargaining representatives satisfy the Commission that a majority of employees want to bargain by collecting employees' signatures on a petition. Allowing broad rights of representation, communication and access to the workplace and workplace facilities will enable the collection of petition signatures, which encourages collective bargaining.⁷

⁶ The witness statement of Michael Weise, [23].

⁷ Ibid.

- c. *Increased employee engagement with the bargaining process* – A broad delegates’ rights term will drive members’ engagement with bargaining by increasing dialogue between the bargaining team and the individuals for whom they are the bargaining representatives.⁸

- d. *Increasing delegates’ capacity during bargaining*– Providing delegates with sufficient opportunity to train will empower them to navigate the FW Act’s complex rules concerning initiating and participating in bargaining, the forms bargaining may take, and provide information on taking protected industrial action. Proficient delegates drive bargaining and increase the likelihood of reaching an agreement.⁹

- e. *Increasing union density* – a broad delegates’ rights term will increase union density by increasing the visibility and effectiveness of unions in the workplace. Creating or consolidating an organised employee collective increases the prospect of bargaining by increasing the chance an employer will agree to bargain or the prospects of a majority of employees expressing a desire to bargain.¹⁰

- f. *Removes financial burden of bargaining for the employee bargaining team* - A broad delegates’ rights term which explicitly provides for a right for delegates to participate in collective bargaining meetings and provides that they will not suffer a financial detriment for doing so, encourages collective bargaining by ensuring that it is both possible and practical for a delegate to participate in bargaining.

15. The MEU submits that its proposed delegates’ rights clause achieves the Modern Award Objective by supporting gender equality in the workplace and providing

⁸ The witness statement of Michael Weise, [23].

⁹ Ibid, [24].

¹⁰ Ibid, [25]-[26].

workplace conditions that facilitate women's full economic participation in the following ways;

- a. *Facilitating collective bargaining* – as outlined above, the MEU's proposed delegates' rights term will facilitate collective bargaining. Increasing the frequency and quality of collective bargaining will result in more employees being subject to enterprise agreements. Enterprise agreements promote pay transparency and gender-neutral job evaluations, which address gender biases in job classification and pay systems.¹¹

- b. *Increased support* – The MEU's delegates' rights term will increase support for employees subjected to sexual harassment. Readily available, visible, and effective delegates increase the number of support and reporting options for individuals who have been harassed.¹² It also provides access to support and reporting options outside their employer's management and human resource teams. Providing delegates with adequate opportunities to train increases the capacity of delegates to provide appropriate support.¹³ Provision of access to appropriate facilities such as private spaces ensures that sensitive discussions can take place in private.

16. The MEU submits that its proposed delegates' rights clause achieves the Modern Award Objective as the clause will have a positive impact on productivity and employment costs in the following ways;

- c. *Facilitating collective bargaining* - Collective bargaining contributes to increased job satisfaction, lower employee turnover and longer tenure, which reduce hiring and training costs and increase productivity.¹⁴

¹¹ See FW Act, s. 186 (4), s. 195 particularly s. 195(4) which governs special measures to achieve equality.

¹² The witness statement of Michael Weise, [20].

¹³ Ibid, [28](e).

¹⁴ See generally OECD's 2019 Negotiating Our Way Up Report.

- d. *Clarity as to the content of the rights in s. 350C* - A clause, such as the one proposed by the MEU will provide clarity for workplace delegates, employees and employers alike. The MEU's clause provides sufficient but non-exhaustive particularisation of the requirements of s. 350C(2)'s otherwise undefined right. This clarity will minimise unnecessary disputation, decreasing time lost and cost and improving productivity.

- e. *Resolving workplace disputes more efficiently* – the MEU's proposed delegates' rights term will facilitate the resolution of workplace disputes close to their source. Access to appropriate training will ensure that delegates are familiar with the relevant industrial instruments. The MEU's delegates' rights term provides delegates trained in the relevant industrial instrument the capacity to assist employees and their employers in resolving workplace disputes.¹⁵ This may decrease disputation which, in turn, decreases the cost associated with protracted dispute resolution.

- f. *Increased support* - A broad delegates' rights term increases support for employees who have been subjected to bullying and harassment.¹⁶ Employee's who feel supported are less likely to leave the workforce. Employee retention increases productivity and avoids unnecessary costs associated with hiring and training new employees.

