

IN THE FAIR WORK COMMISSION

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

Matter Number: AM2024/6

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

Submissions of the Mining and Energy Union

Introduction

1. The Mining and Energy Union (**MEU**) represents individuals who are covered by the following awards:
 - a. Black Coal Mining Industry Award 2020 [MA000001] (**BCMIA**)
 - b. Mining Industry Award 2020 [MA000011] (**MIA**)
 - c. Electrical Power Industry Award 2020 [MA000088] (**EPIA**)
 - d. Coal Export Terminals Award 2020 [MA000045] (**CETA**)

2. The industries in which the Awards operate have a number of common characteristics that would inform the Commission's assessment of what is reasonable with respect to the right to communication, access to the workplace and workplace facilities and paid time for training. Each of the Awards operates in male-dominated industries, the use of contractors and labour hire is prevalent, and employees (and delegates) are likely to work shift work. Additionally, the BCMIA and the MIA cover employees working in industries where large remote enterprises are normal and fly in fly out (**FIFO**) roster and drive in drive out (**DIFO**) roster patterns are prevalent.

3. Filed alongside this submission are the delegates' rights terms that the MEU submits should be incorporated into the Awards.

4. We have had the benefit of reviewing the Australian Council of Trade Union's (**ACTU**) submissions they intend to file in this matter. The MEU broadly supports the ACTU's submissions.

5. This submission will outline the principles applicable to the Commission's task under clause 95 (2) of Schedule 1 to the Fair Work Act 2009 (Cth) (**FW Act**) and justify the delegates' rights terms filed with this submission by reference to considerations specific to the MEU, its delegates and the industries in which its members work.

Commission's task under clause 95 (2) of Schedule 1 to the FW Act

6. Clause 95 (2) of Schedule 1 to the FW Act provides that the Commission must make determinations varying the modern awards to include delegates' rights terms. Delegates' rights term is defined by s 12 of the FW Act as a term in a fair work instrument that provides for the exercise of the rights of workplace delegates.
7. The legislative note included alongside the definition of delegates' rights term is instructive when determining the ambit of the Commission's task under clause 95 (2) of Schedule 1 to the FW Act. The note provides:

*The rights of workplace delegates are set out in section 350C, and a delegates' rights term must provide **at least** for the exercise of those rights.*

8. This note reveals that the *delegates' rights terms* included in the modern awards by virtue of clause 95 (2) of Schedule 1 to the FW Act must, as a minimum, provide 'for the exercise of' the '*rights of workplace delegates*' that are set out in section 350C of the FW Act. The '*rights of workplace delegates*' outlined at 350C of the FW Act are specified at a high level of abstraction. The *Senate Revised Explanatory Memorandum (EM) of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Closing Loopholes Bill)* explains that parliament intended that the modern awards' *delegates' rights terms* would provide greater detail of the *rights of workplace delegates*.¹
9. The amendments introduced into the FW Act by the Closing Loopholes Bill set a minimum standard for the delegates' rights terms but no maximum standard. In doing so, the legislature has entrusted the Commission with a broad discretion to go beyond the rights outlined in 350C of the FW Act.
10. Thus, the task the Commission would undertake is as follows:

¹ EM, [827].

- a. Firstly, the Commission would determine what is necessary *'for the exercise of'* the *'rights of workplace delegates'* as set out in section 350C of the FW;
- b. and, if appropriate, expand the statutory rights that have already been provided.

11. The first of these steps is a question of the correct construction of 350C and what the Commission considers appropriate to give effect to the construction; the second is purely a matter of discretion.

12. For the reasons that follow, the MEU submits that the Commission would adopt the MEU's clause with respect to the Awards. In doing so, the Commission would only be giving effect to the correct construction of rights set out in section 350C of the FW Act.

13. This submission will now justify each of our proposed clauses by reference to the above considerations and, as relevant, factors specific to the industries in which they operate.

