

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

Variation of modern awards to include a delegates' rights term

UNITED WORKERS UNION'S OUTLINE OF SUBMISSIONS

Introduction

1. Changes arising from the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (**'the Closing Loopholes Act'**) have required that the Commission insert a *delegates' rights* term into all modern Awards by 30 June 2024. The Commission has required interested parties to lodge submissions in relation to these terms by 1 March 2024.
2. The United Workers' Union (**'UWU'**) supports the clause proposed by the ACTU and supports the proposal that this clause should be included in all modern awards. The UWU also adopts the submissions of the ACTU, in addition to the below.

Legislative framework

3. The Closing Loopholes Act introduced numerous changes to the *Fair Work Act 2009* (Cth) (**'the Act'**), including to create a system of workplace delegates' rights.
4. These changes to the Act include:

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- (a) The introduction of s 350A which incorporates into the General Protections regime a specific set of protections for workplace delegates, including the protected exercise of workplace delegates' rights;¹
 - (b) the addition of s 350C that establishes a set of workplace delegates' rights that a workplace delegate may exercise;
 - (c) the requirement in s 149E that a modern award must include a delegates' rights term;
 - (d) A requirement in s 205A to include delegates' rights clauses in enterprise agreements; and
 - (e) Section 201(1A), requiring the Commission to note in enterprise agreement approval decisions if a delegates' rights term of a modern award is taken to be a term of an enterprise agreement.
5. Section 350C of the Act acts as the minimum set of entitlements for a delegates' rights clauses. This clause provides delegates are entitled to the following:
- (a) To represent the industrial interests of members and any other persons eligible to be members;
 - (b) Reasonable communications with members and persons eligible to be members, in relation to their industrial interests;
 - (c) Access to the workplace and facilities for the purpose of representing those persons' industrial interests; and
 - (d) Reasonable access to paid time, during working hours, for the purpose of training.

¹ S 340A(1)(c).

6. The Explanatory Memorandum at 827 and 830 provides *for most employees, modern awards and enterprise agreements would provide greater detail for particular industrials, occupations and enterprises*. This is required to ensure that employers can rely on the terms as a complete statement of their obligations under s 350C(4).
7. The proposed ACTU clause ensures that the purpose of the Closing Loopholes Act is met.
8. Any proposed model clause which does not provide for the exercise of each right in s 350C does not meet the requirements for a *delegates rights term* for the purposes of s 12 and thus is inadequate for the purposes of s 149E and s 95 of Schedule 1. Any proposed clause of this nature should be rejected by the Fair Work Commission in those circumstances.

Role of delegates

9. Workplace delegates are an important component of many workplaces in Australia. Those delegates play an essential role in the function of those workplaces, and act to improve conditions in the workplace.
10. The UWU has over 5,000 workplace delegates across our membership.
11. Delegates play an important role in ensuring workers are educated about their rights and are able to enforce them. This is particularly important within certain industries within the economy where workers can be open to exploitation.
12. Many Australian workplaces already recognise the roles delegates play and this is reflected in their workplace policies and industrial instruments. Examples of this include but are not limited to:

- (a) AnglicareSA provides delegates with access to facilities (such as telephones, photocopiers, internet and email), access to have discussions with employees on the worksite and paid leave for training on a yearly basis²;
- (b) Aspen Pharma provides paid leave for delegates to undertake training and on-site communication opportunities and facilities³;
- (c) Goodstart provides the right for delegates to take training in paid time⁴;
- (d) Coles and Woolworths provide access to on-site communication and paid training leave⁵;
- (e) Saputo in the dairy industry provides paid leave for delegates to undertake yearly training and provides on-site and off-site time to represent the industrial instruments of union members⁶;
- (f) Crown Casino in Melbourne provides delegates can access a pool of up to 400 days per year for both training and meetings. Delegates at Crown are able to assist other workers during work time with disciplinary and dispute matters and a meeting is facilitated on a yearly basis for delegates to address employees⁷; and
- (g) The *Cleaning Services Award 2020* provides delegates with access of up to 5 days paid leave per year to undertake dispute resolution procedure training leave.

13. The implementation of the proposed delegates right clause will assist in the standardisation of workplace delegate rights that already apply across the Australian

² AnglicareSA Limited Aged Care Agreement 2015, Part 5.

³ Aspen Pharma UWU (Dandenong Victoria) Enterprise Agreement 2023, Part 9.

⁴ Goodstart Early Learning Enterprise Agreement 2021, clause 55-59.

⁵ Coles Laverton CDC and NUW Enterprise Agreement 2019, clause 37. Melbourne Liquor Distribution Centre Enterprise Agreement 2021-2024, clause 3.5.

⁶ Saputo Dairy Australia and United Workers Union Dairy Beverage Centre Agreement 2021, clause 12.

⁷ Crown Melbourne Limited Enterprise Agreement 2022, Attachment B.

economy. The proposed clause reflects the common role of delegates as already occurring in the workplace.

Right to represent

14. Representation rights are an essential component of the delegates rights clause. As outlined above, it is not uncommon for these terms to be negotiated in enterprise agreements (for example, delegates at Crown being able to attend disciplinary and dispute matters).⁸
15. At Crown Perth, clause 10.2(2) provides that Crown will recognise United Workers Union delegates as the on-site representatives of the Union.⁹ Further, clause 10.2(4) recognises the numerous settings in which a delegate has a role representing members.¹⁰ Mr Andrew Grant's evidence illustrates the importance of the right to represent:

*At Crown, we won delegate rights through enterprise bargaining. In my experience, I have not been restricted or prohibited while acting as delegate. It is my view that the strong delegate rights clause in the Enterprise Agreement enables delegates to be visible to members and to best represent their industrial interests.*¹¹

16. Without express representation rights, delegates who do not have a supportive employer may not be permitted to perform that role.
17. Evidence provided by Ms Rebecca Stiles supports that delegates with a supportive employer are currently able to perform representation more effectively:

⁸ Crown Melbourne Limited Enterprise Agreement 2022, Attachment B; statement of Mr Andrew Grant at [11(a)].

⁹ Crown Perth & Uwu Hospitality Enterprise Agreement 2022.

¹⁰ Ibid.

¹¹ Statement of Mr Andrew Grant at [36].

*Our enterprise agreement does not give me an explicit right as a delegate to represent workers. I have only been able to do the representation that I have done because I have a supportive management committee. I believe that have been allowed to attend more meetings and undertake more representational work than what is explicitly listed in the agreement because I have a supportive employer that wants to improve our sector.*¹²

18. That same evidence also advances a broad view of ‘representation’ that extends beyond representations being made to an employer. For Ms Stiles this has included advocating to government and politicians about the industrial interests of similar workers, advocating or expressing opinions in media, and social media use.¹³
19. The wording of the proposed clause is important to ensure that delegates rights are standardised across industries and employers, but also accounts for a broad meaning of ‘entitled to represent’ and ‘representing’.
20. Similarly, evidence from delegate Christopher Murphy shows that employers, whether intentionally or not, may mislead delegates about their role and rights in the workplace.¹⁴
21. A standardised set of representational rights for delegates would ensure that unions, delegates and employers have a clear and shared understanding of how a delegate can operate within a workplace in exercising their representational functions.

Right to paid training and attending meetings

22. The ability for union delegates to attend training and union meetings makes a significant impact on their ability to represent and assist union members and non-members in their workplaces.

¹² Statement of Ms Rebecca Stiles at [17].

¹³ Ibid [8].

¹⁴ Witness Statement of Christopher Murphy at para 8

23. Every year UWU delegates undertake training provided by the UWU. In the 2023 calendar year 673 delegates attended a foundational training course with the UWU. The UWU delivers foundational training to delegates from all sectors and States/Territories where our members work and live.
24. In 2023 the UWU conducted training courses in Melbourne, Adelaide, Perth, Brisbane, Toowoomba, Gold Coast, Sunshine Coast, Bundaberg, Townsville, Gympie, Rockhampton, Canberra, Sydney, Newcastle, Darwin and Hobart.
25. One of the most common courses undertaken by UWU delegates is the *core delegate skills course*. This course provides education on communication and dispute resolution for UWU delegates. Delegates learn how to perform various aspects of the delegate role, including but not limited to the following:
 - (a) Build and execute democratic union structures within a worksite or industry;
 - (b) Navigate and interpret industrial instruments including Awards and enterprise agreements; and
 - (c) Bridge gaps in communication between members and managers for effective dispute resolution.
26. The training objectives for the UWU's foundational training include:
 - (a) union values;
 - (b) The role of delegates in building power and unity;
 - (c) Worksite mapping;
 - (d) Understanding and using legal/industrial rights in the workplace;
 - (e) Communication skills including asking workers to join and take action; and

(f) Representing members in disciplinary meetings to ensure a fair process is followed.

