



RESPONSE TO THE DRAFT *FAIR WORK* (*STATEMENT OF PRINCIPLES ON GENUINE* *AGREEMENT*) STATEMENT 2023

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union (“AMWU”) makes the following submissions in relation to the draft “Fair Work (Statement of Principles on Genuine Agreement) Instrument 2023. (“draft Statement”).
2. In the thirty or so years of formal enterprise bargaining, the AMWU has been involved in the negotiation of thousands of enterprise agreements across a diverse array of workplaces, industries and workers. In the past 12 months, for example, the AMWU has successfully negotiated several hundred agreements that cover both public and private employers, ranging from single workplaces to national and state-wide agreements, or covering specific groups of employees within larger workplaces.
3. The AMWU has been provided with a copy of the ACTU’s submission and endorses the changes proposed to the draft Statement. In particular, the AMWU supports a more prescriptive statement than what is proposed by the Commission. Such prescription will provide greater certainty and consistency in approval decisions, as well as ensure that employers understand their obligations when seeking endorsement of the Agreement.
4. The AMWU wishes to highlight several aspects of the draft Statement that may require further amendment to ensure genuine agreement is actually achieved, based on the experience of the AMWU and its members.

Ensuring that workers who are in a minority have the ability to genuinely agree to an enterprise agreement

5. In a significant portion of workplaces where we have enterprise agreements, the AMWU is not the only union participating in bargaining. In some industries the AMWU covers both “production” and “maintenance” workers, but in others the AMWU might only represent the maintenance workers employed at the site. Often these workers are part of a comparatively small team and, in some instances, will follow a different roster pattern to those workers engaged in production. A common difference is that maintenance workers are rostered as shift workers while production workers may be day workers.
6. It then follows that AMWU members may have different needs and priorities in bargaining from many of their colleagues. It is not unknown for agreements to be put to vote when the issues of the majority of workers at the site have been resolved, but not those pertaining to

¹ Example footnote

AMWU workers. At times this can result in a focus of explanations on the terms of the Agreement on the majority and not necessarily detailed information pertaining to changes for the minority of workers.

7. As such, the AMWU supports proposed changes by the ACTU that require that arrangements be made with all employee organisations in order to satisfy the Commission (as per Clause 6), and that all employee organisations bargaining representatives' views must be taken into account in consideration of whether there has been genuine agreement (as per Clause 19).

Employer conduct affecting genuine agreement

8. The AMWU welcomes the Draft Statement's explicit requirement that employers cannot mislead employees in relation to bargaining representatives, including the role of employee organisations in bargaining; and in explaining the terms and conditions of the Agreement. The AMWU has had experiences where employers who are reluctant to engage in bargaining will seek to limit our involvement by asking employees to nominate their bargaining committee of workers, without stating that they do not need to nominate such representatives and can have the union represent them.
9. To this end we also support the proposals by the ACTU for employers to inform employees of the details of employee organisations as part of the notification of bargaining.
10. The AMWU has also learned of methods used by employers either to selectively encourage or prevent employees from voting. In one instance, the AMWU learned of an employer offering some, but not all, employees a gift voucher if they voted. In another instance, an employer failed to provide a link to the electronic survey vote to some employees. While this is thankfully rare, the AMWU suggests an amendment to clause 7, creating a new Clause 7(c) so that it would read:

Employees should be given a reasonable opportunity to vote on a proposed enterprise agreement in a free and informed manner. This should include:

- (a) *a voting process that ensures the vote of each employee is not disclosed to or ascertainable by the employer, ~~and~~*
 - (b) *a method and period of voting that provides all employees eligible to vote with a fair and reasonable opportunity to cast a vote; and*
 - (c) *a voting process that is free from undue or selective influence by the employer.*
11. The AMWU is also concerned about the use of "significant" in Clauses 12 and 13. As noted above, some AMWU members may be in comparatively small teams and perform different types of work than the majority of workers covered under the enterprise agreement. What may be seen as a "significant" term to these workers may not be deemed as "significant" for an employer or the rest of the workers covered by the Agreement.
 12. Similarly, the AMWU does not support the proposed Clause 13 as it currently stands. Firstly, the AMWU does not believe that an employer's obligation to explain an enterprise agreement can be mitigated by having a union explain it to a "significant portion" of those workers who will be covered by the Agreement. All workers must have the content of the

proposed agreement explained to them, including whether other workers covered by the agreement will be better off. The AMWU also supports the ACTU's proposed amendment that a union's explanation of terms to workers does not mitigate an employee's incorrect and/or misleading representations of the terms of the Agreement.

13. The AMWU also believes that any oral explanation of the terms of a proposed agreement must be accompanied by a contemporaneous written record in order to satisfy the Commission that this has occurred. This should particularly be the case if there are no employee organisations who have participated in bargaining. As such we submit that Clause 15 be amended by changing "may" to "must".

Small cohort agreements

14. The AMWU has welcomed the amendment to the *Fair Work Act* 2009 that the Commission must have regard to whether the employees being asked to approve an agreement have sufficient interest in the agreement and are sufficiently representative to approve the agreement. The AMWU supports the ACTU's amendments to strengthen these principles. In particular we support the requirement that the number of employees able to vote is proportionate to the number of employees that would be reasonably foreseeable to be covered by the Agreement.

Conclusion

15. The AMWU does not want agreements to be deemed easy to approve at the expense of workers not being fully aware of their rights during bargaining and particularly when they are being asked to vote on an agreement. The AMWU supports the recognition in the Draft Statement that employers need a level of prescription to ensure that its workforce can genuinely agree (or not agree) to any proposed agreement. That said, the AMWU also supports the amendments proposed by the ACTU to broaden the considerations that the Commission must take into account in determining whether genuine agreement has occurred.

National Research Centre

30 March 2023