

# New Rights for Workplace Union Delegates and the Ambiguous Impact on Delegate Education and Training<sup>1</sup>

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## Abstract

In December 2023, the *Fair Work (Closing Loopholes No 1) Act* was proclaimed, introducing a new regime of rights for workplace union delegates in Australia industrial law, including rights concerning access to paid union training leave. While the new regime of workplace delegates' rights is very likely, overall, to increase the voice of employees, and thereby have positive consequences, over the long run, for many aspects of work, the impact of the paid union training leave provisions will depend on how unions respond to the new regime. This is because effective union training relies not just on classroom learning but informal learning on the job and 'follow up' classroom lessons. With more delegates available to be trained, the incentives facing unions could be to increase classroom training but ease up on the follow-up and mentoring activities that require union officials to access workplaces. If this leads unions to spread their training resources more thinly, over a larger number of delegates, and devote

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<sup>1</sup> Most of the material published here originally appeared as part of a report by the author, published by the Centre for Future Work in July 2024, entitled *Employee voice and new rights for workplace union delegates Impacts on wages, productivity, cooperation and union training*. More details on other aspects of the new delegate rights regime (other than union training) can be found in that report.

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fewer resources to follow-up and to organiser mentoring of delegates, the effect on employee voice could be minimised.

### **Key words**

Unions, workplace delegates, union training, union education, training leave.

### **Introduction**

In December 2023, the Fair Work (Closing Loopholes No 1) Act was proclaimed, introducing a new regime of rights for workplace union delegates in Australia industrial law. Included amongst these were rights concerning access to paid union training leave. This article outlines the changes, particularly on paid training leave, and then discusses their potential impact.

### **What are workplace delegates?**

For the purpose of the Fair Work Act's delegate rights regime, a 'workplace delegate' means someone who is appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative for members of the organisation who work in a particular enterprise'.<sup>3</sup> Delegates are volunteers who perform their union duties on an unpaid basis in addition to their normal job at work. Equivalent terms are 'shop steward', or 'workplace union representative'. A workplace delegate is typically elected by the members (unless there is only one candidate). Delegates spend their time undertaking vital tasks for workplace representation, including: handling individual grievances; dealing

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<sup>3</sup> Fair Work Act 2009 s350C(1).

with queries about award conditions; participating on joint consultative committees; negotiating wages, physical working conditions and work practices; and negotiating workplace or enterprise agreements.<sup>4</sup>

### **What is the impact of union training?**

Before analysing the recent reforms to union training rights, it is necessary to revisit what is already known about the effects of union education and training. This research is already thoroughly reviewed elsewhere,<sup>5</sup> so this section just summarises the highlights most relevant for this particular article.

First, the existing research shows that, broadly speaking, education and development activities promote union membership growth and activism, which in turn matters for promoting union membership.<sup>6</sup> Union training is more important than tenure as delegate-building activism.<sup>7</sup> Both training and tenure boost delegates' confidence, and this is a critical pathway to boosting activism and the success of employee voice. Delegate activism will be influenced by the breadth of training (the quantity of it) and the perceived quality of it. For example, training in a broad range of skills associated with building member voice (such as training in campaigning and developing networks) does more over the long run to build membership growth and employee success than training in recruitment alone.<sup>8</sup> As not all delegates want or are suited to becoming, say, successful recruiters, a union may aim to train enough delegates across a workplace to enable specialisation where necessary in tasks such as recruitment.<sup>9</sup>

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<sup>4</sup> Ron Callus et al, *Industrial Relations at Work: The Australian Workplace Industrial Relations Survey* (Canberra: AGPS, 1991), 109; Alison Morehead et al, *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* (South Melbourne: Longman, 1997), 167.

