

s 22(1)

From: s 22(1)
Sent: Wed, 28 Aug 2024 02:36:28
To: s 22(1)
Cc: s 22(1)
Subject: SJBP review update [SEC=OFFICIAL:Sensitive]
Importance: High
Sensitivity: None

[eputy](#)

ri100OFFICIAL: Sensitive

Hi s 22(1)

I just wanted to let you know that the SJBP review procurement process closed on Friday and we didn't receive any tenders from the 3 suppliers approached.

We are now considering what options are available for progressing the review, which could include revisiting the procurement approach or appointing a reviewer/s by Ministerial appointment.

I also note that the HSR Right of Entry review tender is due to close this Friday morning. We had previously discussed the potential to extend the review finalisation date (draft report currently due to dept by 29 November) - please let me know if there is any update on this. Given the tender closes on Friday, this matter could be addressed as part of the contract execution if there are suitable suppliers, if needed.

We'll provide some options for progressing the SJBP Review next week, which may include consideration of the HSR ROE review depending on the outcome of its procurement process.

Please let me know if you would like to discuss.

Cheers

s 22(1)

Assistant Secretary

\sb160Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

P:s 22(1) | M:s 22(1) s 22(1) dewr.gov.au | dewr.gov.au

\qc\ri100\sb100OFFICIAL: Sensitive

s 22(1)

From: s 22(1)
Sent: Tue, 10 Sep 2024 08:06:25
To: s 22(1)
Cc: s 22(1) s 22(1) s 22(1) s 22(1)
Subject: RE: Statutory Reviews [SEC=OFFICIAL]
Importance: Normal
Sensitivity: None

Thanks very much s 22(1)

We'll loop back on next steps shortly.

Cheers

s 22(1)

From: S 22(1)
Sent: Tuesday, September 10, 2024 5:52 PM
To: S 22(1)
Cc: s 22(1)
Subject: Statutory Reviews [SEC=OFFICIAL]

Dear s 22(1)

As discussed, the Minister has asked me to advise you that he wishes to appoint Emeritus Professor Mark Bray - [Professor Emeritus Mark Bray \(sydney.edu.au\)](#) and Professor Alison Preston - [Alison Preston — the UWA Profiles and Research Repository](#) to conduct the statutory reviews of the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act, subject to the usual due diligence checks.

Please let me know if you need any more information to progress this request.

Thanks very much,

s 22(1)



s 22(1)

Director – Workplace Relations

Office of Senator The Hon Murray Watt

Minister for Employment and Workplace Relations

M: s 22(1)

E: s 22(1) mo.dewr.gov.au

s 22(1)

From: s 22(1)
Sent: Thursday, 12 September 2024 8:34 AM
To: mark.bray@newcastle.edu.au
Cc: s 22(1)
Subject: Statutory Reviews [SEC=OFFICIAL:Sensitive]
Attachments: Fair Work Legislation Amendment (Closing Loopholes) Bill 2023.docx; Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022.docx; Attachment B - Terms of Reference.docx

OFFICIAL: Sensitive

Good morning Mark,

Was great to chat to you yesterday afternoon. ^{s 22(1)} and I are looking forward to working with you on this important work.

Apologies I didn't send this information across yesterday afternoon but as discussed, I've attached a few things that will help with background.

1. **Factsheets** – when the various pieces of legislation have received royal assent, the department has published some short factsheets to assist explain the high level detail of the reforms. There is quite a few of them so I haven't attached them to this email but the links to the websites with all of the factsheets are below:
 - a. [Secure Jobs, Better Pay - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://dewr.gov.au)
 - b. [Entry to assist Health and Safety Representatives - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://dewr.gov.au)
2. **Bills and Explanatory Memoranda** – because of the number of amendments made to the Bills there are a number of explanatory memoranda and supplementary memoranda. Again, because there's quite a few I've included links but I have attached the **final** Bill that passed both houses, received the Royal Assent and became the SJPB Act.
 - a. [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Bill 2022 – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)
 - b. [Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023 – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au) [noting your review is only of Part 16A of this Act "Right of entry – assisting health and safety representatives"]
3. **CONFIDENTIAL Terms of reference** – the terms of reference have been agreed by the Minister but are not yet public so please keep under strict confidentiality. They will be public when there is a public announcement about the commencement of the review.
4. **Review of Paid Family and Domestic Violence Leave** - we briefly mentioned another statutory review that is close to finalising which is the review of paid family and domestic violence leave. This review hasn't concluded yet but information about the review is available on the department's website: [Review of Paid Family and Domestic Violence Leave - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://dewr.gov.au).