The right to represent

14. Clause 2 of the MEU's proposed delegates' rights clause contains the MEU's proposed terms regarding the right to represent. The right to represent arises from s 350C (2) of the FW Act. The MEU's proposed delegates' rights clause is supported by the correct construction s 350C (2) of the FW Act.

15. The text of 350C(2) supports an expansive construction of 350C(2):

- a. Section 350C(2) expressly provides that the right to represent *includes* the right to represent a member or potential member in disputes with their employer. The term dispute is used regularly in the FW Act. Elsewhere in the FW Act, the type of dispute the act is referring to in a particular section is routinely qualified. For example, s 186 provides that an EA must include a term dealing with disputes *'arising under the agreement'*; s 65B (1) provides the process to deal with a dispute *'between an employer and an employee about the operation of this Division'*. Dispute, as it is used in section 350C(2), is unqualified. The fact that the legislature has expressly provided that the right to represent *'includes'* (but is not limited to) representing members and potential members in disputes of an unqualified nature underscores the extremely

wide import of the right to represent. At least it would extend to representing a member or potential member in a dispute of any kind contemplated by the FW Act, applicable fair work instrument, contract of employment or policy, including the disciplinary policy. Further, it is significant that the legislature chose the word *includes* when clarifying that the right applies to disputes between the members and potential members and their employer. The use of the word *includes* suggests that there are other matters that the right to represent enables. Thus, the necessary implication arising from the legislature's use of the word *includes* is that the right to represent extends beyond representing members and potential members in disputes with their employers.

- b. The legislature's use of the plural *members and other individuals eligible to be such members* in s 350C(2) should not be read to exclude the right to represent a member's or potential member's unilateral interests. To do so ignores the general interpretative rule outlined in the *Acts Interpretation Act 1901 (Cth)* that the words in the singular number include the plural and words in the plural number include the singular.²

16. The context of 350C further supports an expansive construction of 350C(2).

- a. Section 350C(3) provides four supplementary rights that facilitate the workplace delegate exercising the right to represent.³ The rights to reasonable communication and reasonable access to workplace facilities would not be necessary if the right to represent extended only to communicating with the employer on behalf of the members or potential members. The right to reasonable access to workplace facilities as outlined by 350(3)(b)(i) is subject to the qualification that it is access '*for the purpose of representing (member's and potential member's) interests*' in order to exercise this right. Thus, the right to represent must necessarily extend beyond advocating for members and potential member. It must extend to occasions that the delegate is able to access reasonable facilities such as preparing to advocate for members. The right to reasonable communication, as outlined by 350(3)(a), is subject to '*the qualification that is in relation to their industrial interest*'; this again suggests that the right to represent extends beyond mere discussions with employers. The

² *Acts Interpretation Act 1901 (Cth)*, s 23(b).

³ EM, [826].

inclusion of facilitative rights suggests that the right to represent encompasses tasks that are subsidiary but necessary to its operation, such as preparation for advocacy.

- b. Section 350(1) effectively defines workplace delegate as the chosen representative of the members of an employee organisation in a particular workplace. The legislature's choice to provide the right to individuals who hold an elected or appointed office in an employee organisation evinces that the right to represent necessarily extends to representing members and potential members' collective interests.
- c. Section 350A further reinforces that the registered organisation plays a role in exercising the right to represent. Section 350A, among other things, prohibits the employer from preventing a delegate from exercising rights provided by the relevant fair work instrument. The prohibition only applies when a delegate is acting in their capacity as a delegate. This reinforces that the workplace delegate is acting as the chosen representative of an industrial organisation who is ultimately the embodiment of its members' collective interests.
- d. It is understood that the FW Act's preferred method for setting employees' terms and conditions of employment is collective bargaining.⁴ Part 2-4 of the FW Act, which governs the bargaining for and making of enterprise agreements, contemplates a central role for employee organisations.⁵ The FW Act's preference for bargaining and the role of employee organisations is a strong contextual factor that supports a conclusion that the right to represent outlined in 350C(2) extends to the delegate, as the chosen representative of the employee organisations, representing members' collective interests.

