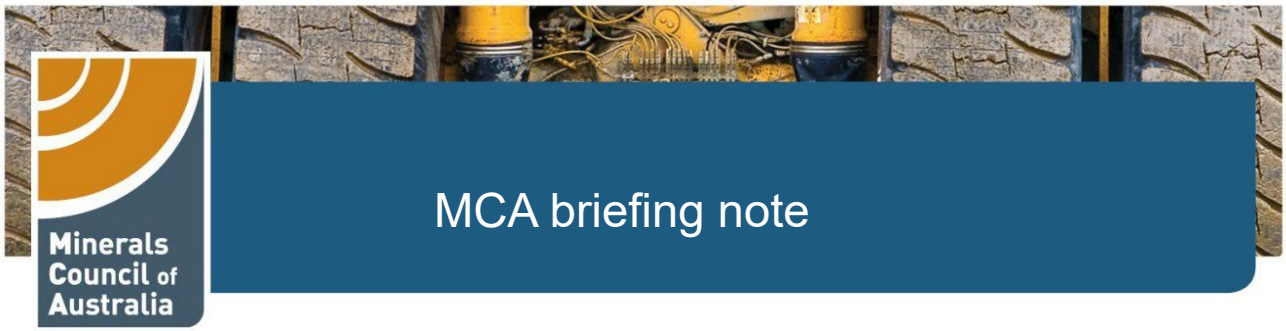

FINAL REPORT OF THE STATUTORY REVIEW OF THE 2022 'SECURE JOBS, BETTER PAY' LEGISLATION

August 2025

Background

On 14 August 2025, the Albanese government released the final report for the statutory review of its 2022 '*Secure Jobs, Better Pay'* legislation.[1] The report contains 21 recommendations.

The review was conducted by two academics, Emeritus Professor Mark Bray and Professor Alison Preston.

The reviewers have produced a disappointing and partisan document that sidesteps the key controversial issues such as multi-employer bargaining but lends support to the government's changes.

Like the interim report, the final report engages in selective analysis; dismisses evidence of employer parties; favours submissions of academic and union parties; and engages in one-sided advocacy for the government's policy position. This is both beyond the terms of reference of the review and inappropriate for a purportedly 'independent' review.

Key concerns with the final report

- The report sidesteps and downplays the enormous changes that have been made by the imposition of multi-employer bargaining
- None of the recommendations in the report will address any of the very serious concerns held by the MCA and other business representatives in relation to the adverse impacts of the legislation on the mining industry
- The report ignores the legitimate concerns around the unjustified expansion of union power, particularly in relation to forced collective bargaining without employee support
- The authors of the report have used the final report as a platform to engage in policy debate based on their own policy preferences and effectively endorese government policy. This brings into question the independence of the report and damages the credibility of the review process.

Multi-employer bargaining – endorsement of government's position

While the report makes no formal recommendation it dismisses employers' concerns about the likely impacts of multi-employer bargaining.

[1] https://www.dewr.gov.au/download/17101/final-report-secure-jobs-better-pay-review/40698/final-report-secure-jobs-better-pay-review/pdf

This issue has been of grave concern to the MCA since the Fair Work Commission's decision in August 2024 to compel three New South Wales coal mines into forced multi-employer bargaining on the basis that they mine the same commodity in the same state.

The final report again sidesteps the major controversial issues in relation to the legislation, including multi-employer bargaining and intractable bargaining.

The report ignores the fact that imposition of multi-employer bargaining in the coal industry was the exact opposite of commitments made by the government in 2022 that this sector would not be impacted. For a report whose terms of reference require the reviewers to consider 'unintended consequences', this is an extraordinary omission.

The most significant flaw in this report is its failure to acknowledge the fundamental shift in Australia's bargaining system that the legislation made by making multi-employer bargaining compellable. The legislation does this by enabling competing employers, for the first time, to be forced to bargain together against their will. The report's analysis of the 'amendments and intent' makes no mention of this fundamental change.

Instead, the report uses the euphemism of 'coordinated bargaining'[2] to express the authors' support for multi-employer bargaining, whether or not it is agreed to by any of the employers.

