



## President's statement

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### The Fair Work Commission's work and performance in 2023–24

Justice Hatcher, President

Sydney, 14 August 2024

#### Introduction

[1] This statement provides information on the operations and performance of the Fair Work Commission for the 2023–24 reporting period. Over this period, we have maintained strong performance against our performance benchmarks while implementing legislative reforms that significantly expand the Commission's functions and services.

[2] Over the 2023–24 financial year, the Commission implemented changes arising from the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Secure Jobs, Better Pay Act), *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (Closing Loopholes Act) and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) (Closing Loopholes No 2 Act). The Commission is currently preparing for functions which commence from 26 August 2024.

#### Operational performance

[3] The Commission received 40,188 applications for the 2023–24 financial year. This was the highest annual figure since the commencement of the *Fair Work Act 2009* (Cth) (FW Act), and 27.5% higher than the number of applications received in 2022–23 (31,523). 92% of all applications were substantively processed within three days of lodgment. In the reporting year, 39,196 matters were finalised, representing a clearance rate of 97.5%.<sup>1</sup> Of these:

- 82% of all matters were finalised within eight weeks of lodgment; and
- 96% of all matters were finalised within 16 weeks of lodgment.

[4] Commission Members and staff supported the settlement without arbitration of around 14,290 disputes (including those about an award, an enterprise agreement or a dismissal). During the year, the Commission continued to provide services that met our users' expectations, with 88% of surveyed users reporting satisfaction with their experience.<sup>2</sup>

[5] The Commission's staff conciliators conducted over 10,300 unfair dismissal conciliations. 76% of these were conducted within 35 days of lodgment, exceeding our target of 50%.

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<sup>1</sup> Data is correct as at 10 July 2024.

<sup>2</sup> Satisfaction rating is based on ease of access, timeliness, even-handedness, and overall satisfaction in unfair dismissal and general protections post-conciliation surveys and our Workplace Advice Service.

[6] Decisions by Members were issued promptly following the final hearing or submission date, with 71% of decisions issued within five weeks and 91% issued within 12 weeks.

[7] Throughout this reporting period, appeals upheld represented 0.27% of published decisions — reaffirming the high quality of our Members’ decision-making. The Commission also dealt with the appeal process efficiently, with almost all appeals being heard within 12 weeks after lodgment.

[8] The Commission must meet statutory timeframes in dealing with particular applications. I can report that:

- the Commission started to deal with 99.9% of applications for orders to stop workplace bullying or sexual harassment in 14 days or less, with 78% of these applications actioned within one day;
- almost all applications to stop unprotected industrial action under s 418 of the FW Act were dealt with in two days or less;
- all applications to suspend or terminate protected industrial action under s 424 of the FW Act were dealt with in five days or less; and
- 92% of applications for protected action ballot orders were, as far as practicable, dealt with in two working days or less.

[9] The timeliness of determining enterprise agreement approval applications has exceeded our benchmarks once again. 4,567 applications were approved in 2023–24, with 50% of these approved within 16 calendar days of lodgment, and 90% approved within 37 calendar days of lodgment.

[10] I am also pleased to report that in 2023–24, the Commission met or exceeded all Portfolio Budget Statement key performance indicators (KPIs), including:

- timely finalisation of all cases and publication of decisions;
- timely approval of enterprise agreements without undertakings or amendments;
- publication of the [Annual Wage Review](#) decision by 1 July 2024;
- timely finalisation of lodgments to arrange registered organisations elections.

## Major cases

[11] I would like to acknowledge the vast amount of work undertaken this past financial year by Commission Members, Expert Panel Members and staff in their handling of major cases. Major cases this year have included the Annual Wage Review 2023–24, the concluding stage of the aged care industry work value case, the determination of the early childhood education and care industry supported bargaining authorisation application, the establishment of a standard workplace delegates’ rights award term, and the Modern Awards Review 2023–24.

