

**AHEIA Submission to the Fair Work Commission**  
**Re: 3 March draft Statement of Principles on Genuine Agreement**

The Australian Higher Education Industrial Association (AHEIA) is the registered employer association for the higher education sector with a membership comprising 32 Australian Universities, whose industrial interests we represent.

AHEIA welcomes the opportunity to make a submission to the Fair Work Commission in relation to its 3 March 2023 draft Statement of Principles. It is our firm belief that the maximum of clarity in respect of the legislation is in the clear interest of employers and employees, to ensure that enterprise agreements that have been negotiated on mutually agreed terms can be approved as efficiently as possible, so as to avoid delay in implementation of pay increases, enhanced employee entitlements, and productivity improvements.

AHEIA is generally supportive of the draft Statement of Principles as meeting the objective of providing clarity and guidance as to how the Commission would consider particular issues in determining whether a proposed Enterprise Agreement has been 'genuinely agreed' for the purposes of amended s188 of the *Fair Work Act 2009* (FW Act).

We set out some minor proposed amendments below in relation to a small number of paragraphs of the draft Statement of Principles, following consultation with our membership.

Paragraph 7

AHEIA suggests a minor revision to proposed Paragraph 7 by essentially transposing the order of (a) and (b) and the insertion of the words "or failing agreement" at the end of revised sub paragraph 7(a). Such a revision would make explicit that a reasonable period to consider a proposed enterprise agreement can be set by agreement with a union representing a significant proportion of employees, or failing an agreement being reached it will be seven days pursuant to re-ordered sub paragraph 7(b):

7. *In paragraph 5, a **reasonable time period** will include:*

- (a) *as is agreed with one or more employee organisation(s) acting as bargaining representative(s) for a significant proportion of the employees to be covered by the agreement, **OR failing agreement**:*
- (b) *at least 7 full calendar days before the day on which voting starts (for example, if the voting is to start on 9 May, employees are to be given the materials on or before 1 May*

Paragraphs 14 and 20

While it is acknowledged that unions are often the sole bargaining representatives, consistent with the Objects of the FW Act with respect to Freedom of Association, the views of potential non-union bargaining representatives should also be taken into account, and we suggest amendments below accordingly.

We also note an inconsistency between the two paragraphs with regard to the function of the Fair Work Commission and suggest this is remedied as set out below.

AHEIA suggests amending paragraphs 14 and 20 as follows:

14. *In determining whether section 180(5) has been complied with, the Fair Work Commission (the FWC) ~~may~~ **will** have regard to any explanation of the proposed agreement given to employees by one or more ~~employee organisation(s) acting as bargaining representative(s)~~ **acting** for a significant proportion of the employees to be covered by the agreement.*

20. *In considering whether an enterprise agreement has been genuinely agreed to by the employees*

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covered by the agreement, significant weight will be given to the views of one or more ~~employee organisation(s) acting as bargaining representative(s)~~ **acting** for a significant proportion of the employees covered by the agreement, where **such bargaining representative's** ~~organisation(s)~~:

- (a) supports the approval of the agreement, and
- (b) does not have concerns that the agreement was not genuinely agreed.