The only acknowledgement of the coercive element of this 'bargaining' was a passing reference that the NSW coal mines case *'was the first significant contested single-interest employer authorisation application.'*[3]

In response to concerns of the Minerals Council and various other business voices that the reach of multi-employer bargaining was far beyond, and directly contrary to what the government promised (i.e. 'same commodity, same state'), the Review concluded that:

> *'The Review Panel does not share the concern of some stakeholders that further amendments are needed to stem the scope of the stream.'*[4]

The report's analysis of this issue is highly partisan and does not withstand close scrutiny. The reviewers deny there is evidence the change will *'negatively impact productivity, the labour market, or employers'*.[5] In response to such concerns, the reviewers cite an assertion of the former Minister, Tony Burke in the second reading speech as evidence to the contrary.[6]

They also dismiss concerns that the legislation is deliberately designed to expand multi-employer bargaining at the expense of single-enterprise bargaining as being '*highly hypothetical*'.[7]

Without citing economic evidence, the report similarly asserts that:

> *'a national collective bargaining system based purely at the single-enterprise level is likely to be poor for national productivity.'* [8]

This is not 'independent' analysis. It is personal advocacy in favour of the government's multi-employer bargaining policy, and it undermines the independence of the report. It is also beyond the terms of reference – which only required the reviewers to consider the *operation* of the amendments, rather than to evaluate policy decisions.

[2] Page 87; Page 427; Page 428
[3] Page 128
[4] Page 133
[5] Page 133
[6] Page 133, citing Minister Burke, House of Representatives Hansard, 27 October 2022)
[7] Page 133
[8] Page 428

Forced bargaining by unions – endorsement of government's position

The final report makes no recommendations for the expansion of union-forced bargaining, though its commentary leaned towards union positions.

The legislation introduced a new power for unions to compel employers to commence collective bargaining for a new agreement within five years of the expiry of an existing agreement. This can be done unilaterally by a union, without any need to demonstrate any employee support or interest. The MCA has been strongly critical of this new power to force employers into what could be a divisive, litigious and ultimately pointless process.

This is a further issue in which the authors' independence is in question. The authors express their own view that, prior to 2022, *'employers had so much power over the bargaining process, including initiating bargaining.'*[9]

The report rejected widespread employer concerns that it removes the requirement for employee 'majority support', which was intended to provide that bargaining was a democratic process. Instead, the report cites with approval the submission of the ACTU, that the requirement to demonstrate actual worker support *'may impose administrative burden on unions…'*[10]

The question of whether even a single employee supports their use was clearly not of concern. To the extent that it is a concern, it is a concern only to the extent that demonstrating any employee support is an *'administrative burden'* for unions.

The report even asserts that the mere *process* of collective bargaining in and of itself is '*central to productivity growth*', regardless of the actual *outcome*.[11] This is partisan wishful thinking that ignores of the reality of many bargaining processes in which productivity benefits may not be obtained.

The central feature of Australia's system of enterprise bargaining agreements – until 2022 – was the central notion of agreement. It is only when agreement is genuinely reached between parties than mutually beneficial outcomes (for both wages and productivity) can be sustainably achieved. Where bargaining processes are forced or outcomes are imposed without agreement, this no longer constitutes 'bargaining' as such. Any assertion that a litigious *process* of forced bargaining will, of itself, enhance productivity is demonstrably false.

Fortunately, the report rejected ACTU proposals in its submission to the review that the power of unions to unilaterally force bargaining to replace 'expired' agreements also be extended to multi-employer bargaining. The report concluded that:

> *'The ACTU has recommended that s 173(2A)(d) be changed to permit employee representatives to initiate bargaining for a replacement single-enterprise agreement that would cover additional workers. This broadens the scope of the legislation and potentially opens up disputes about whether the agreement was a true replacement agreement or a new agreement. The Review Panel, therefore, has not supported this request.'* [12]

Intractable bargaining – no recommendations 'at this time'

The report includes some acknowledgement of concerns regarding the potential impact of the 2022 amendments to expand access to arbitration in 'intractable' bargaining when combined with 2023 amendments requiring that neither workers nor unions must be worse off in any respect under an arbitrated determination.

In the interim report, the reviewers stated that they were *'unconvinced'* about the intended effect of the 2023 amendments. In the final report their position is more qualified, stating that:

> *'Whether these matters provide sufficient risk to focus the minds of all bargaining parties on reaching mutually acceptable outcomes remains to be seen.'*[13]

[9] Page 97
[10] Page 104
[11] Page 430
[12] Page 104
[13] Page 150

Consistent with the draft report, no recommendation was made in the final report. The MCA maintains its very serious concerns that the 2022 'intractable bargaining' amendments, when combined with the 2023 amendments, have created a very clear loophole that will invariably lead to the system being gamed to trigger arbitration as a 'first resort' option. This loophole is especially concerning when it is applied to multi-employer bargaining.

Union right of entry to 'assist Health and Safety Representatives'

The review was also required to review 2023 amendments to union 'right of entry' rules under the that *Fair Work Act* that removed the requirement for a union official to hold a right of entry permit if they were entering a workplace to purportedly assist a Health and Safety Representative (HSR).

These amendments created a very deliberate 'loophole' in which right of entry can be exercised by a union official without giving the usual notice period and without them meeting the requirements that otherwise apply to permit holders, including that they a 'fit and proper person'. The loophole is so wide that even union officials who have had permits revoked for misconduct, or had a permit denied on the basis they were not 'fit and proper' can nonetheless exercise entry at any time under the guise of a 'request' to 'assist' a HSR.