## *Annual Wage Review 2023–24 — Gender pay equity*

[12] In the Annual Wage Review 2023–24 decision,<sup>3</sup> the Expert Panel considered the issue of gender-based undervaluation. In the previous Annual Wage Review, the Expert Panel had foreshadowed a research project that would look at the issue and help the Commission set priorities for dealing with gender-based undervaluation in modern awards.<sup>4</sup> After considering the two stages of the research project, together with the Stage 3 aged care industry work value case decision<sup>5</sup> and other recent developments, the Expert Panel confirmed that the Commission would initiate proceedings<sup>6</sup> pursuant to s 157 of the FW Act to consider whether minimum wage rates in five priority awards should be increased on work value grounds. The awards being reviewed are the:

- *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020;*
- *Children’s Services Award 2010;*
- *Health Professionals and Support Services Award 2020;*
- *Pharmacy Industry Award 2020;* and
- *Social, Community, Home Care and Disability Services Industry Award 2010.*

[13] The Expert Panel for the gender undervaluation proceedings issued a timetable for these proceedings on 7 June 2024. The timetable was confirmed in a further statement<sup>7</sup> issued on 24 June 2024. The Expert Panel in the 2023–24 Annual Wage Review noted that the Commission intends to complete the review of these priority awards by the time of next year’s Annual Wage Review.

## *Aged care industry work value case*

[14] The aged care industry work value case dealt with three applications to vary the minimum rates and classifications in three modern awards covering employers and employees in the aged care industry. The case was conducted in three stages, with the third and final stage now largely complete. Broadly, Stage 1 of the case awarded a 15% interim increase to minimum pay rates for direct care workers in aged care, and Stage 2 determined the timing of that interim increase.

[15] On 15 March 2024, the Expert Panel issued the Stage 3 aged care industry work value case decision.<sup>8</sup> The Expert Panel found that the work of aged care sector employees had been historically undervalued because of assumptions based on gender. Having reached this conclusion, the Expert Panel then determined that the appropriate course of action was to set

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<sup>3</sup> [\[2024\] FWCFB 3500](#).

<sup>4</sup> *Annual Wage Review 2022–23* [\[2023\] FWCFB 3500](#) [137]–[139].

<sup>5</sup> *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [\[2024\] FWCFB 150](#).

<sup>6</sup> [Gender undervaluation — priority awards review](#) (matters AM2024/19, AM2024/20, AM2024/21, AM2024/22 and AM2024/23).

<sup>7</sup> [\[2024\] FWCFB 291](#).

<sup>8</sup> [\[2024\] FWCFB 150](#).

a benchmark pay rate for a key classification and then construct a new and uniform classification structure on the basis of that benchmark rate. The Expert Panel concluded that the benchmark rate must be one which is justified by work value reasons, as required by s 157(2)(a) of the FW Act, and noted that their determination of this rate must be free of assumptions based on gender in accordance with s 157(2B)(a). The Expert Panel awarded a range of further pay increases to direct care workers, as well as an increase for indirect care workers. On 27 June 2024, the Expert Panel issued a further decision with respect to outstanding issues from the Stage 3 decision.<sup>9</sup> This decision determined that the increases should flow in two tranches, the first on 1 January 2025 and the second on 1 October 2025.

### *Early childhood education and care industry supported bargaining authorisation*

[16] On 27 September 2023, a Full Bench of the Commission issued its first supported bargaining authorisation in relation to employers and employees in the early childhood education and care sector.<sup>10</sup> The authorisation specifies 64 employers and the employees of those employers performing certain kinds of work that will be covered by the proposed multi-enterprise agreement.

[17] In making the authorisation, the Full Bench considered matters specified in s 243(1)(b) of the FW Act, finding that low rates of pay prevail in the early childhood education and care sector, that the specified employers support the making of the authorisation and have a number of significant common interests, and that the likely number of bargaining representatives is consistent with a manageable collective bargaining process. The Full Bench also found that the grant of an authorisation may promote gender equality in a female-dominated sector, and that support is required in order to improve the uptake of enterprise bargaining in the sector.