27. Evidence from Mr Andrew Grant illustrates that access to training is an important part of being an effective delegate:

The training sessions are important as they assist delegates to perform the role effectively. The trainings explain the structure of the delegate role and how to be workplace representative. I learn how to put myself forward and be available to members to assist with their workplace issues.¹⁵

28. The UWU's internal data shows that after attending foundational training there is an increase in member recruitment by those delegates as well as improved outcomes in confidence, communication skills and knowledge.

29. Many UWU delegates are culturally diverse, have learning difficulties or low English literacy levels. The UWU structures its training in a way that English language literacy is not required, and the environment is inclusive for member leaders who have had a range of experiences with formal classroom learning. It is essential that delegates are provided with union education that is accessible, inclusive and empowering for them.

30. Delegates are able to implement the skills they use in the training provided by the UWU to work with members and potential members to improve conditions at their worksite.

31. Research has found that delegates who have received union training have *more confidence, greater self-perceived skills and scored higher on measures of activism in*

¹⁵ Statement of Mr Andrew Grant at [33].

*the workplace.*¹⁶ Delegates that have been involved in disputes and/or campaigns at their workplace have also been found to be more confident.¹⁷

32. Delegates who have been trained have been found to be more influential in their workplace. A Canadian study of education sector delegates found that this is because they are more knowledgeable about collective agreements and also *because they played an important 'bridging role' between the union and its membership.*¹⁸

33. Evidence from Mr Andrew Grant illustrates the bridging role between members and the union that delegates perform. Importantly, the delegate is able to answer questions or direct members to the appropriate place:

*I am visible on the floor when I work. Sometimes workers will approach me or other delegates with questions related to work. As a delegate, I will try to answer questions where I can. Otherwise, I direct members to the appropriate place if I cannot assist.*¹⁹

34. Evidence provided by delegate, Ms Rebecca Stiles demonstrates the importance of union training in enabling delegates to effectively perform their role. Ms Stiles states:

*20 years ago, I would not have been confident enough to speak to a crowd. I would not have been able to do live radio. I would not have known how to have a conversation about workplace issues and how we as workers can resolve those issues. Going to training and union meetings has given me the skill I need to advocate for our sector.*²⁰

35. It is essential for delegates to be able to attend such delegate training and union meetings to enable them to perform their role.

¹⁶ D Peetz and R May, Use it or lose it: education and development of delegates in Australian Unions (20 June 2023) 12; D Peetz and P Pocock, An analysis of workplace representatives, union power and democracy in Australia (British Journal of Industrial Relations 47, 2009) 623-652.

¹⁷ D Peetz and R May, *Use it or lose it: education and development of delegates in Australian Unions* (20 June 2023) 13; J Clarke, B Pocock and D Peetz, *Delegates are Diamonds* (University of Adelaide, 2005).

¹⁸ D Peetz and R May, Use it or lose it: education and development of delegates in Australian Unions (20 June 2023) 13; G Murray, C Levesque and C Le Capitaine, Worker empowerment and disempowerment: What makes union delegates feel strong? (Labour Studies Journal 30(3), 2014) 177-201.

¹⁹ Statement of Mr Andrew Grant at [12].

²⁰ Statement of Ms Rebecca Stiles at [20].

Reasonable communications and recruitment activities

36. Representing the industrial interests of union members and non-members involves a broad number of activities undertaken by delegates. For example, union delegate, Ms Stiles provides evidence that she has met with members of parliament, organised meetings at local politicians' offices, appeared on radio and television media, organised 'walk offs', visited other early childhood centres and participated in supported bargaining with early childhood education and care employers and the Commonwealth.²¹
37. Representing industrial interests must include delegates undertaking reasonable communications and recruitment activity to meet the objectives of the legislation. This is a core component of delegate activity within the workplace and assists in delegates being empowered to achieve positive outcomes for members and non-members.
38. Evidence provided by Ms Kathy Adam shows that, in the context of rostering at Sydney Airport during the COVID-19 pandemic, following signing up and having conversations with new members, they were able to organise meetings between workers and management, and represent the workforce to agree on a fair rostering system. This outcome clearly resulted in an improvement in the affected workers' interests.²²
39. Further Evidence by Ms Kathy Adam demonstrates the importance of recruitment activity in creating more permanent jobs. Ms Kathy Adam states:

Another issue is the unfair appointment of full-time employment. Often management would appoint their friends and favourites to full-time employment whereas other workers who had been with the company for years and were competent workers would miss out. Through recruiting members and growing the union, and through enterprise negotiations, we were able to create a fairer process for the allocation of full-time contracts. If we were not allowed to recruit members to the Union, we would not have

²¹ Statement of Ms Rebecca Stiles at [8](a)-(i).

²² Statement of Ms Kathy Adam at para [10] - [14]

been able to create a collective group to affect the positive change in a fair system for appointing full-time contracts.²³

40. Evidence from Ms Stiles also shows that recruitment beyond a delegate's individual workplace is essential for advancing the industrial interests of members and person eligible to be members where those interests could be considered whole of sector issues.²⁴
41. Evidence provided by delegate Mr Christopher Murphy shows that his shift was able to obtain better outcomes with respect to job rotation as opposed to other shifts which had less Union members and delegates. The increased rotation created better physical and mental health outcomes and was directly related to the delegates ability to recruit and consult with members.²⁵
42. Evidence from Mr Murphy shows that delegates having access to employees in inductions results in a better relationship between elected delegates and employees which assists in employees being confident to raise issues, concerns and grievances with their delegates so they may be resolved with the employer.²⁶
43. Evidence from Mr Andrew Grant illustrates that delegate attendance at induction meetings is also important for the development of new member knowledge about the role of the delegate in the workplace:

Inductions assist new workers to identify delegates and understand how we can assist them with their workplace issues, both individually and collectively. I can educate and

²³ Statement of Ms Kathy Adam at para [15]-[17]

²⁴ Statement of Ms Rebecca Stiles [23].

²⁵ Witness Statement of Christopher Murphy at para 10 - 13

²⁶ Ibid at para 15

share information to new employees about their working rights and conditions. I can explain how we achieved better conditions and pay through enterprise bargaining.²⁷

44. Further evidence from Mr Murphy shows that the ability for delegates and union members to discuss workplace matters at "mass meetings", contemplated in the ACTU Draft Clause, are vital in ensuring that all voices are heard.²⁸ Such meetings ensure that diverse views and opinions may be shared and this assists with a delegate's ability to accurately and effectively reflect those views to the employer to facilitate consultation and dialogue.

Right to use facilities

45. The proposed clause provides that delegates have access to facilities in order to effectively perform their role. This is a condition that is provided for in many enterprise agreements, as outlined above. It is not uncommon for employers to grant delegates access to notice boards and sending emails in order to communicate with members and non-members.
46. For example, union delegate, Ms Stiles provides evidence that she uses email, internet, social media, computer, printers, notice boards and her mobile phone in order to perform her role as delegate.²⁹
47. Mr Andrew Grant attends union meetings as a delegate at Crown Perth. His evidence illustrates that the facilities provided by Crown Perth are key to the performance of his role as delegate:

In terms of formal settings, Crown provides two paid union meetings each year for members and non-members. Crown provides access to rooms and facilities, and releases delegates so they can attend and assist with the meetings. The paid meetings

²⁷ Statement of Mr Andrew Grant at [20].

²⁸ Ibid at para 17

²⁹ Statement of Ms Rebecca Stiles at [26](a)-(h).

*are important for delegates as we get in front of workers in a formal setting. Delegates can share information about improvements in workplace conditions and answer questions. The meetings are also an opportunity to identify and discuss workplace issues.*³⁰

Modern Award objectives

48. In the *consultation clause case*³¹ at paragraph 10, JJ Ross, DP Watson and Cmr Wilson found in making determinations to vary modern awards to include terms, the Commission is exercising powers under Schedule 4 of the FW Act. The Commission therefore is not exercising modern award powers within the meaning of s 134(2) of the FW Act. The Commission stated:

It follows that the modern awards objective does not apply by force of s.134(2), but that does not mean that the modern awards objective is irrelevant to our task. Section 138 of the FW Act is important in this regard, it states:

“A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.”

