



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

15 February 2023

Acting President Hatcher

Fair Work Commission

Level 10 Tower Terrace, 80 William Street

East Sydney, NSW, 2011

*via email:* [Chambers.Hatcher.vp@fwc.gov.au](mailto:Chambers.Hatcher.vp@fwc.gov.au)

Dear Acting President Hatcher,

### **Statement of Principles on Genuine Agreement**

Thank you for the opportunity to comment on the proposed statement of principles on genuine agreement (the statement) by the Fair Work Commission. We consider that the statement should be framed as a guide for employers, rather than act as a definition of genuine agreement.

The statement can play a vital role in ensuring that employers and employees have a clear understanding of their rights and obligations under the *Fair Work Act 2009*. Providing employers with clear and concise guidance on how to reach a genuine agreement with their employees is a positive step in increasing the accessibility and effectiveness of bargaining.

While we understand that the commission is concerned about the low rate of enterprise agreements currently being approved without enforceable undertakings, care should be taken not to increase obligations on employers seeking to demonstrate they have reached genuine agreement with their employees. This is particularly pertinent considering one of the objects of the Fair Work Act is to acknowledge the special circumstances of small and medium-sized businesses.

We further suggest that the statement should be written in plain English with as few legalistic expressions as possible. This will ensure that employers, who may not have a background in industrial law or any prior experience of enterprise bargaining, can understand and apply the principles outlined in the statement. This approach will ensure that the statement is easily understood by all parties and will help to promote a culture of fair dealing, transparency, and cooperation in the workplace.

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman