14 February 2025

Chamber of Commerce and Industry WA

Emeritus Professor Mark Bray and Professor Alison Preston
Review Panel
Department of Employment and Workplace Relations
GPO Box 9828
Canberra ACT 2601

Via email: SJBPReview@dewr.gov.au

Dear Professors Bray and Preston

Response to Draft Secure Jobs Better Pay Review Report

CCIWA is the peak business chamber in Western Australia, with more than 7,000 members. Our membership cuts across every region and sector of the economy.

We welcome the opportunity to provide comments on the Secure Jobs Better Pay Review Draft Report ('Draft Report').

In what follows, we first provide some overarching comments in response to the Draft Report and substantive comments in relation to Draft Recommendation 16. Further comments on select draft recommendations are also outlined in **Appendix 1.**

Overarching Comments

Workplace laws have a near-universal impact on the economy and labour market, as they provide a framework for minimum workplace standards.

These laws must strike the right balance and be focused on productivity growth, critical for delivering jobs, growing real wages and strengthening the economy. Poorly designed workplace laws can cause widespread disruption and pose serious compliance challenges for employers.

While a fulsome review of these laws must take place, the timing of this review is a critical issue. As acknowledged in our original submission and throughout this draft report, many of these changes are yet to have full effect, or even be used in practice, which makes it difficult for employers, employees and their representative associations to adequately provide information that would underpin a rigorous review.

For this reason, we strongly support a more fulsome review of the three tranches and the whole framework of industrial relations legislation to be conducted by the Productivity Commission. Given how important the industrial relations framework is to productivity, economic growth and real wages growth, this would ensure that the industrial relations framework is reviewed adequately through the appropriate lens. This is a key anomaly in the recommendations that must be addressed.

Furthermore, we are concerned about commentary that suggests a decoupling of wages and productivity.[1] In a surprising omission, the draft report does not include references to the 2023 Productivity Commission report, which shows that productivity and wages growth continue to broadly track each other.[2] As noted by the Productivity Commission, agriculture and mining are the only exceptions to this due to the impact of global commodity prices. For the remaining 95 per cent of the workforce, real wages and productivity continue to be closely correlated.[3] Given this, we consider it essential that the Review Panel gives greater regard to the connection between productivity and wages growth.

We are also concerned that the Review Panel has not raised the abolition of the Australian Building and Construction Commission (ABCC) as an issue within the report. Two Royal Commissions and an independent report by a retired Judicial Officer have all recommended the need for a specialist regulator to address the significant issues that exist within the building and construction industry.[4] This is another key anomaly in the recommendations that must be addressed.

Recommendation 16 – Fixed Term Contracts

With respect to fixed-term contracts, we welcome the Review Panel's identification of the key issues, particularly that the restrictions imposed are creating significant unintended consequences for both employers and employees.

Of the two options presented in the Draft Report, we oppose Option 2 on the basis that it would not provide employers with sufficient clarity. As indicated in the report findings and our initial submission, a key issue for employers is the inconsistent decision making by Commissioners across a range of IR decisions, notwithstanding the complexity that exists with agreement free and award free employees.

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[1] Mark Bray and Alison Preston, 'Secure Jobs Better Pay Review' (Draft Report, January 2025) 387 - 389

[2] Productivity Commission, 'Productivity growth and wages – a forensic look' (PC Productivity insights, Productivity Commission, September 2023) 5

[3] Ibid, 4-7

[4] See: *Royal Commission into the Building and Construction Industry* (Final Report, February 2003); Hon. Murray Wilcox QC, 'Transition to Fair Work Australia for the building and construction industry' (Report, 3 April 2009); Royal *Commission into Trade Union Governance and Corruption* (Final Report, December 2015)

Under Option 2, principles would need to be developed that guide Commissioners in making consistent decisions. This would add even more complexity to an already complex space, especially when applying to agreement free/award free employees.

With reference to option 1, we do not oppose amending the current framework of Division 5, Part 2-9 of the *Fair Work Act*. However, for option 1 to work as intended, there would need to be some additions in the *Fair Work Act* to address issues around clarity and applicability, specifically:

1) **Structure**

- Allow four-year maximum terms for fixed-term contracts to align with the maximum term of an Enterprise Agreement; and
- Cap the number of renewals of fixed term contracts to four.

It must be recognised that fixed-term contracts are an important instrument, particularly for the use of specialist labour over a longer period, major project construction such as the establishment of a new iron ore or critical mineral mines, or to fill skills gaps for a specific period. Under this proposal, businesses could use fixed-term contracts where and when they are appropriate.

Similarly, by aligning fixed-term contracts with enterprise agreements, this provides employers with some project certainty and aligns with similar agreement timeframes.

These additions would not impact the Government's intent of limiting their use, but instead assist businesses in using them where they are most appropriate.

2) **Exemptions**

There are several circumstances that exemptions should be permitted, including:

a) Government Funded Work

As identified within CCIWA's original submission and reflected within the Draft Report, there is a genuine need for fixed-term contracting in the space of Government funded work.

