Secure Jobs, Better Pay Review

Submission of the United Workers Union

1 December 2024

UNITED
WORKERS UNION

Contents

Acknowledgement to Country

The United Workers' Union is a national trade union. We acknowledge and respect the continuing spirit, culture and contribution of Traditional Custodians on the lands where we work, and pay respects to Elders – past, present and emerging. We extend our respects to Traditional Custodians of all the places that United Workers' Union members live and work around the country.

About the United Workers' Union

United Workers Union ('**UWU**') is a powerful union with 150,000 workers across the country from more than 45 industries and all walks of life, standing together to make a difference. Our work reaches millions of people every single day of their lives. We feed you, educate you, provide care for you, keep your communities safe and get you the goods you need. Without us, everything stops. We are proud of the work we do– our early childhood educators are shaping the future of the nation one child at a time; supermarket logistics members pack food for your local supermarket and farms workers put food on Australian dinner tables; hospitality members serve you a drink on your night off; aged care members provide quality care for our elderly and cleaning and security members ensure the spaces you work, travel and educate yourself in are safe and clean.

Introduction

The bargaining power of workers significantly weakened over the past decade because Australia's industrial relations system was too rigid, technical, and inaccessible for ordinary workers. Collective bargaining offers the best method to increase workers' wages and living standards. Yet prior to the Secure Jobs, Better Pay amendments, workers often had to fight to even get to the bargaining table, with employers empowered to use majority support determinations as a tool to delay or avoid bargaining altogether. Access to multi-employer bargaining was highly restricted, and the promise of the low-paid bargaining stream had failed to materialise, with only 1 application granted and no agreements made.[1] In government funded sectors and through supply chains, there was no mechanism for workers to bargain with the actual wage-setter at the table.

Alongside this, corporations were increasingly using strategies to evade legal responsibilities to their employees. These strategies included outsourcing, moving permanent workers onto insecure work arrangements, and the rise of minimum hours part-time contracts. Progress on gender equality had stagnated and there was little reduction in the gender pay gap.[2] Women in feminised and undervalued industries such as aged care and early childhood education and care (**ECEC**) had limited pathways available to win equal pay, and those available were costly, complex and time-consuming.

The deceleration of wage growth in Australia ranked in the worst third of OECD countries in the decade up to 2021.[3] This deceleration was strongly correlated with the rapid erosion of collective bargaining coverage over the same period.[4] For UWU members, there was no question that significant change to the Fair Work Act (**FW Act**) was required to remove unnecessary barriers to bargaining, and to improve worker's wages and living conditions.

That is why UWU is strongly supportive of the amendments implemented through the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*. Although the laws have not been in place for very long, the Secure Jobs, Better Pay reforms have transformed the industrial landscape and have improved wages and conditions for UWU members across a range of industries. Rates of collective bargaining have increased; wages have grown, and the gender pay gap is closing.[5] We welcome the opportunity to provide feedback on the experiences of UWU members to the Review.

Our submission will also propose ways in which the FW Act and the federal industrial relations system can be further improved. Our submission will not address every aspect of the amendments.

Recommendations

1. Section 302(4) should be amended to provide that reports of the new expert panels must be taken into account when making an equal remuneration order.
2. Further consideration should be given to legislative amendments which extend the FWC's responsibility for commissioning pay equity research in gender undervaluation matters.
3. Gender pay equity should be added to the areas of knowledge and experience an expert panel should have when constituted for the Annual Wage Review.
4. The Federal Government should fund more education, training and build awareness through unions and employer organisations so employers are implementing the entitlement to FDV leave effectively. There should be specific and dedicated resources easily available, as well as training for assisting diverse employees experiencing FDV, and for resources to be available in different languages and formats.
5. The Federal Government should commission research into the factors and conditions that foster workplace cultures of pay secrecy and transparency (and sexual harassment and flexible work).
6. The FW Act should be amended to ensure all workers be protected under pay secrecy provisions, not only employees.
7. Amend sexual harassment provisions so that the FWC can have regard to the general risk that a person will continue to be sexually harassed by others in a workplace and make orders that will reduce the risk of future harassment occurring.
8. Give the FWC stronger powers with regard to sexual harassment applications not solely seeking stop orders, allowing it to arbitrate where the worker or their union requests this.
9. Give the FWC the ability to make orders that are designed to put the worker back into the financial position they were in prior to the sexual harassment commencing.
10. With respect to sexual harassment applications, include reinstatement as a remedy for former workers.
11. Extend vicarious liability for employers in s 527E of the FW Act to include sexual harassment perpetrated by third parties.
12. Amend the FW costs provision to reflect the federal anti-discrimination equal access costs model for discrimination and harassment matters brought under the FW Act.
13. Reproductive health should be included as a protected attribute under the FW Act.
14. Reduce the extensive list of exemptions to limitations on the use of fixed term contracts in the FW Act, by either amending or deleting select exemptions in s 333F, as discussed within the 'limiting the use of fixed term contracts' within this submission.

15. Flexible work arrangements should be available to all employees with caring responsibilities, not just those who fall within the meaning of the *Carer Recognition Act*. Flexible work arrangements should also be available for employees that seek these arrangements due to their reproductive health.
16. Employers should be required to consult collectively about flexible work processes, and workers should have the right to bring collective flexible work requests and disputes.
17. The flexible work provisions should be amended so that FWC orders do not need to be consistent with the terms of an industrial instrument that indirectly discriminate against workers.
18. Require employers to reasonably accommodate flexible working arrangements unless it causes them unjustifiable hardship.
19. Amend s 191A and 191B of the FW Act to empowers the FWC to amend the text of an agreement where an undertaking has been provided by an employer. This would make agreements easier for workers to read.
20. Section 227A of the FW Act should be broadened to allow for an agreement to be reassessed where a variation to the award (whether to wages or to other provisions) has resulted in employees now likely being worse off overall when compared to the award.
21. Provide clarity that bargaining can be initiated without requiring an MSD where parties seek a new agreement that covers the same, or substantially similar workers as a previous agreement, even if the new agreement would also cover additional workers.
22. The requirement in s 448A of the FW Act for the FWC to convene a mandatory conference following the making of a protected action ballot order should be removed.
23. Subsection 413(5) of the FW Act should be repealed.
24. Section 243A of the FW Act should be amended so that employers with single enterprise agreements are not barred from being included in supported bargaining.
25. The FW Act should be amended to allow any bargaining representatives during multi-employer bargaining to apply for a Voting Request Order. Voting Request Orders should enable the FWC to require an employer to put the agreement out to vote, in circumstances where a set proportion of employers are in agreement that it should be put out to vote, and other reasonable criteria has been met.
26. The process for initiating the renegotiation of multi-employer bargains should be simplified. Further reforms should mandate that bargaining in the multi-employer streams can commence upon a bargaining representative representing workers writing to the employer and requesting that bargaining commence within 5 years from the nominal expiry date of the previous agreement. As a default, the FWC should be

required to grant an authorisation the same as the earlier type, and this should cover all employers covered by the previous agreement, unless there are exceptional circumstances as to why a particular employer should be excluded, or the parties have an alternative consent position.

27. The object of the FW Act be amended so as to not preference any particular level or form of bargaining.
28. Section 249 of the FW Act should be amended to remove the requirement for unions to demonstrate majority employee support where an employer opposes an application for a single-interest employer authorisation.
29. Employers and employees should be permitted to obtain a single interest employer authorisation irrespective of business size, common interest or similarity in business or operations if they genuinely consent to an authorisation being granted.
30. Section 240 should be amended to allow parties in the cooperative workplaces bargaining stream to unilaterally request the assistance of the FWC to deal with a bargaining dispute. The FW Act should also be amended to enable the FWC to make bargaining orders within this stream.
31. The FW Act should be amended to ensure consistency with our international obligations; industrial action should be an available course of action to workers bargaining within the cooperative workplaces stream.
32. Items 4 and 7 in column 2 of the table at s 539(2) of the FW Act be amended to place it beyond doubt that all interested parties can enforce historical contraventions of replaced enterprise agreements and workplace determinations on an equal footing.
33. Section 536AA(3) of the FW Act, which allows employers to escape scrutiny if they have a ‘reasonable excuse’ for advertising jobs at less than the legal minimum rate, should be removed.

The UWU also supports the recommendations of the ACTU of 29 November 2024.

Gender Equality and Job Security

Objects of Fair Work Act

Secure Jobs, Better Pay (**SJBP**) amendments to the FW Act embed the principles of job security and gender equality in the decision-making processes of the Fair Work Commission (**FWC**). The amendments:

- Include the insertion of gender equality and job security in the objects of the FW Act,
- amend the modern awards objective to include secure work and gender equality, and
- amend the minimum wages objective to include gender equality.

As a result, the FWC is required to take these matters into account when performing its functions or exercising its powers under the FW Act, including when varying modern awards and, in the case of gender equality, when reviewing and setting minimum wages.

UWU (and its predecessor unions) advocated for the introduction of equal remuneration as an objective of the FW Act, and as such, we welcomed these reforms. The inclusion of gender equality as an object of the FW Act, and within the modern awards and minimum wages objectives, has already led to meaningful and positive changes.