<sup>5</sup> David Peetz and Michael Alexandr, "A synthesis of research on training of union delegates", (2013) 44(4) *Industrial Relations Journal* 2013).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

Second, there are some important lessons on the relationship between training and follow-up. A key lesson from that research is that there is limited value from formal training of delegates if there is not follow-up to that training. Post-training contact with organisers is strongly related to continuing commitment and the effectiveness of voice. In one telephone survey of trained union delegates (undertaken in 2009, by a union call centre, and not previously reported, N=572), 52% of the delegates who reported that they had been followed up after training also reported that ‘how successful you are in achieving gains at the workplace’ had gone up, but this increased success rate was reported by only 26% of delegates who had not been followed up. Another telephone survey at a similar time, of trained delegates from a range of unions (also unreported, N=569), found that, amongst delegates who had not had contact with their organiser after training, ‘member success in achieving gains’ had increased ‘a lot’ for just 16% of delegates. However, this substantial increase in member success was reported by 25% of delegates who had been contacted by their organiser to follow up on the course, and by 31% of those who had been contacted by their organiser to follow up on the course *and* had been applying the lessons from it at least once a week. These results are consistent with published findings from other, larger, surveys showing follow-up is associated with better outcomes for unions from training.<sup>10</sup>

Formal training is important, but at least as important is the informal side: what happens when organisers train delegates ‘on the job’. For example, in that multi-union survey just mentioned, when delegates reported that their organiser had been ‘very effective’ (scoring 1, on a 1 to 5 scale) in ‘teaching me valuable things about being a delegate’, 28% reported that ‘member success in achieving gains’ had increased ‘a lot’. However, when delegates rated the organiser as from 3 (‘neutral’) to 5 (‘very ineffective’) on that matter, only 10% reported that member success had increased a lot. Again, this is

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<sup>10</sup> Ibid.

consistent with the evidence from other published and unpublished surveys, showing similar findings. Organiser mentoring of delegates is critical for developing voice.<sup>11</sup>

### **Union training rights before 2024**

Paid union training leave was first inserted into Australian awards in the 1970s, mostly by consent.<sup>12</sup> The provisions then mostly provided for a maximum of 5 days paid union training leave per year per delegate. Compensation was mostly at full pay, though some provided for half pay, and others allowed paid leave for up to 10 days per year. Some had conditions and limitations, such as avoiding inconvenience to the employer. By 1988, some 64 federal awards had such provisions.

In 1997, as part of a major shift in industrial relations policy that was antagonistic to unionism, the Howard government passed legislation preventing awards from including paid union training leave provisions, along with other union-related provisions such as those concerning union right of access to workplaces. It also abolished the Trade Union Training Authority, which had been established with bipartisan support 21 years earlier. Provisions for union training leave moved to collective agreements,<sup>13</sup> and by the early 2000s many, possibly a majority, of enterprise agreements included union training leave provisions.<sup>14</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Renee Burns, Anthony Forsyth, Alice Garner and Mary Leahy, 'The evolution of the regulatory framework for trade union training in Australia', (2022) 35(2) *Australian Journal of Labour Law* 95-118.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, citing Richard Mitchell, Rebecca Campbell, Andrew Barnes, Emma Bicknell, Kate Creighton, Joel Fetter and Samantha Korman, *Protecting the Worker's Interest in Enterprise Bargaining: The 'No Disadvantage' Test in the Australian Federal Industrial Jurisdiction, Final Report for the Workplace Innovation Unit, Industrial Relations Victoria*, Centre for Employment and Labour Relations Law, University of Melbourne, 2004, 45.

The 2005 WorkChoices legislation of the Howard government extended the ban on union training leave provisions to enterprise agreements and bargaining over such agreements. Some unions struck unregistered side-agreements covering the matter. The Rudd government's Fair Work Act 2009 reversed this prohibition, and also removed the prohibition on union training provisions in awards. Union training leave provisions again appeared in enterprise agreements, and examination of the Workplace Agreements Database database showed that by 2015, some 30% of the 5000 agreements approved had a provision for union training leave.<sup>15</sup> The proportion has since increased (see below). Some agreements provided for more than the previous 5 days standard (e.g. 7 or 10 days),<sup>16</sup> though it is not obvious that this was a common departure.

The process of award modernisation did not lead to the mass reinsertion of explicit union training leave provisions into awards; instead the FWC chose to maintain 'dispute resolution training leave' provisions in awards. These provisions had become a partial work-around of the WorkChoices-era prohibition of union training leave. So, most of the action on union training leave remained in enterprise agreements.