As is often the case, ongoing grant funding is not guaranteed and may be subject to a competitive tender process. This can result in a situation where a grant recipient may not get awarded a contract, despite having the advantage of incumbency. In these circumstances, the entity may be ineligible to use the exemption and may lead to the entity having to hold funds from the original grant to cover redundancy and other entitlement payouts. This creates the unintended consequence of removing critical funding from key areas of service delivery.

One way to address this issue is by amending s 333F(F)(iii) of the *Fair Work Act 2009* from its current drafting to:

> (iii) There is ***no commitment*** that the funding will be renewed after the end of that period;
>
> (Emphasis Added)

With this addition, we believe this would ensure that such circumstances are limited, while keeping with the Government's intent of limiting the use of fixed-term contracts.

b) Exemption for temporary visas

The use of short-medium term temporary visas to address labour shortages or project-based work is a key feature of many organisations' modern employment practices. Currently, however, there seems to be limited alignment between visa classes and fixed-term contracts. For example, the Skills in Demand Visa (Subclass 482) enables up to four years, with special exemptions to five years, and the Skilled Employer Sponsored Regional Visas (subclass 494) stream permits up to five years.

This creates a situation where someone may be sponsored for a temporary visa (e.g. 3 to 5 years), but due to the current provisions may be unable to work on a fixed-term contract with the single employer even if that is their wish. Given this, it would make sense to tie fixed-term contracts with visa terms.

With these changes noted above, we believe the provisions would then strike the appropriate balance between meeting workforce needs and the Government's intent of limiting their use.

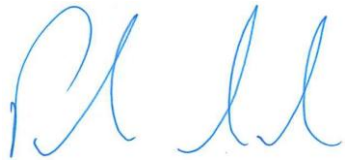
Concluding Remarks

As noted above, it is critically important that the Review Panel consider these provisions and their appropriateness within a proper functioning industrial relations system beyond simply achieving their legislative intent.

Due to the nature of industrial relations law in Australia, these provisions touch upon most employment arrangements within Australia and as such, their potential cost on Australia's economic conditions is highly significant. Without a well-functioning industrial relations system, we can expect to deliver the opposite to what the Government seeks to achieve — weaker wage growth, slower growth and less prosperity for all Australians.

Should you wish to discuss the content of this letter further, please do not hesitate to contact to contact Aaron Morey, Director of Policy via email at aaron.morey@cciwa.com.

Yours sincerely



Dr Peter Cock
Chief Executive Officer

Appendix 1: Comments to select Draft Recommendations

Draft Recommendation	***CCIWA's Comments***
Draft Recommendation 3: The Australian Government consider utilising the NCIF as a model tripartite forum to advise the Australian Government on other industries.	To date, there is limited-to-no evidence that the NCIF model has created any tangible outcomes for employers, employees and the broader industry. Without strong evidence to support the arrangement, we are unable to support this recommendation. A preferred model – and one that is consistent with the Government's continued claims that all workers and industries should be treated the same - is to utilise existing structures in place more efficiently and effectively. This, for example, would include additional meetings of the National Workplace Relations Consultative Council (NWRCC), and Safe Work Australia's members to assist in improving culture of the relevant industry. Subgroups of those fora could deal with specific industry issues, if deemed appropriate, rather than additional bodies being created and subsequently funded and resourced.
Draft Recommendation 4: The Australian Government consult, including with the General Manager of the Fair Work Commission (FWC), to consider whether penalty amounts payable under Infringement Notices are proportionate to the contraventions that are subject to an Infringement Notice under the Fair Work	Governance is important in all organisations; this is no different for registered organisations, which are given a special privilege within the industrial relations system currently. The importance of providing appropriate paperwork, filing, and providing election information to the regulator cannot be overstated. The requirement exists to protect members of the association who the registered organisation purports to represent, and importantly often exist to protect members in a time of severe crisis. Over recent years, significant actions have been undertaken that would indicate the need for such breaches to face substantial penalties, such as the recent allegations involving the Health Services Union in Victoria, and the notable conviction of previous officials such as Craig Thompson, and Kathy Jackson from the same registered organisation. The *Corporations Act* has similar provisions for paperwork breaches and uses continuous disclosure as a deterrent factor. The same is present under *Therapeutic Goods Act* and provision of information to the regulator.[5]

[5] See for example: Marvel Health (Australia) Pty Ltd fined $13,320 for alleged failure to comply with a request for information notice | Therapeutic Goods Administration (TGA)