### *Modern Awards Review 2023–24*

[18] On 12 September 2023, I received a letter from the Minister for Employment and Workplace Relations which expressed the Government's interest in the Commission conducting a targeted review of modern awards. I later initiated a review of modern awards on the Commission's own motion under ss 157(3)(a) and 576(2)(aa) of the FW Act. The Modern Awards Review 2023–24 considered four priority topics: the arts and culture sector, job security, work and care, and making awards easier to use. Between December 2023 and May 2024, Members of the Full Bench assigned to conduct the Review engaged in extensive consultations with parties in relation to these topics. Commission staff also prepared discussion papers for the arts and culture sector, job security and work and care streams to assist the consultation process. A data profile and additional independent research, including a literature review and employer survey, were also published in the work and care stream.

[19] The final report was published on 18 July 2024. Its chief conclusion was that the Commission would commence proceedings on its own initiative pursuant to ss 157(3)(a) and/or 160(2)(a) of the FW Act to deal with priority issues identified in the Review. Most of

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<sup>9</sup> [\[2024\] FWCFB 298](#).

<sup>10</sup> [\[2023\] FWCFB 176](#) and [PR766609](#).

these proceedings will commence in August or September 2024. The following six priority issues will be dealt with in the proceedings to be initiated by the Commission:

- The classification structure and other terms of the *Amusement, Events and Recreation Award 2020*, including whether the award clearly and adequately establishes minimum terms and conditions of employment for ‘arts workers’.
- Rectifying deficiencies in the *Live Performance Award 2020*, which were the subject of a consensus among the relevant parties participating in the Review.
- Considering proposals advanced in the ‘making awards easier to use’ stream of the Review with respect to the *General Retail Industry Award 2020* which overlap with existing matters, or which otherwise raise a serious case for change.
- Developing a ‘working from home’ term in the *Clerks—Private Sector Award 2020*, which the Full Bench identified as the most commonly-used award under which working from home is likely to occur. The term developed may then serve as a model for incorporation in other modern awards, with or without adaptation.
- A review of the fixed-term contract provisions in the *Higher Education Industry—Academic Staff—Award 2020* and the *Higher Education Industry—General Staff—Award 2020*, responding to changes concerning the use, extension and renewal of fixed-term contracts now contained in Division 5 of Part 2-9 of the FW Act.
- A review of award provisions regulating part-time employment, focusing on the seven awards which were the subject of the ‘making awards easier to use’ stream. This review will commence at an appropriate time in 2025.

#### *Review of C14 and C13 rates in modern awards*

[20] On 16 April 2024, a Full Bench of the Commission, constituted as an Expert Panel for the Care and Community Sector, published its decision<sup>11</sup> in relation to rates of pay in modern awards that were equivalent to or below the C13 rate of pay in the *Manufacturing and Associated Industries and Occupations Award 2020* (currently \$24.10 per hour). That decision followed on from the decision<sup>12</sup> of the Expert Panel in the Annual Wage Review 2022–23 to align the National Minimum Wage with the C13 rate.

[21] The Expert Panel confirmed the provisional views expressed in its 22 September 2023 statement<sup>13</sup> that the lowest rate of pay applicable to ongoing employment in any modern award should be the C13 rate, and that all current rates below the C13 rate should be applicable for a maximum of six months’ employment, after which awards should provide for employees to transition to a higher rate not lower than the C13 rate. The Expert Panel then proceeded to address how that conclusion would be implemented in various awards, taking into account interested parties’ submissions. It expressed the provisional view that the relevant modern awards should be varied with effect from 1 January 2025.

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<sup>11</sup> [\[2024\] FWCFB 213](#).

<sup>12</sup> [\[2023\] FWCFB 3500](#).

<sup>13</sup> [\[2023\] FWCFB 168](#).