We will keep you updated as best we can as the administrative matters in the background progress. If there's anything we can help you with in the meantime don't hesitate to get in touch with ^{s 22(1)} or myself.

s 22(1)

Assistant Secretary (A/g)

M:s 22(1)

Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

OFFICIAL: Sensitive

Workplace Relations Amendment Acts Review**Terms of Reference**

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the reviews is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable 'State or Territory Occupational Health and Safety law'.

The amendments give effect to 'Recommendation 8: Workplace entry of union officials when providing assistance to an HSR' of the '2018 Review of the model WHS laws' conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at:
<https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel's findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.

CONFIDENTIAL

s 22(1)

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Thursday, 12 September 2024 11:29 AM
To: s 22(1)
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

OK. Thanks. I'll keep my comments for now, but perhaps let me know whether not sending them affects the timeliness of any changes? In the meantime, I'll hopefully talk with Alison. Cheers, Mark

OFFICIAL: Sensitive

From: s 22(1)
Sent: Thursday, September 12, 2024 11:10 AM
To: Mark Bray
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks, Mark. If you want me to consider your preliminary thoughts I'm happy to do so but also understand if you want to discuss them with Alison first.

s 22(1)
 Assistant Secretary (A/g)

M: s 22(1)
 Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

OFFICIAL: Sensitive

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Thursday, September 12, 2024 11:07 AM
To: s 22(1) <s 22(1) [dewr.gov.au](mailto:s 22(1)@dewr.gov.au)>
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I have read through the Terms of Reference. I have some provisional comments, but I have not yet had the opportunity to discuss them with Alison Preston, who is S 22(1)

Should I send them through as they are presently, with the proviso that further comments might come, or await discussion with Alison?

Cheers,

Mark

OFFICIAL: Sensitive

From: s 22(1) <s 22(1) dewr.gov.au>
Sent: Thursday, September 12, 2024 10:21 AM
To: Mark Bray <mark.bray@newcastle.edu.au>
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Completely understand the potential for this to impact others besides yourself so will try to avoid that if at all possible.

I'll come back to you as soon as possible but it may take me a little time to look into.

s 22(1)

Assistant Secretary (A/g)

M: s 22(1)

Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

OFFICIAL: Sensitive

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Thursday, September 12, 2024 10:18 AM

To: s 22(1) <s 22(1) dewr.gov.au>
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

Thanks for the quick response and the promise of more detail.

I understand the “general position”. The problem is, of course, that the Review has happened very quickly and these papers were already underway. They also have co-authors who need to be consulted. This latter point especially applies to the provision to you of draft papers.

So, some further detail would be most welcome.

Cheers,

Mark

OFFICIAL: Sensitive

From: s 22(1) <s 22(1) dewr.gov.au>
Sent: Thursday, September 12, 2024 10:12 AM
To: Mark Bray <mark.bray@newcastle.edu.au>
Cc: s 22(1) <s 22(1) dewr.gov.au>
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks, Mark.

I'll look into the question about the hard copies and give you an update when I can.

I think the general position is that during a review, a reviewer should refrain from making public comments about the thing they are reviewing to avoid any perceptions of bias etc (not suggesting that is the case of course). The purpose of this being to avoid any perception that the reviewer has a closed mind about outcomes of the review and may not genuinely engage with views/evidence to form their opinions on recommendations etc. I'll look into this further and come back to you.

To help me consider the question more fully, would it be possible for you to provide me with the draft papers (under strict confidentiality of course)?

s 22(1)
Assistant Secretary (A/g)

M: s 22(1)
Bargaining and Industry Policy Branch
Safety and Industry Policy Division

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

OFFICIAL: Sensitive

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Thursday, September 12, 2024 9:38 AM
To: S 22(1) <S 22(1) dewr.gov.au>
Subject: RE: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Thanks, S 22(1) Much obliged.

