

Secure Jobs, Better Pay Review

United Workers Union submission in response to Draft Report

18 February 2025

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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 United Workers Union (**UWU**) appreciates the opportunity to provide feedback on the Secure Jobs Better Pay Review Panel's Draft Report. We welcome the Review Panel's assessment that overall, the reforms contained within the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (SJBPA Act)* are "*operating appropriately and effectively and with minimal unintended consequences*".¹ As we detailed in our initial submission, the SJBPA amendments to the *Fair Work Act 2009 (FWA Act)* have improved the wages and conditions of UWU members. UWU members across areas such as logistics, farms and manufacturing have been able to commence bargaining without lengthy and cumbersome majority support determinations, early childhood educators have been able to win a historic pay rise through the supported bargaining stream and aged care members secured a significant pay increase under the amended work value provisions.

We have read the ACTU's response submission dated 18 February 2025 and we agree with it in its entirety. This submission will outline UWU's responses to select draft recommendations within the Draft Report.

UWU responses to draft recommendations

Chapter 9. Initiating bargaining

UWU has significant concerns about Draft Recommendation 5, which states the Fair Work Commission (**FWC**) should publish guidance to assist employers understand their obligations after receiving a written request to bargain under s 173(2A) of the FWA Act, including a template written request for bargaining representatives to use.

In its consideration of this issue, the Review Panel refers to a decision in a case involving Sephora Australia Pty Ltd and the Shop, Distributive and Allied Employees Association (SDA).² The Review Panel states that "*the relevance of Sephora for present purposes is that it highlights a potential lack of knowledge about the significance of the written request to bargain*".³ We note the ACTU, in its submission, has stated that it views this conclusion as a misreading of the case, and that rather:

*The case illustrates not so much the employer's lack of knowledge of the import of a s.173(2A) notice, as the actions taken by a large, sophisticated employer (presumably with access to legal advice) to avoid bargaining with a union.*⁴

We agree with the ACTU's characterisation of this case. We have significant concerns that requiring unions to use a prescriptive template to initiate bargaining will provide employers

with an opportunity to dispute whether the template has been correctly followed and will ultimately result in technical disputes that will delay bargaining. This is at odds with the stated goal of the SJPB reforms of “boosting bargaining by removing unnecessary complexity”.⁵

If there is genuine confusion amongst employers about notices under s 173(2A) of the FW Act, UWW would support the FWO or FWC preparing resources to assist with this issue.

Chapter 11. Supported bargaining

UWW was one of the applicants in the first successful agreement arising from the supported bargaining stream. In our initial submission, we made four specific recommendations as to how the stream could be improved. For context, the recommendations were:

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.

The Draft Report states that: “The Review Panel does not share the concern of some stakeholders that further amendments are needed to the scope of the stream. While the Review Panel agrees that there have been limited decisions to date, it appears that the FWC is performing the role in the supported bargaining process that was intended”.⁶

We urge the Review Panel to reconsider this position.

UWU's recommendations in relation to supported bargaining, particularly recommendation 25 and 26, are directed at addressing logistical and technical issues that may arise when there are large numbers of employers involved in bargaining.

At the time of our initial submission, the ECEC multi-employer bargain involved 64 employers. As noted in the Draft Report, in January 2025, the FWC approved an additional 33 employers becoming parties to the agreement.⁷ At the time of this submission, there are approximately 120 employers conducting ballots of their employees as to whether they wish to be added to the agreement. Based on discussions with employers in the sector, we anticipate that additional employers will seek to join the agreement too. It is likely that there will be well over 200 employers covered by the agreement soon.

This is clearly a demonstration of the success of, and the need for, supported bargaining in sectors such as ECEC. Further, it also highlights that serious consideration needs to be given to dealing with the technical and logistical issues that may arise when bargaining with a significant number of parties at the table. This review represents a critical opportunity to address these issues, and we urge the Review Panel to adopt our recommendations 24 to 27.

Chapter 14. Bargaining disputes

Intractable bargaining

We note that the Review Panel states that it *“remains unconvinced about whether the ‘not less favourable’ amendments have the intended effect of focusing the minds of parties on reaching a mutually acceptable compromise”*.⁸

UWU believes that the introduction of the requirement under s 270A of the FW Act that terms within intractable bargaining workplace determinations must not be less favourable than a term of the enterprise agreement that deals with the matter, was a beneficial reform.⁹ We note and support the ACTU's comprehensive submissions regarding this.

In addition, UWU has direct experience of the impact of this reform. Prior to the introduction of s 270A, UWU was in bargaining with at least 5 different employers who were warning that they would file intractable bargaining applications. In a number of these cases, the UWU was told in no uncertain terms by the employer that they believed they were more likely to obtain the outcomes they wanted (often a reduction in conditions - such as a reduction in redundancy pay provisions) by applying for an intractable bargaining workplace determination. A notable number of employers expressed this view during bargaining. UWU found this concerning, especially given that the intractable bargaining provisions had only recently come into effect. Early signs indicated that some employers viewed the new intractable bargaining provisions

as a pathway for obtaining outcomes they were unable to negotiate in bargaining. Once s 270A was introduced, the above-mentioned employers changed their approach and continued bargaining with UWU. In fact, the UWU has only been subject to one intractable bargaining application so far, which concerned a confined number of issues and followed a factual scenario that the UWU did not dispute was intractable. In our experience, the introduction of s 270A has resulted in matters being resolved at the bargaining table, rather than ending up before the FWC in intractable bargaining matters. As such, it should be considered a positive change - one that is having the intended effect of encouraging parties to resolve issues and reach agreement at the bargaining table.