17. The MEU submits that its proposed delegates' rights clause achieves the Modern Award Objective by promoting flexible modern work practices and the efficient and productive performance of work;

- g. *Education and advocacy* – the FW Act provides various options for an individual seeking flexible work. The MEU's delegates' rights term provides

¹⁵ The witness statement of Michael Weise, [20] h.

¹⁶ The witness statement of Michael Weise, [20].

sufficient access to time off to train such that delegates will obtain an appreciation of the many avenues an employee may access flexible work. Further, the MEU's delegates' rights term allows delegates to speak to individuals about their options for seeking flexible work. It allows them to advocate for individuals seeking flexible work.

- h. *Promoting bargaining and union density* – As discussed, the MEU's delegates' rights term promotes bargaining and increases collective strength. Increased collective strength encourages bargaining. Enterprise bargaining allows employees and employers to establish roster patterns that meet the specific needs of the employers' workplace while also allowing employees to work flexibly.¹⁷

18. The MEU submits that its proposed delegates' rights clause achieves the Modern Award Objective by providing additional remuneration for unsocial, irregular or unpredictable hours in the following ways;

- a. *Facilitating collective bargaining* - Collective bargaining allows employers and employees to tailor employment conditions to their industrial context. Increases in collective bargaining will support the creation of enterprise agreements that adequately compensate employees for working unsocial, irregular and unpredictable hours in the specific context of the business or businesses where they will apply.¹⁸
- b. *Increasing union density* – as stated above, broad delegates' rights terms will increase union density by increasing the visibility and effectiveness of unions in the workplace. Increases in collective strength increase the likelihood that employees can negotiate additional remuneration for working unsocial, irregular and unpredictable hours during bargaining.¹⁹

¹⁷ The witness statement of Michael Weise, [24].

¹⁸ Ibid.

¹⁹ Ibid, [25] – [26].

19. The structure of the MEU's proposed clause is cognisant of the Modern Award Objective in that it ensures a simple modern award system for Australia. Clauses 2.2 and 2.3 of the MEU's proposal provide a non-exhaustive list of circumstances where the right in 2.1 would allow the delegate to represent the interests of members and potential members. An exhaustive right to represent may lead to a circumstance where the modern award term has been complied with, but the employer's conduct falls foul of s. 350C(2). Despite this, it is appropriate for the term to provide some guidance to the delegates and employers on the exercise of the right.

20. Similarly, the MEU's proposed clause concerning the reasonable right to communication and access to facilities provides guidance as to what the statutory right requires of employers.

The delegates' rights terms should be responsive to industries in which the Awards operate

21. The employer groups have submitted that the Commission should insert the same delegates' rights term in all modern awards. This is not the task the legislature has tasked the Commission to undertake.²⁰

22. The MEU's proposed clause largely mirrors the ACTU's proposal; however, it reflects the industrial context in which the clause will operate. The MEU's clause includes several matters not expressly included in the ACTU's clause. These matters reflect the history of the Awards and the conditions prevalent in the industries which they operate.

23. The most significant distinguishing feature of the MEU's clause is a right to be released from normal duties to participate in bona fide union business. As outlined in our 1 March submission, it has long been accepted in the black coal mining industry

²⁰ FW Act, s. 350C(5).

that delegates represent members by participating in bona fide union business. The historical and contemporary provision of terms allowing delegates to participate in bona fide union business arises from the black coal mining's industrial context. An industrial context that is shared with the industries in which the Awards operate. These industries are characterised by isolation. Invariably, enterprises are located in remote and regional Australia and work performed within the enterprises is often done so in isolation. For example, delegates required to represent their members in a tribunal proceeding commonly have to travel a significant distance. If the delegate is rostered on, they must be released from duty to allow travel to occur safely.

24. The MEU submits that a number of the matters common to the MEU's and ACTU's clauses are especially important in the industries in which the Awards operate. As submitted above, the work performed in the industries, particularly in the black coal mining and mining industries, is characterised by isolation. The MEU submits that the rights to reasonable communication and access to the workplace and workplace facilities included in the Awards would be responsive to this isolation.

25. The MEU submits that set against this context, the right to communication would include:

- a. A right to communicate to members at mass meetings.
- b. The ability to address new employees and other workers at an induction or the commencement of their employment or shift.

26. The MEU submits that set against this context, the right to access facilities would include:

- a. Transport and freedom of movement to or within the workplace, where this is necessary to provide access.
- b. A lockable notice board in a high-traffic area.