49. Section 134 of the FW Act outlines the modern awards objective. The proposed clause meets the requirements outlined in the modern awards objective to the extent that it is relevant to this case.

50. Section 134(1) requires that the Fair Work Commission must ensure that modern awards and the national employment standards provide a fair and relevant minimum safety net of terms and conditions, taking into account:

³⁰ Statement of Mr Andrew Grant at [16].

³¹ [2023] FWCFB 10165.

- (a) *relative living standards and the needs of the low paid; and*
- (aa) *the need to improve access to secure work across the economy; and*
- (ab) *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*
- (b) *the need to encourage collective bargaining; and*
- (c) *the need to promote social inclusion through increased workforce participation; and*
- (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (da) *the need to provide additional remuneration for:*
 - (i) *employees working overtime; or*
 - (ii) *employees working unsocial, irregular or unpredictable hours; or*
 - (iii) *employees working on weekends or public holidays; or*
 - (iv) *employees working shifts; and*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

(a) relative living standards and the needs of the low paid

51. The Commission has recently considered the meaning of 'low paid' and 'low rates of pay', and that employees will be considered to have 'low rates of pay' where employees are predominantly paid at or close to the award rates of pay for their classification,³² while 'low paid' refers to 'the amount an employee is paid for each defined period of working time.'³³ Ms Rebecca Stiles provides evidence about her advocacy in relation to the Early Childhood Education and Care sector which extends beyond advocacy in her

³² Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia [2023] FWCFB 176, [32].

³³ Ibid [31].

workplace, particularly where there is a need to advance the industrial interests of employees across the sector.³⁴ In industries where workers are low paid, low rates of pay are prevalent or the relative living standards of employees in those industries are lower (which ought to be viewed as correlated factors), expansive workplace delegates rights will be necessary to effectively advance the industrial interests of members and individuals eligible to be members.

(aa) the need to improve access to secure work across the economy

52. The proposed clause improves access to secure work. The clause provides delegates with the right to represent employees at their worksite. This empowers employees to enforce their rights and will act to improve secure work across the economy.

(ab) the need to achieve gender equality in the workplace

53. The proposed clause has the ability to assist to achieve gender equality in the workplace. In circumstances where a sector is feminised and gender-based undervaluations exist, or are likely to exist, expansive workplace delegates rights are required. For example, Ms Stiles provides evidence of her workplace's enterprise agreement explicitly recognising the gendered nature of early childhood education work, and the need for educators to act as advocates to address these gendered undervaluations.³⁵

(b) the need to encourage collective bargaining

54. The proposed clause encourages collective bargaining and protects delegates being able to exercise their rights to participate in collective bargaining.

55. Evidence of Mr Andrew Grant illustrates the connection between delegates rights and collective bargaining:

³⁴ Statement of Ms Rebecca Stiles, [6]-[7].

³⁵ Statement of Rebecca Stiles, [15].

As a union, we are only as strong as our membership. Our power to make change in the workplace is membership dependent. It is my view that the industrial conditions of Crown are a product of delegate rights won during bargaining. The delegate rights provisions enable us to represent members effectively by allowing delegates to recruit members, get in front of members, hear from members, get information out to members freely, and to illuminate issues that are impacting workers.³⁶

(c) the need to promote social inclusion

56. This is a neutral consideration.

(d) the need to promote flexible modern work practices

57. This is a neutral consideration.

(da) the need to provide additional remuneration

58. This is a neutral consideration.

(f) the likely impact of any exercise of modern award powers

59. This is a neutral consideration.

(g) the need to ensure a simple, easy to understand, stable and sustainable system

60. The proposed model clause meets this requirement. It is simple and easy to read and understand.

(h) the likely impact on employment growth, inflation, sustainability, performance and competitiveness of the national economy

61. This is a neutral consideration.

³⁶ Statement of Mr Andrew Grant at [25].

Conclusion

62. The UWU supports the adoption of the delegates rights clause proposed by the ACTU.

Filed on behalf of the

United Workers Union

1 March 2024

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

Fair Work Act 2009, Schedule 1, cl 95 – FWC to vary certain modern awards

Variation of modern awards to include a delegates' rights term

Filed by the United Workers' Union

Interested Party

WITNESS STATEMENT OF CHRISTOPHER MURPHY

1. My name is Christopher Murphy of [REDACTED].
2. I am employed by Woolworths Group Limited (**Woolworths**) at the Melbourne South Regional Distribution Centre at 2 Portlink Drive, Dandenong South VIC 3175 (**MSRDC**). I have been employed by Woolworths at the MSRDC for approximately four and a half years.
3. The MSRDC is a distribution centre and I perform a variety of work including picking, packing, driving a forklift and other incidental duties.
4. I have been a Delegate of the United Workers' Union (**UWU**) for four years.
5. Save where otherwise indicated, I make this statement based on my own personal knowledge and belief.

My role as a delegate

6. In my role as a delegate I support and represent members and workers. This involves education, advocacy and guidance. Often my role involves helping workers with issues at work and how to approach those issues with management or other workers. For example, I have assisted several workers with requesting roster changes, which

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involves educating them on their rights and how they should go about requesting this from site management.

7. I also represent workers to management myself, raising grievances or issues that are felt across the workplace. Sometimes this is done in the forum of a Joint Consultative Committee (**JCC**), but at other times I raise issues with management myself on behalf of individual workers.
8. When I was first a delegate I found that Woolworths site management, whether intentionally or not, attempted to mislead me about my role. Woolworths advised me that my role was limited to being a support person rather than act as a representative. I did not agree as the UJU had informed me that my role as a delegate was to act as a representative.

Reasonable communication, facilities and mass meetings

9. In my experience, being able to frequently and properly communicate with members and workers is vital to representation. This can take the form of individual conversations, mass meetings, inductions or other organised meetings between workers..
10. I work on the day shift which has a higher proportion of UJU members and delegates than other shifts. In my experience, having more of both increases our ability to represent ourselves to our employer and ensure that work is performed safely.
11. For example, on day shift we have a higher number of rotations during our shifts. This means that we rotate around different jobs and functions frequently. This is important for both physical health in terms of preventing injuries caused by repetitive movements, and for mental health because our work can be quite monotonous.
12. Myself and other delegates consulted with workers about how the work was affecting them both physically and mentally and discussed how more rotations would assist. After consulting with members and workers through meetings and one on one discussions we raised the issue of rotations through the JCC with site management. Management agreed to implement more rotations after we raised the issue, however myself and the other delegates still have to ensure that rotations are occurring on an

adequate basis otherwise the practice can slip and become less frequent. We have an active role in keeping the site management accountable in meeting their stated and agreed obligations.

13. This kind of work in which we as delegates actively represent members and workers on issues that affect the entire worksite are only possible if we have active members who are comfortable speaking to us. We build trust with our colleagues by building membership and forcing our employer to take us seriously. When we have low numbers of members we struggle to match our employers resources and power, so it is important that as delegates we are able to recruit members, advocate for them and be held accountable by them.
14. Another example of my work as a delegate and the positive relationship between the number of UWU members and outcomes was in a recent Health and Safety Representative (**HSR**) election at the MSRDC. Woolworths wanted to conduct the ballot for electing new HSR's through a QR code which took you to a google form. Myself and other delegates were concerned about the security, transparency and reliability of this method and wanted to conduct a paper ballot instead. We consulted with the outgoing HSR and other members and workers to determine if others felt the same. We wanted to ensure that everyone would be able to easily participate and have confidence in the result without Woolworths having control over the process which would be held entirely online. This resonated with other workers and people started to speak up, ensuring that we were able to show Woolworths that they should conduct a paper ballot which they eventually did.
15. The ability to speak with new workers during inductions is important so that we can explain the rights and entitlements that the workers have. When the workforce has more knowledge of their rights and entitlements then it keeps the employer accountable and means that everyone is on the same page. It also reduces the potential for misunderstandings. If delegates were not able to speak to new workers in inductions it would mean that we would have to take more time out of our work day to try and have a conversation with the new workers and introduce ourselves. When workers know who the delegates are and that they can come to us for help it means they will raise issues or concerns rather than let them linger and affect the culture of the workplace.