Chapter 15. Industrial action

UWU's initial submission recommended removing 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. As such, we support the Review Panel's Draft Recommendation 6 which calls for this section be *"amended to provide the FWC with the discretion not to conduct a conference if there is agreement of relevant bargaining representatives"*.¹⁰

While we are pleased that the Review Panel has listened to our concerns, UWU believes that the draft recommendation needs further amendment. In a bargain with multiple union parties and/or individual bargaining representatives, there may be circumstances in which the FWC may seek to hold a conference with several, but not *all*, bargaining representatives. For example, if the FWC has held a conference because one union has filed a protected action ballot, and then, the week later, another union files a PAB in relation to a separate group of workers, it may not be useful for all parties to attend a further conference.

To address this, we recommend that Draft Recommendation 6 is amended to provide the FWC with broad discretion to decide whether to proceed with a conference, and to determine who should attend the conference.

We note that the Review Panel did not make any recommendation on s 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. UWU continues to have serious concerns about this section. As noted in our initial submission, it applies to "any" order and could result in a bargaining representative being barred from industrial action for a relatively minor or unintentional contravention. We urge the Review Panel to give serious consideration to a recommendation to repeal s 413(5) of the FW Act.

Chapter 25. Equal remuneration

As we observed in our initial submission, while there is a long way to go, it is undeniable that the SJBP reforms have assisted women workers in the fight to achieve gender equality. As a union that represents members in many predominately female industries and occupations, we are supportive of the FWC continuing its program of work *“to advance gender equality, particularly by addressing the low pay in other female dominated sectors (beyond care work)”* as per Draft Recommendation 9.¹¹

UWU’s initial submission recommended that *“further consideration should be given to legislative amendments which extend the FWC’s responsibility for commissioning pay equity research in gender undervaluation matters”*. As such, we support the Review’s Draft Recommendation 10, which calls for the FWC *“through its gender pay equity unit undertaking research and gathering evidence to support future work value proceedings”*.¹² UWU continues to support strengthening this FWC role through legislation and funding. Similarly, we also support Draft Recommendation 12’s call for the government to *“actively monitor bargaining outcomes in sectors that receive significant increases to modern award rates of pay due to gender undervaluation”*.¹³

The Review Panel’s call in Draft Recommendation 11 for the Federal Government to *“take steps to advise the FWC and stakeholders of its position on funding for the outcomes of FWC reviews to address gender undervaluation”* at the earliest opportunity is also welcome.¹⁴ If government were to provide certainty about funding earlier in the review process, the parties would be better placed to direct resources towards resolving any remaining issues in dispute.

We note that the ACTU has further recommendations in relation to the matters addressed in chapters 25. We support those recommendations.

Chapter 26. Expert Panels

UWU’s initial submission also recommended that *“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”*. We are pleased therefore that Draft Recommendation 13 states that the government should *“include gender pay equity as an additional area of expertise when appointing Expert Panel Members”* to the Annual Wage Review.¹⁵

Conclusion

Overall, as we stated in our initial submission to the Review, the SJBP amendments are working as intended and UWU continues to strongly support them. We welcome many of the recommendations within the Draft Report, particularly in relation to equal remuneration and

expert panels. SJPB reforms are already making a significant difference to women workers, with the gender pay gap narrowing, and significant wins already achieved in the highly feminised sectors of ECEC and aged care. Further reforms will assist in making additional progress towards gender equality.

We urge the Review Panel to consider the responses contained within this submission where we have identified concerns with the proposed draft recommendations, particularly in relation to initiating bargaining, intractable bargaining, industrial action and the necessity of further reforms to the supported bargaining stream.

UWU members, delegates, and staff would be happy to discuss these matters with the Reviewers.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'LHarrison', with a stylized flourish at the end.

Larissa Harrison

Director – Strategic Power

United Workers Union

For more information about these submissions, please contact:

Tim Dymond, Senior Research Analyst

tim.dymond@unitedworkers.org.au

¹ Emeritus Professor Mark Bray and Professor Alison Preston, *Secure Jobs, Better Pay Review*, Draft Report, 31 January 2025 (**Draft Report**), pg.13.

² *Shop, Distributive and Allied Employees Association* [2024] FWC 1225.

³ Draft Report, pg. 89.

⁴ ACTU, *Submission in response to the Secure Jobs Better Pay Independent Review Draft Report*, 18 February 2025, Response to Chapter 9 of the Draft Report.

⁵ Parliament of the Commonwealth of Australia, *Revised Explanatory Memorandum to the Fair Work Amendment (Secure Jobs, Better Pay) Bill 2022*, pg. iii.

⁶ Draft Report, pg. 107.

⁷ As above, pg. 104.

⁸ As above, pg. 134.

⁹ Introduced by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

¹⁰ Draft Report, pg. 140.

¹¹ As above, pg. 211.

¹² As above, pg. 211.

¹³ As above, pg. 212.

¹⁴ As above, pg. 212.

¹⁵ As above, pg. 217.