



ADDITIONAL SDA SUBMISSION

Secure Jobs, Better Pay Review

Date Submitted: 18 February 2025

Submitted by: Gerard Dwyer
National Secretary-Treasurer



About the SDA



The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions, representing over 200,000 members nationwide. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%), under 35 years (57%), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a proud history of advocating for the rights and interests of workers in these sectors, many of whom are young, part-time, or casual employees. We do this through enterprise bargaining, making submissions regarding Awards and the National Employment Standards (NES) to provide a relevant safety net, and through numerous submissions made to parliamentary and government inquiries and other important reviews.

A significant proportion of our membership comprises women and individuals with caregiving responsibilities, making the issue of flexible working arrangements particularly relevant.

The SDA has 10 policy principles that guide our engagement in these reviews. A list of these principles is attached to this submission at Appendix A.



Executive Summary

The SDA welcomes the opportunity to make a submission to the draft report on the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Secure Jobs, Better Pay Act)*.

The SDA strongly supports the Review Panel's overall conclusions that the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (SJBPA Act)* is achieving its intended purposes.¹

In this brief submission to the draft report, we have taken the opportunity to respond to the draft report's content on Chapter 9 (Initiating Bargaining) and Chapter 21 (Sunsetting of "Zombie" Agreements).

¹ Emeritus Professor Mark Bray and Professor Alison Preston, *Secure Jobs, Better Pay Review, Draft Report*, 31 January 2025 (**Draft Report**), page13.

Chapter 9. Initiating Bargaining

The SDA is concerned about Draft Recommendation 5, which proposes that the FWC publish guidance to assist employers in understanding their obligations after receiving a written request to bargain under s.173(2A), including a template request for bargaining representatives. This recommendation is said to arise from a perceived lack of employer knowledge highlighted by the Sephora Australia Pty Ltd case; however, in our view, this interpretation misreads the FWC's findings.

In that matter, the FWC concluded that Sephora had breached its good faith bargaining obligations by excluding the union from bargaining meetings, even though Sephora was fully aware of the union's interest—evidenced by the s.173(2A) notice. Far from being a small employer struggling to comprehend its responsibilities, Sephora is a sophisticated multinational with extensive bargaining experience and access to multinational legal representation. In our view, its failure to engage was intentional, and not because of a lack of knowledge regarding the effect of a s.173(2A) notice.

Accordingly, the SDA submits that Draft Recommendation 5 is unnecessary and would only add unwarranted complexity to the simplified process for initiating bargaining renewals.

Chapter 21. Sunsetting of "Zombie" Agreements

The SDA welcomes the Panel's finding that, in general, the sunsetting provisions for pre-Fair Work Act "zombie" agreements are operating as intended. However, and as raised in our original submission, the Draft Report highlights that there are still a number of agreements made after 1 January 2010 which were approved during the transitional period between pre-modern and modern awards, that may not have been assessed against current pay and conditions and yet continue to operate.

The SDA supports the Panel's observation that a significant number of enterprise agreements remain in operation that, if tested against current modern awards, would likely fail the BOOT. This is due to the indefinite operation of enterprise agreements under the Fair Work Act (FW Act) and the requirement in sections 193(1) and 193(6) that the BOOT be applied on the basis of the modern award as it stood at the time the agreement was approved.

The SDA supports the Panel's recommendation to undertake research to quantify both the incidence and coverage of enterprise agreements nominally expired for more than five years, and to compare their wages and conditions to the applicable modern awards. The SDA requests that this be made a formal, numbered recommendation in the Panel's Final Report. Such research would help identify and locate these agreements, the exact number and names of which are presently not recorded.

However, the SDA believes the Panel's recommendation should also provide that the FW Act be amended to allow a registered organisation with the right to represent employees covered by an Agreement made between 1 January 2010 and 31 December 2014, to apply for the termination of that Agreement. Broadening the category of persons with standing in this manner will help facilitate the termination process.

For further information, please contact:

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National Secretary-Treasurer

Shop, Distributive and Allied Employees' Association (SDA)

Appendix A: Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by an industrial system that has been reformed but had failed them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to utilise the reformed industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system saw inequality grow, and economic and political power has further concentrated in the hands of a few.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But there has been growth in insecure work, digitalisation is now a matter of course, safety concerns have persisted, and automated, digital and generative technologies must be shaped to enhance, not undermine, decent work.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we are guided by ten principles that we believe will create value for our members.

Those principles are:

- 1. Address Inequality & Enshrine Fairness**
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers' Capital & Superannuation**
Workers' capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing decent work and jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**
Institutional support must provide for collective agents (registered organisations) in all industries so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

