

Representation Rights

Developments since Congress 2009

Strong, effective and representative unions are essential to building a fair and just society. Delegates play a vital role in the union movement by representing the collective and individual hopes, aspirations and needs of their work colleagues. Delegates are critical to the improvement of pay, employment conditions and workplace health and safety.

Under the WorkChoices amendments to the *Workplace Relations Act 1996* ("WR Act"), there were strict limitations on workers' ability to meet with their union at their workplace. Workers on individual statutory agreements – Australian Workplace Agreements (AWAs) – were prevented from consulting with union officials in their workplace. Employers, including large businesses like Telstra and the Commonwealth Bank, routinely refused to recognise union delegates and officials, let alone bargain with them. The legislation also banned workers from negotiating 'delegates rights' clauses in Agreements, and made it more difficult for unions to protect delegates from dismissal or victimisation.

The implementation of the *Fair Work Act 2009* ("FW Act") has gone some considerable way towards restoring fairness to industrial relations by removing the ban on delegates' rights clauses in awards and agreements, by requiring businesses to consult workers and their representatives on significant workplace changes, by requiring representation of employees in disputes under enterprise agreements, by stipulating that a refusal to allow a 'support person' in internal disciplinary matters may make a dismissal unfair, and by consolidating protections for delegates and other union members in relation to the exercise of their workplace rights and industrial activities under the newly constituted 'general protections' provisions.

Key Issues

This policy reaffirms Congress' commitment to the ACTU *Charter of Delegates' Rights* and continue to urge affiliates and employers to incorporate the Charter into enterprise agreements and workplace policies. However, union delegates are critical to building and maintaining co-operative workplace relations and their capacity to do so should not be limited to workplaces where their rights have been secured through bargaining.

Consistent with the object of the Fair Work Act to enable fairness and representation at work, there must be a further strengthening of legislative rights afforded to union delegates to ensure they can properly take up their role in providing strong and effective representation.

Agenda 2012 -2015

This policy calls for positive rights to be provided to delegates and workplace representatives to better represent their workmates and colleagues. The Fair Work Act says little about the powers and functions of union delegates, and the union movement as outlined in this policy is strongly of the view that creating a framework for delegates to carry out their representative role in the workplace is an important step towards achieving some of the key objects of the Fair Work Act.

Accordingly, over the next three years this policy would commit unions to continue to call on the government to provide legislative recognition of the rights of union delegates. This will include recognition of the representative rights of delegates, facilitation of appropriate discussions during paid work time, provision for delegates to have access to appropriate and private facilities and equipment to enable effective communication with workers and special paid leave rights for delegates to enable them to attend training in workplace relations, dispute resolution and trade union matters. The policy proposes that the legislature should also impose obligations on employers to recognise and deal with delegates in good faith and require employers to consult with delegates when considering any economic, technological or structural changes in the workplace.

Further this policy maintains that the statutory right of entry scheme should be expanded from being a legal right to enter premises to being a legal right to access workers on those premises. Industrial parties should also be free to bargain about right of entry arrangements that apply at their workplaces.