Prior to the SJBP reforms, the FWC's approach to the Annual Wage Review (**AWR**) was that it had *"limited utility in addressing any systemic gender undervaluation of work",* and that gender undervaluation matters were more appropriately dealt with by way of equal remuneration order (**ERO**) applications or work value applications.[6] In the 2022-23 AWR, the FWC acknowledged that the reforms required the FWC to take a more active approach to addressing gender undervaluation in the AWR:

> ***[40]*** *In previous years, the Commission has approached the Review on the implicit premise that the task of establishing and maintaining a safety net of fair minimum wages involves determining the adjustment that should be made to the NMW [national minimum wage] and modern award minimum wage rates as they exist at the relevant time. However, the requirement to now take into account the elimination of gender-based undervaluation of work in the conduct of the Review itself necessarily requires us to consider whether the existing NMW and modern award minimum wage rates constitute a properly valued and non-gender biased foundation upon which to make any wages adjustment.* [7]

The FWC went on to set out a process to address gendered undervaluation. As a first step, the FWC commissioned a two-stage research project to identify occupations and industries

in which there is gender pay inequity and potential undervaluation of work and qualifications.[8]

The resulting research reports for 'Stage 1' and 'Stage 2' were published in November 2023 and April 2024, respectively. Stage 1 was a National Data Profile of Gender-based Occupational Segregation, which identified occupations and industries in which gender-based occupational segregation is prevalent and the modern awards which cover those occupations and industries.[9] The Stage 2 report set out the history of wage fixation and work value assessments in the awards identified in the Stage 1 Report as setting pay in the large highly feminised occupations.[10]

In June 2024, the FWC commenced on its own initiative proceedings to consider variations to modern award classifications and minimum wage rates on work value grounds to remedy potential gender undervaluation in five priority awards.[11] The five priority awards are the *Children's Services Award 2010*, the *Social, Community, Home Care and Disability Services Industry Award 2010*, the *Health Professionals and Support Services Award 2020*, the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* and the *Pharmacy Industry Award 2020*. UWU has an interest in four of the five priority awards and has been an active party to these proceedings.[12] These proceedings are aimed to conclude prior to the 2024-25 AWR.[13]

The Stage 1 and Stage 2 research reports have played an important role in providing industry information and analysis to inform the FWC's gender undervaluation proceedings. It is likely that without these reports, additional matters would be in contention in the proceedings, extending the time and resources that both the FWC and the parties would have to expend. It is appropriate that such research be commissioned, and paid for, by the FWC itself rather than the parties, who often cannot draw upon the resources and information access that is available to government.

UWU believes the SJBP reforms have rightfully placed an onus on the FWC to address gender equality, and that the FWC has appropriately begun taking steps to meet this obligation. The proactive actions of the FWC – in commissioning pay equity research and initiating expedited proceedings to address gendered undervaluation – are a direct outcome of the SJBP reforms and represent a significant departure from the FWC's previous approach.

While the gendered undervaluation proceedings are still underway, and no outcome is guaranteed, these proceedings have the potential to significantly improve the wages and working lives of women across Australia. Over 200,000 educators are employed in Australia's ECEC sector.[14] In centre-based day care, where most educators are employed, about 96% of

workers are female.[15] If UWU members are successful in obtaining an increase to award wages in the *Children's Services Award* through the gendered undervaluation proceedings, it will transform the lives of educators working across the sector, many of whom struggle to meet living expenses on current wages. It will also enable the sector to better attract and retain workers, which is critical to addressing the early education workforce crisis.

Further consideration of matters relating to gender equality, job security and secure work will take place within the Modern Awards Review 2023-24. Significantly, the FWC has identified that there is a need for *"a fundamental review of the regulation of part-time employment in modern awards."*[16] Part-time employment and how it is structured is a significant issue for UWU members across a range of industries. In many award reliant and feminised sectors such as aged care, ECEC, disability support and hospitality, part-time employment hours and days of work vary week to week, workers are pressured to take on shifts at late notice, and despite many working above their contracted hours, overtime payments are a rarity. At the more extreme end, it is not uncommon for UWU to come across 'zero hour' part-time contracts, or contracts that provide for under 10 hours of work per week – all in circumstances where workers regularly work above such hours. Part-time employment under such arrangements provide employers with maximum flexibility, allowing them to treat part-time employees as de facto casual employees, but without having to pay casual loading.

Case Study

A UWU member works as a disability support worker with a large disability and aged care support provider operating out of WA. The member's employment is covered by the SCHADS Award.

Earlier this year, the member submitted a request for casual conversion, which was accepted by the employer. However, the employer offered the member a part-time employment contract which did not provide guaranteed regular hours of work, but which rather offered a "span of hours" during which the member could be rostered to work.

We lodged a dispute with the FWC in relation to the employer's non-compliance with the part-time hours' provisions of the SCHDS Award.

This case is an example of the strategies that some employers are using to resist or circumvent the casual conversion reforms in the FW Act. The strategy here is to seek to employ workers on part-time arrangements which are still akin to casual arrangements, in that it does not provide the worker with guaranteed hours (and a guaranteed income). It

retains the insecurity of a casual arrangement, while also alleviating the employer of the requirement to pay casual loading.

The new objectives of job security and gender equality will both be relevant considerations in this review. The review will commence in 2025 and will provide a further opportunity for the effectiveness of the SJBP amendments to be assessed.

Equal remuneration

The FW Act now includes equal remuneration principles based on those applying in the Queensland state jurisdiction.[17] In deciding whether there is equal remuneration for work of equal or comparable value, the FWC may take into account whether the work has been undervalued on the basis of gender. Comparisons between occupations and industries are not limited to similar work and importantly, the requirement for applicants to tender evidence of a "male comparator" is removed.[18] There is also no requirement for the FWC to find that there has been gender discrimination to establish that the work has been undervalued or to grant an equal remuneration order. The FWC will now also be able to make an equal remuneration order on its own initiative, as well as on application.

Thus far, the SJBP amendments to the equal remuneration provisions remain untested (bar one individual matter which was dismissed due to the employee having left her position).[19] However, the amendments are a significant improvement on the previous legislation. UWU (and its predecessor unions) invested a significant amount of money and resources testing the previous ERO provisions in pursuit of equal pay for early childhood educators. Unfortunately, the previous ERO provisions were not fit for purpose. Early childhood educators perform highly skilled, complex work in caring for and educating the next generation yet earn little above minimum wages due to the gendered undervaluation of their skill set. It is exactly workers such as early childhood educators who *should* have been able to utilise the ERO provisions to win equal pay. However, we faced numerous technical obstacles to our ERO application, including the requirement for a male comparator, and ultimately the application failed. The SJBP amendments have removed several of these obstacles (such as the need for a male comparator, and the requirement for the FWC to establish that there has been gender discrimination). Given this, we welcomed the SJBP amendments as a positive change in the fight for equal pay.

Under s 302(4) of the FW Act, the FWC must take into account orders and determinations made in annual wage reviews, and the reasons for those orders and determinations. UWU

supports the ACTU recommendation that the FW Act be further amended to ensure that any reports, studies and decisions obtained during the proceedings of expert panels in Pay Equity and the Care and Community Sector should be referred to in s.302(4) of the FW Act as a matter that the FWC must take into account when making an ERO.

Amendments to s 157 of the FW Act, which deals with work value applications, also now require that when considering whether amending an award is justified for work value reasons, consideration of work value reasons must be free of assumptions based on gender and include consideration of whether the work has been historically undervalued due to gender-based assumptions.

These amendments were first considered in the Aged Care Work Value case (an application progressed by the HSU, ANMF and UWU to increase wages in the *Aged Care Award 2010*, the *SCHADS Award 2010* and the *Nurses Award 2010*). The proceedings for the Aged Care Work Value case had already been part-heard when the SJBP amendments came into effect. The amendments were considered in the Stage 3 decision, with the FWC Expert Panel giving extensive consideration to the gendered history of wage setting.[20] Ultimately, the FWC found that the work of aged care sector employees had been historically undervalued because of assumptions based on gender, including a failure to properly value feminised "invisible skills".[21] In the Stage 1 decision, direct care workers in aged care had been granted an interim increase of 15%.[22] The Stage 3 decision resulted in increases of up to 28.5% for personal care workers (inclusive of the interim 15% increase).[23] This was a significant win for UWU members and workers in aged care:

> *"Over the years in aged care, I've noticed small increases, like 50 cents per hour, which didn't really make a difference. The work value increase pay rise has allowed me to live a better life and enjoy the simple things that people often take for granted, like going out to dinner with my family or to the movies. I'm able to do things like that now!"* Lindsay, UWU member, with 17 years' experience as an aged care worker.

> *"The wage increase has made a huge difference for me and my family. We can now enjoy more time together without feeling as stressed and I feel more valued for the important work I do in aged care."* Binod, UWU member, with 7 years' experience as an aged care worker.

UWU is of the view that the amendments to s 157 of the FW Act, alongside other SJBP amendments (such as the inclusion of gender equality in the objectives, and the creation of expert panels), facilitated greater recognition of the gendered undervaluation of aged care

work, and led to better outcomes for the predominately female workforce than may have been achievable under the previous legislation.

The impact of the aged care work value case has been significant. In November 2024, the Workplace and Gender Equality Agency (WGEA) reported that that the total remuneration gender pay gap has dropped by 0.6 percentage points.[24] WGEA's analysis found the most significant contributor to the gender pay gap reduction was an increase in the wages of low paid workers, particularly in residential aged care, where women make up approximately 80% of employees.[25] There is still a long way to go, but it is undeniable that the SJBP reforms have assisted women workers in the fight to achieve gender equality.

While UWU supports the above amendments, we note that proceedings for equal remuneration continue to be costly and resource intensive for parties. In the current FWC proceedings on gendered undervaluation, the ACTU put forward a proposal that there would be merit in using an agreed methodology of assessment of the work value in the proceedings, to avoid the time and cost associated with the parties obtaining competing expert evidence on the assessment of invisible skills, as well as producing an assessment method which can be deployed in subsequent proceedings.[26]

The FWC agreed to consider this proposal if the parties were able to reach a consensus.[27] Unfortunately, consensus was not achieved.[28] Further consideration should be given to legislative amendments which extend the FWC's responsibility for commissioning pay equity research in gender undervaluation matters.