### **The new rights framework for union delegates**

In December 2023, the Fair Work (Closing Loopholes No 1) Act was proclaimed, introducing a new regime of rights for workplace union delegates in Australian industrial law. Their justification ultimately lies in the obstruction that some employers have placed in the way of delegates performing their duties. There are not many quantitative studies of employer opposition to union delegates, but one study in the early 2000s found that 23% of delegates found management hostile. In the same study, 22% of delegates reported that management opposition to their role as a delegate had become more intense

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<sup>15</sup> Search of WAD conditions dataset provided by then Department of Employment, September 2016. The 30% number also applied to agreements approved in the first 8 months of 2016.

<sup>16</sup> Burns, Forsyth, Garner & Leahy 2022, n 12.

over the previous two years.<sup>17</sup> While a majority of management (at least in workplaces with delegates) appeared indifferent or even supportive, and it is unclear exactly what proportion of hostile managers would have breached any delegates' rights, what is clear is that there was significant minority showing hostility towards union delegates. Examples from various case studies, including court and industrial decisions, give us an idea of some of the ways in which that minority of employers from workplaces with delegates expressed their hostility towards unionism and their opposition to delegates.<sup>18</sup> Some obstructive tactics have already been prohibited by the 'adverse action' provisions of the Fair Work Act<sup>19</sup> or made difficult by 'good faith bargaining' provisions.<sup>20</sup> Establishing a regime of workplace delegates' rights would overcome many, but not all, of the remaining barriers facing workplace delegates in performing their duties.

The new rights operate at several levels. Some rights for union delegates are specified in the Fair Work Act itself. They are also clarified in modern awards. They are further clarified in enterprise agreements. Under the Act itself, a workplace delegate is entitled to represent the interests of their union's members, and any other non-members eligible to be members, including in disputes with their

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<sup>17</sup> David Peetz and Barbara Pocock, *Organising and delegates: An overview*, Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ), 2005, 445.

<sup>18</sup> e.g. *Finance Sector Union v Commonwealth Bank of Australia* [2000] FCA 1372 (28 September 2000), [14]; *CPSU v Telstra Corporation Ltd* [2000] FCA 1610 (13 November 2000); *CPSU v Telstra Corporation Ltd*, [1999] FCA 1224 (3 September 1999), [25]; *CFMEU v Coal and Allied Operations Pty Ltd* [1999] FCA 1531 (5 November 1999), [134], [136], [154], [164]; *AWU v BHP Iron-Ore Pty Ltd* [2001] FCA 3 (10 January 2001), [90]-[94]; *R.D. Smith and Others and Pacific Coal Pty Ltd*, AIRC, 9 April 2001, Print PR902679; T Dundon, 'Employer opposition and union avoidance in the UK', (2002) 33(3) *Industrial Relations Journal* 234; 'Blair Athol battle finally over, as Rio Tinto and CFMEU reach settlement', *Workplace Express*, 5 August 2005; P Smith, and G Morton, 'Union exclusion and the decollectivization of industrial relations in contemporary Britain', (1993) 31(1) *British Journal of Industrial Relations*, 105-6; P Smith and G Morton, 'Union exclusion— Next steps', (1994) 25(1) *Industrial Relations Journal*, 3-14.

<sup>19</sup> Fair Work Act 2009, ss 340-345.

<sup>20</sup> Fair Work Act, s 228.

employer.<sup>21</sup> A workplace delegate is entitled to reasonable communication ‘in relation to their industrial interests’ with union members, and any non-members who are eligible to join that union.<sup>22</sup> They are also entitled to reasonable access to the workplace and its facilities, if it is for the purpose of representing members’ interests. An employer must not unreasonably refuse to deal with the workplace delegate.<sup>23</sup>

Most importantly for this article, except in small businesses (those with fewer than 15 permanent employees), the delegate is also entitled to reasonable access to paid time off, during normal working hours, for related training.<sup>24</sup> This last right does not apply to gig workers (truck owner-drivers and digital platform workers) who are brought into Fair Work regulation through other ‘Closing Loopholes’ amendments to the Fair Work Act.