16. Having an adequate number of delegates for the worksite is crucial in representing members. It is difficult to be across the different issues, grievances and needs across the worksite if there are not enough delegates.
17. In terms of “mass meetings” of members and workers on paid time, they are vital to ensuring that all voices are heard. In one-on-one conversations there are only two voices, which means that there are only two points of view. In mass meetings of workers there are many voices and those who are more shy or not as confident may hear their own opinions spoken by someone else, showing them that their opinion is shared. This can be empowering and help reflect the diversity of views on a worksite. This is a transparent way to organise and inform consultation with our employer and enables us as a cohort of workers to articulate our views in one voice, ensuring that we can all work towards solutions together.
18. Having access to facilities at the workplace like private rooms, computers and printers allows myself and other delegates to properly perform our roles. If we are not provided with these kinds of facilities it would mean we would have to leave the worksite to properly fulfil our responsibilities. It is in everyone's interests that the employer provide us with these facilities so we can work efficiently and represent our colleagues properly.
19. Being able to perform delegates duties while working is vital. Myself and other delegates always try to balance our own work with our delegate duties. The time spent performing delegate duties varies week to week depending on what is happening at work. If there are changes happening at the worksite or there are collective issues which we need to talk to other workers about then it takes us time to understand those issues so we can properly represent the collective views to our employer. However, if there are enough delegates on the worksite then the work can be efficiently spread around the various delegates.

Training leave

20. In my experience training leave is vital so that new delegates can learn how to perform their role. Each delegate works differently and training helps us build a good foundation on which to reach our own potential. Paid training undertaken with other delegates, sometimes from different worksites, helps to build confidence in our role which is important for a role which is often demanding. Developing the skills to advocate and

represent fellow workers takes time but training provides a good framework and foundation for that development.

21. If training could only be undertaken on personal time or by taking my own paid leave, I would be much less likely to participate in the training. A delegate performs a representative role which assists in resolving problems on site before they escalate. This helps workers and employers, so it would be unfair for a delegate to have to sacrifice their own paid leave just so they could properly fulfil their elected role.

28 February 2024



Christopher Murphy

MRSDC Delegate – United Workers' Union

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

CL 95, SCHEDULE 1 – VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES’ RIGHTS TERM (AM2024/6)

WITNESS STATEMENT OF ANDREW GRANT

Background

1. My full name is Andrew Grant.
2. I live in Ballajura, Western Australia.
3. I am employed by Burswood Resort (Management) Limited trading as Crown Perth (**Crown**) on a part time basis.
4. I have worked for Crown since approximately February 2009. Prior to employment at Crown, I was employed as a store person.
5. The *Crown Perth & UWU Hospitality Enterprise Agreement 2022* (**Enterprise Agreement**) covers my employment.
6. I work as a Croupier, also known as a table game dealer, in the front of house. I am a licensed Croupier who is responsible for running table games at Crown. My license is provided by the Department of Local Government, Sport and Cultural Industries who are responsible for regulating casino operations in Western Australia. I follow my

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license conditions as well as implement Crown policy and procedure. I am also required to engage with patrons and deliver customer service.

7. As well as working as a Croupier, I also perform duties as a part time inspector from time to time. In this role, I supervise dealers to ensure they are following the rules and procedures required of Croupiers.

Representing industrial interests as a delegate

8. I am delegate for the United Workers Union (**UWU**). I have been a delegate since 2022.
9. Clause 10.2 of the Enterprise Agreement provides delegates rights. I have attached clause 10.2 to this statement, it is marked AG-1.
10. Clause 10.2 of the Enterprise Agreement contains the following delegate rights:
 - (a) employer recognition of delegates as on-site representatives of the UWU;
 - (b) with the prior authorisation of Crown, the right to represent concerns of individual members, participate in issue resolution and grievance handling procedures, and participate in other workplace matters without loss of pay;
 - (c) access to stationary, printers and similar resources to perform the delegate role;
 - (d) paid delegate attendance at enterprise bargaining negotiations;
 - (e) subject to employer approval and cap requirements, paid delegate training leave;
 - (f) two delegates' meetings per calendar year, each 2 hours of length, in suitable locations and with facilities. Attendance at one meeting is paid;
 - (g) release on leave without pay to perform paid work as an official of the UWU for a period of up to 6 months;

- (h) release to attend employee inductions on paid time; and
 - (i) release of delegates to attend paid union meetings, capped at 6 delegates per meetings.
11. As a delegate, I work with the other delegates, union representatives, and members to address industrial issues at Crown. In my role as delegate, I:
- (a) have capacity to act as a support person during disciplinary matters or attend meetings with Crown when a member raises an issue;
 - (b) attend weekly inductions for new employees;
 - (c) participate and contribute to enterprise bargaining;
 - (d) communicate with members and non-members about the goals of the UWU and the workplace issues we are addressing as a union; and
 - (e) speak to members and non-members about their industrial issues and connect them with the UWU in both formal and informal settings.
12. I am visible on the floor when I work. Sometimes workers will approach me or other delegates with questions related to work. As a delegate, I will try to answer questions where I can. Otherwise, I direct members to the appropriate place if I cannot assist.
13. Distributing information to members and non-members is primarily done through word of mouth. The Crown worksite is quite atomised. Croupiers have a different break system and so we do not see everyone during our breaks. I usually speak to individuals or small groups in informal settings, such as break rooms, to distribute information.
14. As delegate, I speak to both members and non-members. It is difficult to identify who is and who is not a member. In any event, we do not restrict information about workplace issues.

15. I am used as a point of reference and asked questions about the Enterprise Agreement by both members and non-members. For example, a member had an issue with when their meal break was occurring. Their break was occurring early in the shift soon after they had commenced work. I showed the member clause 7.6 in the Enterprise Agreement that restricts when meal breaks can take place. The member took a screenshot of the clause on their phone. The member was then able to speak to the manager about their issue with the support and knowledge of the Enterprise Agreement.
16. In terms of formal settings, Crown provides two paid union meetings each year for members and non-members. Crown provides access to rooms and facilities, and releases delegates so they can attend and assist with the meetings. The paid meetings are important for delegates as we get in front of workers in a formal setting. Delegates can share information about improvements in workplace conditions and answer questions. The meetings are also an opportunity to identify and discuss workplace issues.
17. I don't think people have an ongoing understanding of the Crown workplace and the issues that impact employees across the site. As I mentioned before, the Crown worksite is an atomised workplace and workers from different departments do not interact often. The paid union meetings are an important setting for delegates to communicate with members and non-members about the issues from across the site.

Inductions

18. I am involved in weekly inductions on paid time. Crown adjusts my roster to accommodate this, where possible. The table game managers understand and are familiar with my responsibilities as a delegate. There is a standardised release system and schedule that balances delegates attending inductions and staffing levels.

19. Inductions are the first point of reference for workers. Crown is a large and atomised worksite with young workers and seasonal workers. In my experience, it is rare to see new workers with experience of union membership or activity.
20. Inductions assist new workers to identify delegates and understand how we can assist them with their workplace issues, both individually and collectively. I can educate and share information to new employees about their working rights and conditions. I can explain how we achieved better conditions and pay through enterprise bargaining.
21. For many employees, inductions are the only time that they will be asked to join the UWU as we may not see them at paid union meetings due to rostering. It is important to stress at inductions that Crown Perth is a union site where the union, delegates and members advocate for improved workplace conditions.
22. Crown accommodates delegates to perform a role at inductions which is beneficial for the workplace. New employees are exposed to union early on and know that we are active and engaged. It helps new members to recognise us and approach us with questions or issues that may have.

Enterprise Bargaining

23. I am a member of the bargaining team. As a delegate, I:
 - (a) work with members to formulate a log of claims on paid time;
 - (b) attend bargaining meetings on paid time; and
 - (c) speak with members to provide updates about progress.
24. Bargaining sessions occur during working hours and I attend the sessions without loss of pay.

25. As a union, we are only as strong as our membership. Our power to make change in the workplace is membership dependent. It is my view that the industrial conditions of Crown are a product of delegate rights won during bargaining. The delegate rights provisions enable us to represent members effectively by allowing delegates to recruit members, get in front of members, hear from members, get information out to members freely, and to illuminate issues that are impacting workers.