Recommendations

1. Section 302(4) should be amended to provide that reports of the new expert panels must be taken into account when making an equal remuneration order.
2. Further consideration should be given to legislative amendments which extend the FWC's responsibility for commissioning pay equity research in gender undervaluation matters.

Expert panels

The FW Act has been amended to provide for new FWC expert panels:

- A Pay Equity Expert Panel;
- A Care and Community Sector Expert Panel; and
- A Pay Equity in the Care and Community Sector Expert Panel.[29]

The FW Act allows for the appointment of FWC members with expertise in gender pay equity, anti-discrimination and the care and community sector. Where matters involving award variations (including work value) or equal remuneration arise, the President of the FWC must constitute an appropriate panel. A majority of members of the panel must have relevant knowledge or experience.

UWU (and its predecessor unions) advocated for the implementation of pay equity expert panels as a key reform that would assist the FWC to address pay inequity. As such, we welcomed the introduction of new expert panels as part of the SJBP reforms.

On 15 June 2023, President Hatcher constituted an Expert Panel for Pay Equity in the Care and Community Sector within the Aged Care work value proceedings.[30] At that stage, part of the case had already been heard, however the expert panel addressed the remaining matters in Stage 3 of the proceedings. The inclusion of experts with experience in gender equality brought valuable specialist expertise to the consideration of gendered undervaluation in a highly feminised sector. As discussed earlier, unions were able to win significant pay increases for the predominately female dominated aged care workforce, including recognition of "invisible" feminised skills which had long been overlooked in industrial wage setting. While this win was the result of multiple factors, including strong witness evidence from union members and academic experts, it is likely that the constitution of an expert panel assisted the FWC in determining this matter more effectively and efficiently.

In June 2024, President Hatcher constituted an Expert Panel for Pay Equity in the Care and Community sector to address gender undervaluation in five priority awards, as discussed above. It is too early to provide feedback on the function of expert panels in this setting as this matter is still progressing before the FWC, with hearings to commence in December 2024.

In addition, while there is no requirement to include an expert in pay equity on the Annual Wage Review panel, the past two years have included one. As discussed above, there has been a noticeable shift in how gender equity has been considered in the AWR, and this has been a positive development. There would be value in formalising this practice.

Recommendation

3. Gender pay equity should be added to the areas of knowledge and experience an expert panel should have when constituted for the Annual Wage Review.

Paid family and domestic violence leave

UWU, alongside the ACTU and other unions, have long campaigned for paid family and domestic violence leave to be a fundamental workplace condition across Australia. The SJBP

amendments prohibiting the inclusion of information identifying the taking of FDV leave on payslips was a very positive step in supporting persons that are subject to family and domestic violence. The risks are considerable if the perpetrator of family and domestic violence accesses a victim-survivor's pay slips and sees that leave was taken. UWU members have however, reported that there is a significant need for more education of employers around this condition, and in how to support employees to access FDV leave.

The independent review of the FDV Leave Entitlement (FDV Leave Review) produced strong evidence that not only is there majority support for the entitlement amongst employers, but those that are providing the entitlement are more likely to say it is not a burden.[31] However, the FDV Leave Review also highlighted the challenges, as emphasised by UWU members above, that more education is needed for employers to understand their rights and obligations.

Recommendation

4. The Federal Government should fund more education, training and build awareness through unions and employer organisations so employers are implementing the entitlement to FDV leave effectively. There should be specific and dedicated resources easily available, as well as training for assisting diverse employees experiencing FDV, and for resources to be available in different languages and formats.

Prohibiting pay secrecy

Pay secrecy clauses that stop employees talking about or revealing their pay and conditions run fundamentally counter to freedom of association, which in turn stifles the ability of workers to bargain collectively. UWU views the prohibition of pay secrecy clauses as a positive change, as these clauses can significantly contribute to the gender pay gap and to suppressing wages more generally.

However, there are gaps in these pay secrecy reforms. There is the possibility that despite pay secrecy clauses having no effect (unless the employment contract was entered into or varied before 7 December 2022 and contains such a clause), that employers will continue to promote or otherwise allow a workplace culture of pay secrecy, and that there will still be barriers to pay equity in workplaces. There is an opportunity to investigate whether these reforms have encouraged pay transparency and, conversely, what specific factors or conditions may foster a workplace culture where pay secrecy is, if informally, the norm. There would be value in researching the role of an active union presence and workplace delegates in encouraging pay transparency.

Pay secrecy provisions should apply to all workers, including independent contractors – a group of workers currently excluded from the reforms. This would provide consistency with s.342 of the FW Act. It is a barrier to pay transparency when there are employees with these protections working alongside other types of workers in a workplace without, let alone in workplaces where still no worker has these protections.

Recommendations

5. The Federal Government should commission research into the factors and conditions that foster workplace cultures of pay secrecy and transparency (and sexual harassment and flexible work).
6. The FW Act should be amended to ensure all workers be protected under pay secrecy provisions, not only employees.

Prohibiting sexual harassment in connection with work

The SJBP amendment greatly increases protections against workplace sexual harassment in the FW Act and gives workers a new way to deal with sexual harassment complaints, through a new dispute resolution process.

UWU notes that there are still limitations for employees seeking remedies or arbitration. Workers should not be worse off financially for experiencing harassment in their place of work. Further, sexual harassment provisions do not currently have appropriate regard for the general risk that a person will be sexually harassed in the workplace by others, nor can the FWC make widely applicable orders that will reduce the risk of future harassment, where work design or the nature of the workplace may be a factor. A stop order against an individual will not necessarily improve a workplace culture or reduce the risk of future sexual harassment against other workers by other employees or third parties – instead – orders for education or training may be more appropriate, as an example. These are amendments that could offer greater protection for workers against future harassment and is a more proactive approach to reducing the potential harm to workers. Legal action should be an accessible option for workers and so the FW Act costs provisions should be amended to reflect the recently enacted federal anti-discrimination equal access costs model.

Recommendations

7. Amend sexual harassment provisions so that the FWC can have regard to the general risk that a person will continue to be sexually harassed by others in a workplace and make orders that will reduce the risk of future harassment occurring.

8. Give the FWC stronger powers with regard to sexual harassment applications not solely seeking stop orders, allowing it to arbitrate where the worker or their union requests this.
9. Give the FWC the ability to make orders that are designed to put the worker back into the financial position they were in prior to the sexual harassment commencing.
10. With respect to sexual harassment applications, include reinstatement as a remedy for former workers.
11. Extend vicarious liability for employers in s 527E of the FW Act to include sexual harassment perpetrated by third parties.
12. Amend the FW costs provision to reflect the federal anti-discrimination equal access costs model for discrimination and harassment matters brought under the FW Act.

Anti-discrimination and special measures

In addition to existing attributes in the Act, the SJBP amendments now also provide protection against workplace discrimination based on:

- gender identity
- intersex status
- breastfeeding

The above amendments provide better protection from discrimination in the workplace and improve economic and job security for workers, however reproductive health is an oversight that ought to be included, especially given the disproportionate impact on women. Menstruation, menopause and perimenopause can also impact worker participation and therefore the economic security of workers. This is both because of the cultural taboo on these topics and the difficulty in speaking openly about them, but also in practical terms the difficulty in accessing reasonable adjustments at work. An amendment to include reproductive health would go towards breaking down taboos and ensuring workers can receive the support and adjustments they need.

Special measures to achieve equality are now considered matters pertaining to the employment relationship and therefore matters that can be addressed in bargaining and included in an enterprise agreement. The reforms have clarified that 'special measures to achieve equality' are not regarded as discriminatory terms and therefore are not unlawful in an agreement. This is consistent with special measures provisions in other legislation such as the *Racial Discrimination Act 1975* (Cth) (RD Act), the *Sex Discrimination Act 1984* (Cth), the *Disability Discrimination Act 1992* (Cth), and the *Age Discrimination Act 2004* (Cth).

Recommendation

13. Reproductive health should be included as a protected attribute under the FW Act.

Limiting the use of fixed term contracts

Fixed term contracts increase job insecurity for workers who perform the same role over an extended period or are subject to rolling contracts for jobs that would otherwise be permanent.

The SJBP amendments are already benefiting workers by improving their opportunities to gain permanent employment.

Case studies

A UWU member who works as a store person had been on a series of fixed term contracts for 18 months. He was offered a new one and began working under it as he was unaware that this was a breach of the new 2-year limitation on fixed term contracts, rendering the end-date void. The employer eventually realised that he should have been made permanent but tried to cover for their mistake by arguing that the fixed term contract had not been properly signed off. At first, the employer tried to pressure the member to sign onto a new casual contract, but after the UWU intervened, the member was eventually offered a permanent ongoing role.

As another example, UWU's cleaning members employed by a private contractor at Commonwealth Defence sites were employed on a series of back-to-back fixed term contract back to 2014. In November 2023, weeks before the SJBP restrictions on the use of fixed term contracts were to come into effect, the employer sought to have its workforce sign one final extension of their fixed term contracts. UWU advised its members to hold the line until 6 December 2024. As a result, still requiring their labour, the employer had no choice but to offer these employees ongoing employment.

The UWU is also seeing a distinct change in the nature of contracts offered to members, including the cessation of rolling fixed term contracts, and greater permanency.

In some areas of contracting, such as security or cleaning sectors, it was commonplace for employers to issue one- or two-year fixed term contracts. Employers in these industries are now limited to either providing ongoing employment or issuing fixed term contracts that are limited to the length of the contractor's engagement. Thus, the changes have significantly increased job security, albeit they do not completely remove the reliance of fixed term contracts for UWU members precariously employed in traditionally contracting industries.

