



**Submission to Fair Work Commission –
Variation of modern awards to include a
delegates’ rights term -
(AM2024/6)**

May 2024



Industry Bodies, Associations and Associates



Australian Peak Shippers Association Inc. (APSA)



SMALL BUSINESS ORGANISATIONS AUSTRALIA



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1.0 Australian Meat Industry Council (AMIC)

1.1 AMIC is the peak body representing red meat and pork retailers, wholesalers, processors, and smallgoods manufacturers across the country. Our industry is one of the largest manufacturers in Australia today. We exist for a clear reason: to help our members achieve and maintain profitability and ensure our members are recognised for the crucial role they play in the agribusiness supply chain.

1.2 We are the only industry association representing the post-farmgate Australian meat industry. We work with members, governments, and industry groups to influence policy and provide technical and other services to the industry.

1.3 Our overriding goal is profitability for our members. To help our members achieve and maintain profitability, we work hard to solve our industry's key challenges and provide a range of services that make it easier for our members to run their businesses, from finding staff to complying with legislation.

1.4 The Australian Meat Industry Council is the voice of Australian businesses in the crucial and complex post-farmgate meat industry. Our 1500 plus members employ tens of thousands of people and are significant contributors to their local economies.

1.5 We are continually working towards a more competitive and prosperous meat and livestock supply chain that is good for members, good for industry and good for communities. We do this by advocating for effective and strategic policy, supporting our industry on important issues and providing members with tools to build and grow their businesses so they remain competitive and profitable within the Australian and global supply chain.

1.6 Following the consultation process and upon reviewing the draft delegates' rights term that is intended to be the term inserted into all modern awards. AMIC have reviewed the intended terms and would like to provide a submission on behalf of AMIC's members as to the possible implication of these changes on our members for your consideration. We are concerned these changes will add costs to employers and increase disruptions in industry, for no associated tangible benefits apparent.

1.7 We note that, in some instances, with the level of detail currently available, we can only approximate the full extent of the implications of these changes, so we put forward this submission with the obvious caveat, that this is our best efforts to estimate the implications at this point in time.

THE ISSUES

3.0 Overview

3.1 There have already been significant changes under the Closing Loopholes Act 2023 (Cth) that have caused significant angst and uncertainty within our industry. Whilst we have raised our concerns, industry feels very strongly about the intended draft wording to be imbedded in the modern awards for Workplace delegates' rights.

4.0 Delegates Rights

4.1 We acknowledge the process of written notice of appointment or election as a workplace delegate. We note the provision of providing evidence that would satisfy a reasonable person of their appointment or election as well as, the employee who ceases to be a workplace delegate requirement to provide written notice to the employer as soon as practicable.

4.2 With regard to the Right of representation, we do not see any concerns as per the stated matters that the workplace delegate may representation the industrial interests of eligible employees in the matters outlined in the draft terms.

5.0 Entitlement to reasonable communication

5.1 The provision that relates to providing that a workplace delegate may communicate with eligible employees individually or collectively, during working hours or work breaks, or before the start or after the end of work does cause serious concern from our members and the broader industry.

5.2 Of significant concern is the potential cost of non-production time that these meetings will incur. This is then multiplied by the fact that it could be collective of individuals at this meeting, which would be detrimental to the continuation of the chain (production in general), and for the chain to remain running, as well as the extra workload on other workers left on the chain.

5.3 Production facilities are not brimming with surplus people to just be able to plug gaps whenever the workplace delegate decides to call a meeting. Let's be brutally honest, without checks and balances there is nothing in the draft terms that holds the delegate to account for content, importance, and duration of these communication sessions.

5.4 We respectfully suggest there should be prior agreement in place (at the very least), to assist the mitigating concerns and costs on businesses. The impact of this free for all, will impact operations at the best of times without even considering the impact in peak production time requirements. There appears to be no consideration to the cost implications that are two-fold on the business. One, with the loss of productivity and two, with paying workers to be not performing their duties as employed and paid for, for an in descript amount of time.

- 5.5 This is not acceptable to any business and should be removed from the draft terms, OR at the very least, it should be crafted to provide duration of said discussions and the reason of importance, with written approval from the employer that these meetings must happen in paid work time.
- 5.6 Greater access to the workplace and employees will potentially cause undermining of the relationship that our industry members work very hard to build. It will take away the ability for business to engage directly with its workforce to build feelings of mutual trust and build an increased focus on an employee-based culture.
- 5.7 Greater access or as the new proposal lends itself to full access, for any site will lead to a natural progression of workers meeting with delegates in work time and causing significant down time and cost to production processes. We have already seen the impacts of unions being allowed to access sites with no notice for contravening workplace health and safety and how this has been manipulated and taken advantage of across various industries. The unions are certainly flexing their authority and every yard progresses to a mile with little to no consequence.
- 5.8 With little detail, or thresholds, any move a business makes to reduce this on a reasonableness basis, will be seen negatively by the employees, and potentially promoted this way by delegates.
- 5.9 This will cause significant disruption and unrest amongst the workers, seeing it pressing towards a likeness to force employees to become union members (in an industry with low union membership, covered by a small union in potential merger talks with a union outside the industry), removing the freedom of association in its true form.
- 5.10 Industry employers want to remain the primary contact for their employees and should be able to maintain this fundamental right. By opening this avenue, it raises concerns for loss of direct communication with employees to avoid misunderstandings, misinterpretations, and an exacerbation of situations. Increasing delegates rights in this area will undermine the essence of the workforce right to management in its primacy. Workers must feel able to speak with an employer on many industry issues that the Union is not involved in from a voluntary or statutory basis.