Paid Union Secondment

26. As a delegate, I was seconded to a paid union job on site for three months around April 2023. In this role, I updated notice boards, spoke with workers on the floor and assisted with site campaigns.
27. I communicated with members and non-members about their workplace. In particular, I spoke to hospitality workers who are employed by a third party, and not directly by Crown. These workers have less contact with other workers directly employed by Crown and are not covered by the Enterprise Agreement. I generally found that their working conditions were inferior to those provided by the Enterprise Agreement.
28. I think that a lot of the employees of the third party employer were suspicious of union presence. As a delegate, I engaged with them and explained we are a union and that our goal is to improve working conditions for members.
29. Important issues for this group of workers were the low number of guaranteed hours, under rostering, workloads, breaks, incidents with particular managers that were rude, and cultural insensitivity issues.
30. This experience illustrated the importance of effective representation in the workplace. It was an eye-opening experience to see the real impacts of the absence of an enterprise agreement. The paid union role allowed me to interact with the workers and

step into another workplace. I was able to have conversations with these workers and let them know about the union and its purpose.

Training

31. Under the enterprise agreement, delegates have access to 5 days of paid training leave per delegate. This leave may also be used for a UWU conference.
32. We have an onboarding process for a new delegates that typically runs for 2 or 3 days. This is training run by the UWU and attendance is paid.
33. The training sessions are important as they assist delegates to perform the role effectively. The trainings explain the structure of the delegate role and how to be a workplace representative. I learn how to put myself forward and be available to members to assist with their workplace issues.

Representation of industrial interests outside the workplace

34. As a delegate I have also been involved in broader issues that impact workers at Crown. As a result of the Royal Commission into Crown, there has been an uptick in audits across Crown. The increased audits have impacted workers. This has led to real life impacts including threats of fines for non-compliance and detrimental impacts on mental health. As a delegate, I have met with several Ministers of Gaming and Racing and other regulators to give workers' perspective on changes occurring at Crown.

Importance of delegate role

35. Crown is a significantly different workplace to my previous experience with employers. At my previous employer, the union was not present and delegates were not available to advocate for workers. Crown is a unionised site with delegates who are active, present and respected which has enabled the representation of their industrial interests.

36. At Crown, we won delegate rights through enterprise bargaining. In my experience, I have not been restricted or prohibited while acting as delegate. It is my view that the strong delegate rights clause in the Enterprise Agreement enables delegates to be visible to members and to best represent their industrial interests.

Signed:

Name:

Andrew Grant

Date:

PART 10 UNION PROVISIONS

10.1 Union Fees

- (1) Where the employee authorises the Employer to do so, the Employer will deduct from the wages of the employee, amounts nominated from time to time by the United Workers Union for union fees and remit such amounts on a monthly basis to the United Workers Union or where otherwise agreed, on some other basis.
- (2) Where the employee authorises the Employer to do so, the Employer will send to the United Workers Union, such of the employee's details as will permit the establishment of a direct debit arrangement for the payment of the employee's union fees.

10.2 Delegate Rights

- (1) The United Workers Union will accredit representatives from amongst the union membership as delegates.
- (2) The Employer will recognise the United Workers Union delegates as the on-site representatives of the Union upon receiving written notification by the United Workers Union to the Employer.
- (3) Delegates may be employed in any employment type e.g., part-time, full-time or casual.
- (4) As part of the union's role in representing members and in contributing to the efficient operation of the Employer, the United Workers Union's delegates will have the opportunity to represent the concerns of individual members to representatives of the Employer, participate in issue resolution and grievance handling procedures, and participate in other workplace matters including negotiations.
 - (a) United Workers Union delegates may participate in these activities, subject to prior notification to, and authorisation by the Employer, without loss of ordinary pay during rostered hours. Such authorisation will not be unreasonably withheld and will take into account operational requirements. Payment without loss of ordinary pay for a casual delegate will only apply to their rostered ordinary hours.
 - (b) In cases where a new employee (4-6 weeks after their commencement date) requests a meeting with a United Workers Union delegate up to 30 minutes, a delegate may be released to attend this meeting, during rostered hours, without loss of ordinary pay. The approval of these requests require reasonable notice (by the United Workers Union and / or delegate) and will be subject to operational requirements; however, such authorisation will not be unreasonably withheld. During these meetings, sub-clauses 10.2(20)-(22) will have application.
- (5) United Workers Union delegates will have access to reasonable stationary, printers and similar resources to perform their role where appropriate.
- (6) Prior to the nominal expiry date of this Agreement, the United Workers Union and the Employer will discuss arrangements for delegates to attend negotiation meetings for a new enterprise agreement. Delegates attending enterprise agreement negotiations will do so without loss of ordinary pay. Payment without loss of ordinary pay for a casual delegate will only apply to their rostered ordinary hours.

Delegate Training Leave

- (7) Subject to sub-clause 10.2(8), delegates nominated by the United Workers Union, will be entitled to a maximum of five (5) days per calendar year of paid leave for the purpose of education concerning the relationship between the parties and the role of the delegates.
- (8) The training leave requirements of all United Workers Union delegates in any calendar year will not exceed one hundred and eighty (180) days.

Paid training leave may be utilised for Union delegates to attend Union Workers Union conferences upon the provision of four (4) weeks' notice, or less time if agreed between the Employer and the Union. Releases to attend such conferences will be subject to approval by the Employer and will not unreasonably be refused. The maximum of five (5) training days per delegate (outlined within sub-clause 10.2(8)) will not apply to conference attendance.

- (9) The United Workers Union will advise the Employer of the number of United Workers Union delegates annually.
- (10) Attendance at a training course will be paid at the delegate's ordinary hourly rate of pay for the time the delegate would otherwise have been rostered to work.
- (11) The United Workers Union agrees that they will provide as much notice as possible (no less than 7 days) when requesting the release of delegates to attend training. This notice will be provided to the Employer's nominated representative. The release of delegates will be considered having regard to the operational requirements of the business and the subject-matter of the course.
- (12) For casual employees training days cannot be scheduled Friday to Sunday or during peak event periods or casino closures.

The number of hours paid per training day will be based on the employee's average shift hours worked over the previous three (3) months.

Payment will be at the delegate's base rate of pay inclusive of applicable casual loading.

Delegates' Meetings

- (13) Delegates will be entitled to attend two (2) delegates' meetings per calendar year which will be held at Crown Perth premises on a day to be mutually agreed by the Employer and the United Workers Union. The meetings will be for no longer than two (2) hours and will be scheduled at a mutually convenient time, which will allow for the maximum number of delegates to attend. On each day, there will be two (2) meetings to allow morning and evening shift workers access to the meeting. Subject to operational requirements, the Employer will release delegates from shift to attend such meetings. The Employer will provide the United Workers Union with a suitable location and adequate facilities for delegate meetings.
- (14) Delegates shall be paid for their attendance at one (1) delegates' meeting each calendar year. Payment shall be at the delegate's ordinary hourly rate of pay for the time the delegate would otherwise have been rostered to work. Provided that delegates who attend outside of their rostered working hours or on a roster day off shall not receive payment for their attendance.

Member/Delegate Organisers

- (15) Upon application by the United Workers Union, and subject to operational requirements, the Employer may release delegates on Leave Without Pay, for a period of up to six (6) months, to work as paid officials of the Union. The Union will provide as much notice as possible and the Employer will not unreasonably deny the leave.
- (16) On request made by the United Workers Union, the Employer will consider granting leave without pay to United Workers Union delegates to undertake United Workers Union projects, provided such leave would not interfere with the operational requirements of the business. Any leave granted under this sub-clause is subject to the Employer's agreement.

Right to Representation, Information and Advice

- (17) The Employer supports the right of all employees to join and actively participate in the Union. The United Workers Union shall be provided with 30 minutes of uninterrupted time at employee orientations to present to new employees. The Employer will provide details of those employees who are eligible to be members of the United Workers Union and who

are attending the orientation/induction to the Union as soon as this information is available. These details will include the employee's:

- (a) Name;
 - (b) Mode of employment (including part-time bracket if applicable);
 - (c) Position title; and
 - (d) Department
- (18) The Union agrees that they will provide as much notice as possible (no less than one business day) when requesting the release of delegates to attend inductions/orientations.
- (19) The Employer will deliver a statement of encouragement to employees regarding the Union prior to the Union induction but will not be present during the Union's induction presentation.
- (20) The United Workers Union will not be critical of the Employer in its presentation to employees. The contents of United Workers Union's presentation will be submitted to the Employer in advance of United Workers Union's presentations taking place. The Employer will not unreasonably object to the contents of the presentation.
- (21) The United Workers Union will not raise issues in dispute during inductions/orientations.
- (22) The United Workers Union will not coerce employees to join the union.