However, while the SJBP reforms have significant improved job security, there are too many exemptions available. Of particular concern to UWU members are the exemptions for a training arrangement (s.333F(1)(b)) and work that is funded in whole or in part by government funding with no reasonable prospects of renewal (s.333F(1)(f)).

In s.333F(1)(b) the exemption is far too ambiguous by virtue of the words '*in relation to*' a training arrangement. Accordingly, UWU agrees with the amendment proposed by the ACTU that would replace s 333F(1)(b) with:

> *"the employee is employed as an apprentice or trainee under a recognised formal training scheme or arrangement".*

This would clarify that the provision applies to a specific type of recognised formal training rather than applying generally to all manner of training methods and learning environments.

Secondly, with regards to s.333F(1)(f), UWU agrees with the concerns raised by the ACTU in their submission, namely that the words '*funded in whole or in part'* by government funding are too broad and liable to overreach. Rather, that phrase should be replaced with the words '*funded in whole or mostly',* to ensure that the relevant funding deficit is substantial, rather than simply not renewed 'in part'.

In addition, to ensure that funding is genuinely not being renewed and cannot reasonably be found elsewhere or through similar programs, we recommend the insertion of an additional provision s.333F(1)(iv) which states:

> *"and (iv) the funding will not be replaced by funding for similar or like work".*

This would narrow the exemption where a funding stream or program is more flexible and tied to comparable work.

Recommendation

14. Reduce the extensive list of exemptions to limitations on the use of fixed term contracts in the FW Act, by either amending or deleting select exemptions in s 333F, as discussed within the 'limiting the use of fixed term contracts' within this submission.

Right to request flexible working arrangements and extensions of unpaid parental leave

The SJBP reforms strengthen the right to request flexible working arrangements to assist eligible employees to negotiate workplace flexibilities that suit both them and their employer. UWU supports the expansion of circumstances in which an employee may request flexible

work arrangements, such as an employee who is pregnant, or an employee or a member of their immediate family or household who is experiencing family and domestic violence.

Under the SJBP reforms, the FWC is empowered to resolve disputes regarding flexible work. Where the dispute relates to an employer's refusal to grant or respond to a request for flexible work, the FWC is empowered to resolve the dispute first by means other than arbitration, unless there are exceptional circumstances, and then by arbitration. UWU views this as a positive change. The possibility of arbitration acts as an incentive for employers to seriously consider and accommodate employees' requests.

Case Study

A UWU member is employed at a large hospitality venue. The member has multiple disabilities, including ADHD. The member was employed by the employer under a specific program, which is meant to operate as a pathway for people with disabilities to pursue career opportunities at the hospitality venue.

The member received advice from her treating doctor that she should avoid working extended hours and working overnight, as it would aggravate her ADHD symptoms. The member submitted a flexible work arrangement request in which she asked that she not be rostered to work shifts of more than eight hours and overnight. The employer agreed to roster the member only for shifts of eight hours but refused to grant her request not to be rostered onto night shifts. The employer did not provide a clear reason for refusing this part of the member's request.

The member has submitted a flexible work arrangement dispute to the FWC. After conciliation failed to resolve the dispute, the FWC has listed the member's dispute for arbitration.

While the matter is not resolved, it does demonstrate the benefit of the reforms to the flexible work arrangements provisions of the FW Act that provide workers with a pathway to have the FWC arbitrate disputes in relation to flexible work arrangements. Without those reforms, the member would have no recourse in relation to the employer's refusal of her request for flexible work arrangements.

These changes improve both improve access to flexible work and normalise flexible work arrangements. These measures are likely to increase female participation in the workforce and encourage men to take on more caring responsibilities.

However, there are some limitations. The FW Act requires that the FWC must not make orders that would be inconsistent with a provision of the FW Act or a term of a fair work instrument such as an award or enterprise agreement that applies to the parties.[32] Terms in industrial instruments may indirectly discriminate against certain groups of employees. In the case of employees with caring responsibilities, it means they have no recourse if the applicable industrial instrument indirectly discriminates against them – for example in clauses that cover breaks, rostering or span of hours – as the FWC cannot make orders under s.65C (1) (e) and (f). Amending the provisions so that orders need not be consistent with the terms of the enterprise agreement or award would give workers greater access to flexible work arrangements.

There are inherent constraints in individual rights mechanisms, particularly in workplaces where there is a broad need for flexible work alongside complex rostering arrangements. Collective consultation would lead to a consistent approach across a workplace, and workers should have the right to collectively bring flexible work requests and disputes.

The definition of carer under the *Carers Recognition Act 2010* is also too narrow, excluding many workers that do have caring responsibilities. It is also arbitrary to have an employee wait 12 months before requesting a flexible work arrangement – particularly when considering women returning to work after parental leave, or pregnant women. The focus should be on the request itself and if it can be accommodated, rather than on the worker's reasons for the request. Oftentimes it creates a barrier to workers gaining access to flexible work.

The strengthening of the right to request an extension of unpaid parental leave is also welcomed by UWU as a vital contribution to building family friendly and balanced workplaces. By making the right to request unpaid parental leave substantive, with the right to a process, and to a review of decisions via the FWC (or ultimately the courts), the amendments will make this benefit accessible to many more workers. UWU would expect it to make a positive impact on female labour force participation.

Recommendations

15. Flexible work arrangements should be available to all employees with caring responsibilities, not just those who fall within the meaning of the *Carer Recognition Act*. Flexible work arrangements should also be available for employees that seek these arrangements due to their reproductive health.
16. Employers should be required to consult collectively about flexible work processes, and workers should have the right to bring collective flexible work requests and disputes.

17. The flexible work provisions should be amended so that FWC orders do not need to be consistent with the terms of an industrial instrument that indirectly discriminate against workers.
18. Require employers to reasonably accommodate flexible working arrangements unless it causes them unjustifiable hardship.

Agreements

The SJBP amendments presented a broad package of sensible reforms to update Australia's Industrial Relations system and get wages moving. UWU members have been fighting for more than a decade for secure jobs for casual and insecure workers in our coverage areas, and for better quality jobs overall. UWU members played a significant role in securing this legislation, by speaking up on the impacts of low pay, casualised, and insecure work that they face daily – both in their workplaces and in public and political forums.

Below are examples of the benefits to UWU members from specific changes.

Enterprise agreement approval

UWU supported removing some of the more prescriptive pre-approval requirements for enterprise agreements, and providing a single, broad requirement that the FWC be satisfied that an enterprise agreement has been genuinely agreed to by the employees, which is now prescribed in the Statement of Principles on Genuine Agreement. A significant feature of this change includes giving significant weight to the views of registered employee organisations on the issues of approval and genuine agreement, the ability to modify what was previously a very strict requirement of the '7 clear-day' access period by allowing for a shorter reasonable period if agreed with an employee organisation representing a significant proportion of employees, and providing greater clarity on other matters which are relevant to assessing whether employees' agreement is authentic and genuine.

The result has been a significant fall in work and hearings on technical non-compliance of pre-approval steps and is a change that UWU believes has been favourable.

The FWC is taking a greater level of care to ensure that enterprise agreements are made with a cohort of employees who are sufficiently representative of the employees to be covered by the enterprise agreement. UWU successfully appealed the approval of an enterprise agreement made with a cohort of just four managerial employees who had an insufficient interest in the agreement in *United Workers' Union v Hot Wok Food Makers Pty Ltd*.[33]

The SJBP reforms also included the introduction of new sections 191A and 191B of the FW Act, empowering the FWC to amend an enterprise agreement if it has a concern that the agreement does not meet the better off overall test. The UWU supported these changes on the basis that amending the actual written text of an agreement would make it a lot easier for workers to read and would prevent the situation where employees were required to review the FWC decision approving an enterprise agreement and any undertakings, in order to understand how the agreement operates. However, despite this optimism, the changes have been underutilised. The UWU would support further amendment to this provision that empowers the FWC to amend the text of an agreement where an undertaking has been provided by an employer.

Recommendation

19. Amend s 191A and 191B of the FW Act to empowers the FWC to amend the text of an agreement where an undertaking has been provided by an employer. This would make agreements easier for workers to read.

Termination of enterprise agreements after nominal expiry date

UWU members have benefited from the SJBP amendments making it harder for employers to manipulate the enterprise agreement termination processes to their advantages, either for the purposes of keeping outdated often inferior agreements in operation long after their nominal expiry date or terminating good agreements to the detriment of employees as an unfair bargaining tactic.

Prior to the SJBP amendments, if an application was made to terminate an agreement post its nominal expiry date, the FWC needed to consider whether termination was “not contrary to the public interest” and appropriate “taking into account all the circumstances”, including the views of covered employers, employees, and employee associations.

What was considered ‘public interest’ had been interpreted broadly, to also include the interests of the public at large, often giving insufficient consideration to the impact on employees who either faced a diminishment in their terms and conditions or else were being kept on old agreement which left then worse off than the award.

The FWC can now terminate an enterprise agreement that has passed its nominal expiry date, on application, if satisfied that it is appropriate in all the circumstances. This includes a primary consideration of whether the continued operation of the agreement would be unfair to employees covered and importantly also requires the consideration of whether the termination

would adversely affect any bargaining which might be occurring with respect to a replacement agreement.

The SJBP changes have improved agreement terminations in respect of two key issues faced by UWU members:

a) The uncertainty of whether an agreement would be terminated, even if employees were worse off than the award; and

b) The threat and/or actual termination of enterprise agreements during bargaining adversely affecting the bargaining power of employees.

Prior to the SJBP changes, the ability of the FWC to terminate an agreement, even if workers under it were worse off than the award, was much more limited. One example of this prior situation comes from 2020, and the FWC's dismissal of an application for termination of the *Roy Morgan Enterprise Agreement 2014-2017*.[34] This Agreement had reached its nominal expiry date on 11 November 2017. Bargaining for a replacement took until October 2019, when that agreement was approved by a majority of employees and lodged with the FWC. However, the employer got the approval application withdrawn, and no further agreement was received by the FWC.