6.0 Entitlement to reasonable access to the workplace and workplace facilities.

- 6.1 The employer must provide a workplace delegate with access to or use of the following workplace facilities, unless the employer does not have them:
- (a) a room or area to hold discussions which is fit for purpose, private and accessible by the workplace delegate and eligible employees.
 - (b) a physical or electronic noticeboard.

(c) electronic means of communication that are ordinarily used by the employer to communicate with eligible employees in the workplace.

(d) a lockable filing cabinet or other secure document storage area; and

(e) office facilities and equipment including printers, scanners, photocopiers and wi-fi.

Member Response to workplace facilities

- (a) Employers provide designated areas for discussion for when unions attend site. This has always been at the employer's discretion. By providing additional rooms this could see an abuse of site access by unions but also abuse in working time for private conversations. When a delegate is called for employee representation, rooms are made available for these meetings and as such there should be no requirement for additional rooms to be made available for any other purpose, such as group meetings etc.
- (b) Employers should not need to provide this. Unions & associations already leave significant amounts of handouts, booklets, business cards etc in access areas. They have access to any employee in these areas for communication whether verbal or written. There should be no requirement for a business to have to provide a physical or electronic noticeboard. These cost to purchase and have installed. The next phase will be that employers will have no control of content on these notice boards as they will be under delegate or union lock and key.
- (c) Unions already have member contact details & their own communication programs. This is obtained upon membership sign up. There is a requirement for employee confidentiality of any information that is provided and for an understanding of the intent of use by the employer. We reiterate that employees have a right of freedom of association and should not be subjected to continual information from unions and/or delegates. Employees need to have the true ability for freedom of association. This is a fundamental right.
- (d) We are also unsure as to why there is a necessity for employers to provide lockable filing cabinets. Most employees are provided with a locker in which if there is a need for secure document storage industry would recommend the use of the delegates lockers or the union official providing the facility as it is for their sole purpose an usage.
- (e) For the provision of officed equipment including printers, scanners, photocopiers and wi-fi – again industry sees this as an added cost that is not of any benefit to the business. The unions have managed to work with this prior to now and do not see any benefit for the employer and ironically it will continue with costs with power, ink, paper etc. This is completely over the top of necessity.

7.0 Entitlement to reasonable access to training

7.1 Whilst this appears to be reasonable for the employer we would like to see the provision -

The employer is not required to provide the 5 days or 1 day of paid time during normal working hours, to more than one workplace delegate per 50 eligible employees.

To have the following wording as a consideration –

The employer is not required to provide the 5 days or 1 day of paid time during normal working hours, to more than one workplace delegate per 50 eligible employees, OR for the total number of delegates off at any one time, to be capped at no greater than 5% of the workforce total employees or capped at a maximum of 10 delegates in larger workplaces or in small businesses, no more than one delegate off at a time.

8.0 Exercise of entitlements under clause X

As stated in the Variation of modern awards to include a delegates' rights term – Section 9, this seems to contradict or seems unclear earlier requirements in the statement at X5 and X.7.

(b) Clause X does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.

(c) Clause X does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

We seek further clarification on these points, to ensure that there can be no misunderstanding of the intent in either section of the delegates' right terms.

9.0 Conclusion:

9.1 Whilst the draft delegates' right terms have a reasonably measured approach, there are still some concerns with some of the wording and intent. It leaves a concern that the ambiguity will cause rise to ongoing disputes at the employers' expense on multiple levels.

9.2 Industry appreciates and acknowledges the importance of appropriate provisions in legislation to protect both the employer and the employee (and other parties who engage with the employer or employee). However, further clarification is being sort under the delegates' rights to ensure that all parties are clear, and there is a distinct ability to understand when the lines have been overstepped.

9.3 The delegates rights need to be in proportion and workable. Be clear and provide the appropriate intent. Industry needs to be assured that there is an enforceability that precludes delegates from overreaching with these terms.

9.4 There has already been significant change in legislation and a real struggle for employers under the government changes and IR reforms, leaving the average employer wondering what is next and how do they continue to move forward.

9.5 We urge the decision makers to really consider if there is a genuine need for any changes required above and beyond the existing delegates rights and to what benefit will they be in the long term. We are seeing where unions are currently enjoying scope creep in several areas with new powers, rights, and provisions. Do we need anymore?

9.6 The existing rights have served purpose for a considerable number of years. Industry is concerned with constant change and increased union powers for their businesses future. We request a consideration of the points raised by our industry and a real purposeful reason that these measures are necessary and a clear understanding of the gains by the continued expansion of legislation.