I too am looking forward to working with you and S 22(1)

I'll go through them all. In the meantime, I have some questions:

1. Could I possibly get some hard copies of the Act and the EM sent to me at home? My printer is not all it would be hoped for and I will be using these docs extensively: S 47(F)
2. I have some unpublished academic papers already drafted that include some commentary on the amendments, although not exclusively SJB:
 - a. one on non-union collective agreements resulting from a presentation at the AIRAANZ Conference in January this year, and co-authored with S 47(F) was submitted in June to the academic journal, Labour & Industry. A presentation based on this paper will be given to the Conference of the Australian Labour Law Association in Geelong in November.
 - b. the other (with S 47(F) presently located at the joint Yale/National University of Singapore campus in Singapore) has been the subject of many exchanges between him and me and is presently being drafted. It is scheduled for presentation at a seminar at the University of Sydney in November and again at the AIRAANZ Conference in Wellington next February.

What should I do with these, given that they were underway well before I even knew about this Review?

I think that's all at present.

Best wishes,

Mark

OFFICIAL: Sensitive

From: s 22(1) <s 22(1) dewr.gov.au>
Sent: Thursday, September 12, 2024 8:34 AM
To: Mark Bray <mark.bray@newcastle.edu.au>
Cc: s 22(1) <s 22(1) dewr.gov.au>
Subject: Statutory Reviews [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Good morning Mark,

Was great to chat to you yesterday afternoon. s 22(1) and I are looking forward to working with you on this important work.

Apologies I didn't send this information across yesterday afternoon but as discussed, I've attached a few things that will help with background.

1. **Factsheets** – when the various pieces of legislation have received royal assent, the department has published some short factsheets to assist explain the high level detail of the reforms. There is quite a few of them so I haven't attached them to this email but the links to the websites with all of the factsheets are below:
 - a. [Secure Jobs, Better Pay - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://dewr.gov.au)
 - b. [Entry to assist Health and Safety Representatives - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://dewr.gov.au)
2. **Bills and Explanatory Memoranda** – because of the number of amendments made to the Bills there are a number of explanatory memoranda and supplementary memoranda. Again, because there's quite a few I've included links but I have attached the **final** Bill that passed both houses, received the Royal Assent and became the SJPB Act.
 - a. [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Bill 2022 – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)
 - b. [Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023 – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au) [noting your review is only of Part 16A of this Act "Right of entry – assisting health and safety representatives"]
3. **CONFIDENTIAL Terms of reference** – the terms of reference have been agreed by the Minister but are not yet public so please keep under strict confidentiality. They will be public when there is a public announcement about the commencement of the review.
4. **Review of Paid Family and Domestic Violence Leave** - we briefly mentioned another statutory review that is close to finalising which is the review of paid family and domestic violence leave. This review hasn't concluded yet but information about the review is available on the department's website: [Review of Paid Family and Domestic Violence Leave - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://dewr.gov.au).

We will keep you updated as best we can as the administrative matters in the background progress. If there's anything we can help you with in the meantime don't hesitate to get in touch with s 22(1) or myself.

s 22(1)
Assistant Secretary (A/g)

M: s 22(1)
Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

New iMessage

Cancel

To: Alison Preston

iMessage

Thu, 12 Sep at 9:20 am

Morning Alison, this is s 22(1)
s 22(1) from the Department of
Employment and Workplace
Relations. My colleague s 22(1)
s 22(1) left a message on your
phone late yesterday. I was
hoping to have a chat to you
sometime in the near future
about some work I understand
you have been asked to do for
the Government. I understand
you're s 22(1)
so if you could let me know a
convenient time to chat in the
nearish future that'd be greatly
appreciated.

Text Message • SMS

Thu, 19 Sep at 3:43 pm

s 22(1)

From: [Mark Bray](#)

Mail received time: Thu, 12 Sep 2024 08:25:52

Sent: Thursday, 12 September 2024 6:25:53 PM

To: s 22(1) [Alison Preston](#)

Cc: s 22(1)

Subject: RE: Department of Employment and Workplace Relations [SEC=OFFICIAL:Sensitive]

Importance: Normal

Sensitivity: None

\cbpat3You don't often get email from mark.bray@newcastle.edu.au. [Learn why this is important](#)

\ri100OFFICIAL: Sensitive

\cbpat7\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Thanks, s 22(1) I've accepted the invitation for 4.30pm on Monday (Melbourne time). Mark

\ri100\sb100OFFICIAL: Sensitive

From: s 22(1)

Sent: Thursday, September 12, 2024 5:47 PM

To: Alison Preston

Cc: s 22(1) ; Mark Bray

Subject: RE: Department of Employment and Workplace Relations [SEC=OFFICIAL:Sensitive]

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100

Thanks, Alison. Hope your trip home is smooth.