Under the amended Fair Work Act, a modern award must include a delegates’ rights term.<sup>25</sup> This takes effect from July 2024. The FWC created a model award term that takes effect from 1 July 2024. That decision clarifies in greater detail the rights set out under legislation.<sup>26</sup>

One of the most contentious issues for the FWC is clarifying the entitlement to reasonable access to *training*. Here, the model clause says that, unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for ‘initial training’ (the number of months or years is not specified) and 1 day each subsequent year, to attend training related to representation of the industrial interests of eligible employees.

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<sup>21</sup> Fair Work Act, s 350C(2).

<sup>22</sup> Fair Work Act, s 350C(3)(a).

<sup>23</sup> Fair Work Act, s 350A(1)(a).

<sup>24</sup> Fair Work Act, s 350C(3)(b).

<sup>25</sup> Fair Work Act, s 149E.

<sup>26</sup> Draft decision at [2024] FWC 1214. Final determination at PR774855 (AM2024/6).



This right is subject to a number of conditions. The most significant is that the employer is not required to provide the paid leave to more than one workplace delegate per 50 eligible employees (being full- or part-time or regular casual employees). It also puts notice obligations on the employer and employee regarding the scheduling of training:

- the delegate must give the employer at least 5 weeks' notice of the dates, subject matter and the start and finish times of the training;
- the delegate must, on request, provide the employer with an outline of the training content;
- the employer must advise the workplace delegate as soon as is practicable, and not less than 2 weeks before the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld;
- the workplace delegate must provide the employer with evidence of attendance at the training, within 7 days of the training.

The model clause makes it clear that, if another clause in the award provides more beneficial rights to delegates, then the more beneficial clause prevails.

All new enterprise agreements will include a delegates' rights term.<sup>27</sup> If that term is less favourable than the delegates' rights term in *any* modern award that cover the workplace delegates, then the most favourable term amongst the relevant modern awards (as determined by the FWC) prevails.

### **Comparison of new minimums with old**

It is difficult to make a full comparison of the new entitlement with previous ones in awards and agreements, due to the absence of systematic data about entitlements under previous regimes. That said,

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<sup>27</sup> Fair Work Act, S205A (1).

the 5 days minimum provided in the FWC's model award clause (for the first year) appears in line with common practice in agreements and old awards.

A seemingly major departure, however, occurs with the provision of only 1 day paid leave per year in the second and subsequent years. This scaling down of entitlements by 80% after an initial period does not appear to reflect existing arrangements in awards or agreements.

These limitations appear to reflect concern by the FWC that the cost burden on employers of union training leave should not be too large. However, there is a built-in incentive that stops unions from imposing too high a cost upon employers through union training, and that is that training is costly for unions themselves.

A second departure from apparent common practice is the FWC's proviso that the employer is not required to provide the paid leave to more than one workplace delegate per 50 eligible employees (the latter number including non-members who are eligible to join that union).

Although there are no recent published data on the ratio of workplace delegates to members, a question was asked in a survey of Australian delegates in 2013, asking participants about approximately how many members they had personal responsibility for. It showed that the median delegate had responsibility for 25 members, but a quarter had responsibility for 10 or fewer, while just over a quarter had responsibility for 50 or more.<sup>28</sup> While these numbers are for *members* per delegate, not *employees* per delegate, it is noteworthy that, across that sample, median union density (in response to the question 'approximately what percentage of people in your workplace are in the union') was estimated at 65%, with a quarter reporting density below a third and a quarter claiming density of 90% or more. Bear in mind, while these numbers might appear high, it is in the most highly unionised workplaces that trained

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<sup>28</sup> These data are unpublished but the survey is reported in David Peetz e a., "The meaning and making of union delegate networks", (2015) Economic and Labour Relations Review 26(4).