Paid Union Meetings

- (23) Employees covered by this agreement will be allowed to attend one 30 minute meeting convened by the Union each calendar year, without loss of pay.
- (24) The Employer will facilitate this attendance during paid time; attendance may take place prior to the rostered start of shift or at the end of the rostered shift, or during the rostered shift. For the sake of clarity, attendance at this meeting will not attract overtime.
- The Employer will facilitate attendance at these meetings by ensuring staff will be rostered, subject to operational needs, to attend Paid Union Meetings. Payment will only be made for employees who are rostered to work at the time of the meeting. To verify payments, the United Workers Union will take a record of attendance and provide this record to the Employer as soon as practicable after each meeting.
- (25) Meetings will be held at dates and times to be agreed by the Employer and the Union and will not be held during peak operating periods or a roster period containing a major event. Requests for meeting dates and times will be made by the Union at least ten (10) weeks in advance, or less time if agreed between the Employer and the Union.
- (26) The Employer will release six (6) delegates on leave without pay to participate in the Paid Union Meetings. The Union will give the Employer four (4) weeks' notice of the names of delegates and period they will be required. Delegates will be released in blocks to be agreed between the parties provided the minimum block is for a period of two (2) consecutive weeks.
- (27) The Union may request an additional (second) Paid Union Meeting within each calendar year and the Employer will facilitate this. The following will apply to the second meeting:
- (a) The timing of the second meeting will be subject to agreement with the Employer.
 - (b) Sub-clause 10.2(25)-(26) will have application.
 - (c) An agreement between the Employer and the Union will need to be reached on how these meetings will be facilitated each time, which may follow a different process than outlined within this clause 10.2

- (28) Employees within the Crown Casual Staffing pool (defined in clause 1.8) / Multi-hire casual positions can attend meetings outlined in clauses 10.2(23) and 10.2(27), during unpaid time, outside of rostered hours.

Union Badges

- (29) Union members are permitted to wear union badges, provided that the badges worn are not offensive, disparaging of the Employer or its management, do not concern matters in dispute between the parties and are not otherwise inappropriate for the workplace. Badges should not cover or conceal an employees work identification card and must comply with any regulatory requirements.

Public Comments

- (30) The Employer and United Workers Union agrees neither party will make statements about the other party to the media unless 24 hours notice is give to the other party.

10.3 Consultative Committee

- (1) The Employer will establish an Employee Consultative Committee (ECC), which will meet quarterly, comprised of senior managers (as designated by the Employer including members from People & Culture), officials of the Union and employee representatives from across the different business units within the Company as outlined below. Additional meetings may be scheduled only where this is agreed between the Employer and the Union.
- (2) The employee representatives will be nominated by the Union with no more than twelve (12) employee representatives attending, covering the following areas:
- (a) Table Games
 - (b) Food and Beverage
 - (c) Security
 - (d) Gaming Machines
 - (e) Hotels
 - (f) Cage and Count
 - (g) Others that may be agreed with the Employer.
- (3) Elected employee representatives may attend quarterly meetings as designated by the Employer, this will be accommodated in paid time (ordinary hours). Given the number of possible attendees, attendance at consultative committee meetings will be subject to operational requirements and approval by relevant supervisors. Elected employee representatives may utilise shift swap arrangements to attend the consultative meetings.
- (4) The purpose of the ECC will be to consult about the following:
- (a) operational issues of a collective nature;
 - (b) matters arising from the Agreement; and
 - (c) any other agreed matter.

10.4 Disputes

- (1) Any dispute or matter raised by the Employer or the United Workers Union regarding the provisions contained within sub-clauses 10.2(1) to (30) and 10.3, shall be settled in accordance with the following:
- (a) The issue will be notified to the other party as soon as possible.

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

Fair Work Act 2009, Schedule 1, cl 95 – FWC to vary certain modern awards

Variation of modern awards to include a delegates' rights term

Filed by the United Workers' Union

Interested Party

STATEMENT OF KATHY ADAM

1. My full name is Kathy Adam
2. I live [REDACTED]
3. I have a Certificate II Security Operations

Employment History

4. I have worked as an aviation screening officer at the Sydney airport for the last 14 and a half years and. I have worked for SNP, and then Certis, since November 2009
5. I am full-time.
6. The role involves duties such as:
 - (a) Screening
 - (b) Bag checks

Lodged by	Telephone:	08 8352 9300
United Workers Union for the Applicant		
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833 Bourke Street	Email:	Larissa.harrison@unitedworkers.org.au
DOCKLANDS VIC 3008		

- (c) Metal detection
- (d) Body scanning
- (e) Explosive tracing testing

7. I have been a delegate for both the TWU and the UWU for over 10 years

Role as Union Delegate

8. As a Union delegate, some of my duties involved are:

- (a) Representing members in disciplinary meetings
- (b) Representing members in pay disputes
- (c) Representing members' health and safety interests
- (d) Recruiting workers into the Union

9. Recruiting members to the Union is a particularly important point as often non-members have the same issues as union members but do not have their issues resolved as they do not feel empowered to speak up.

Rostering During COVID-19 Pandemic

10. During the COVID-19 pandemic, particularly in 2020, my team was stood down was not entitled to the job-keeper allowance. We were told by our employer to apply for job-seeker.

11. The Airport stayed open and there was work available, however only specific staff were rostered onto shifts. We were made to apply for shifts. Often you would only get one 5 hour shift a week. This is despite the fact a lot of us are full-time.

12. In our capacity as delegates, we organised fortnightly meetings with members and management to discuss ongoing issues during the COVID-19 pandemic. One of the issues we raised was the favouritism in rostering – some people were getting 45 hours a week where others were getting nothing.
13. During this process, myself and other delegates recruited workers to the union and we represented them on mass to get a fairer roster.
14. Eventually management came to the table to work with us and we were able to get a fairer roster system.

Permanent Employment

15. Another issue is the unfair appointment of full-time employment. Often management would appoint their friends and favourites to full-time employment whereas other workers who had been with the company for years and were competent workers would miss out.
16. Through recruiting members and growing the union, and through enterprise negotiations, we were able to create a fairer process for the allocation of full-time contracts.
17. If we were not allowed to recruit members to the Union, we would not have been able to create a collective group to affect the positive change in a fair system for appointing full-time contracts

Roster Change

18. Ordinarily, we would either have a morning or afternoon shift – e.g. a worker would either work only morning shifts or afternoon shifts, or they would have at least one day off before switching between an afternoon and morning shift.

19. In around January 2024, Certis, at short notice, changed the roster so that it was irregular in the way that we might have an afternoon shift immediately followed by a morning shift. This was effecting people's work life balance and workers were not happy.
20. We were able to recruit members and organise roster meetings with management and workers were empowered to raise issues with management and eventually, after a conference with the FWC, the rosters were changed back.

Pay Errors

21. Throughout the COVID-19 pandemic, there were so many instances of workers not being paid correctly , particularly around annual leave.
22. After I discovered an error in my pay, I spoke with all my colleagues and got them to check their payslips for errors. Myself and other delegates represented members to have their pay corrected. This is still ongoing.

Final Thoughts on Recruiting

23. Being able to recruit workers to the union is one of the most important functions of our role as delegates.
24. Recruiting grows the strength of our Union and allows us to represent the interests of working people and allows us to resolve issues amicably and en masse with management.