17. The purpose of 350C(2) further supports an expansive construction of 350C(2):

- a. It is notorious that employee organisations represent individuals that are financial members of the organisation. Despite this, the legislature elected to extend the right beyond the right to represent members. The legislature chose that the appropriate

⁴ One Key Workforce Pty Ltd v Construction, Forestry, Mining and Energy Union [2018] FCAFC 77; 262 FCR 527, [150].

⁵ See s 176(2) of the FW Act which provides that employee organisations are the default bargaining representatives of their members during bargaining for an enterprise agreement.

limit was allowing representation of any 'other person eligible to be such members'. In doing so, the legislature chose not to allow the delegates to represent everyone in the enterprise's workforce, only individuals who are potential members of the employee organisation. The necessary implication that can be drawn from this is that the legislature intended the right to extend to recruiting members. There is no other sensible reason for setting the limit of those able to be represented as potential members.

- b. Unlike the right to communication, access to the workplace and workplace facilities and training, the right of workplace delegates to represent members and potential members is absolute. It is not qualified by the requirement that it be reasonable. The lack of qualification indicates the legislature intended for the right to be of broad import.

18. The key components of Clause 2 of the MEU's clause are as follows, it:

- a. acknowledges that the delegate is entitled to represent their Union, union members, and persons eligible to be union members. Clauses 2.2 and 2.3 outline a non-exhaustive list that further particularises circumstances in which a workplace delegate may exercise their right to represent.
- b. provides that representation is to occur during paid time.
- c. provides that when engaging in representation the workplace delegate will be paid as if at work.
- d. adopts the protections outlined in 350A of the FW Act. Subsection (c) of the clause outlines circumstances that would necessarily be hindering, obstructing, or preventing the exercise of the right to represent.

19. Clause 2.1 of the MEU's proposal provides '*for the exercise of*' the right contained in 350C (2) of the FW Act. Specifying that a delegate is entitled to represent union members and persons eligible to be union members acknowledges that the delegate is entitled to represent the member's and potential member's unilateral interests, for example in disciplinary meetings.

Expressly providing that the delegate is entitled to represent their Union acknowledges that the delegate is entitled to represent the members' collective interests.

20. The non-exhaustive lists in clauses 2.2 and 2.3 are appropriate given the absolute right in 350C(2) is excluded from 350C(4). If the Awards were to include an exhaustive list, a circumstance may arise where the Awards may have been complied with, but the actions fall short of the requirements of 350C(2) of the FW Act.

21. The MEU's clauses 2.2 and 2.3 acknowledge the widely accepted and long-standing practice in industries in which the MEU or an earlier iteration of the MEU has had a significant presence. In the black coal mining industry, industry awards have long recognised the right for delegates (or officers as they are known) to participate in bone fide union business and that when participating in union business, any missed shifts were regarded as time worked and paid as such.⁶ It was understood that bone fide union business extended to attending Union and peak body meetings,⁷ as well as lobbying political delegations.⁸ Looking back even further, awards invariably included a right for delegates (or stewards as they were known) to be recognised as the accredited representative of an employee and the Union to which they belong. Stewards were granted paid time during working hours to interview the employer or his representative on matters affecting employees whom they represent.⁹ What can be seen from the above is that it has long been understood that in industrial contexts similar to black coal mines, delegates:

- a. Have been permitted to represent union members and the Union.
- b. While representing members, allowed paid time to undertake bone fide union business, including attending union meetings, participating in lobbying and other similar tasks.
- c. Were paid 'as if at work' when missing a shift due to union business.