In 2020 a Roy Morgan employee who was also a bargaining representative made an application to terminate the expired Agreement on the basis that the:

> *… terms and conditions of employment for face-to-face market research interviewers under the Agreement, specifically in relation to rates of pay and classification, telephone allowance, minimum hours and travel time, have fallen under the Market and Social Research Award 2010 (Award) and it is therefore in the public interest for the Agreement to be terminated.*[35]

The FWC accepted the employee's contention that *'she, and other Level 3 face-to-face market research interviewers employed on a casual basis by RM Interviewing will be better off under the Award than under the terms of the Agreement.'*[36]The Commissioner was also satisfied *'that termination of the Agreement is not contrary to the public interest'*.[37]

Nevertheless, the Commissioner declined to terminate the expired Agreement, because not enough evidence was provided that every *other* employee (not just level 3 research interviewers) would be better off under the Award. This reasoning applied even though the FWC was informed that the bulk of employees under the Agreement were in this classification.

Since the SJBP changes, the situation has improved for workers, as the following example demonstrates.

In December 2022 a security officer and UWU member employed under the *Bluestar Security - Enterprise Agreement - 2014* made an application to terminate that agreement, which had nominally expired on 15 July 2018.[38] The Agreement had only been approved after Bluestar gave an undertaking to conduct an audit every eight weeks comparing pay under the Agreement to the pay under the Award, and to make up any shortfall for any employee in the next pay cycle. By 2022, the member and other workers were questioning both the fairness of this arrangement (the reconciliations were not actually being conducted by the employer) and whether there was any serious intention to bargain for a replacement Agreement.

The 2022 application was made under the revised s226 of the FW Act. The Commissioner was satisfied that that the continued operation of the Agreement would be unfair for the employees covered by it, and this and other reasons required that the Agreement be terminated. This decision also made clear that the FWC has a discretion to accept evidence from workers provided on a confidential basis can be accepted, as well as evidence from former as well as current employees. It also made clear that in assessing unfairness of continued operation of employees, an employer cannot simply rely on a previous undertaking to keep the Agreement better than the Award to meet the Better Off Overall Test (BOOT), where the evidence is that it has failed to comply with the undertaking (an issue which might otherwise be considered merely a compliance issue).

Historically, the ability of an employer to terminate an agreement in the middle of a bargaining process had put employees at a massive disadvantage and had been a significant feature of bargaining under the FW Act. The result of this can be seen as early as 2009 in *Coca-Cola Amatil (Aust) Pty Ltd v Liquor, Hospitality and Miscellaneous Union-South Australian Branch and Others*[39], where Coca-Cola terminated an existing enterprise agreement in the middle of bargaining, which included significant redundancy entitlements in circumstances where the future closure of the Thebarton location was known. Workers, who had been bargaining for pay increases and other matters, were suddenly faced with having to try and bargain to reestablish their entitlement to redundancy pay above the National Employment Standards.

Indeed, just prior to the implementation of this change, UWU members had been threatened by a pet food manufacturing company in NSW that they would terminate their existing agreement if the UWU did not capitulate with a number of the company's demands. The resulting SJBP reforms meant that this threat was withdrawn (although the company did file a s 240 dispute and threaten to make an intractable bargaining dispute instead).

Beyond this, even where employer did not actually make an application to terminate an existing agreement, the fact this was indeed an avenue open to an employer allowed employers to use the mere threat of an application to terminate as a tactic in its own right during bargaining. For example, during UWU's bargaining with a large hospitality employer, management regularly made this threat at the bargaining table as a tactic designed to put pressure on employees to accept the employer's offer. Such a tactic is no longer open to employers.

Sunsetting of 'zombie' agreements

The automatic termination of 'agreements' on 6 December 2023 made under 'WorkChoices' (prior to 1 January 2010) resolves a long running scandal in Australian industrial relations. Commonly referred to as 'zombie' agreements, after they have ceased to operate, minimum pay and conditions will typically be set by the relevant modern award, until a new enterprise agreement is negotiated.

In UWU's experience 'sunsetting' has been useful for getting bargaining moving, particularly in industries such as hospitality in which low paying 'zombie' wage rates enable businesses to compete on labour costs rather than service quality. The Dome Café Group is an example of a relatively big hospitality player who used a zombie agreement to avoid conditions such as weekend penalty rates, thus imposing cost pressures on their often-smaller competitors.

Whilst the sunsetting provisions were welcome, there remains a further gap in respect to the continued operation of old enterprise agreements. This includes:

a) Agreements that have passed their nominal expiry date but were made after 1 January 2010 and were subject to the No Disadvantage Test, or that may have been subject to a less rigorous BOOT;

b) Agreements that have been replaced, but are not automatically terminated; and

c) Agreements that passed the BOOT, but with the effluxion of time are now considerably below the Award. This is particularly seen in enterprise agreements where 'loaded rates' of pay or rates that incorporate penalty rates or overtime are used.

In respect of type 3 agreements, the following example demonstrates how an agreement with the passage of time can still become 'zombified' under the existing laws:

Example

December 2014

An enterprise agreement for a hospitality employer approved in Dec 2014 contains a base hourly pay rate for a full-time Level 2 food and beverage attendant of $20.50 per hour. This enterprise agreement allows the employer to roster the employee to work hours that include hours between 7:00pm and midnight Monday to Friday without any penalty rate.

The Hospitality Award in Dec 2014 contains a base hourly rate of pay of $18.02 per hour, plus a penalty rate of $1.96 per hour for any hour or part of an hour worked between 7:00pm and midnight Monday to Friday.

At the time that the BOOT was conducted, a '**enterprise agreement worke**r' ('EA worker') is being **paid $20.50 per hour** and was $0.52 better off per hour for all hours worked between 7:00pm and midnight Monday to Friday, and $2.48 better off per hour for any hours worked outside of those times.

The agreement contained 3% pay increases for 2 years following Dec 2014, taking effect in July 2015 and July 2016, but no further pay increases following this.

July 2016

In July 2016, a **worker on the Award is now receiving $18.91** per hour **plus $2.06** per hour or part of an hour when working between 7:00pm and midnight Monday to Friday ($20.97 per hour total for evening work) while the **EA Worker is now receiving $21.75 per hour**.

July 2018

In July 2018, a worker on the Award is now receiving $20.22 per hour plus $2.20 per hour or part of an hour when working between 7:00pm and midnight Monday to Friday ($22.42 per hour total for evening work). **The EA worker is still receiving $21.75 per hour.** However, the worker is $0.67 per hour worse off for evening work than they would be under the Award.

October 2022

In October 2022, a worker on the Award is now receiving $22.77 per hour plus $2.48 per hour or part of an hour when working between 7:00pm and midnight Monday to Friday ($25.25 per hour total for evening work). The **EA worker now receives $22.77 per hou**r, matching the Award base hourly rate because of the operation of s 206 of the FW Act.

However, the worker is $2.48 per hour worse off for evening work than they would be under the Award.

Thus, the gap between Award conditions and the base rate of pay continues to grow until such time as the enterprise agreement is replaced or terminated.

Better off overall test (BOOT)

The Better Off Overall Test (BOOT) has explicitly become a global assessment to ensure each employee is better off overall from a proposed agreement. It is not generally applied as a line-by-line comparison between the agreement and the relevant modern award. While this is intended to encourage bargaining, there remain issues with the application of the BOOT – such as where agreements pass the test by containing marginally higher wages than the award, but quickly slip behind as minimum award wages increase and absorb these amounts.

UWU welcomed the introduction of new Division 7A of Part 2-4, allowing the FWC to reconsider whether an enterprise agreement passes the BOOT if patterns of work change after an agreement has been approved, but noting that to date, the FWC has not yet used this power. UWU believes that the process should be broadened to allow for an agreement to be reassessed where a variation to the award (whether to wages or to other provisions) has resulted in employees now likely being worse off overall when compared to the award.

Recommendation

20. Section 227A of the FW Act should be broadened to allow for an agreement to be reassessed where a variation to the award (whether to wages or to other provisions) has resulted in employees now likely being worse off overall when compared to the award.

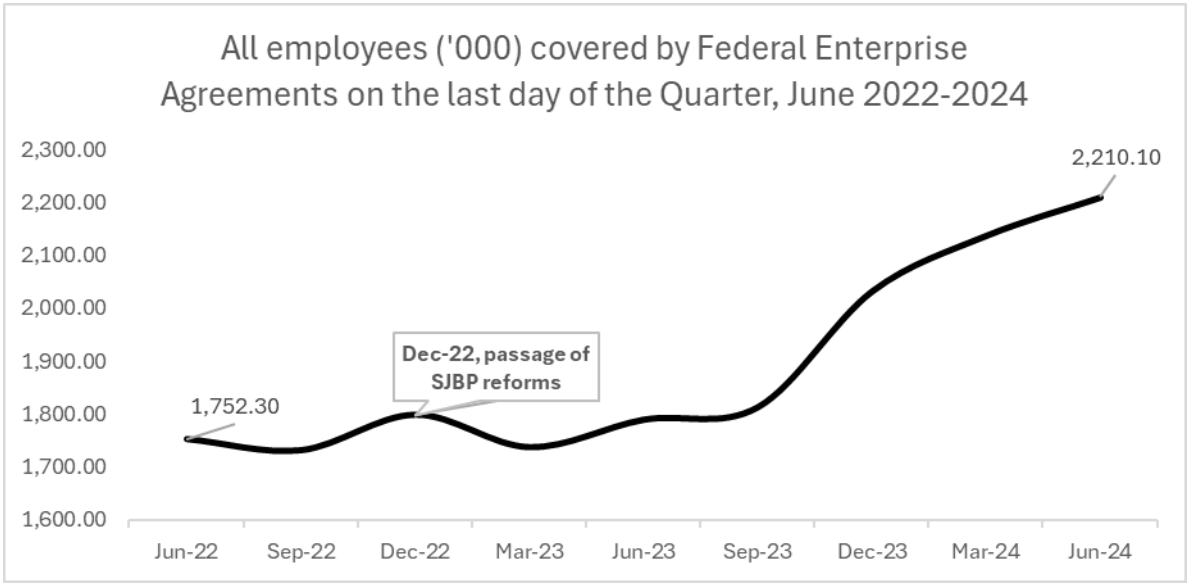
Bargaining

Along with the broader union movement, UWU is committed to achieving a bargaining system that delivers for working people and empowers workers to engage in meaningful negotiations with their employer regarding their terms and conditions of employment. Such a system should give parties the flexibility to reach agreement on terms and conditions appropriate to their circumstances. UWU therefore supports the significant improvements to multi-employer bargaining made by the SJBP amendments to the FW Act. Bargaining should be flexible enough to allow for agreements to be reached with varying scopes, including across industries, regions, enterprises and occupations. It should also be broadened to cover all workers, including those in dependent contracting and the gig economy.