- c. The ability to send electronic messages, including using electronic address lists, using electronic communication facilities that the employer uses to communicate with its workforce.
- d. Making telephone calls.

27. This is not to say that the balance of the MEU's proposed clause is not necessary to give effect to the exercise of the rights contained in s. 350C. The MEU submits that the balance of the claims is necessary. This submission highlights that the enterprise's nature in the industries in which the Awards operate provides further justification for the MEU's proposed clause.

28. Although the Commission has not called for evidence to support the parties' submissions, the MEU has filed a witness statement of Michael Weise, establishing the assertions the MEU relies on. We note that while a number of the employer groups have identified that the Commission's present task requires evidentiary considerations, they have not filed any evidence supporting their claims.

The number of workplace delegates

29. The employer representatives have submitted that the term to be inserted into the modern awards should limit the number of workplace delegates that an employer is required to recognise and afford the rights set out in s. 350C. The MEU respectfully submits that such an approach is inconsistent with the task the Commission is undertaking. Presently, the Commission is determining delegates' rights terms that give effect to the rights of workplace delegates as outlined in s. 350C of the FW Act.

30. The rights outlined in s. 350C attach to each individual who meets the definition of workplace delegates as defined in s. 350C(1). Section 350C(1) does not limit the number of workplace delegates who can access the benefit at a particular enterprise or work for a particular employer. If the term inserted into the Awards limits the number of workplace delegates an employer must recognise, the Award terms would be inconsistent with the statutory regime.

31. Further, while the facilitative rights outlined in s. 350C(3) are subject to a reasonableness qualification, the MEU respectfully submits that the delegates' rights terms would not exclude any individual that meets the definition outlined in s. 350(1) from exercising the rights outlined by s. 350C(3). Given the rights attached to each delegate, the assessment of what is reasonable should be undertaken by reference to what is reasonable for an individual delegate.

Rate of pay during training.

32. AIG has submitted that when delegates access paid time for training, the delegate would be paid at the relevant minimum award rate for those hours. The MEU submits that AIG's contention is not supported by the correct interpretation of s. 350C(b)(ii) of the FW Act.

33. Nothing in the terms of s. 350C(b)(ii) of the FW Act indicates that when accessing paid time for the purpose of training, the delegate would receive a rate different (lower or higher) from that which they would normally receive if at work during that time. The section provides time off without specifying a rate at which the time is to be paid, this indicates that an individual is paid the rate they would have been paid if they were at work. Further, s. 350C is in Part 3-1 of the FW Act. Part 3-1 contains the FW Act's general protections regime. The purpose of the general protections regime is to prevent individuals from being adversely affected when exercising workplace rights. The MEU submits that the text and purpose of s. 350C(b)(ii) supports an interpretation requiring employers to pay employees as if they were at work when absent to obtain training.

Jack Patrick

Mining and Energy Union

29 March 2024

IN THE FAIR WORK COMMISSION

Fair Work Act 2009 (cl.95, Schedule 1)

Matter Number: AM2024/6

Matter: Variation of modern awards to include a delegates' rights term

The witness statement of Michael Weise

I, MICHAEL KEITH WEISE, of 215-217 Clarence Street, Sydney, in the state of NSW, state:

1. I am employed by the Mining and Energy Union ('MEU') as the National Organising and Training Director.
2. I am responsible for coordinating and administering the MEU's national workplace organising unit. The MEU's organising unit is known as Unite. Unite organises and trains members and delegates across Australia. Unite currently operates in;
 - a) the black coal mining industry in New South Wales, Queensland and Western Australia; and,
 - b) the metalliferous mining industry in New South Wales and Western Australia.
3. My role often requires me to liaise with national and district officials as well as organisers and employees on national and district campaign issues, including developing and implementing strategies to organise and recruit employees into the union, establish lodges and bargain for enterprise agreements. I am also responsible for delivering and administering the MEU's delegate training and development program across Australia.
4. Before commencing employment with the MEU, I was an underground coal miner in Queensland for approximately 16 years. While working as a coal miner, I was an MEU delegate for 14 years.

Black coal mining industry

5. Black coal mining typically occurs in regional areas. Black coal mining is a male-dominated industry. While some mines are close to regional towns, others can be up to forty kilometres from the closest town. In Queensland, black coal mining operations are distributed from Collinsville in the north to Oaky in the South and as far west as Clermont.