⁶ See *Australian Collieries Staff Association and New South Wales Combined Colliery Proprietors Association; Queensland Coal Owners Association* [1980] ACIndT 2810

⁷ See *CFMEU v Novacoal Australia Pty Limited Coal and others* [1994] ACIndT 4723

⁸ See *The Australian Coal and Shale Employee's Federation v Australian Iron and Steel Pty Ltd and others* [1985] ACIndT 3439

⁹ See *The Federated Mining Mechanics Association; the Amalgamated Engineering Union; the Blacksmiths Society of Australasia and Northern Colliery Proprietors' Association* [1949] ACIndT 565

22. These historic practices are still widely accepted in the industries in which the Awards operate. For example, the *Loy Yang B Enterprise Agreement 2022*, which applies to members covered by the EPIA, contains rights to:

- a. Reasonable time off for delegate duties and contact with their members and management to ensure observance of this Agreement or any other work-related matter;
- b. adequate facilities to assist the Union delegates in carrying out this role, including the provision of notice boards, suitable meeting rooms to accommodate meetings, the use of appropriate private office space for meetings with employees, Company computers, telephones, facsimile and IT facilities;
- c. approach or be approached by an employee to discuss any matter related to the employees' employment at any time during working hours;
- d. to be notified and given the opportunity to introduce themselves at induction sessions for new employees and
- e. time off-site on reasonable Union business without loss of ordinary pay by prior agreement with the Company.¹⁰

23. Similarly, BHP Coal Pty Ltd's *BMA Enterprise Agreement 2022*, which applies to members covered by the BCMIA, provides rights to;

- a. necessary paid time and resources to represent the MEU and the MEU's members,
- b. be released from normal duties without loss of pay to participate in discussions with management and employees concerning,¹¹
- c. release from normal duties, without loss of pay, to attend an FWC or Court proceeding with the employer to pay for travel, accommodation and meals,¹²

¹⁰ *Loy Yang B Enterprise Agreement 2022*, PR745754, clause 24.

¹¹ *BMA Enterprise Agreement 2022*, PR749624 clause 38.7.

¹² *ibid*, PR749624 clause 38.10.

d. leave to undertake union business (limited to 25 days per lodge), and¹³

e. leave to attend Board of Management or Council Meetings.¹⁴

24. Further, the *Port Kembla Coal Terminal Limited Enterprise Agreement 2023*, which applies to members covered by the CETA, provides rights for delegates to represent individuals in disputes,¹⁵ and grievances with their employer,¹⁶ paid time to attend bona fide union business,¹⁷ including attending Commission and Court proceedings,¹⁸ mass meetings on-site including an annual meeting without loss of pay,¹⁹ access to suitable meeting rooms, and facilities including access to a phone, facsimile, computer and email.²⁰

Right to reasonable communications

25. The right to communication with members and potential members is contained in s 350C(3)(a) of the FW Act. The construction of s 350C (3)(a) supports an expansive reading of the right to communication.

26. Communication, as it is ordinarily understood, refers to the imparting or interchange of thoughts, opinions or information by speech, writing, or signs.²¹ It necessarily encompasses both imparting and receiving a message. As there are no contrary indications in the text of 350C(3)(a), this is plainly how it was intended to be understood. To read, the right to communicate as other than the right for a message to be imparted and received would lead to the absurd outcome where a delegate is empowered to speak, but no one is given an opportunity to listen. This is not a right to communication.

27. The right to communication is subject only to the following limitations:

¹³ *ibid*, PR749624 clause 38.9.

¹⁴ *ibid*, PR749624 clause 38.11.

¹⁵ *Port Kembla Coal Terminal Limited Enterprise Agreement 2023*, PR763847, clause 6.

¹⁶ *ibid*, clause 12.5.

¹⁷ *ibid*, PR763847, clause 33.1.

¹⁸ *ibid*, PR763847, clause 33.1.

¹⁹ *ibid*, PR763847, clause 33.2.

²⁰ *ibid*, PR763847, clause 33.2.7.

²¹ Macquarie Dictionary 8th edition, 2020, p 320, definition 2.

- a. The communication must '*relate*' to the interests the delegate is entitled to represent and
- b. The communication is *reasonable*.

28. The requirement that the communication '*relate*' to the interests that the delegate is entitled to represent requires the communication to be merely connected to such an interest. While this is a limitation, it is a narrow one. Especially so given the breadth of the interests the delegate is entitled to represent.