The following sections discuss specific SJBP reforms, but it is worth noting that the reforms overall have noticeably shifted the bargaining environment, to one that is more conducive to negotiations. For example, UWU has noted that aged care providers have been more pro-active about putting forward offers in current bargaining rounds, as compared to past bargains. This experience is supported by the most recent data gathered from the Commonwealth Department of Employment and Workplace Relations Trends in Federal Enterprise Bargaining, which has information on the numbers of employees covered by enterprise agreements in the Fair Work system.[40] In the June 2022 Quarter, prior to the passage of the SJBP amendments, the number of employees on current agreements was 1.75 million. By the end of the June 2024 Quarter, that number had risen to 2.21 million employees. The table and chart below show that this change was not simply a continuation of a pre-existing trend. In the quarter ending after the passage of the amendments (March Quarter 2023) the number of employees covered actually fell by 61,600. However, in the subsequent quarters June 2023 to June 2024, the covered employees increased by 473,300 as the changes have taken effect. This is a welcome increase in bargaining for Australian workers after the mediocre performance of recent years, and a sign that the SJBP amendments are fulfilling their goals.

End of the Nominated Quarter	**Jun-22**	**Sep-22**	**Dec-22**	**Mar-23**	**Jun-23**	**Sep-23**	**Dec-23**	**Mar-24**	**Jun-24**
All employees ('000)	1,752.30	1,731.10	1,798.40	1,736.80	1,788.90	1,812.60	2,032.10	2,137.40	2,210.10
Number change ('000) from previous quarter	*87.1*	*-21.2*	*67.3*	*-61.6*	*52.1*	*23.7*	*219.5*	*105.3*	*72.7*

Table 1. Number of employees covered by enterprise agreements (federal) by quarter, June 2022 – June 2024.



Graph 1. All employees covered by enterprise agreements (federal) by quarter, June 2022- June 2024.

Initiating bargaining

SJBP amendments removed the requirement for unions to obtain a majority support determination (**MSD**) from the FWC to initiate a single enterprise bargaining in certain circumstances (e.g. where employees want to bargain for a new agreement which will cover the same, or substantially the same, group of employees as an earlier agreement, and the existing Agreement reached its nominal expiry date within the last 5 years, a bargaining representative can now simply request that bargaining commence). UWU has received positive feedback from members as they now have more control over when bargaining starts and need fewer resources for applications. These changes also restrict employers from delaying bargaining (thus delaying the ability of employees to take protected industrial action and potential wage increases).

The UWU has experienced a significant fall in the number of MSDs that are required to be filed as a result of the SJBP amendments. Prior to the amendments, the UWU was regularly making MSD applications in respect of workplace where there was an existing enterprise agreement. Now, such actions are only required at sites that do not have an existing enterprise agreement, or it has been longer than 5 years. In practical terms, in the 12 months prior to the SJBP amendments (1 January 2022 to 6 December 2022), the UWU filed and/or prepared 22 MSDs. Since the amendments, the UWU has made only 9 MSD applications in 2023 and 9 MSD applications in 2024. The result of the change has been a significant reduction in the resources required by the UWU to commence the renegotiation of a new agreement.

The other added benefit is that we have reduced the lag in commencing bargaining and the finalisation of new replacement agreement, as employers commence bargaining straight away.

Specific examples of these changes include:

- Airport Security Officers at Avalon Airport recently commenced bargaining for a new agreement, as their current agreement was not far from reaching its nominal expiry date. The employer was initially reluctant to agree to commence negotiations. However, UWU advised the employer that if it did not agree now, UWU intended to exercise its new rights and would request bargaining commence the day the agreement expired. The employer agreed to bargain.

- At PPG Aerospace Tullamarine (who manufacture paints for aerospace industries), no longer needing an MSD meant that bargaining was able to advance much more

quickly, as the employer could see there was little to be gained by them 'holding out' for the entire MSD process.

- At Launceston Airport, UWU members wanted to bargain with their employer, a security contractor. However, the employer was reluctant to bargain. While the union made an application for an MSD around late 2023 to advance the bargain, the SJBP amendments convinced the employer that their insisting on the full MSD process would be no longer be an effective delaying tactic.
- In 2023, UWU was easily able to commence bargaining for a new agreement with a farming company in Queensland, in circumstances where we likely would have had to try and obtain an MSD prior to the reforms.

Removing MSD requirements has facilitated the spread of collective bargaining and acted to increase wage and improve job security. Re-imposing such requirements would make the bargaining process cumbersome and inefficient to the detriment of employees. A further amendment that would improve access to bargaining is to ensure that s 173(2A) of the FW Act also applies in circumstances where the proposed agreement will cover the same, or substantially the same, group of employees as the earlier agreement, even if the new agreement would cover additional workers.

A possibly unexpected consequence of the new s173(2A) of the FW Act is that, by tying the notification time to the request to bargain, the employer can effectively cause a notice of employee representational rights (NERR) to be late by not responding for 14 days.

Case study

At a small logistics site, a UWU organiser made a request to bargain under the new s 173(2A) of the FW Act. The request to bargain started the notification time which meant a notice of employee representational rights (NERR) had to be issued within 14 days.

Unfortunately, despite our request to bargain, the employer ignored the organiser's emails and no NERR was issued, meaning that the NERR was out of time. Eventually UWU had to take the employer to the FWC for breaching good faith bargaining requirements, just to get them to issue the NERR and schedule a first bargaining meeting. It remains to be seen whether the late issuance of the NERR will affect the approval of the agreement.

Recommendation

21. Provide clarity that bargaining can be initiated without requiring an MSD where parties seek a new agreement that covers the same, or substantially similar workers as a previous agreement, even if the new agreement would also cover additional workers.

Intractable Bargaining

Intractable bargaining and the ability of the FWC to arbitrate on the terms of an enterprise agreement was introduced as part of the SJBP amendments. This was a significant alteration to the enterprise bargaining scheme.

The use of intractable bargaining is a course of action that remains, in UWU's view, an option of last resort. It is our preference that UWU members are empowered through bargaining with their employer to determine what the terms and conditions of employment should be. When the initial reforms were introduced, the lack of any safeguard to prevent workers from going backwards in the course of an arbitrated outcome caused UWU significant concern, and this concern was further heightened by the FWC's decision in *United Firefighters' Union of Australia v Fire Rescue Victoria (t/as FRV)*[41]. That said, the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* introduced new s 270A, which requires that a term in an intractable bargaining workplace determination must not be less favourable than a term of the enterprise agreement that deals with the matter, and this has been a positive amendment which provides some level of safeguard to employees.

Industrial action

Australia still has one of the most restrictive systems in the world for *employees* to take industrial action but is relatively lenient when *employers* take it. The modest changes to the bargaining system brought in by SJBP still leave a restrictive system in place which risks limiting its uptake and effectiveness.

<u>Steps to taking protected industrial action – compulsory conferences</u>

One newly added restriction is s 448A of the FW Act which now requires the FWC to conduct compulsory conferences prior to a protected action ballot outcome:

> *If the FWC has made a protected action ballot order in relation to a proposed enterprise agreement, the FWC must make an order directing the bargaining representatives for the agreement to attend a conference…*

The experience of UWU members going through these conferences is not positive. They do not assist the resolving of disputes that have already got to the point of industrial action in the

first place. No protected action ballot conference attended by the UWU has resolved a bargain. The timing of the conferences, occurring just after an application for a protected action ballot order (PABO) has been filed, but before its results are declared, means that there is little incentive on the part of employers to compromise for the agreement.

The PABO conferences are often attended, not just the bargaining representatives around the table, but by lawyers or other agents. This gives rise to a range of legalistic approaches that are not necessary in enterprise bargaining. For UWU delegates and members, they have advised us that they sometimes find this sudden move into the FWC, away from the workplace, to be disempowering. Suddenly you have a situation where delegates who were running a bargain are now listening to others talk about their agreement.

The UWU is of the view that any movement in party positions at these conferences, which has been in almost all cases low or none, are outcomes that would have occurred as a result of filing a protected action ballot application and the threat of industrial action. The ultimate result of this can be seen in how many protected action ballots are often followed by resolution of the bargain, rather than the taking of action, even before the SJBP amendments.

On UWU data from the calendar year of 2023, UWU attended an estimated 120 conciliation conferences, and have attended 88 so far during 2024. This is a not an insignificant number of conferences, all generally ranging between 1 to 3 hours (not including preparation), and additional work to manage for UWU.

