

DELEGATES' RIGHTS

What is a delegate?

Delegates, also known as workplace delegates, or union delegates, are employees appointed or elected as representatives of union members in their workplace.

Delegates can represent the industrial interests of union members and those who are eligible to be union members who are employed by the employer (**eligible employees**), including in disputes with their employer.

They act as a first point of contact for eligible employees in connecting with the relevant union and they advocate for knowledge of rights at work and assist in running union campaigns.

What is the difference between a delegate and an official/organiser or representative?

Union organisers are union officials who are employees of the union/employee organisation and liaise with delegates across workplaces. Whereas a workplace delegate is not an employee of the union but an employee of the relevant employer who assists with representing their colleagues' interests.

Delegates are also not to be confused with Health and Safety Representatives (**HSR**) who are similar to delegates in that they are employees who are elected by their colleagues to represent and promote their interests. However, HSRs only act on Work Health and Safety issues and have different rights.

What rights do delegates have?

Workplace delegates have the right to:

- represent the industrial interests of union members and those eligible to be members of the union;
- reasonable communication with current members and those eligible to be members, about their industrial interests (such as holding a meeting with employees during enterprise bargaining to get their input on issues important to them);
- reasonable access to the workplace and workplace facilities (such as use of the computer provided by the employer); and
- reasonable access to paid time during normal working hours, for the purposes of training related to their role as a delegate (unless the employer is a small business, i.e. has 15 or less employees).

In exercising their rights, a delegate must still comply with their duties and obligations as an employee and reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of employer resources.

What is reasonable?

What is considered reasonable depends on the:

- size and nature of the delegates' employer;
- resources of the employer; and
- facilities available at the workplace.

How are delegates' rights protected?

An employer of a workplace delegate must not:

- unreasonably fail or refuse to deal with the workplace delegate;
- knowingly or recklessly make a false or misleading representation to the workplace delegate;
- unreasonably hinder, obstruct or prevent the exercise of the workplace delegate's rights while acting in the capacity as a workplace delegate,

As of 15 December 2023, workplace delegates' rights are a workplace right. Therefore, an employer must not take adverse action against a union delegate for exercising their rights.

Adverse action includes, but may not be limited to, the following actions taken by the employer against the relevant workplace delegate due to their exercise of their workplace rights:

- not allowing the delegate to meet with employees;
- prevent a delegate from using a meeting room to hold discussion with employees;
- preventing a delegate from inviting employees to meetings using their company email;
- dismissing the employee;
- reducing the number of shifts or hours of work the employee has;
- demoting the employee; and
- treating the employee differently to others and offering them different/worse conditions to other employees.

If an employer takes adverse action against a union delegate for exercising their workplace rights the delegate may commence a general protections claim in the Fair Work Commission against the employer.

The maximum penalty for general protections contraventions is \$18,780 for an individual and \$93,900 for a company.

What is the workplace delegates' rights term in modern awards?

The workplace delegates' rights clause was inserted into all modern awards on 1 July 2024 and sets out the rights delegates may exercise in the workplace.

The workplace delegates' clause can be found at the following clauses in each of the awards relevant to LPA Members:

- Clause 26A of the *Amusement, Events and Recreation Award 2020*.
- Clause 23A of the *Broadcasting, Recorded Entertainment and Cinemas Award 2020*.
- Clause 37A of the *Clerks - Private Sector Award 2020*.
- Clause 21A of the *Live Performance Award 2020*.

In order to exercise their rights and entitlements in a workplace, delegates must give the employer written notice of their appointment or election as a workplace delegate, including evidence if requested. If an employee ceases being a delegate they must give written notice to the employer within 14 days.

Right of representation

A workplace delegate can act as the representative for eligible employees who wish to be represented by the workplace delegate. This means that a workplace delegate can attend and represent employees in disciplinary matters and with resolution of disputes. Representation allows a workplace delegate to speak on behalf of the employee as opposed to attending meetings in a passive support person role.

A workplace delegate can also represent employees during consultation about workplace change, such as during a redundancy process or changes to rosters and hours of work, and during enterprise bargaining if they are appointed as the bargaining representative.

Reasonable communication

During working hours, on work breaks and before or after work, a workplace delegate can engage in reasonable communication with employees. Reasonable communication includes communication about union membership and representation in respect of representation, consultation, dispute resolution, disciplinary processes and enterprise bargaining.

Reasonable access to the workplace and workplace facilities

For the purpose of carrying out their role as a delegate the employer must provide access to or use of the following workplace facilities:

- a room or area that is private and accessible;
- a noticeboard (physical or electronic);
- access to Wi-Fi and email or other electronic means that are usually used at the workplace;
- lockable filing cabinet or secure document storage area; and
- office facilities such as printers, scanners, photocopiers.

An employer is not required to provide workplace facilities if they do not have that facility, or it is impractical due to operational reasons, such as the facility is being used at the time the delegate wishes to hold a meeting.

Reasonable access to training

Small business employers (less than 15 employees) are not required to provide paid access to training.

A workplace delegate is entitled to 5 days paid training, for initial training, and 1 day each subsequent year. The training must be related to the representation of the industrial interests of eligible employees.

The following conditions apply to access to paid training:

- Each year commencing on 1 July, only 1 delegate per 50 eligible employees can undertake paid time for training. The employees to be counted are full-time and part-time and regular casual employee.
- When training, the workplace delegate must be paid the wages they would have received if they had attended work that day.
- 5 weeks' notice must be given to the employer which sets out the date, subject matter, daily start and finish time of training and the training provider.
- If an employer requests, the workplace delegate must provide an outline of the training content.
- The employer must advise whether or not the training is approved at least 2 weeks prior to commencement.
- Within 7 days of the end of the training the workplace delegate must provide the employer with evidence that they completed the training.

What do enterprise agreements need?

Any enterprise agreement (EA) that goes to ballot (or vote) on or after 1 July 2024 must contain a delegates' rights clause bargained by the parties.

If the EA does not contain a delegates' rights term, the relevant award term will be included (e.g. if a performing arts company EA was made but it did not have a delegates' rights term, the *Live Performance Award 2020* delegates' rights term at clause 21A would apply).

Any term bargained for that is different to the award term must be no less favourable to workplace delegates' than the relevant award term.