

14 February 2024
Emeritus Professor Mark Bray and Professor Alison Preston
Panel, Review of the Secure Jobs Better Pay Act
Lodged online and via email: SJBPRewiew@dewr.gov.au

AREEA submission on the draft report of the ‘Secure Jobs, Better Pay’ Review

Dear Emeritus Professor Bray and Professor Preston,

Australian Resources and Energy Employer Association (AREEA) is pleased to provide the following submission in response to the draft report and recommendations of the joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (the Secure Jobs, Better Pay Review).

Overview

AREEA is disappointed that the draft report, for all its 409 pages, provides little additional texture by way of conclusions drawn – let alone decisive findings or recommendations. Rather, in our view it reads like a literary review of competing submissions from employer groups and employee representatives (i.e. unions).

Perhaps this is partly explained by the Review Panel’s regular referral to limited or insufficient time and data to assess the amendments. We accept and agree with many of the stated limitations that faced the Review Panel as cited within the draft report.

Nonetheless, the Review falls short of its assignment under the Terms of Reference to:

- consider whether the operation of the amendments are appropriate and effective;
- identify any unintended consequences of the amendments; and
- consider whether further amendments to the Fair Work Act 2009, or any other legislation, are necessary to: improve the operation of the amendments or rectify any unintended consequences that are identified.

The opportunity cost is serious.

Multi-employer bargaining, increased Fair Work Commission involvement in disputes and procedures, new rights and powers for unions and the abolition of longstanding regulators – each enlivened by the SJBPA Act – are already contributing to declines in productivity and workplace harmony, which, together with international competitive pressures and high energy costs, portend poorly for employers and employees.

Red line issues – perfunctory treatment

In a 29 November 2024 submission to the Secure Jobs, Better Pay Review, AREEA highlighted three “red line” issues (summarised below) for urgent attention. The Review Panel’s tepid response is illustrative:

1. Initiating bargaining without a Majority Support Determination

Part 15 of the SJBPA Act (“Initiating Bargaining”) allows unions to force employers to bargain for a replacement enterprise agreement in circumstances where employees have demonstrated no desire for that course of action. AREEA told the Review that allowing unions to force bargaining on workplaces without first obtaining majority support of the employees who would be covered by that agreement offended fairness and freedom of association.

The Review Panel found the amendment had been working effectively to “streamline bargaining and reduce barriers” – while failing to demonstrate how.

2. Bargaining disputes (intractable bargaining declarations)

What was initially promised as a good faith bargaining measure has become an incentive for unions to hold out on claims for nine months in the expectation the new agreement will be arbitrated by the FWC in their favour.

The Review Panel did “not accept” that intractable bargaining was being used as a bargaining tactic. This is at odds with reality as some AREEA members are experiencing absurd logs of claims that employers simply can’t accede to.

3. Single Interest Authorisations (multi-employer bargaining against consent)

AREEA argued strongly against the introduction of non-consent-based multi-employer bargaining into Australia’s IR system. The Government had no justification for allowing multi-employer bargaining to occur in sectors such as resources where a wide range of employment arrangements are in place – including EBAs and “all staff” direct employment – that accommodate the variety of interests of employers and employees working in highly productive and high-paying workplaces.

The Review Panel found no evidence the Government’s changes to the single-interest employer bargaining stream were or would negatively impact productivity, the labour market or employers.

Conclusion

AREEA notes the Review Panel has recommended a more substantive review in two to three years – and this is welcomed. What Australia desperately needs to reignite the economy is a system that encourages employers and employees to work together for their mutual benefit and in the interests of the nation.

For this to happen, the Review Panel must consider and recommend targeted amendments to the SJBPA Act to reduce its burden on business and begin rebuilding trust with the Government.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Reid', is written over a horizontal line.

**TOM REID, Director – Industry & Advocacy
AREEA**