The final report goes further than the interim report on this subject and included a new recommendation that the government should:

> *'monitor Health and Safety Representative assistants accessing workplaces without right of entry permits and take **immediate action to address any indications of misuse**, particularly in the building and construction industry'.*

These particular amendments were deliberately designed to be abused by unions such as the CFMEU. They were not announced by the government prior to their introduction to the Parliament. They were government amendments that were introduced after the Senate Committee inquiry process had concluded and were 'rammed through' on the final sitting day of 2023 without any debate. They had zero public or Parliamentary scrutiny. In this case, the concerns of the reviewers and others are well-founded.

The MCA welcomes the report's acknowledgment that the amendments create the potential for abuse of right of entry rules. The report also confirms the government does not have adequate visibility over the extent of such abuse. Its recommendation that the government 'monitor' the issue and take 'immediate action' to address misuse have, however, now been overtaken by events.

The report was completed in March 2025 and was written prior to the most recent evidence of abuse by health and safety representatives being publicised. Such evidence includes, but is not limited to, media reports such as one entitled '*Alleged hitman was handpicked for CFMEU health, safety role'*[14], which was published on 14 August 2025. Amongst other things, this report stated that:

> *'A CFMEU delegate accused of involvement in a brazen underworld execution was parachuted into his lucrative union health and safety role four months after he allegedly gunned down a gangland figure in a suburban car park.. (and) … was working as a union health and safety representative until a fortnight ago when armed police arrested him over his alleged role in the shooting of (a) gangland boss…'*

Another media report entitled '*Bashed, harassed and black-banned: CFMEU sides with bikies not women*' and published on 15 March 2025[15], included evidence of another CFMEU health and safety representative bashing a woman on camera in their workplace. Amongst other things, this report stated that:

> *'The union has admitted it let women down in its response to violence as shocking examples of mistreatment have emerged. One was bashed by a bikie-linked health and safety representative on his lunch break from a government-funded project in an attack caught on camera…The video captures the*

[14] https://www.theage.com.au/national/alleged-hitman-was-handpicked-as-cfmeu-health-and-safety-man-on-big-build-20250812-p5mm90.html
[15] https://www.theage.com.au/national/bashed-harassed-and-black-banned-cfmeu-sides-with-bikies-not-women-20250311-p5lipj.html

> *state government site employee kicking the woman as she lies on the ground while he screams at her that he will "cave" her head in and calls her a "f---ing dog".'*

Based on such clear evidence of abuse, the government should now take 'immediate action' to close the loophole it created. The amendments in question should be urgently repealed. The extent to which they have already been abused is sufficient to condemn them as being highly inappropriate.

Fixed term contracts – acknowledgment of clear flaws in the legislation

The final report acknowledges there are legitimate concerns with the limitations the legislation put on fixed term contracts, and the system of exceptions it puts in place. This is consistent with the approach in the interim report that *'the fixed-term contract amendments were an overly complex solution to the perceived problem'*.

The final report concluded that there is *'limited evidence available about the use of fixed term contracts to assess the extent to which their use is appropriate or contrary to the broader job security goals'*.[16] This view is consistent with the widespread concerns that were expressed at the time the legislation was introduced – including by the MCA – that there was no evidence base to justify such a far-reaching legislative change.

The reviewers state that *'The time has come to draw a line in the sand and progress towards a final approach rather than a piecemeal approach to exceptions and regulations'.*[17]

The final report includes a new recommendation (Recommendation 17) stating *'stakeholders should seek variations to modern awards to tailor the limitation on the use of fixed term contracts to their industry or occupation'*. Another recommendation (Recommendation 18) has been updated to propose a '*short final period of consultation'* to identify targeted improvements to the limitation on fixed term contracts to address issues which cannot currently be resolved through awards.[18]

Whilst the report's findings are a welcome acknowledgement of the deeply problematic nature of the government's approach, the recommendations risk becoming further piecemeal 'solutions' that may be insufficient to address the very real problems this legislation has created.

Moreover, in terms of the impact of the changes, the final report again notes that they have not seen a reduction in the used of fixed term contracts:

> *'…contrary to the intentions of the Secure Jobs, Better Pay Act, the number of employees on fixed-term contracts has reached its highest level in a decade.'*[19]

The report also cites objective data showing there has been *'no difference in transition outcomes from fixed-term contracts after the passage of the Secure Jobs, Better Pay Act'* and that *'no difference in the earnings of employees on fixed-term contracts vis-à-vis permanent contracts'.* [20]

Given such evidence, a full repeal of these provisions is justified.

[16] Page 267
[17] Page 268
[18] Page 19
[19] Page 266
[20] Page 261