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National Secretary
Michael Kaine

BEFORE THE FAIR WORK COMMISSION

AM2024/6 – Variation of modern awards to include a delegate’s rights term

SUBMISSION ON DRAFT DETERMINATION – TRANSPORT WORKERS’ UNION OF AUSTRALIA

Introduction

1. The Transport Workers’ Union of Australia (**TWU**) has prepared these submissions in in accordance with the Statement¹ issued in this matter dated 10 May 2024.
2. The TWU represents over 70,000 men and women in Australia’s aviation, oil, waste management, gas, road transport, passenger vehicle, the emerging “gig” economy including ride share and the freight logistics industries. With over 100 years’ experience in conducting Australia’s transport tasks, the TWU has been proactive in establishing efficient industry standards that improve the lives and safety of transport workers, their families, the road using public and those travelling by air.
3. The TWU’s coverage across the aviation and transport industry puts the union in a unique position to understand both current and emerging challenges for workers

¹ [2024] FWC 1214.

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engaged in those industries. The TWU also acknowledges the critical importance of the draft determination and inclusion of a delegate's rights term in various modern awards.

TWU Interest in Modern Awards

4. The TWU has interest in a number of modern awards as follows:

- a. *Road Transport and Distribution Award 2020* (MA000038);
- b. *Road Transport (Long Distance Operations) Award 2020* (MA000039);
- c. *Waste Management Award 2020* (MA000043);
- d. *Transcript (Cash in Transit) Award 2020* (MA000042);
- e. *Passenger Vehicle Transportation Award 2020* (MA000063);
- f. *Airline Operations – Ground Staff Award 2020* (MA000048);
- g. *Aircraft Cabin Crew Award 2020* (MA000047); and
- h. *Air Pilots Award 2020* (MA000046).

5. The TWU notes that in its Statement² the Commission has sought comment on the proposed draft determination and that it is the Commission's intention to allow for award-specific variations to the term to be allowed after the conclusion of this matter. On that basis, the TWU approaches this submission on the basis that further opportunity will be available to make applications to vary the terms by reference to specific industries and modern awards.

² Ibid.

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Comment on Draft Determination

6. The TWU has been provided with a copy of the submissions of the Australian Council of Trade Unions (ACTU) dated 22 May 2024 and filed in this matter. The TWU supports those submissions and makes this submission to supplement those filed by the ACTU and to draw attention to a key area of concern in the draft determination.
7. The draft determination at subclause x.8 includes a provision for an entitlement to reasonable access to training to 5 days for initial training and then 1 day of training each subsequent year.
8. It is unclear if the first 5 days of initial training must be undertaken in the first year, but it is implied that is the case given that the draft determination goes on to provide for 1 day of training each subsequent year that a workplace delegate is either appointed or elected in accordance with subclause x.3 of the draft determination.
9. Further, at subclause x.8(a) there is the limitation on the number of delegates able to access paid training based on the number of eligible employees – with 1 delegate able to access the training per 50 eligible employees.
10. Both the road transport and aviation industries operate on a 24 hour, 7 day basis often with complex and varied rostering arrangements that facilitate productive operations and ensure that those travelling by air or requiring goods be delivered by road do so both safely and efficiently. Due to the nature of the relevant industries, it is critical to



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note that workplace size and access to employees in order to ensure that they are effectively represented is directly relevant to the TWU and the approach taken to the election or nomination of a workplace delegate.

11. Using the road transport industry as an example, employees are often engaged on a site by site basis with work split between shifts. A site, yard or depot will often have a morning, afternoon and night shift with up to 50 (in some cases more) employees at that location working across the nominated shift patterns. Those shifts may intersect but it is ultimately unlikely that an employee acting as a delegate and performing the early morning shift will be sufficiently capable of representing workers engaged to perform work on an afternoon or night shift. Further, because those workers will generally not spend the vast majority of their work time in one depot or location, the capacity for any single delegate to effectively represent workers across all 3 shift arrangements would be very difficult if not possible.

12. Further, we note that section 350C(5) of the *Fair Work Act 2009* (Cth) (**FW Act**) that sets out what is reasonable for the purposes of this subsection. One such matter at subsection 350C(5)(a) is the size and nature of the enterprise. Where a shift or rostering arrangement like those set out above is considered, it is likely that more than one delegate per 50 employees would be necessary or reasonable having regard to the nature of the employer's enterprise.

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13. Subsections 350C(2)-(3) of the FW Act sets out the circumstances upon which a workplace delegate is entitled to represent the industrial interest of members. It is the TWU's submission that to do this effectively, those workplace delegates must have access to appropriate training AND there must be an appropriate number of delegates having regard to an employer's enterprise, size and scale. Any limitation to access to training based on 50 eligible employees for an enterprise would undermine this provision.
14. In addition, the TWU's current training program for workplace delegates exceeds 1 day per year. All training offered is important to workplace delegates to assist them in fulfilling their role as delegates and the TWU's process in supporting delegates in being effective in the role. Training offered by the TWU to its delegates is focused on various matters directly relevant to their role as workplace delegates including; effective representation in disciplinary matters, identifying safety concerns, managing disputes in the workplace and ongoing training on legislative amendments to ensure delegate knowledge is current and up to date.
15. On an overall basis, where workplaces have well entrenched delegate structures with access to a reasonable pool of delegates leave, those workplaces also benefit from increased efficiencies in addressing workplace disputes, engaging in consultation and finalising individual disciplinary matters. Using the case of the TWU's arrangements with Linfox as an example, the *Linfox and Transport Workers Union Road Transport and*

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*Distribution Centres Agreement 2023 (AE523132)*³ sets out at clauses 84 and 85 delegate access to paid training leave (6 days per annum plus 2 additional days to attend the TWU's State conference) and a clear set of rights that a delegate might exercise. In the case of this arrangement, there is no limitation on the number of appointed workplace delegates to the size of each individual work site. Further, access to paid training assists both the workplace delegates and Linfox by allowing workplace delegates to perform their functions in an informed manner.

16. The Linfox and TWU approach to paid training for workplace delegates does not limit access to paid training on an ongoing basis after their first year of appointment nor, does it limit the number of delegates that might be appointed based on the number of eligible employees. Instead, the approach at Linfox ensures consistent ongoing training and support for workplace delegates and allows the TWU and the Company to ensure that appropriate workplace representation takes place.

17. On that basis, the TWU submits that the draft determination should be amended to provide for:

- a. No less than 1 delegate for every 25 eligible employees or part thereof; and

³ Link to Agreement: <https://www.fwc.gov.au/document-search/view/3/aHR0cHM6Ly9zYXNyY2RhdGFwcmRhdWVhYS5ibG9iLmNvcuUud2luZG93cy5uZXQvZW50ZXJwcmVlZWFncmVlbWVudHMvMjAyNC8xL2FINTIzMTMyLnBkZg2?sid=&q=linfox>

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- b. No decrease in the number of paid training days per subsequent year a workplace delegate is appointed or elected with 5 days paid training per year to be available on an ongoing basis.

Transport Workers' Union of Australia

22 May 2024

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