In New South Wales, black coal mining operations are distributed from Narrabri in the north to Wollongong in the South and as far west as Mudgee. There are two types of black coal mines: open-cut mines and underground mines.

6. Commonly, at a black coal mine, there will be workers engaged by several employers. Workers will be engaged by the mine operator, mine owner, various labour higher businesses and service contractors. Workers will be engaged in various types of employment, such as permanent full-time, permanent part-time, casual, and fixed-term employment. At any one time, several agreements may apply to the workers' employment. Further, the Black Coal Mining Industry Award 2020 may apply to worker's employment.
7. Typically, black coal mining industry employers have detailed policies and procedures. Black coal mines are high-risk workplaces, and operators of black coal mines are subject to significant safety regulations.

Open-cut black coal mines

8. Open-cut mines may cover an area of over ten square kilometres. Transportation on an open-cut mine occurs in light vehicles. A light vehicle is typically a ute or four-wheel drive. Driving from one side of an open-cut mine to another could take half an hour.
9. At any given time, work is performed in many locations on an open-cut mine. These locations may be at opposite ends of the mine. At any time, workers will be operating various pieces of equipment across the mine, for example, haul trucks, dozers, diggers, draglines, graders and water carts. Maintenance workers will be performing scheduled and unscheduled maintenance in workshops and remote locations. Workers will be transporting coal and operating the coal preparation plants. The nature of this work means workers have minimal interaction with other employees while performing work.
10. Crib rooms (or break rooms) are often distributed across the mine. On a large open cut, there could be up to seven locations where workers can take crib (a break). Typically, mines operate twenty-four hours a day, seven days a week. To facilitate non-stop operation, workers work various shifts and roster patterns. Typically, workers working on an open-cut mine start and finish shifts at several locations.
11. Due to the following reasons workers often have little interaction with one another:
 - a) working on different shifts or opposing roster cycles.

- b) working in different areas of the mine.
- c) Taking crib in different rooms.
- d) Commencing work in different locations.
- e) Taking crib at different times (Workers often '*hot seat*', which means work in a manner where breaks are staggered.)

Underground black coal mines

12. Underground coal mines consist of a large number of connected tunnels. Generally, they are broken down into the following sections:

- i) The surface.
- ii) Coal preparation plant (a plant which crushes and washes coal).
- iii) Outbye area (a series of service roads, coal transportation belts and ventilation systems that provide necessary support and access to the production areas).
- iv) Development panels (the new mine sections which are being prepared for longwall mining).
- v) Long wall panels (the primary production area).

13. Transportation underground occurs in slow-moving specialised personal transport vehicles. There could be up to five kilometres of access roads from the surface to the furthest working face. To be transported from the surface to the face, it may take thirty minutes. Movement is highly restricted in underground coal mines. To move from one area of the mine to another, you have to seek permission from the person in charge of the area, and you may only enter the area once you obtain the authority to do so.

14. Work in an underground coal mine occurs in a wide range of locations between the surface and the production faces. At any one time, workers could be performing work in the outbye area, several development panels, at the longwall, on the surface or in the coal preparation plant. At any one time, workers will be performing duties such as undertaking gas drainage tasks, operating the continuous miner, performing maintenance, performing safety inspections, operating the long wall, operating shuttle cars, operating the coal preparation plant, performing roof support work as well as erecting and maintaining the ventilation system. Due to the nature of the work being performed many workers have little interaction with one another while performing work.

15. Underground coal mines typically operate twenty-four hours a day, seven days a week. Workers work various shifts and roster patterns. There is minimal interaction between workers on opposing roster patterns.

Metalliferous mining industry

16. Metalliferous mining typically occurs in regional Australia. The MEU represents workers performing work in Western NSW and Western Australia. The MEU and the Australian Workers' Union have an alliance to represent workers engaged in metalliferous mining in the Pilbara region of Western Australia. There are two types of metalliferous mines: open-cut mines and underground mines.

17. While different tasks are performed in black coal mines and metalliferous mines, the work is similarly organised, so there is minimal interaction between workers unless the workers work in the same crew. Typically, metalliferous mines are geographically large enterprises that operate twenty-four hours a day, seven days per week. Workers are regularly required to perform shift work on rotating rosters.