[22] I expect that draft determinations in respect of each of the modern awards affected by the Expert Panel’s decision will be published shortly. As indicated in that decision, interested parties will then have four weeks to comment before the variations are finalised.

## **Secure Jobs, Better Pay Act**

### *Flexible working arrangement and unpaid parental leave extension requests*

[23] From 6 June 2023, the Secure Jobs, Better Pay Act strengthened the right to request flexible working arrangements and extensions of unpaid parental leave. The amendments also provide for the Commission to deal with disputes about these rights to request.

[24] In 2023–24, the Commission received 207 applications to deal with a dispute about requests for flexible working arrangements and six applications to deal with requests for an extension of unpaid parental leave under the amended provisions.

### *Sexual harassment jurisdiction*

[25] As indicated in my 22 December 2023 [statement](#), the Secure Jobs, Better Pay Act made amendments prohibiting sexual harassment in connection with work and expanded the Commission’s jurisdiction to deal with workplace sexual harassment disputes. In 2023–24, the Commission received 95 applications under the new provisions in Part 3-5A.

### *Sunsetting of pre-2010 ‘zombie’ agreements*

[26] Certain agreements made before 2010 that were still in operation sunsetted at the end of 6 December 2023 unless an application was made to the Commission to extend their operation.

[27] As at 1 July 2024, the Commission had received initial extension applications for 483 agreements, of which 81 were individual instruments and 402 were collective agreements. The Commission has extended 299 agreements, with the longest extension being approximately two years and eight months. Extensions have been refused for 109 agreements. The extension applications for 74 agreements have been withdrawn. All extension applications lodged before the sunset date have now been heard and determined.

[28] The Commission had, as at 1 July 2024, received further extension applications for 39 agreements that had already been extended. All of these applications relate to collective agreements. In the five decisions issued as of 1 July 2024, a further extension was granted for six of these agreements.

[29] The Commission maintains on its website a [list](#) of pre-2010 agreements that have had their default period extended by the Commission or are subject to an application to extend the default period currently before the Commission. This list is indicative only as it may contain some agreements which have been replaced by a new enterprise agreement and are therefore no longer operating.

[30] The consideration of these applications was a significant undertaking for the Commission. I would like to extend my thanks to the team of Members of the Commission, led by Deputy President Slevin, which was able to deal with the large number of applications in such a timely manner.

#### *Changes to enterprise bargaining and agreement-making*

[31] As outlined in my 22 December 2023 [statement](#), the Secure Jobs, Better Pay Act made some important reforms to enterprise bargaining. The Commission continues to utilise the [major cases webpage](#) and our [bargaining subscription service](#) to publish information about significant bargaining matters. Significant cases in 2023–24 have included:

- Independent Education Union of Australia WA branch — application for single interest employer authorisation in relation to Catholic schools in Western Australia
- Early childhood education and care industry — supported bargaining authorisation application
- United Firefighters’ Union of Australia — application for an intractable bargaining declaration in relation to bargaining with Fire Rescue Victoria
- Health Services Union & Australian Education Union — application for a supported bargaining authorisation in relation to employees performing disability support work
- The Association of Professional Engineers, Scientists and Managers, Australia — application for single interest employer authorisation in relation to certain employers and employees in the black coal mining industry.

#### *Absorbing the functions of the Registered Organisations Commission*

[32] On 6 March 2023, through Machinery of Government changes, the General Manager of the Commission assumed responsibility of the regulatory functions of the Registered Organisations Commission in relation to registered organisations.

[33] I am pleased to report, on behalf of the General Manager, that applications to arrange registered organisation elections are being finalised expeditiously with 84% of lodgements finalised within four weeks and 98% finalised within eight weeks.

[34] The General Manager also continued to work with registered organisations throughout 2023–24 to promote financial transparency and effective governance of registered organisations. On 21 May 2024, the General Manager issued a [Compliance and Enforcement Policy](#) which provides simple and clear information about how the General Manager, supported by specialist staff within the Commission, undertakes education, assistance, compliance and enforcement activities.