There is also the issue that s 448A conferences now take up a significant amount of individual Commissioner's time and resources. Indeed, Justice Hatcher told the Australian Labour Law Association's national conference that the s448A conferences are "now a fairly significant feature of our work, because they're quite time-intensive". An early example from UWU's bargaining is the experience with an employer in Victoria which began in December 2023. At the s 448A conference in February 2024, no real progress was made. The employer made a small adjustment to their pay offer, going from 9% over three years to 9.5% over the same period. This was so far from what union members had asked for (7% for each year of the Agreement) that it could not be considered a serious offer to resolve the bargain. The series of 24-hour stoppages staggered across the next month is what got the parties to an agreement, not the conference.

Another example occurred at an employer in South Australia where the conference was convened in person and more than a dozen different people attended from the employer, unions and delegates. The employer simply explained its position was set by a third party and change was subject to that third party's considerations, so no progress was achieved, and the

Commissioner expressed the view that if they had known the employer's position would be unchanged they would have convened a conference via electronic means to avoid wasting all parties' time, including their own.

Section 448A conferences generally can only resolve surface issues and are a considerable resourcing requirement on all bargaining parties and the FWC. UWU would support the removal of these conferences, with greater reliance placed on s 240 disputes instead.

Approved Ballot Agents

One positive change relating to the SJBP amendments and industrial action is the introduction of a list of FWC approved private ballot agents. This means agents need only satisfy the FWC that they are a fit and proper person to conduct a ballot on one occasion, rather than needing to go through the formal procedure every time they are engaged to conduct a ballot (a procedure which had largely become a formality, except on the odd occasion where an employer objected simply to frustrate and slow down the ballot process). The new process also acknowledges that private ballot agents are increasingly popular as they offer digital ballots, meaning far quicker turn-around times, and far higher participation member rates, than the AEC (the downside being they are considerably more cost than the AEC, which provides a free postal service). However, the fact the AEC offers a ballot service which is increasingly seen as slow and no longer fit for purpose – meaning employee organisations must now expend their limited resources on costly private ballot agents - is an area which could be reformed.

Risk to the availability of industrial action

Unfortunately, the SJBP reforms did not address section 413(5) of the FW Act, which deprives industrial action of its protected character where a bargaining representative has failed to comply with an order. Notably, this applies to "any" order and could result in a bargaining representative being barred from industrial action for a relatively minor or unintentional contravention. UWU believes this section of the FW Act should be repealed.

Recommendations

22. The requirement in s 448A of the FW Act for the FWC to convene a mandatory conference following the making of a protected action ballot order should be removed.
23. Subsection 413(5) of the FW Act should be repealed.

Multi-employer bargaining

Supported bargaining

UWU's ECEC members welcomed the introduction of supported bargaining provisions in the Federal Government's SJBP legislation. Those educators have become the first group of workers to use this new system through the application by UWU, AEU and the IEU for a supported bargaining authorisation – which has replaced the previous unsatisfactory 'low paid bargaining stream'. It has not only allowed for unions and employers from across the ECEC sector to come together around the common interest of getting wages moving, but for the first time, these laws can also require the federal government, as funder, to actively participate in those negotiations. The low pay in the sector is not only a result of the historical undervaluation of care work but also because enterprise bargaining is difficult and largely ineffective in ECEC. Services are primarily government funded, but for decades there has been no ability to bring the Government to the bargaining table to fund any improved wage outcomes. The ECEC sector includes highly fragmented workplaces where single enterprise bargaining does not work. Research has shown that larger enterprises are more likely to have a collectively bargained agreement over an award and ECEC is a highly fragmented sector.[42] In the third quarter of 2024, the Australian Children's Education and Care Quality Authority (ACECQA) reported that there were 17,762 children's education and care services operating, under 7,197 approved providers. 79 per cent of approved providers operate a single service, while only 1 per cent of approved providers operate 25 or more services.[43]

Educators are far more award-reliant than most industries and sectors.[44] Moreover, enterprise bargaining has never been able to remedy the gender pay disparity resulting from gender segregation and the historical undervaluation of care work. As early as 1994, commentators were predicting that enterprise bargaining would not work in ECEC: "Women workers who are employed in the service industries, where 'output' cannot be measured and where there is little scope for technological and organisational change which may increase labour productivity in manufacturing, are unlikely to benefit from enterprise bargaining."[45]

UWU members have long campaigned for sector wide bargaining, with the funder at the table, as the key to addressing low pay rates and poor conditions in ECEC. Our experience with supported bargaining so far indicates that these provisions are a highly effective means of increasing wages and addressing gender inequity. Following the supported bargaining authorisation in September 2023, unions and employers commenced bargaining with the assistance of the FWC. Due to the SJBP reforms, unions and employers in ECEC were able to bargain with the funder, the Federal Government, at the table. The impact of this was significant. In August 2024, the Federal government announced that it would fund a 15%

increase for ECEC workers.[46] The increase will be available to employers to pass on to their workers through workplace instruments including the multi-employer agreement.

On 14 November 2024, the terms of the multi-employer agreement were finalised between the 3 unions and 64 employers – a historic win for a long-undervalued sector, and a move that should provide around 12,000 educators with a substantial 10% wage increase before the end of 2024 (with a further 5% increase due in December 2025). On 26 November the 15 per cent increase became law though the passage of the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024.*[47]

Once a multi-employer agreement is made an employer or a union can apply to vary the agreement to add an employer who is not a party. This is often referred to as "roping in". UWU has already received interest from numerous employers who are interested in joining the multi-employer agreement, as this is an efficient and effective way for employers to get access to the 15% wage increase for their employees. This means that thousands of additional educators are also likely to receive the wage increase prior to the end of the year.

Educators celebrate 15% pay increase won through the supported bargaining stream

"This is a monumental moment. It is history making. This means I can stay in the job I love, and I know that it is going to change a lot of lives, not just my own. Government has delivered the missing piece needed to stop the crisis in our sector.

There are people I work with and at other centres that are just hanging on because they can't get a second job, or they want to have quality of life and having this extra finance come in will be paramount for them. We are proud to finally win the recognition that educators deserve."

Lisa Bonser, Educator for over 20 years in New South Wales

"It's so great to have a female-led industry actually being recognised as having real qualifications and actually being more than just babysitters.

We are educators who help develop children, and the first five years are so crucial for them, so it is actually nice to be recognised for what we are actually trying to do here."

Paige, Educator

"This increase will enable me to live comfortably and not stress financially pay check to pay check."

Gemma, Educator

"This isn't just a huge win for educators like me, this is a huge win for our community and our families that we have here."

Bec, Educator

"It really does mean a lot to me for this to happen ... there's all the girls at work that have young children and they're moving back in with their parents because they can't afford expenses, or they're taking on a second job. … I want to see them be recognised and get the money that they deserve and need, because it's not an easy job."

Christine, Educator

Further reforms to multi-employer bargaining

The SJBP reforms to multi-employer bargaining are a significant improvement on the previous legislation. However, there are additional reforms that would provide greater access to these provisions and address logistical and technical issues.

The FW Act restricts the ability of employers with a current single enterprise agreement to engage in multi-employer bargaining. As UWU was preparing to make the first supported bargaining application for ECEC, we were approached by employers with single enterprise agreements in place, who were nonetheless interested in joining the application. As these employer's agreements had yet to expire, they were barred under the legislation from joining the supported bargaining application.[48] This is an unnecessary restriction. It can have a particularly anomalous impact in circumstances where the employer has indicated that they wish to be covered by the multi-employer bargain in the future as it means that that employer and their employees are excluded from genuinely bargaining on the terms of an agreement that they may be covered by soon. UWU recommends that s243A of the FW Act should be amended so that employers with single enterprise agreements are not barred from being included in supported bargaining.

Even in circumstances where a supported bargain is progressing well, there may be one employer who is unreasonably delaying the process. The SJBP amendments set out a process for how to manage situations where a union may be unreasonably withholding consent to putting the agreement out to a vote. If the permission of all unions cannot be obtained, the employer can apply to FWC for a "Voting Request Order".[49] FWC can make this order – allowing the employer to put the agreement to vote – if it can be shown the union's lack of consent is unreasonable and it is consistent with good faith bargaining requirements for a vote to be held.[50] However, there are no similar provisions for where an employer is

unreasonably withholding consent to put out an agreement for vote. UWU recommends that the FW Act be amended to allow any bargaining representatives to apply for a Voting Request Order, which requires an employer to put the agreement out to vote, in circumstances where a set proportion of employers are in agreement that it should be put out to vote, and other reasonable criteria has been met.

Another matter that requires consideration is renegotiation of multi-employer agreements. There are no provisions under the FW Act that allow for automatic renegotiation. As discussed above, the ECEC multi-employer bargain already includes 64 employers. Many more employers are likely to be "roped in" over the life of the agreement. Having to re-apply for a supported bargaining application, or a single-interest employer bargaining application, could result in lengthy, complex and expensive proceedings before the FWC, simply to re-determine matters relating to "common interest" or whether "low rates of pay prevail" that had already been decided in the first round.

The SJBP reforms have simplified the process for initiating bargaining in single enterprises where bargaining has occurred previously. As discussed above, these measures, alongside others, have reinvigorated bargaining. UWU recommends that the process for initiating the renegotiation of multi-employer bargains is simplified in a comparable manner. Further reforms should mandate that bargaining in the multi-employer streams can commence upon a bargaining representing writing to the employer and requesting that bargaining commence within 5 years from the nominal expiry date of the previous agreement. As a default, the FWC should be required to grant an authorisation the same as the earlier type, and this should cover all employers covered by the previous agreement, unless there are exceptional circumstances as to why a particular employer should be excluded, or the parties have an alternative consent position.

