

Delegates Rights Clause

AM2024/6

SDA ADDITIONAL SUBMISSION

Date Submitted: 22 May \2024

Gerard Dwyer National Secretary-Treasurer



Rights for Delegates in Awards

1. The Shop Distributive and Allied Employees' Association (**SDA**) is providing this additional submission to the Fair Work Commission (**FWC**) as part of a response to the FWC process established to vary awards to provide for a delegate's rights clause.
2. On 10 May 2024, Justice Hatcher issued a Statement¹ proposing a draft award delegates' rights clause.
3. The SDA provides this short submission in response to that Statement.
4. The SDA supports the submission that has been made by the ACTU in relation to the FWC proposed draft clause and the proposed amendments to the draft clause it includes.
5. The ratio change of delegates to employees from 50 to 25 employees is important as it does provide a more realistic approach to cover situations such as sites that operate up to 24 hours per day seven days a week. Having the ability to have delegates on a range of different shift cycles and days of the week is an important factor.
6. The ratio improvement is also assisting in workplaces where there are smaller numbers per site but there are multiple sites. The workforce might total 100 workers but there are 14 sites. This improved ratio would mean that workers will have a greater chance to access a trained delegate for assistance in cases where their site might not have a delegate.
7. The retail workforce is a feminised workforce (and highly feminised in certain sectors eg clothing retail, beauty etc) and it is important that female workers are able to access a delegate. With the new provisions female workers may also be encouraged to become a delegate, which would be a benefit to the employer and the workforce more broadly. Female participation in all aspects of work needs to be encouraged and facilitated.

¹ *Variation of modern awards to include a delegates' rights term [2024] FWC 1214.*

8. It is also important that the ratio also allows a full delegate to be recognised for training purposes with the inclusion of the phrase 'part thereof'. It is not possible to have a 'part' delegate when the worker numbers are higher but not at the full threshold. It would also mean at the initial threshold for the first delegate there would be no difference between the small business that is exempt and a workplace having more workers, is comparatively larger but not included to have a delegate training.
9. The increase in the paid training days for workplace delegates to 3 days in subsequent years is also an important feature which will ensure there is adequate training accessible for delegates to be updated on any key changes in workplace laws/requirements and to have their skills refreshed that they will be required to utilise in their role at the workplace.
10. The SDA would also be concerned if an approach to the clause resulted in workers not being able to discuss with delegates matters if such discussion could only occur during meal or rest breaks. There are many retail workers who only are rostered by their employer to work shorter shifts that do not entitle them to a rest or meal break. Any such provision that could be used by an employer to circumvent the intention of the Fair Work Act or a proposed clause in awards should not be entertained.