Signed:

Name:

Kathy Adam

Date:

IN THE FAIR WORK COMMISSION

Matter No: AM2024/6

Fair Work Act 2009, Schedule 1, cl 95 – FWC to vary certain modern awards

Variation of modern awards to include a delegates' rights term

Filed by the United Workers' Union

Interested Party

WITNESS STATEMENT OF REBECCA STILES

Background

1. My name is Rebecca Stiles.
2. I work in the early childhood education and care sector. I am employed as a Centre Director in the Hillbank Community Childrens Centre (**Hillbank**), in South Australia. My role focuses on the day-to-day management of the centre.
3. I am responsible for staffing, ensuring quality and other regulatory requirements are met, and also provide care to children.
4. I have worked in the industry for 28 years.
5. I am also a delegate of the United Workers Union (**UWU**)

Representing industrial interests

6. I have been involved in the UWU's 'Big Steps' campaign over the last 10 years. The goal of the campaign is to advocate for early childhood educators, raise awareness of the issues confronting the sector, and achieve a significant improvement in the wages, conditions and professional recognition of educators.

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7. Early childhood educators are skilled workers. We do not receive a level of remuneration that aligns with our skills and importance to the economy. Our sector is in crisis, with staff constantly leaving to find higher-paid and better recognised work.

8. Across the Big Steps campaign, I have:
 - (a) Travelled to Canberra on 4 occasion to meet with members of parliament, senators and ministers;
 - (b) met with state members of parliament including a state premier;
 - (c) hosted politicians at my centre to show them what early childhood work is like and have them speak with other workers;
 - (d) organised meetings for groups of educators at local politicians' offices or at press conferences to discuss issues in our sector;
 - (e) appeared in radio and television media;
 - (f) advocated on social media;
 - (g) helped organise 'walk-offs' and other activities to raise awareness of the Big Steps campaign;
 - (h) visited early childhood centres, other than the enterprise in which I am employed, to speak with other members and workers eligible to be members about the campaign and the issues in early childhood education and care;
 - (i) participated (and continue to participate) in supported bargaining with early childhood education and care employers, and the Commonwealth;

9. I am aware of other early childhood delegates across the country who have engaged in substantially the same activity across the campaign.

10. All of the above actions, I believe have worked to advance the industrial interests of early childhood workers, and improve the sector as a whole. I believe my advocacy, and that of other union delegates, led to the introduction of things like the supported bargaining authorisation scheme in the *Fair Work Act 2009*. I think representations to government and politicians by other early childhood delegates and myself have significantly advanced the interests of early childhood workers. Early childhood was given as the example by government of where supported bargaining would be appropriate; I believe that is a direct result of the extensive representation by delegates directly to government and politicians.
11. In my experience, whole of sector advocacy is a core part of being an early childhood education and care delegate. I do not just represent members at Hillbank; I have the whole sector behind me, and I am advocating for everybody, in any way that I can.

Representational rights and my enterprise

12. My centre only employees around 26 staff, including casuals, a cook and administrative staff. There are many community childcare centres that are smaller than mine, particularly regional centres. I think the average size for a childcare centre would be 30 to 35 employees.
13. I am employed and report to a management committee that is made up of parents who have their children at the service. Hillbank is a standalone centre; it is not part of a big multi-centre enterprise.

Hillbank Enterprise Agreement

14. My employment is covered by the *United Voice - Hillbank Community Children's Centre Enterprise Agreement 2018* (the **agreement**),¹ which expired on 30 June 2021.

¹ AE505414.

15. The agreement recognised early childhood education and care was historically undervalued, was essential and skilled work, that the undervaluation was largely due to the gendered nature of our work, required UWU and Hillbank to work together to allow educators to act as advocates for our sector and our work, and facilitated educator participation in the Big Steps campaign.² It recognises that changing our industry is a bigger problem than just our workplace.
16. The agreement also formally recognised and supported ‘the role of workplace delegates’,³ entitled me to attend a delegates’ meeting each month with pay,⁴ and access 5 days training leave per year per delegate with pay.⁵
17. Our enterprise agreement does not give me an explicit right as a delegate to represent workers. I have only been able to do the representation that I have done because I have a supportive management committee. I believe have been allowed to attend more meetings and undertake more representational work than what is explicitly listed in the agreement because I have a supportive employer that wants to improve our sector.
18. I have also attended the UWU delegate convention, which governs the whole union. I think participating in union decision making is a core part of being a delegate.

Exercise of rights

19. In terms of using the rights in the agreement, I have completed delegate training, attend almost monthly delegate meetings in South Australia, and I also act as a lead delegate

² See *United Voice - Hillbank Community Children's Centre Enterprise Agreement 2018*, AE505414, cl 4.10.

³ *Ibid* cl 9.3.1.

⁴ *Ibid* cl 9.3.2.

⁵ *Ibid* cl 9.4.

which means I attend other enterprises to advocate for workers and talk about the Big Step campaign.

20. 20 years ago, I would not have been confident enough to speak to a crowd. I would not have been able to do live radio. I would not have known how to have a conversation about workplace issues and how we as workers can resolve those issues. Going to training and union meetings has given me the skill I need to advocate for our sector. I think training is more than just training about how to mediate disputes; it can be public speaking, dealing with government and politicians, media training, and a range of other skills that let us advocate for workers. Thinking of training just in terms of disputes, bargaining, or disciplinary processes is narrower than my experience being a delegate.
21. I know of other early childhood delegates who do not have supportive employers or management committees, who do not get to attend training, rallies, supported bargaining sessions, regular meetings, or actively represent our industry. I am lucky as our management committee has allowed me to do the representation that I have done. Similarly, if I was not able to do the advocacy I have done on paid time, I do not think I would be able to have done as much as I have over the past 10 years.
22. In my time at Hillbank, I have not had to act as a union representative in disputes with my employer, or for members in relation to performance management or disciplinary processes. I have not had to participate in court proceedings.

Recruitment as representation and advancing industrial interests

23. Recruitment to the union is a key part of those visits; I think it is important that other educators hear from an educator about how a union can help advance their industrial interests, and how joining the union advances those interests. I think if I can only represent in my centre, if I was restricted to discussions with just the 25 other

employees in Hillbank I would not make as big an impact as I have. I have to be able to speak to educators in other services to achieve the change we need in our sector.

24. I would usually spend a day per week visiting other centres to talk about the Big Steps campaign and supported bargaining.
25. In the week beginning 19 February 2024, I spent 3 days visiting other childcare centres to talk about progress in the supported bargaining and to recruit new members. I then travelled to Sydney on 23 February to participate in supported bargaining. This representational work happened on paid time, and I visited worksites with agreement from those other employers.
26. I am not a right of entry permit holder for UUU.

Access to facilities

27. As a delegate, I have used the following to represent workers:
 - (a) email;
 - (b) internet;
 - (c) computer
 - (d) social media;
 - (e) printers;
 - (f) other materials like posters, stickers, and used Word to create my own documents promoting industrial activities;
 - (g) notice boards;
 - (h) a mobile phone;

- (i) a car;
- (j) flights to participate in bargaining; and
- (k) accommodation.

Rebecca Stiles

Signed: _____

Date: _____

PART 10 UNION PROVISIONS

10.1 Union Fees

- (1) Where the employee authorises the Employer to do so, the Employer will deduct from the wages of the employee, amounts nominated from time to time by the United Workers Union for union fees and remit such amounts on a monthly basis to the United Workers Union or where otherwise agreed, on some other basis.
- (2) Where the employee authorises the Employer to do so, the Employer will send to the United Workers Union, such of the employee's details as will permit the establishment of a direct debit arrangement for the payment of the employee's union fees.

10.2 Delegate Rights

- (1) The United Workers Union will accredit representatives from amongst the union membership as delegates.
- (2) The Employer will recognise the United Workers Union delegates as the on-site representatives of the Union upon receiving written notification by the United Workers Union to the Employer.
- (3) Delegates may be employed in any employment type e.g., part-time, full-time or casual.
- (4) As part of the union's role in representing members and in contributing to the efficient operation of the Employer, the United Workers Union's delegates will have the opportunity to represent the concerns of individual members to representatives of the Employer, participate in issue resolution and grievance handling procedures, and participate in other workplace matters including negotiations.
 - (a) United Workers Union delegates may participate in these activities, subject to prior notification to, and authorisation by the Employer, without loss of ordinary pay during rostered hours. Such authorisation will not be unreasonably withheld and will take into account operational requirements. Payment without loss of ordinary pay for a casual delegate will only apply to their rostered ordinary hours.
 - (b) In cases where a new employee (4-6 weeks after their commencement date) requests a meeting with a United Workers Union delegate up to 30 minutes, a delegate may be released to attend this meeting, during rostered hours, without loss of ordinary pay. The approval of these requests require reasonable notice (by the United Workers Union and / or delegate) and will be subject to operational requirements; however, such authorisation will not be unreasonably withheld. During these meetings, sub-clauses 10.2(20)-(22) will have application.
- (5) United Workers Union delegates will have access to reasonable stationary, printers and similar resources to perform their role where appropriate.
- (6) Prior to the nominal expiry date of this Agreement, the United Workers Union and the Employer will discuss arrangements for delegates to attend negotiation meetings for a new enterprise agreement. Delegates attending enterprise agreement negotiations will do so without loss of ordinary pay. Payment without loss of ordinary pay for a casual delegate will only apply to their rostered ordinary hours.