Further, the objects of the FW Act still preference enterprise bargaining[51], even though it is apparent that enterprise bargaining is not the most effective type of bargaining in all industries or circumstances. UWU and other unions have been able to win significant pay rises for educators in the supported bargaining stream that would not be possible at the enterprise level. UWU recommends that the object of the FW Act be amended so as to not preference any particular level or form of bargaining.

Recommendations

24. Section 243A of the FW Act should be amended so that employers with single enterprise agreements are not barred from being included in supported bargaining.

25. The FW Act should be amended to allow any bargaining representatives during multi-employer bargaining to apply for a Voting Request Order. Voting Request Orders should enable the FWC to require an employer to put the agreement out to vote, in circumstances where a set proportion of employers are in agreement that it should be put out to vote, and other reasonable criteria has been met.
26. The process for initiating the renegotiation of multi-employer bargains should be simplified. Further reforms should mandate that bargaining in the multi-employer streams can commence upon a bargaining representative representing workers writing to the employer and requesting that bargaining commence within 5 years from the nominal expiry date of the previous agreement. As a default, the FWC should be required to grant an authorisation the same as the earlier type, and this should cover all employers covered by the previous agreement, unless there are exceptional circumstances as to why a particular employer should be excluded, or the parties have an alternative consent position.
27. The object of the FW Act be amended so as to not preference any particular level or form of bargaining.

Single interest employer bargaining

The SJBP amendments have significantly reformed the Single Interest Employer bargaining stream. Previously Ministerial approval was required for employers to bargain together (except for where the employers were franchisees). This is no longer the case. In addition, the reforms have also expanded the criteria for which employers can bargain together within this stream and is now inclusive of employers who have 'common interests' (which includes considerations of geography, regulatory regime, the nature of the enterprises and the terms and conditions in place). The reforms have removed barriers to bargaining under this stream.

However, limited take up of bargaining under this stream indicates that further reform is necessary. Under s 249 of the current FW Act, where an employer opposes an application, unions are required to demonstrate majority employee support. This provides an opportunity for employers to delay bargaining and requires intensive use of union resources before the bargain has even started. As discussed above, removing the requirement for an MSD requirement (in certain circumstances) has facilitated and encouraged single enterprise bargaining. Removing this similar requirement in the single interest employer bargaining stream should also encourage greater utilisation of this form of bargaining. In addition, where employers seek to bargain under this stream, they should be permitted do, regardless of whether they share similarities in business or operations, have a "common interest" or otherwise.

Recommendations

28. Section 249 of the FW Act should be amended to remove the requirement for unions to demonstrate majority employee support where an employer opposes an application for a single-interest employer authorisation.
29. Employers and employees should be permitted to obtain a single interest employer authorisation irrespective of business size, common interest or similarity in business or operations if they genuinely consent to an authorisation being granted.

Cooperative workplaces

The cooperative bargaining stream is largely a continuation of the previous multi-employer bargaining stream. Protected industrial action is not available under this stream, and conciliation and arbitration of bargaining disputes by the FWC can only occur with the consent of all parties.[52] Given the limited options available to resolve disputes or move the position of the other party through industrial action, this bargaining stream is not often utilised. Where it is utilised, problems can arise where the parties are in agreement on some matters but cannot resolve the remainder.

UWU is of the view that the cooperative bargaining stream of the FW Act should be amended to allow parties greater access to the FWC's assistance in resolving disputes, including via the ability to unilaterally apply for bargaining orders in s 240. Further, amendments should be made to allow the FWC to make bargaining orders in this stream. These amendments would improve the effectiveness of the stream.

In addition, the right to strike is a fundamental tool for achieving workers' rights. The right to strike, and other forms of industrial action, is an intrinsic corollary of the right to freedom of association protected by ILO Convention 87 on Freedom of Association and the Right to Organise, and is enshrined in the International Covenant on Economic, Social and Cultural Rights.[53] The FW Act should be amended to ensure workers have the right to strike within the cooperative workplaces bargaining stream, consistent with our international obligations.

Recommendations

30. Section 240 should be amended to allow parties in the cooperative workplaces bargaining stream to unilaterally request the assistance of the FWC to deal with a bargaining dispute. The FW Act should also be amended to enable the FWC to make bargaining orders within this stream.

31. The FW Act should be amended to ensure consistency with our international obligations; industrial action should be an available course of action to workers bargaining within the cooperative workplaces stream.

Workplace Relations Institutions

Abolition of the Registered Organisations Commission (ROC)

The abolition of the ROC and transference of the regulatory powers and functions of the Commissioner to the General Manager of the FWC is supported by UWU as a positive development. Registered organisations such as UWU continue to have the same reporting and compliance obligations as they did under the *Fair Work (Registered Organisations) Act 2009*. However, the changed regulatory approach means that the FWC and Fair Work Ombudsman (FWO) are more appropriately focused on ensuring and supporting compliance, and more willing to engage and listen to unions. The additional enforcement options, such as enforceable undertakings, has helped the parties to save costs on compliance.

Additional reforms

Small Claims Procedure

Expanding the Federal Circuit Court's jurisdiction for "Small Claims" has greatly enhanced access to justice for victims of wage theft. Prior to the SJSP amendments there was limited scope for workers to access the Small Claims jurisdiction, which too often made recovery of entitlements cost inhibitive. Increasing the cap on the amount that can be recovered from $20,000 to $100,000 means that more workers can access the Small Claims jurisdiction. The Small Claims jurisdiction has the benefit of making recovery of entitlement claims less formal and affordable, by reducing both filing costs and the complexity of court procedures. This has made dispute resolution mechanisms accessible to a greater number of workers. In addition, the SJBP amendment clarified the courts' ability to award filing fees as costs to successful applicants. This has further minimised the potential cost of the proceeding for applicants.

However, UWU recommends, in line with the ACTU's submission, that items 4 and 7 in column 2 of the table at s 539(2) be amended to clarify that parties can enforce historical contraventions of replaced enterprise agreements. This would ensure that the window for justice does not expire with the operation of an agreement. Without this clarification, employee organisations could lose their right to bring proceedings once an enterprise agreement has been terminated or replaced.

Recommendation

32. Items 4 and 7 in column 2 of the table at s 539(2) of the FW Act be amended to place it beyond doubt that all interested parties can enforce historical contraventions of replaced enterprise agreements and workplace determinations on an equal footing.

Right of entry – assisting health and safety representatives (HSRs)

UWU supports this change as a positive for workplace health and safety. Obtaining entry permits can be complex, and HSRs are not usually provided with the appropriate training about the steps required. It should be noted the HSRs are rightly focused on workplace safety and should not *need* to be aware of the right of entry provisions of the FW Act to seek assistance.

Prohibiting employment advertisements with pay rates that would contravene the Act

While it is unlawful to pay someone incorrectly, it was previously *not* unlawful to advertise a job with a pay rate that breached the Act. The amendments:

- prohibit the advertisement of a job with a pay rate that breaches the Act
- require advertisements that include specific piece rates to specify any periodic rate of pay to which the pieceworker is entitled.

These changes are welcome, and it should be noted that it was the trade union movement, specifically the work of Unions NSW, that informed these changes. We note that the current provisions permit employers who advertise jobs at less than the legal minimum rate to escape scrutiny entirely if they have a "reasonable excuse". This exception is far too wide and should be removed.

Recommendation

33. Section 536AA(3) of the FW Act, which allows employers to escape scrutiny if they have a 'reasonable excuse' for advertising jobs at less than the legal minimum rate, should be removed.

Conclusion

UWU members have long campaigned to expand access to both single enterprise and multi-employer bargaining, to embed gender equity as an objective of the FW Act, and to improve job security. The SJBP amendments addressed a significant number of UWU's concerns with FW Act and were welcomed by UWU members.

The SJBP amendments to the FW Act have only been legislated for a relatively short period of time. Yet even in that short time UWU members have experienced significant improvements to wages and conditions. Early childhood educators have secured a historic pay rise through the supported bargaining stream, aged care workers have won a significant pay rise under the amended work value provisions, logistics, farms and manufacturing workers have been able to commence bargaining without having to run lengthy and cumbersome MSDs, and cleaners and security guards are seeing positive outcomes from restrictions on the use of fixed term contracts. Across Australia, rates of collective bargaining have increased; wages have grown, and the gender pay gap is closing.[54] Overall, it is clear that in large part, the SJBP amendments are working as intended. UWU continues to strongly support the SJBP amendments, with opportunities for further reform outlined within this submission.

Yours sincerely

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Please be advised that UWU members, delegates, and staff will be happy to discuss the examples contained in this submission with the Reviewers.

[1] Department of Employment and Workplace Relations, *Bargaining and workplace relations, Supported Bargaining Stream*, p. 2 <https://www.dewr.gov.au/download/14730/supported-bargaining-stream/32041/supported-bargaining-stream/pdf>
[2] ACTU, *Minding the gap: The 20 reforms that are closing the gender pay gap faster* (November 2024) p.7 <https://www.actu.org.au/wp-content/uploads/2024/11/Minding-the-Gap.pdf>
[3] Jim Stanford, Fiona Macdonald and Lily Raynes, The Centre for Future Work, *Collective Bargaining and Wage Growth in Australia*, (November 2022), p. 7 <https://futurework.org.au/wp-content/uploads/sites/2/2022/11/Collective_Bargaining_and_Wage_Growth_in_Australia_FINAL.pdf>
[4] Ibid, p. 14.

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[24] WGEA *Gender Equality Scorecard 2023-24*, p.7 <https://www.wgea.gov.au/sites/default/files/documents/Australia%27s%20Gender%20Equality%20Scorecard%202023-24_V10_0.pdf>
[25] Ibid.
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[28] [2024] FWCFB 334 [5].
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[34] [2020] FWC 3125.
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