

Workplace Delegate Rights

Background

This information sheet discusses workplace delegates and their rights in the workplace in light of recent changes to the *Fair Work Act 2009* (Cth) (Act).

This information sheet will be updated accordingly if there is any change to advice moving forward. This document contains information, which is currently known, and no warranty or guarantee is or can be given by VCEA or any member of its staff.

Schools should seek advice from their relevant diocesan representative in relation to specific queries.

Workplace delegate

What is a Workplace delegate?

A workplace delegate (also referred to as a union delegate/union representative) is an employee of the school/employer who is elected or appointed under a union's rules to represent union members in the workplace.

Workplace delegates have the right to represent the industrial interests of union members and potential members. This includes disputes with their employer. However, there is no obligation on an employee (whether a union member or not) to be represented by the workplace delegate.

Workplace delegates rights and obligations

Prior to a workplace delegate exercising their rights, if they have not already done so, they must give the employer written notice of their appointment or election as a workplace delegate. If requested, they must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

Representing employees

Workplace delegates may represent the industrial interests of members and potential members of a union (including in disputes with their employer). They may represent workers in:

- consultation about major workplace changes, rosters, or hours of work
- resolution of disputes
- disciplinary processes
- enterprise bargaining (where they have been appointed as a bargaining representative) or assist their union with enterprise bargaining duties, and
- any other process or procedure in the agreement or policy where eligible employees are entitled to be represented and which concerns their industrial interests.

Reasonable communication

Workplace delegates may communicate with eligible employees for the purpose of representing their industrial interests including during periods of enterprise bargaining. This includes discussing membership of their union and representation with eligible employees.

Under the recent changes, workplace delegates may now communicate with any employee that is eligible to be members of the union who are employed by the employer. This means that they can reasonably communicate with

current and prospective union members including employees such as independent contractors or music tutors at appropriate times which does not interfere or impact upon the performance of duties.

However, workplace delegates must act reasonably and must not hinder, obstruct or prevent the normal performance of work. They must also comply with their own duties as an employee. They must not harass employees who have advised that they do not wish to be communicated with or be represented by a workplace delegate.

Communication can occur verbally or electronically (further information under heading “right to access workplace and facilities” below). They may communicate with employees during work hours, breaks, or before or after work, in relation to their industrial interests.

What will be deemed reasonable, is based on each circumstance but workplace delegates must not interfere with employees performing their duties or harass employees who have advised they do not wish to be communicated with. The use of email or other school communication to employees who have indicated they do not wish to receive such communication may be deemed as unreasonable.

Rights to access the workplace and facilities

Workplace delegates must be provided with reasonable access to the workplace and its facilities to perform their duties. The employer must provide a workplace delegate with access to or use of the following facilities at the school (unless the school does not have the facility, or it is impractical to provide access to the facility at the time sought, or the employer is unable to provide access at the relevant site after taking reasonable steps to do so):

- a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and employees. This may be the staff room or room where meal breaks are ordinarily taken, however it can also be another agreed suitable room that is private and fit for use at the school. There is no requirement that discussions are to be held in the staff room if it's unreasonable or impractical to provide access at the time sought. Where an agreement cannot be reached on the location, the workplace delegate will be able to meet with employees where meal breaks are ordinarily taken.
- a physical or electronic noticeboard.
- electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi. This can include a request for all staff school email addresses to contact employees. However, the use of the all staff school email address is restricted to the use of the workplace delegate who is an employee of the school/employer and cannot be shared by the workplace delegate to any external person including union representatives who are not employed by the employer/school.
- a lockable filing cabinet or other secure document storage area.
- office facilities and equipment including printers, scanners and photocopiers.

Paid time for union training

The *Catholic Education Multi-Enterprise Agreement 2022*, *DOSCEL Schools and Secretariat Agreement 2022* and *Catholic College Sale Limited Enterprise Agreement 2022* provide for paid leave for workplace delegates to attend union training.

The training must be taken at a time mutually agreed with the Principal and limited to one day per school per year. This leave does not accumulate from year to year.

Paid leave to attend union training in line with the above is also available to employee representatives on the consultative committee.

Performance of workplace duties

Workplace delegates must fulfil their duties and obligations as a worker. This includes following reasonable policies and procedures such as:

- codes of conduct
- workplace health and safety
- acceptable use of information communication technology (ICT) resources.

Workplace delegates must not hold up or prevent:

- the normal performance of work
- workers exercising their right to freedom of association.

Workplace delegate protections

There are extra protections to prevent employers from taking adverse (negative) action against delegates because of their delegate role.

An employer must not:

- unreasonably fail or refuse to deal with a workplace delegate
- knowingly or recklessly make a false or misleading representation to a workplace delegate
- unreasonably hinder, obstruct or prevent a workplace delegate from exercising their rights under the Act.

Examples of adverse action include doing, threatening or organising to:

- fire or terminate an employee
- injure an employee in their employment (for example, by not giving legal entitlements such as pay or leave)
- change an employee's job to their disadvantage (for example by demoting them or cutting their hours).

Further questions

For enquiries, please contact the relevant representative of your employer or the VCEA:

- Melbourne: Employee Relations at Melbourne Archdiocese Catholic Schools (MACS) on 03 9267 0431 or ceoir@macs.vic.edu.au
- Ballarat: Ms Tina Phillips, tphillips@dobcel.catholic.edu.au or Ms Jo Huntley on 03 4344 4350 / jhuntley@dobcel.edu.au or Nick Barta on 0492 327 650 / nbarta@dobcel.catholic.edu.au
- Sale: Employment Relations on 03 5622 6600 or employment@doscel.catholic.edu.au
- Sandhurst: People and Culture team on 03 5443 2377 or peopleandculture@ceosand.catholic.edu.au
- For Religious Institute and Ministerial Public Juridic Person (RI/MPJP) schools, contact the employer representative as advised by your principal or VCEA Employee Relations: employeerelations@vcea.catholic.edu.au