#### **Closing Loopholes Act**

[35] On 14 December 2023, the Closing Loopholes Act received Royal Assent. On 20 December 2023, I issued a [statement](#) outlining the Closing Loopholes Act amendments and

the approach the Commission would take to implement those changes. We established a dedicated [section](#) on the Commission’s website to share information about implementation of the Closing Loopholes Act changes. This section has been updated regularly and includes statements and information about the legislative changes.

### *Workplace delegates rights for employees*

[36] The Closing Loopholes Act changes introduced specific rights of workplace delegates and new general protections for workplace delegates. New website content, updated general protections forms and a fact sheet for distribution have been published in relation to these new protections. The general protections benchbook is currently being reviewed and new content will be included in relation to these matters.

[37] The Closing Loopholes Act changes also required the Commission to make determinations varying modern awards to include a delegates’ rights term by 30 June 2024. A Full Bench led by Vice President Asbury finalised the delegates’ rights term on 28 June 2024,<sup>14</sup> and the new term was inserted into all 155 modern awards with effect from 1 July 2024. The new term was finalised following extensive public consultation and engagement conducted by the Full Bench. The Commission has determined that a review of the term will be conducted after 12 months of operation of the term, to deal with any issues which arise with respect to its operation, generally or in relation to individual modern awards.

[38] The Closing Loopholes Act changes also inserted into the FW Act a requirement that an enterprise agreement include a delegates’ rights term for workplace delegates to whom the agreement applies. This applies to agreements made after 1 July 2024.<sup>15</sup>

[39] The Commission has provided updated guidance on the Commission’s website about this new requirement and has published a fact sheet about the changes for distribution.

### *Regulated labour hire arrangement orders*

[40] From 15 December 2023, Part 2-7A of the FW Act has provided for the Commission, on application, to make a ‘regulated labour hire arrangement order’ which sets a protected pay rate for labour hire employees who are working for a host business. In 2023–24 the Commission has received 24 applications under these new provisions.

[41] On 24 July 2024, a Full Bench of the Commission made the first regulated labour hire arrangement order<sup>16</sup> under new s 306E of the FW Act applying to Batchfire Callide Management Pty Ltd as the regulated host, and WorkPac Pty Ltd and WorkPac Mining Pty Ltd as the labour hire employers in respect of employees who perform work at the Callide Mine, a black coal mine in Queensland. The order comes into operation on 1 November 2024.

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<sup>14</sup> [\[2024\] FWC 1699](#).

<sup>15</sup> New s 205A of the FW Act does not apply in relation to an enterprise agreement if: the employer requested that employees vote on the agreement before 1 July 2024, the vote approved the agreement and the Commission approves the agreement.

<sup>16</sup> [PR777029](#); see also decision [\[2024\] FWC FB 299](#).



[42] The first contested applications for regulated labour hire arrangement orders will be heard by Full Benches of the Commission in September and October 2024.

#### *Family and domestic violence protections*

[43] The Closing Loopholes Act adds ‘subjection to family and domestic violence’ as a new protected attribute for the purposes of the anti-discrimination provisions in the FW Act. The Commission has updated our general protections website content and forms and published a fact sheet about the changes.

[44] The Commission understands that those seeking information about or making applications relating to the new protected attribute may be particularly vulnerable. The Commission has instituted internal processes to ensure these matters are dealt with by Members as expeditiously as possible.

#### **Closing Loopholes No 2 Act**

[45] On 26 February 2024, the Closing Loopholes No 2 Act received Royal Assent. On 27 February 2024, I issued a [statement](#) outlining the Closing Loopholes No 2 Act amendments and the approach the Commission would take to implement those changes. A number of amendments contained in the Closing Loopholes No 2 Act significantly expand the Commission’s functions and the persons the Commission serves. The Commission has continued to utilise the dedicated section on its website to share information about implementation of the Closing Loopholes No 2 Act changes and keep stakeholders informed about consultations and available educational resources. A number of these significant changes come into operation on 26 August 2024 (or an earlier date by proclamation).