(Registered Organisations) Act 2009.	The General Manager of Fair Work Commission has numerous avenues available before needing to issue an infringement notice, and as such, this change is unnecessary.
Draft Recommendation 15: The Australian Government should undertake further research and consider whether it is appropriate to extend the protected attributes in the Fair Work Act to cover perimenopause and menopause, as well as other reproductive health issues.	CCIWA is agnostic to the Recommendation to conduct additional research, however, cautions further inclusion of additional protections through either additional legislation or expansion of the protected attributes of the *Fair Work Act*. Currently, employers are required to follow 12 separate discrimination legislations, which all overlap and at times contradict one another in terms of protected attributes. In addition to the significant overlap of anti-discrimination provisions, consideration must also be given to how this applies to working from home arrangements, and flexible work arrangement with the Awards system, which is continuing to play out. Once the research is undertaken and concluded, this might identify that there are more appropriate mechanisms, such as, for example, the need for additional guidance.
Draft Recommendation 17: Consistent with recommendations 9, 10 and 11 of the Department of Employment and Workplace Relations' Review of the Fair Work Act Small Claims Procedure ('Small Claims Procedure Review'): **9.** The Government should undertake further work to consider whether additional funding is required for legal assistance in small claims matters, to enable:	**Small Claims Procedure Review - Recommendation 9** The small claims process through the Court system has been designed to be a low-cost option, often involving self-representing parties. Most small claims jurisdictions were designed to remove complexity and formality from the process to assist parties to come to an expedited outcome at little-to-no cost. This also includes the procedural nature of the process, which differs significantly to procedural rules of normal court proceedings. CCIWA holds the view that to further inject legal practitioners into this jurisdiction would have an undesirable effect on all parties. It would create a jurisdiction akin to normal court processes, resulting in substantial cost escalation for all parties, and delays in dealing with claims – costing employers more and leaving employees waiting longer for a successful claim. We, therefore, suggest that the current arrangement, which involves amending rules of the Court and investigating alternative procedural aspects, such as the new registrar-led process, would deliver better outcomes. **Small Claims Procedure Review - Recommendation 10** With a fivefold expansion of the cap, CCIWA supports additional data collection and review to determine how the

a. the establishment of duty lawyer services b. the provision of targeted community legal education initiatives, and c. legal assistance providers to assist and represent more workers. **10.** Once data on the effects of the increased monetary cap becomes available, the Department of Employment and Workplace Relations should consider whether any Additional changes to the small claims procedure under *Fair Work Act 2009* are necessary.	new cap is working in practice, and especially, if the cap is working against the intended aim of the small claims process. CCIWA notes that despite the name, $100,000 is not a small claim and is substantially misaligned with most Small Claims jurisdictions in Australia. For example: • News South Wales Small Claims Division deals with claims up to $20,000;[6] • Queensland Civil and Administrative Tribunal Minor debt dispute is limited to $25,000 (excluding Interest);[7] • Western Australia's Minor Cases is $10,000 or less; and[8] • *National Consumer Credit Protection Act* 2009 defines small claims at claims valued at $40,000 for many sections of the Act.[9] It is important to note that in 2016, the SA Parliament reduced their small claims jurisdiction from $25,000 back to $12,000. This followed concerns by the then Attorney-General, the Hon John Rau MP SC, who stated: "*a number of respondents who provided feedback to OSCAR acknowledged that the monetary increase had broadened access to the civil justice system, but felt that the number of complex claims where the parties were unrepresented had also increased which was requiring additional time for the Registrar or Magistrate to determine the relevant issues*."[10] **Small Claims Procedure Review - Recommendation 11** There is no evidence to suggest that an additional court structure would assist in finalising matters sooner and at less cost. We, therefore, suggest it would be more efficient and effective to improve the current procedural arrangements rather than creating a standalone industrial relations court. A separate industrial court has not existed in practice since 1996, and the current system, which utilises the Federal Circuit and Family Court of Australia (FCFCoA) and its predecessors, has been broadly successful. For all

[6] *Local Court Act 2007* (NSW) s29 (1)(b) sets out the jurisdictional limit for Small Claims Division of the Local Court.
[7] *Queensland Civil and Administrative Tribunal Act 2009* (QLD) s 3 (definition of 'Prescribed Amount') outlines Queensland's minor debt dispute jurisdictional cost limit.
[8] *Magistrates Court (Civil Proceedings) Act 2004* (WA) s 3(1) (definition of 'minor cases jurisdictional limit') sets the jurisdictional limit of the minor cases division.
[9] *National Consumer Credit Protection Act 2009* (Cth) s 199(2) sets out the numerous sections of the *National Consumer Credit Protection Act* that can be dealt with as a small claim in Courts.
[10] South Australia, *Parliamentary Debates*, House of Assembly, 13 April 2016, 5134-5135 (John Rau, Deputy Premier).

11. Noting differing views about the potentially complementary nature of extending small claims jurisdiction to a tribunal and establishing an industrial court, it is recommended that Government consider these options further and determine which option, if any, to pursue. In progressing the selected policy, stakeholder feedback, including that received as part of the Small Claims Review, should be considered.	general Fair Work Matters, the court continues to track well with filing and finalisation.[11] Finalisation of small claims matters also continues to increase as well.[12] Procedural changes, as noted in the Review of the *Fair Work Act Small Claims Procedure,* have recently come into effect and are yielding some positives outcomes in terms of cost-efficiency and timely service delivery to resolve claims.[13] [14] For these reasons, CCIWA believes a continued focus on improving the current arrangements is most appropriate.

[11] Federal Circuit and Family Court of Australia, *FCFCoA Annual Reports 2023-2024* (Report, 2024) 131-132
[12] ibid
[13] Ibid 132
[14] Department of Employment and Workplace Relations (Cth), *Review of the Fair Work Act Small Claims Procedure*, (Report, February 2024) 10-11.