workplace delegates are likely to exist. If the median delegate mentioned above also had median union density, he or she would be in a workplace with one delegate per 50 employees, but (if representative of delegates as a whole) that in turn would mean that something approaching half of delegates were in workplaces with more than one delegate per 50 employees.<sup>29</sup>

There are no other recent data on the ratio of members per workplace delegate but John Benson's 1985 book referred to an average ratio of 24:1 for FEDFA members in the La Trobe Valley,<sup>30</sup> and an international study from the 1970s suggested ratios of something like 35:1 in the UK, 45:1 in Italian metalworking, 11:1 in Dutch transport unions, 20:1 in German metalworking, 30:1 in unionised Danish textile firms and 15:1 in Norwegian textiles and transport, alongside ratios higher than 50:1 in some other sectors in those countries.<sup>31</sup> These averages, of course, are not only very dated but also would disguise the high amount of variability between establishments regarding the numbers of members and delegates.

Overall, the 1:50 restriction in the model award provision appears likely to fail to account for the number, possibly high, of establishments that have more than 1 delegate per 50 members and potential members. For this reason, and more importantly because of the provision of only one day paid leave after the 'initial' period, the award provision is likely to be less generous overall than that applying in most enterprise agreements, and so is likely to mainly affect only people covered by enterprise agreements that do not have a training provision.

### **The frequency of delegate training provisions under the old regime**

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<sup>29</sup> Ibid.

<sup>30</sup> John Benson, *Unions at the Workplace*, Oxford University Press, 1991.

<sup>31</sup> Anthony Carew, *Democracy and Government in European Trade Unions*, Routledge, 1976 (republished 2022).

The Workplace Agreements Database (WAD), managed by the Department of Employment and Workplace Relations, contains data about the incidence of trade union training provisions in federal enterprise agreements. It indicates that, in 2022, 49% of federal agreements had a union training provision (up from 30% in 2015). Of course, some enterprise agreements are non-union agreements, and so the more relevant indicator is the proportion of union agreements that have a delegate training clause. In WAD, an agreement is normally treated as a ‘union’ agreement if a union is a party to the agreement. As shown in Table 1, 59% of ‘union’ agreements had a training provisions. However, some 3% of ‘non-union’ agreements also had a delegate training provision, suggesting that a small number of agreements are negotiated by a union even though the union is not a party. If we treated all agreements that have some ‘trade union’ provision in them as union agreements, the proportion of union agreements in WAD would increase slightly, from 81% to 82%.

**Table 1: Union training provisions in federal enterprise agreements, by sector and union status, 2022**

	Private	Public	All	% of agreements that are private
Union	58.5%	71.5%	59.2%	94.5%
Non-union	3.4%	0.0%	3.4%	98.4%
Total	47.6%	66.8%	48.5%	95.2%
% of agreements that are union	80.2%	93.5%	80.9%	

How to read this table: The numbers in the shaded cells indicate the proportion of agreements of that type that have delegate training provisions in them. Cells in the bottom row indicate the proportion of agreements of that type that are ‘union’ agreements (ie a union is a party). Cells in the right-hand column indicate the proportion of agreements of that type that are private sector agreements.

Note: apparent discrepancies between this table and the text are due to rounding in the text.

Source: Workplace Agreements Database.

Delegate training provisions were more common in the public sector (included in 72% of ‘union’ agreements) than in the private sector (58%). Table 2 shows how incidence of delegate training provisions varies by industry. In most industries, over half of ‘union’ agreements had a delegate training provision. The main exceptions were mining, education and ICT and media, where anti-union employer strategies are probably most common. In the case of education, it is predominantly a phenomenon of private primary/secondary education: only 19% of IEU agreements (in private education) had delegate training provisions, but 88% of AEU agreements (with mostly public employers) had them, while the NTEU (universities) was near the norm at 63%. In the mining sector, only a minority of agreements had training provisions, regardless of whether a party was the AWU, the CFMMEU or there was no union party.

