

IN THE FAIR WORK COMMISSION

Statement of principles on genuine agreement in bargaining

CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION – MANUFACTURING DIVISION SUBMISSION

(30 March 2023)

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Statement of principles on genuine agreement in bargaining

Submission of the Construction, Forestry, Maritime, Mining and Energy Union (Manufacturing Division)

BACKGROUND

1. On 3 March 2023, The President of the Fair Work Commission issued a statement regarding s.188B of the *Fair Work Act 2009* (FW Act), as amended by the *Fair Work Legislation Amendment (Secure Jobs Better Pay) Act 2022* (the Secure Jobs Better Pay Act).¹
2. Section 188B requires the Commission to “make a statement of principles for employers on ensuring that employees have genuinely agreed to an enterprise agreement” (statement of principles).
3. In conjunction with the 3 March 2023 statement, the Commission published a draft Statement of Principles (“Draft Principles”) it developed and invited parties to provide submissions in relation to the draft.
4. The Construction, Forestry, Maritime, Mining and Energy Union (Manufacturing Division) (“CFMMEU-MD”) covers a range of industries, including the Timber, Forestry, Pulp & Paper, Textile, Clothing, and Footwear, Laundry and Dry-Cleaning, Glass & Glazing, and Wood Products Manufacturing Industries.
5. The CFMMEU-MD provides the following submissions in respect of the Draft Principles.

SUBMISSIONS OF THE ACTU

6. We have reviewed draft submissions prepared by the ACTU in relation to the Draft Principles, including a proposed revision to the Draft Principles.
7. The CFMMEU-MD supports the proposed revisions to the Draft Principles.

DRAFT PRINCIPLES

8. The CFMMEU-MD provides the following submissions regarding matters that have a particular impact on the industries we cover.

¹President’s statement, *Approval of enterprise agreements – genuine agreement – Statement of Principles* (3 March 2023).

***Providing employees with a reasonable opportunity to consider a proposed enterprise agreement
(Paragraphs 4-7)***

9. The CFMMEU-MD supports paragraphs 4-7 of the Draft Principles and submits that these paragraphs provide protections that are particularly important for employees in the industries we cover.
10. Paragraph 4 of the Draft Principles provides:

The employer should provide employees with a reasonable opportunity to consider a proposed enterprise agreement before voting on it, so that the employees can vote in an informed manner.
11. Paragraph 5 of the Draft Principles provides:

The employer will be taken to satisfy paragraph 4 if, a reasonable time period before the start of the voting on the proposed agreement, the employer gives employees who are eligible to vote on the agreement: (a) a full copy of the agreement, and (b) a full copy of any other material incorporated by reference in the agreement.
12. The CFMMEU-MD submits that the requirement to provide full copies of all documents is critical in the industries we cover on account of the common low education levels and the significant portion of employees for whom English is not their primary language. It is important for these employees to be able to seek outside assistance in understanding the terms of the enterprise agreement on which they are being asked to vote; without a full copy of the relevant documents, this is not possible.
13. Using publicly available data from the 2021 Census of Population and Housing², the following statistics are pertinent:
 - a. More than 42% of workers in the Textile, Leather, Clothing and Footwear Manufacturing Industry speak a language other than English at home.
 - b. More than 41% of workers in the Laundry and Dry-Cleaning Services Industry speak a language other than English at home.
 - c. More than 20% of workers in the Wood Product Manufacturing Industry speak a language other than English at home.

² Available on the Australian Bureau of Statistics' TableBuilder website, using the "employment, income and education" dataset. <https://tablebuilder.abs.gov.au>.

- d. More than 58% of workers in the Forestry and Logging Industry have not completed Year 12 of School.
 - e. More than 52% of workers in the Wood Product Manufacturing Industry have not completed Year 12 of School.
 - f. More than 58% of workers in the Forestry and Logging Industry have not completed Year 12 of School.
14. Moreover, we note that the Full Bench of the FWC has accepted that “a substantial group of TCF workers have very limited or no spoken English language skills.”³
15. Paragraph 7 of the Draft Principles states:
- In paragraph 5, a reasonable time period will include:*
- (a) 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),*
 - or*
 - (b) such other reasonable time period 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.*
16. The CFMMEU-MD strongly supports the inclusion of the 7-day period in Paragraph 7 of the Draft Principles.
17. The industries in which the CFMMEU-MD has an interest have characteristics which can make it difficult for officials to speak with members and employees on short notice.
18. Many Timber Industry workplaces with CFMMEU-MD members are located in remote rural areas and require significant travel for CFMMEU-MD officials to reach.
19. Many factory workplaces, including in the TCF, Pulp & Paper, and Wood Manufacturing industries, have large employee populations, in some cases over 200 employees, and operate on multiple shifts (Day, Afternoon and Night), requiring multiple days of visits in order for officials to speak with employees. In addition, many workplaces we cover also have irregular shifts and/or a large proportion of part-time workers, which limits the available time to speak with employees during work.
20. Moreover, in many circumstances, CFMMEU-MD officials are only able to enter workplaces

³ [2015] FWCFB 2831 at [118].

after utilising the right of entry provisions in the FW Act. Right of entry under the FW Act contains restrictions on the time and location of entry that can create further delays in meeting with employees.

21. For the foregoing reasons, CFMMEU-MD officials have difficulty in speaking to all employees covered by a proposed enterprise agreement in the 7-day access period prior to the vote taking place that is currently in place under the FW Act.
22. Any reduction in this requirement would severely impact the ability of the CFMMEU-MD to effectively act as a bargaining representative and consult with its members prior to an enterprise agreement being voted on.
23. Therefore, the CFMMEU-MD opposes any reductions to this period and supports paragraph 7 of the Draft Principles

Providing employees with a reasonable opportunity to vote on a proposed agreement in a free and informed manner, including by informing the employees of the time, place and method for the vote (Paragraph 8)

24. The CFMMEU-MD supports the proposed change to the draft principles contained in the ACTU's submissions regarding paragraph 8.
25. The CFMMEU-MD notes that it is commonplace, in various workplaces where it acts as a bargaining representative, for votes on proposed agreements to be held by a show of hands.
26. The CFMMEU-MD submits that, where agreement exists between the employee bargaining representatives and the employer, a show-of-hands vote is appropriate notwithstanding that the vote of each employee is disclosed to the employer.

Explaining to employees the terms of a proposed enterprise agreement and their effect (Paragraph 16)

27. The CFMMEU-MD supports the proposed change to the draft principles contained in the ACTU's submission in relation to paragraph 16, namely that the FWC may take into account "The cultural and linguistic diversity of the employees, and any languages spoken within the workplace."
28. As set forth in paragraphs 13-14 above, the CFMMEU-MD covers employees in a number of industries where English is not the primary language of employees.

29. The CFMMEU-MD therefore submits that it is critical that employers, when explaining terms of a proposed agreement, take into account the languages spoken within the workplace, including by providing translations. Without this protection, many employees may be forced to vote on a proposed agreement the terms of which they do not understand.

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