

	<u>PROPOSED ORIGINAL BILL</u>	<u>AHEIA PROPOSED AMENDMENTS</u>	<u>NEW ACT PROVISIONS</u>	<u>AHEIA CURRENT ASSESSMENT</u>
<b>Single interest multi-employer Agreements Authorisation Stream (SIMEAs)</b>				
<b>Exempted employers from SIMEA stream</b>	<p>Exempted employers include those:</p> <ul style="list-style-type: none"> <li>subject to an in-term single EA*</li> <li>awaiting an application to be covered by a SIMEA</li> <li>already bargaining for a SIMEA or</li> <li>covered by a multi-employer agreement</li> </ul> <p>“in term single EA” means a single employer enterprise agreement that is less than 9 months past its NED.</p>	<p>AHEIA sought to exempt employers whose:</p> <ul style="list-style-type: none"> <li>nominally expired EA pays at least a 10% premium on Modern Award</li> <li>The EA expired less than 12 months ago, and bargaining is underway for a replacement EA.</li> </ul>	<p>Exempt employer now includes those employers whose NED expired less than 9 months ago (“grace period”) and who are bargaining in good faith for a replacement EA.</p> <p><i>(Note earlier amendments to the original Bill proposed a grace period of 6 months).</i></p>	<p>Universities who wish to stay in the single EA stream are advised to start and conclude formal bargaining as soon as possible with a view to having a replacement EA agreed or arbitrated within the 9 months ‘grace period’.</p>
<b>Common interest test</b>	<p>Very broad ‘common interest’ criteria. Concern likely to lead to sector wide agreements.</p> <p><i>“The Fair Work Commission is required to have regard to the geographical location of the enterprises, the regulatory regime applying to the enterprises, the nature of the enterprises, and the terms and conditions of employment in those enterprises.”</i></p>	<p>AHEIA sought to tighten the common interest test to enable better differentiation between employers based on size, number of staff, market share, financial resources / capacity to pay as well as identifiable sub-sector groupings.</p>	<p>New “reasonably comparable” threshold added to common interest test. It will be presumed an employer with 50 or more employees has <i>“operations and business activities ...[that are]... reasonably comparable with those of the other employers ...<u>unless the contrary is proved.</u>”</i></p>	<p>Onus will now be on universities (not unions) to demonstrate why they should not be included in <u>bargaining</u> for a proposed SIMEA or roped into an existing SIMEA.</p> <p>AHEIA’s current view is that universities are likely to held to have common interest.</p> <p>AHEIA is finalising our mitigation strategy on this issue will shortly consult members seeking your feedback.</p>

<p><b>Union veto on offers that may be put to staff directly (proposed multi-employer agreements only)</b></p>	<p>Written agreement required from union(s) before employers may put offers to staff directly.</p> <p>The 'minimum bargaining period' for the purpose of the FWC making an "intractable bargaining declaration" is six months.</p>	<p>AHEIA submitted that employers must be permitted to put a final offer directly to employees as a penultimate step to resolving intractable bargaining disputes (i.e., ahead of any arbitration).</p>	<p>Removed ability of union(s) to "veto" employers putting final offer directly to staff. FWC must approve the putting of an offer to staff where unions are first consulted as to their views, but unreasonably withhold their agreement to do so.</p> <p>(Pre-existing right of employers to put offers to staff in the single enterprise EA stream remains unchanged).</p> <p>The 'minimum bargaining period' for the purpose of the FWC making an "intractable bargaining declaration" before moving to arbitration increased from six to nine months.</p>	<p>This is a significant improvement.</p> <p>Together with the 9-month bar on seeking arbitration (for Unions or Employers), retaining the ability to be able to put offers directly to staff, will assist universities with the development of appropriate bargaining strategies.</p> <p>Universities will be subject to the very real prospect of arbitration to settle outstanding issues.</p>
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**Other provisions of concern**

<p><b>Fixed term employment provisions</b></p>	<p>The restrictions proposed in the Bill, may 'leak through' gaps in existing Sector Modern Awards where an EA has circumstances not explicitly listed in the Award. Re-engagement on fixed term contacts is restricted under the Bill but is impliedly permitted by Awards and EAs with severance in certain circumstances.</p>	<p>AHEIA sought clarification and amendments to the Bill.</p> <p>AHEIA proposed a three-year sunset provision to retain the Sector's EA provisions to enable harmonization of research funding with industrial arrangements.</p>	<p>No substantive changes were made to the Bill -ambiguity remains.</p> <p>However, the commencement of the fixed term contracting provisions has been delayed by upto 12 months, to allow for further consultation between the government and stakeholders.</p>	<p>Over the coming 12 months AHEIA will work with DEWR to seek further clarification regarding the continued use of fixed term contracts exceeding in two years, by way of guidelines.</p> <p>Universities are advised to review their current fixed-term contract arrangements and consider workforce planning implications of the reforms. AHEIA will be calling on members for this data for future advocacy efforts.</p>
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<p><b>BOOT</b></p>	<p>The BOOT to be simplified to a global assessment of whether each employee is better off. FWC may only consider reasonably foreseeable and not hypothetical work patterns.</p> <p>A new 'reconsideration process' of the original BOOT decision in circumstances where there has been a material change in working arrangements/circumstances which were not considered during the original approval process.</p>	<p>AHEIA sought to remove reconsideration provisions and retain s190 of the FW Act 2009 i.e., the existing 'undertakings' capacity.</p>	<p>The original position proposed in the Bill has been largely adopted.</p>	<p>Assessment reserved.</p> <p>Strategy will depend on how the FWC applies these provisions in the initial test cases. We expect significant transaction cost to members should retrospective reconsideration be applied by the FWC.</p>
<p><b>Termination of Enterprise Agreements</b></p>	<p>Now only available where employer is at risk of insolvency / threat to viability of business.</p>	<p>AHEIA sort to retain the current provisions enabling a broader scope for employers to terminate their EA.</p>	<p>No substantive change to bill</p>	<p>This strategy of a university terminating their EA is now effectively unavailable.</p>