29. Necessarily, when assessing whether something is reasonable, the Commission balances competing interests. The requirement that the communication be reasonable is conscious of the fact that communication, as it is contemplated by s 350C(3)(a), may impact the ordinary business operations carried out at the enterprise. Thus, the legislature's inclusion of a reasonableness qualification must support a conclusion that the right may necessarily be exercised in a manner that impacts ordinary business operations. It is not a right to merely speak about union business while undertaking ordinary work; if it were, the right would not need to be qualified. It is a right to exchange information, to impart and receive messages, including in circumstances where utilising it affects the ordinary operation of the business, such as during a mass meeting.

30. When assessing what amounts to reasonable communication, a significant consideration, particularly with respect to the BCMIA and MIA, is the size and nature of typical enterprises in the relevant industries. Mines are often large and remote. Work is carried out in various locations at any time; movement between locations is highly regulated and often requires permission before an individual is entitled to move from one section to another. Further, mines operate twenty-four hours a day; workers are often siloed into crews with limited interaction between crews and there can be a large number of employers engaging individuals on-site, which further segments individuals. In the mining and black coal mining industries, reasonable communication would be cognisant of the above industrial content. The right must include the ability to communicate with members concerning collective interests at mass meetings. The clause inserted into the BCMIA and MIA would contain such a right and other similar rights.

31. Similar industrial conditions are prevalent in the EPIA and CETA, where operations occur twenty-four hours a day, and shift work is common.

32. The MEU's proposed clause 4 gives effect to the drafters' intention in s 350C(3)(a) and is reasonable, taking into account the size and nature of the typical enterprises in the relevant industries.

Right to access the workplace and to workplace facilities

33. The right to access the workplace and workplace facilities is contained in s 350C (3) (b)(i) of the FW Act. The construction of s 350C (3)(b)(i) supports an expansive reading of the right to access the workplace and workplace facilities. The right to access the workplace and workplace facilities is subject only to the following limitations:

- a. The access must be for the purpose of representing the interests of a member or potential member;
- b. The workplace and workplace facilities must be where the enterprise is being carried on, and,
- c. The access must be reasonable.

34. The impact of the first of these qualifications is self-evident; the workplace delegate may only exercise the right to access the workplace and workplace facilities to aid their representation of a member or potential member. As stated in [16], this must necessarily extend to preparing to adequately represent their interests.

35. The second qualification provides a geographic limit to the right to access the workplace and workplace facilities. The workplace delegate may only exercise the right with respect to the workplace and workplace facilities where the enterprise is being carried on. The FW Act defines enterprise to mean a *business, activity, project or undertaking*. The phrase 'being carried on' is common to the *Corporations Act 2001 (Cth)*, where 'carried on' is used to describe a business location or locations.²² Thus, the right to access the workplace and workplace facilities is limited to the geographic location where the employee is working. If the employee works across several locations, it is limited to the workplaces and workplace facilities at each of the locations where they normally work. Notably, the right is not qualified

²² *Corporations Act 2001 (Cth)*, s 21.

by the owner of the relevant workplace or workplace facilities. The right is vested in the workplace delegate and is exercisable regardless of the owner of the workplace or workplace facilities.

36. Other than the purposive and geographic limitations on the right, the right is only limited to what is reasonable. In determining what is reasonable, the legislature has directed the Commission to consider the size and nature of the enterprise, the resources of the employer of the workplace delegate, and the facilities available at the enterprise.²³

37. The MEU's clause 5 reflects the limitations and is otherwise reasonable considering the matters in s 350C(5). The facilities available at the enterprise are the most significant consideration when determining what is reasonable access to the workplace and workplace facilities. Each of the facilities referred to in clause 5.2 (with the exception of (a)) is necessary for the operation of enterprises in the industries in which the Awards operate. A further significant consideration, particularly with respect to the BCMIA and MIA, is that enterprises are often large and remote. Work is carried out in various locations at any time; movement between locations is highly regulated and often requires permission before an individual is entitled to move from one section to another. Further, there may be a significant distance between the location of one worksite and another. For example, the Loy Yang coal mine in the Latrobe Valley is approximately 12 square kilometres with an average depth of 200 meters. The operator of the mine may direct employees to work anywhere within the site. The right to access the workplace and workplace facilities would fall short of its statutory task of facilitating the right to represent should it not provide a right to free movement, transportation, sending electronic messages, making telephone calls, and a lockable notice board in a high traffic area.