[46] The Commission’s preparation for these changes is well-advanced. There has been significant Member engagement, particularly relating to new regulated worker functions, and the Commission has engaged with interested parties through the publication of implementation reports and through our existing stakeholder groups. We continue to encourage all parties to engage with our implementation materials. Feedback can be sent to [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au).

[47] Below is an update on some of our preparations for these upcoming functions. For an explanation of the functions, please see my 27 February 2024 [statement](#) and the various materials published in the dedicated Closing Loopholes [section](#) of the Commission’s website.

#### *Regulated worker and unfair contracts jurisdictions*

[48] The Commission will be empowered to set minimum standards for employee-like workers, workers in the road transport industry and road transport contractual chains. The Commission will also be empowered to deal with disputes about unfair deactivation of an employee-like worker from a digital platform, and unfair termination of a road transport contractor’s services contract by a road transport business.

[49] Separately, independent contractors earning below a specified contractor high income threshold will be able to apply to the Commission to set aside, amend or vary unfair terms in services contracts.

[50] These are significant reforms and implementation work is advanced. Achievements to date include:

- establishing a dedicated Regulated Worker Standards team to support Members and Expert Panel Members considering minimum standards applications and consultation processes;
- establishing a [Regulated Worker User Group](#) to connect the Commission with regulated workers, regulated businesses and other interested parties;
- conducting extensive Member-led engagement with interested parties;
- publishing implementation reports regarding:
  - the [minimum standards for regulated workers jurisdiction](#) (12 April 2024); and
  - the [unfair deactivation and unfair termination jurisdiction for regulated workers and the unfair contracts jurisdiction for independent contractors](#) (5 July 2024); and
- publishing educational materials, including website information, animations and Member presentations.

### *Right to disconnect*

[51] From 26 August 2024 (26 August 2025 for small business employers), the Commission will be empowered to deal with disputes between employers and their employees about the new workplace right to disconnect, including by issuing a stop order. Applications may also be made to the Commission to deal with general protections disputes involving the right to disconnect.

[52] The Commission is also required to insert a right to disconnect term into all modern awards by 26 August 2024. It must also make written guidelines about how the right to disconnect will operate. There is no legislative deadline for making those guidelines.

[53] The Commission continues to engage with the community as it implements these new functions. On 12 March 2024, I issued a statement<sup>17</sup> commencing a major case to deal with the creation of the right to disconnect modern award model term and guidelines. On 11 July 2024, I issued a further statement<sup>18</sup> attaching a draft term for consultation. Final determinations will be published by 23 August 2024.

[54] On 19 July 2024, the Commission published an [implementation report](#) on the right to disconnect dispute resolution functions. Additional website materials and a fact sheet have also been published. Relevant forms and updated content about the process for dealing with a right to disconnect dispute will be available from 26 August 2024.

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<sup>17</sup> [\[2024\] FWC 649](#).

<sup>18</sup> [\[2024\] FWC 1818](#).

## **Conclusion**

[55] Our performance outcomes are the result of the Commission's unwavering focus on timeliness in delivery and quality of outcomes, which I consider to be an essential element of the proper administration of justice. We continue to strive to implement the changes to our functions in an open and transparent manner, with the needs of our users front of mind. I am confident the significant changes to come will be successfully integrated into the Commission's existing workload.

[56] I wish to convey my deep appreciation to our various advisory groups, our Workplace Advice Service partner organisations and the individuals who have engaged with our consultation processes over this period. They have offered their time, knowledge and experience to the Commission and its clients throughout the year.

[57] I also extend my thanks to all Commission Members, the General Manager and Commission staff, who are committed to the community they serve and give so much to this institution every day, particularly throughout this significant and historic transformation.

## **PRESIDENT**