**Table 2: Union training provisions in federal enterprise agreements, by industry, 2022**

	% of union agreements with union training clause	% of all agreements with union training clause	N	union/all
Wholesale Trade	77%	61%	59	80%
Agriculture, Forestry and Fishing	72%	60%	30	83%
Public Administration and Safety	71%	61%	146	86%
Electricity, Gas, Water and Waste Services	67%	53%	137	78%
Health Care and Social Assistance	65%	60%	281	91%
Construction	63%	50%	1503	80%
Manufacturing	62%	51%	779	82%
Transport, Postal and Warehousing	60%	50%	495	81%
Accommodation and Food Services	60%	41%	32	63%
Other Services	52%	37%	97	69%
Arts and Recreation Services	51%	46%	52	87%
Administrative and Support Services	51%	39%	66	74%
Financial and Insurance Services	50%	46%	26	92%
Professional, Scientific and Technical Services	50%	32%	34	65%
Rental, Hiring and Real Estate Services	50%	14%	14	29%
Retail Trade	50%	38%	40	75%
Information Media and Telecommunications	45%	42%	31	94%
Education and Training	29%	27%	208	91%
Mining	28%	20%	136	65%
Total	59%	49%	4166	81%

How to read this table: The numbers in the shaded cells indicate the proportion of agreements of that type that have delegate training provisions in them. Cells in the right-hand column indicate the proportion of agreements of that type that are ‘union’ agreements (ie a union is a party).

Note: apparent discrepancies between this table and the text are due to rounding in the text.

Source: Workplace Agreements Database.

## The outcomes of union education and training under the old regime

To understand the effects of the new rights regime, we must first consider what the research to date has shown about the effects and effectiveness of union education and training.

### **The effects of the new union training rights regime**

Overall, despite the (unknown) number of establishments where paid union training leave rights are already greater than the new legislated minimum, it appears very likely that the total availability of union training will increase — provided that unions have the resources to deliver increased training. Obviously, this would mostly be the case where delegates have previously been unable to access union training due to the absence of a right to paid leave. This in turn would very likely lead to greater employee voice in those workplaces where training increases. That would have impacts on wages, conditions, safety, union membership, cooperation and productivity as described in the previous section as arising from the increases in workplace delegates' rights generally.

The impact on union membership is worth commenting on in the context of existing research on union training and education. Recall from above that it shows that, broadly speaking, education and development activities promote union membership growth and activism, which in turn matters for promoting union membership. So, if more training rights lead to broader training and to it covering a larger number of delegates within a workplace, then those rights could indeed be expected to lead to higher membership. Whether that happens may depend on how the stepped leave allowance, with five days leave in the initial period and then one day in subsequent years, is administered in practice.) It also depends on whether unions have the resources to enhance their provision of training, or at least target it more effectively.

Aside from these factors, there are key uncertainties arising from the new legislation, even while the legislated union training rights regime provides important benefits to many union delegates that did not exist before to such a degree. We can categorise those into two types of uncertainties.

### **Uncertainties about bargaining over union training**

One uncertainty, which could be a risk for either employers or employees, is over whether and how the new legislative regime changes the ‘floor’ (or starting point) for bargaining over training rights in enterprise agreements. This is relevant in cases where enterprise agreements already provide for paid union training — especially where the paid leave in the second and subsequent years exceeds the one year provided in the FWC model award clause. This only affects a minority of establishments with enterprise agreements, as the majority probably do not have a paid training leave clause in their EBA.

If the regime raises the ‘floor’ or starting point for bargaining where agreements already provide for paid training leave, this could be to the advantage of employees and the disadvantage of employers; if it lowers the ‘floor’ (the ‘floor’ also becoming the ‘ceiling’), it could be to the disadvantage of employees and the advantage of employers. It is difficult to say *ex ante* what the more likely outcome is, though of course for the majority of EBAs (those that do not presently have a paid union training leave) the ‘floor’ is raised anyway.

### **Uncertainties about union choices in training**

The larger uncertainty concerns the impact on union behaviour. The question is: how will the legislative paid training rights regime affect the quantity, content and delivery of union training? Put briefly, if the greater availability of paid union training leave increases the number of delegates who are trained at the expense of the content and delivery of union training, there may be no improvement in the overall effectiveness of union education and training.