38. Each of the Awards operates in male-dominated industries. If a member or potential member is seeking representation when ventilating a sensitive or complex complaint, it is essential for their chosen representative to have access to the workplace, freedom of movement and transportation and an appropriate room to hold discussions.

39. Importantly, given the facilitative nature of the right to access the workplace and workplace facilities, clause 5.2 is cognisant of the right being exercised for the purpose of representing members' interests. The facilities listed in 5.2 are essential for the delegate to exercise their

²³ FW Act, s 350C(5).

absolute right to represent the collective and unilateral interests of members and potential members and requires nothing more than access to the general premises and facilities that an employee would normally have access to by virtue of working at an enterprise.²⁴

Right to paid training leave

40. The right to access paid training leave is contained in s 350C (3)(b)(ii) of the FW Act. The correct construction of s 350C (3)(b)(ii) supports an expansive reading of the right to access the paid training leave. The right to access paid training leave is subject only to the following limitations:

- a. The leave must be for training related to the delegate's right to represent.
- b. The access to paid time is reasonable.

41. The first of these limitations confines the right to access training leave to leave for training that is connected with the right to represent. The MEU's clause 3.1 outlines an exhaustive list of circumstances. Each of these relates to the delegates' right to represent members and potential members and, as such, affects the correct drafting of clause 350C(3)(b)(ii).

42. The second of these limitations confines the provision of paid training leave to what is *reasonable*. What is reasonable is determined by reference to the matters outlined in 350C(5). Of these matters, the size and nature of the enterprise and the resources of the employer are the key considerations. Typically, employers in the industries in which each of the Awards operates have significant resources. For example, the black coal mining and mining industries are dominated by multinational corporations with significant financial and non-financial resources. While there are smaller employers in these industries, given the nature and size of the enterprises the smaller employers operate at, it is significantly more common for delegates to work for the larger, established employers with significant resources. For example, in a black coal mine, delegates are typically engaged by the mine operator as opposed to the smaller (but still often large) contracting company.

²⁴ EM, 827.

43. The enterprises in industries in which the Awards operate are complex industrial environments. Individuals are engaged by various employers in a number of modes of employment; shift work is common; there are numerous species of relevant industrial instruments in application and companies often have extensive and complex policies reflecting the highly regulated workplaces. Additionally, the FW Act, which significantly impacts the collective and individual rights of members and potential members, is highly prescriptive. For the right to training to effectively facilitate the exercise of their unqualified right to representation, delegates need to appreciate the complex industrial environments in which they are representing members and potential members. This takes significant and ongoing training.
44. Further, as the right to represent extends to ‘any other persons eligible to be such members,’ the delegate will need to appreciate the MEU’s rules to identify who they are able to represent. Union eligibility rules are, at times, notoriously opaque. The MEU’s eligibility rules are complicated. For example, the MEU’s rules include a craft rule because of an amalgamation with the FEDFA. The FEDFA rule has been the subject of significant judicial comment. Delegates will need to appreciate the intricacies of these rules to understand who they are able to represent.
45. Each of the Awards operates in male-dominated industries. Workplace delegates representing members and potential members must be adept at handling complex issues using a best practice trauma-informed approach.
46. It is significant that the clause doesn’t seek that the employer of the delegate pay for the training even though the employer will reap the rewards of competent union delegates. Competent union delegates aid in the resolution of issues with minimal lost time. They also often mediate interpersonal disputes between employees, increasing workplace cooperation, decreasing staff turnover and driving productivity.
47. The provision of five days of leave per delegate provided for in clause 3.3 of the MEU’s clause is reasonable for the industries in which each of the Awards operates.
48. Clause 3.2 acknowledges that the delegates' rights are exercised by workplace delegates only in their capacity under the rules of employee organisations. It recognises that delegates operating in their capacity as representatives of the employee organisations would seek input

from the workplace organisation with respect to how best prepare themselves to advocate for members and potential members.