Delegate Training Leave

- (7) Subject to sub-clause 10.2(8), delegates nominated by the United Workers Union, will be entitled to a maximum of five (5) days per calendar year of paid leave for the purpose of education concerning the relationship between the parties and the role of the delegates.
- (8) The training leave requirements of all United Workers Union delegates in any calendar year will not exceed one hundred and eighty (180) days.

Paid training leave may be utilised for Union delegates to attend Union Workers Union conferences upon the provision of four (4) weeks' notice, or less time if agreed between the Employer and the Union. Releases to attend such conferences will be subject to approval by the Employer and will not unreasonably be refused. The maximum of five (5) training days per delegate (outlined within sub-clause 10.2(8)) will not apply to conference attendance.

- (9) The United Workers Union will advise the Employer of the number of United Workers Union delegates annually.
- (10) Attendance at a training course will be paid at the delegate's ordinary hourly rate of pay for the time the delegate would otherwise have been rostered to work.
- (11) The United Workers Union agrees that they will provide as much notice as possible (no less than 7 days) when requesting the release of delegates to attend training. This notice will be provided to the Employer's nominated representative. The release of delegates will be considered having regard to the operational requirements of the business and the subject-matter of the course.
- (12) For casual employees training days cannot be scheduled Friday to Sunday or during peak event periods or casino closures.

The number of hours paid per training day will be based on the employee's average shift hours worked over the previous three (3) months.

Payment will be at the delegate's base rate of pay inclusive of applicable casual loading.

Delegates' Meetings

- (13) Delegates will be entitled to attend two (2) delegates' meetings per calendar year which will be held at Crown Perth premises on a day to be mutually agreed by the Employer and the United Workers Union. The meetings will be for no longer than two (2) hours and will be scheduled at a mutually convenient time, which will allow for the maximum number of delegates to attend. On each day, there will be two (2) meetings to allow morning and evening shift workers access to the meeting. Subject to operational requirements, the Employer will release delegates from shift to attend such meetings. The Employer will provide the United Workers Union with a suitable location and adequate facilities for delegate meetings.
- (14) Delegates shall be paid for their attendance at one (1) delegates' meeting each calendar year. Payment shall be at the delegate's ordinary hourly rate of pay for the time the delegate would otherwise have been rostered to work. Provided that delegates who attend outside of their rostered working hours or on a roster day off shall not receive payment for their attendance.

Member/Delegate Organisers

- (15) Upon application by the United Workers Union, and subject to operational requirements, the Employer may release delegates on Leave Without Pay, for a period of up to six (6) months, to work as paid officials of the Union. The Union will provide as much notice as possible and the Employer will not unreasonably deny the leave.
- (16) On request made by the United Workers Union, the Employer will consider granting leave without pay to United Workers Union delegates to undertake United Workers Union projects, provided such leave would not interfere with the operational requirements of the business. Any leave granted under this sub-clause is subject to the Employer's agreement.

Right to Representation, Information and Advice

- (17) The Employer supports the right of all employees to join and actively participate in the Union. The United Workers Union shall be provided with 30 minutes of uninterrupted time at employee orientations to present to new employees. The Employer will provide details of those employees who are eligible to be members of the United Workers Union and who

are attending the orientation/induction to the Union as soon as this information is available. These details will include the employee's:

- (a) Name;
 - (b) Mode of employment (including part-time bracket if applicable);
 - (c) Position title; and
 - (d) Department
- (18) The Union agrees that they will provide as much notice as possible (no less than one business day) when requesting the release of delegates to attend inductions/orientations.
- (19) The Employer will deliver a statement of encouragement to employees regarding the Union prior to the Union induction but will not be present during the Union's induction presentation.
- (20) The United Workers Union will not be critical of the Employer in its presentation to employees. The contents of United Workers Union's presentation will be submitted to the Employer in advance of United Workers Union's presentations taking place. The Employer will not unreasonably object to the contents of the presentation.
- (21) The United Workers Union will not raise issues in dispute during inductions/orientations.
- (22) The United Workers Union will not coerce employees to join the union.

Paid Union Meetings

- (23) Employees covered by this agreement will be allowed to attend one 30 minute meeting convened by the Union each calendar year, without loss of pay.
- (24) The Employer will facilitate this attendance during paid time; attendance may take place prior to the rostered start of shift or at the end of the rostered shift, or during the rostered shift. For the sake of clarity, attendance at this meeting will not attract overtime.
- The Employer will facilitate attendance at these meetings by ensuring staff will be rostered, subject to operational needs, to attend Paid Union Meetings. Payment will only be made for employees who are rostered to work at the time of the meeting. To verify payments, the United Workers Union will take a record of attendance and provide this record to the Employer as soon as practicable after each meeting.
- (25) Meetings will be held at dates and times to be agreed by the Employer and the Union and will not be held during peak operating periods or a roster period containing a major event. Requests for meeting dates and times will be made by the Union at least ten (10) weeks in advance, or less time if agreed between the Employer and the Union.
- (26) The Employer will release six (6) delegates on leave without pay to participate in the Paid Union Meetings. The Union will give the Employer four (4) weeks' notice of the names of delegates and period they will be required. Delegates will be released in blocks to be agreed between the parties provided the minimum block is for a period of two (2) consecutive weeks.
- (27) The Union may request an additional (second) Paid Union Meeting within each calendar year and the Employer will facilitate this. The following will apply to the second meeting:
- (a) The timing of the second meeting will be subject to agreement with the Employer.
 - (b) Sub-clause 10.2(25)-(26) will have application.
 - (c) An agreement between the Employer and the Union will need to be reached on how these meetings will be facilitated each time, which may follow a different process than outlined within this clause 10.2

- (28) Employees within the Crown Casual Staffing pool (defined in clause 1.8) / Multi-hire casual positions can attend meetings outlined in clauses 10.2(23) and 10.2(27), during unpaid time, outside of rostered hours.

Union Badges

- (29) Union members are permitted to wear union badges, provided that the badges worn are not offensive, disparaging of the Employer or its management, do not concern matters in dispute between the parties and are not otherwise inappropriate for the workplace. Badges should not cover or conceal an employees work identification card and must comply with any regulatory requirements.

Public Comments

- (30) The Employer and United Workers Union agrees neither party will make statements about the other party to the media unless 24 hours notice is give to the other party.

10.3 Consultative Committee

- (1) The Employer will establish an Employee Consultative Committee (ECC), which will meet quarterly, comprised of senior managers (as designated by the Employer including members from People & Culture), officials of the Union and employee representatives from across the different business units within the Company as outlined below. Additional meetings may be scheduled only where this is agreed between the Employer and the Union.
- (2) The employee representatives will be nominated by the Union with no more than twelve (12) employee representatives attending, covering the following areas:
- (a) Table Games
 - (b) Food and Beverage
 - (c) Security
 - (d) Gaming Machines
 - (e) Hotels
 - (f) Cage and Count
 - (g) Others that may be agreed with the Employer.
- (3) Elected employee representatives may attend quarterly meetings as designated by the Employer, this will be accommodated in paid time (ordinary hours). Given the number of possible attendees, attendance at consultative committee meetings will be subject to operational requirements and approval by relevant supervisors. Elected employee representatives may utilise shift swap arrangements to attend the consultative meetings.
- (4) The purpose of the ECC will be to consult about the following:
- (a) operational issues of a collective nature;
 - (b) matters arising from the Agreement; and
 - (c) any other agreed matter.

10.4 Disputes

- (1) Any dispute or matter raised by the Employer or the United Workers Union regarding the provisions contained within sub-clauses 10.2(1) to (30) and 10.3, shall be settled in accordance with the following:
- (a) The issue will be notified to the other party as soon as possible.