To explain this proposition, we need to recall the second key lesson from the last two decades of research on union training: that there is limited value from formal training of delegates if there is not follow-up to that training. It showed that post-training contact with organisers is strongly related to



continuing commitment and the effectiveness of voice. It also showed that, at least as important as formal training and education, was the informal side, of ‘on the job’ training: organiser mentoring of delegates is crucial for developing voice.

Almost certainly, improved delegates’ training rights will increase the number of delegates available to be trained. If this leads unions to spread their training resources more thinly, over a larger number of delegates, and devote less resources to follow-up and to organiser mentoring of delegates, the effect could be less productive from a union perspective, and ultimately for employee voice. More delegates could be trained, but not necessarily as effectively, and if that happened then there is no certainty that voice would be improved. (This is more likely if the 5 day/1 day step in paid leave leads to unions concentrating their training resources on new delegates, a response that would seem intuitively sensible to many.)

This risk is magnified by the fact that the workplace delegates’ rights regime does not explicitly alter processes for union access to workplaces, and therefore it need not make it any easier for organisers to engage in the follow-up and mentoring that good education and training practice would warrant. While right-of-entry provisions were amended slightly, those changes do not materially affect the issues facing organisers in accessing workplaces for follow-up to training purposes (classed as ‘discussions with employees’). Amongst other things, an organiser seeking access must obtain a right of entry permit, provide at least 24 hours’ notice to the employer, and hold discussions, during breaks, in an agreed location or a meal room. While the delegates’ rights provisions guarantee that delegates are entitled to a room or area to hold discussions that is fit for purpose, it is unclear whether this will be interpreted as encompassing a meeting with paid officials of the union, or just with members and employees. Regardless, meeting the above conditions has a resource cost for unions, and so when the resource cost of providing classroom training goes down, it could be tempting for unions to shift their

attention. The incentives facing unions could lead them to increase classroom training, and ease up on the follow-up and mentoring activities that require union officials to access workplaces. If increasing employee voice is the priority then unions should allocate *more* resources to union education and training (since a new cohort of members with potentially high returns from training is accessible) and consider the most effective way of using scarce resources.

Thus, if employee voice is to be increased over the long run, in the context of the new delegate rights schema, unions must address several questions:

- How can the total benefit from union education and training be increased in the new delegates' rights regime, bearing in mind the need for follow-up to classroom training and the role of informal education in improving employee voice?
- Can the total resources available for delegate education and training be increased?
- Amongst those delegates who previously were unable to access union education because of the absence of paid training leave, which ones have the greatest potential to enhance employee voice through a program of classroom and informal training and post-classroom follow up?

If these matters are systematically addressed, the new union training rights regime could indeed lead to an increase in employee voice at the workplace. If they are not, the benefits for employee voice could be very muted.

## **Conclusion**

Overall, these rights (in combination with the 'adverse action' and related provisions already in the Fair Work Act) will address the active barriers that some employers place in front of delegates attempting to

perform their duties as delegates. However, we cannot be so certain about the effects of the new rights for paid union training leave in medium and larger workplaces. A crucial factor in assessing the impact on new delegate training rights is what the research shows about the impact of education and training itself — with a key emphasis on the relevance of informal training, organiser relationships and follow-up.

On this matter, the incentives unions face are different from those on other aspects of delegates' rights. At its simplest level, the new rights give unions an incentive to train more delegates, but this could feasibly take the form of increased classroom training and reduced informal training and follow-up. If unions respond that way, the positive outcome from increased paid training leave could be minimised. To prevent this from happening, unions need to ensure that there is no loss of focus on the informal aspects of union education, and to focus on the need for follow-up and support for delegates as this new training rights regime is implemented. If unions use the new training rights simply to emphasise getting more 'bums on seats', ahead of taking a holistic approach to education, the benefits would be minimised. In short, the effects of the new rights are ambiguous, depending as they do on how unions respond to them.

### **Declaration of interests**

The author has provided advice on union training and education to various unions and at various conferences over the years, but stands to make no financial gain from the publication of this article.

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