49. Clause 3.4 mitigates any potential for the employer's business to be adversely affected by employees accessing paid leave to train.

Conclusion

50. For the above reasons, the MEU submits that the Commission would vary each of the Awards to insert the MEU's proposed clause.

Jack Patrick
Mining and Energy Union

1 March 2024

IN THE FAIR WORK COMMISSION

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

Awards: *Black Coal Mining Industry Award 2020* [MA000001]; *Mining Industry Award 2020* [MA000011]; *Electrical Power Industry Award 2020* [MA000088]; *Coal Export Terminals Award 2020* [MA000045]

MEU Delegates Rights – Award Clause

1 Definitions

In this clause –

union member means a member of an employee organisation of which the workplace delegate is appointed or elected.

workplace delegate means a person appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for members of the organisation who work in a particular enterprise.

2 Right to represent

2.1.A workplace delegate is entitled, on paid time during normal working hours, to represent (including but not limited to in disputes or grievances):

- a. their union,
- b. union members, and
- c. persons eligible to be union members.

Note: the Fair Work Act 2009 (Cth) s 350A(1) provides that an employer may not unreasonably fail or refuse to deal with a delegate, knowingly or recklessly make a false or misleading statement to a delegate or unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate.

Note: the Fair Work Act 2009 (Cth) s 350C(2) provides that a workplace delegate is entitled to represent the industrial interests of union members and persons eligible to be union members, including in disputes with the employer.

2.2. Without limiting sub-clause (1), a workplace delegate is entitled to, among other things:

- a. be provided with information relevant to the exercise of their right to represent. Provision of information to a workplace delegate or provision of information by a workplace delegate to their union will not constitute a breach of confidentiality;

- b. at the election of a union member or a person eligible to be a union member, participate in (including by representing and advocating) any disciplinary or investigatory process;
- c. assist union members and persons eligible to be union members in decision-making.
- d. access to a particular shift, roster or other flexible work changes where necessary to facilitate the exercise of their right to represent during work time;
- e. be released from normal duties for the purpose of the workplace delegate participating in bona fide union business;
- f. represent a member or potential member in a dispute with the site owner or operator;
- g. All other rights provided for in this clause or by legislation;

for the purpose of exercising the rights in (1) above or for related purposes.

2.3. For the purpose of clause 2.2.e bona fide union business includes, but is not limited to preparing for, travelling to, attending, or otherwise participating in:

- a. collective bargaining meetings.
- b. the resolution of any dispute or grievance in the workplace.
- c. any consultative process.
- d. any court, or tribunal proceeding which relates to the industrial interests of a member or potential member who works in the same enterprise as the workplace delegate.
- e. any event or meeting (however described) acknowledge by the rules of the relevant registered organisation.
- f. any political lobbying delegation organised by the relevant registered organisation and which impacts on the industrial interests of members or potential members of the relevant registered organisation.
- g. any other bona fide union business.

2.4. While a workplace delegate is representing union members or persons eligible to be union members during time which they would otherwise be at work, the employer of the workplace delegate must pay the workplace delegate as if they were at work.

2.5. While a workplace delegate is representing union members or persons eligible to be union members during time which they would not otherwise be at work, the employer of the workplace delegate must pay the workplace delegate as if they were at work.

2.6. An employer must not:

- a) induce a delegate not to exercise their rights.
- b) prevent a delegate from participating in collective bargaining.

- c) deal directly with a person who is being represented by a delegate about a dispute, bargaining for a collective agreement, their industrial interests, a disciplinary matter, a performance matter, or any other workplace or industrial matter unless the persons consents, after having had a prior opportunity to consult the delegate.