18. Typically, mining industry employers are sophisticated; they have detailed policies and procedures. Metalliferous mines are high-risk workplaces, and operators of metalliferous mines are subject to significant safety regulations. Similarly to black coal mining, metalliferous mining is a male-dominated industry.

MEU delegates work for mine owners and operators

19. Overwhelmingly, the MEU's delegates are employed by companies that own or operate coal or metalliferous mines. While it is true that some small and medium-sized businesses perform work in the black coal and metalliferous industries, almost without exception, the MEU's delegates on a site are employed by the mine owner or operator.

Ways in which MEU delegates represent members

20. The MEU's delegates play a critical role in the operation of safe, efficient and harmonious workplaces. Delegates are often the first person with whom a worker raises a workplace issue. Delegates:

- a) Resolve disputes between workers and their employers.

- b) Resolve disputes between workers.
- c) Represent and support workers during performance evaluations and appeals concerning performance evaluations.
- d) Participate in consultative processes.
- e) Represent and support workers during investigations and disciplinary meetings.
- f) Assist and advise workers through worksite restructures, expansions, changes of ownership and operation closures.
- g) Assist, advise and support workers through injury management and return to work programs.
- h) Assess worker's grievance's and assist workers in determining whether it is a matter that should be raised with management.
- i) Drive efficient resolution of bargaining.

21. From the MEU's perspective, delegates hold the most important role in the union. They are at the coal face, so to speak. They are the face of the MEU in the workplace and represent the member's interests internally. The MEU's delegates set the MEU's organisational priorities by participating in MEU internal governance meetings. They influence the issues on which the MEU runs campaigns. An example of this is the recent Same Job Same Pay campaign, which resulted in amendments to the Fair Work Act. The MEU initiated the Same Job Same Pay campaign due to delegates expressing concern about the pay and conditions of the members they represent being undercut by labour-hire companies.

22. Delegates can better represent workers when the industrial instrument that applies to them contains broad delegates' rights.

The role MEU delegates play in bargaining for an enterprise agreement

23. The MEU's delegates play a central role in preparing to bargain and bargaining for an enterprise agreement. Before bargaining, MEU delegates educate their workmates on the benefits of bargaining for an enterprise agreement. They speak to members about the issues they want to address during bargaining. If a majority support declaration is sought to initiate bargaining, they assist in obtaining evidence that a majority of the relevant employees wish to bargain. Ideally, delegates consistently communicate with the members they are representing during bargaining. This ensures that member's priorities are being reflected at the table. If/when the employer meets those priorities, employers can be confident that the agreement they propose to the employees will be voted up.

24. In my experience, worksites with higher union density and good union delegates have the best chance of negotiating an enterprise agreement and achieving the best outcomes during the resultant bargaining.

How delegates' rights increase union density

25. Typically, workers will only join a union if they know that the union has a presence at the worksite and are confident that the union can effectively represent their interests. Rights for delegates address both these concerns. They allow the delegate to speak to potential members about the union's role in representing workers, including the union's role in bargaining for better terms and conditions of employment through an enterprise agreement. They also increase the ability of the delegate to represent members. It goes without saying that the broader the right, the more visible and effective the delegate.

26. In my experience, employers are more likely to agree to bargain for an enterprise agreement when they believe that most of their employees are union members. Further, if an employee refuses to bargain, the higher the union's density is on a site the more likely the union will be able to satisfy the Commission that employees want to bargain.

The MEU's delegate training program

27. Currently, the MEU offers several training programs for workplace delegates. They include:

- a) A one-day course that provides an overview of basic knowledge and necessary skills required to be a delegate.
- b) A two-day course that provides greater detail on the information in the one-day course with a particular focus on bargaining for an enterprise agreement.

28. The MEU has identified that its delegates would benefit from further training. To develop this training, the MEU has hired a National Training Officer who will commence with the union in April 2024. The National Training Officer will develop an updated training regime based on recognised principles of adult education. The training program will train the MEU's delegates on the following matters:

- a) Foundational principles of employment law. e.g. the significance of enterprise agreements.
- b) Familiarity with relevant industrial instruments.
- c) Safety regulations and the role of the relevant regulator
- d) Best practice negotiation and dispute resolution techniques.
- e) Best practice approaches when dealing with workplace bullying and harassment and sexual harassment.

29. The MEU does not and will not support delegates accessing paid time for training unless the training they are to receive will meaningfully increase their capacity to represent workers.



Michael Weise

28 March 2024