



Enhancing delegates' rights

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amended the *Fair Work Act 2009* (the Act) to provide specific rights and protections for the important work undertaken by workplace delegates in representing and educating employees to allow them to effectively undertake their role.

Further amendments to the Act, introducing delegates' rights for 'regulated workers' (defined as 'employee-like' workers and regulated road transport contractors) were made by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

What has changed?

The amendments provide specific rights for workplace delegates to represent the industrial interests of union members and potential members, including in disputes with their employer.

Workplace delegates are employees or workers who are appointed as representatives in the workplace under their union's rules. Workers can choose to be represented by a workplace delegate. There is no requirement for workers to accept representation if they do not wish to be represented.

The changes mean delegates must be provided reasonable access to communicate with members and potential members about matters of industrial concern and reasonable access to workplace facilities.

Delegates in businesses that are not small business employers will also have reasonable access to paid time for related training. What is reasonable for these matters will depend on the size and nature of the enterprise, and the enterprise's resources and available facilities. Workplace delegates that are 'regulated workers' will not have a right to paid time to undertake related training.

The amendments introduce a general protection for workplace delegates when carrying out their role at a workplace, including preventing an employer from unreasonably refusing to deal with them, misleading them, or hindering and obstructing the exercise of their rights as delegates.

The Fair Work Commission will prepare modern award terms to include in all modern awards to ensure these rights are appropriately adapted for particular industries and occupations. Enterprise agreements and workplace determinations made after 1 July 2024 will also need to include a delegates' rights term. Any enterprise agreements that have been approved by employees prior to 1 July 2024 will not need to include a delegates' rights term.

What do these changes mean?

This amendments support and strengthen the ability of workplace delegates to perform their role in the workplace, ensuring workers have reasonable access to representation to address safety and compliance

issues. Employees and workers will benefit from having trained and capable workplace delegates who can provide effective representation and help them to understand and enforce their workplace rights. Employers will benefit from having strong, cooperative delegate structures to resolve disputes and facilitate change.

When will these changes come into effect?

The changes introducing delegates' rights for employees commenced on 15 December 2023.

Delegates' rights terms will be included in all modern awards from 1 July 2024. Enterprise agreements and workplace determinations made after this date will also need to include a delegates' rights term.

The changes for 'regulated workers' who are delegates will commence on 26 August 2024, or earlier by Proclamation.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>