2.7. An employer that is considering changes of an economic, technological or structural nature which may have a significant impact upon employees must consult with the relevant delegates in good faith before a final decision is taken.

Note: Clause X sets out further obligations in relation to consultation on major change.

3 Right to paid training leave

- 1) A workplace delegate has the right to paid time to attend training;
 - a) on their role as a workplace delegate;
 - b) on workplace delegates' rights, or
 - c) related to their role in representing their union, union members and/or persons eligible to be union members.
- 2) A workplace delegate must be nominated by their union to participate in such training, and the training course must be approved by their union.
- 3) An employer and employee association must agree in writing on the total amount of paid time provided to each workplace delegate to attend training, provided that such time must not be less than five (5) days per annum per delegate.
- 4) A workplace delegate must give the relevant employer four weeks' notice of the intention to take paid time for training, unless otherwise agreed.

4 Right to reasonable communications

- 1) A workplace delegate is entitled to have communications (including discussions), including during paid time, with their union, union members or persons eligible to be union members in relation to any matter or subject.
- 2) For the avoidance of doubt, a workplace delegate's entitlement to communications (including holding discussions) includes (but is not limited to), among other things:
 - a) asking a person their union status and to join the union; and
 - b) asking an official or employee of the union to attend the workplace.
 - c) discussing relevant industrial and workplace matters with union members and persons eligible to be union members, including at mass meetings;
 - d) addressing new employees and other workers at an induction or at the commencement of their employment or shift; or
 - e) representing or advising an employee or employees, or otherwise discussing, an individual or collective issue, concern, dispute, grievance, disciplinary matter, performance matter or any other workplace or industrial matter.
 - f) participating in bargaining for an enterprise agreement or other communication in connection with such bargaining;
 - g) identifying to [union members] that they are a workplace delegate, including by wearing a badge, apparel, sticker or other mark, or to use a sign, or other forms of communication;
- 3) A person who is a union member, or person eligible to be a union member, of a union has the right

to have discussions with a workplace delegate that represents them.

- 4) If communications occur during work time, they must be treated and paid as work time for the workplace delegate as well as any union members or persons eligible to be union members who participate.
- 5) An employer must facilitate communications between a delegate and union members or persons eligible to be union members. This may include provision of access to the workplace and/or to means of communication used in the workplace.

Note: Access to facilities and equipment is further provided for in clause X

- 6) An employer must not knowingly or recklessly survey, monitor, record or otherwise infringe the privacy of communications between workplace delegates and their union, union members or persons eligible to be union members.
- 7) An employer must not:
 - a) prevent workers from disclosing information to a workplace delegate or union; or
 - b) require a worker to disclose the contents of any communications with a workplace delegate or union.

Any term of an arrangement or contract which provides to the contrary is void and unenforceable.

- 8) An employer must not:
 - a) prevent a workplace delegate from disclosing information
 - i) to their union;
 - ii) to union members or persons eligible to be union members; or
 - b) require a workplace delegate to disclose
 - i) the contents of any consultations.
 - ii) information to it, or make any use of such information.

Any term of an arrangement or contract which provides to the contrary is void and unenforceable.

5 Right to use facilities

- 1) A workplace delegate has the right to make use of the facilities and equipment where the enterprise is being carried on.
- 2) Without limiting sub-clause (1), use shall include, among other things:
 - a) a lockable notice board in a high traffic area. The workplace delegates are to have exclusive access to the notice board.
 - b) placing a union notice on employee noticeboards (including electronic notice boards, intranet pages and other internal electronic pages;
 - c) use of computers and printers;
 - d) making photocopies of a document;
 - e) making telephone calls,
 - f) sending electronic messages, including making use of electronic address lists, using electronic communication facilities that the employer uses to communicate with its workforce;
 - g) access to the workplace;
 - h) transport and freedom of movement to or within the workplace, where this is necessary in order to provide access;
 - i) holding discussions in an appropriate room.