I will need to talk to you separately as well to discuss the arrangements for the review to make sure you're comfortable if that's okay?

I'll send around 2 invites for Monday in anticipation.

s 22(1)

Assistant Secretary (A/g)

\sb240M:s 22(1)

Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100**From:** Alison Preston <alison.preston@uwa.edu.au>
Sent: Thursday, September 12, 2024 5:01 PM
To: S 22(1) <S 22(1) dewr.gov.au>
Cc: S 22(1) <S 22(1) dewr.gov.au>; Mark Bray <mark.bray@newcastle.edu.au>
Subject: Re: Department of Employment and Workplace Relations [SEC=OFFICIAL:Sensitive]

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100

\cbpat7\qc**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

\qc

Hi^{S 22(1)}

Thank you for email. Unfortunately I couldn't access the voice mail. S 22(1)
S 22(1)

I've just spoken with Mark who has put me in the picture on several points, including the timeframe.

At my end I will need to get university approval. I don't anticipate any issues with this but it is a formality that I need to observe.

My diary is committed on Monday from 8.30 to 1.30pm (WA time) but perhaps we could speak before or after? Could you send me a teams appointment and include Mark?

Many thanks, Alison

Get [Outlook for iOS](#)

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100**From:** S 22(1) <S 22(1) dewr.gov.au>
Sent: Thursday, September 12, 2024 1:25 AM
To: Alison Preston <alison.preston@uwa.edu.au>
Cc: S 22(1) <S 22(1) dewr.gov.au>
Subject: Department of Employment and Workplace Relations [SEC=OFFICIAL:Sensitive]

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100

Good morning Alison,

I've just sent you a text message and I understand my colleague S 22(1) left a message on your phone late yesterday. I am told you're overseas at the moment so apologies for the time of my message/email – hopefully it hasn't disturbed you.

I understand you've agreed to do some work for the Government and I was hoping to have a chat with you sometime in the nearish future to discuss what needs to happen to get that underway and answer any questions you might have.

Happy if you want to email, call or text me back when you have a moment.

Thanks, Alison, look forward to chatting with you.

s 22(1)

Assistant Secretary (A/g)

\sb240M:s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\qc\ri100\sb100OFFICIAL: Sensitive

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

s 22(1)

From: s 22(1)
Sent: Fri, 13 Sep 2024 02:53:29
To: [Mark Bray](#) s 22(1)
Cc: [Alison Preston](#)
Subject: RE: Department of Employment and Workplace Relations [SEC=OFFICIAL:Sensitive]
Importance: Normal
Sensitivity: None

\ri100OFFICIAL: Sensitive

Thanks for putting some meat on the bones for our initial discussion, Mark.

Very happy to discuss it all on Monday. I am already in the process of setting up various things in the department to support you both (some of which is already completed) and with the broader logistics/expectations of the review itself. Hopefully we can get to a position so both yourself and Alison are as comfortable as possible with the arrangements.

s 22(1)

Assistant Secretary (A/g)

M:s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\ri100\sb100OFFICIAL: Sensitive

From: Mark Bray
Sent: Friday, September 13, 2024 12:10 PM
To: S 22(1) ;s 22(1)
Cc: Alison Preston
Subject: RE: Department of Employment and Workplace Relations [SEC=OFFICIAL:Sensitive]

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100

\cbpat9\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

\qc

s 22(1)

Thanks to^{s 22(1)} in particular, for the information and advice provided in these early stages.

As I've explained, and you have confirmed, Alison is unlikely to be in a position to comment further until at least Monday afternoon, Perth time.

It's apparent that the Review will be conducted over a short period (particularly given the effects of the holiday period), so work will be intense. I'm sure you are also keen to finalise formalities quickly, but also confirm parameters / expectations as early as possible, so the work is done efficiently, and to everyone's satisfaction.

On Monday, can we please discuss the issues below (and any others you identify) so we can hit the ground running.

Issues:

1. Clarification of substantive issues and division of responsibilities:

- a. I have already suggested (in my emailed comments to^{s 22(1)} that the list of issues raised in the Terms of Reference gives the impression of greater scope than the Review is actually supposed to be investigating. That list is:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

"Workplace relations institutions" is potentially a big and controversial one that was not discussed earlier. There's also the question (unresolved in my mind) about how we deal with the "minor" of "narrow" issues, like "compliance" and "workers compensation". I'd like to see the contract qualify these; for example, to specify that the review will consider these issues only to the extent that they arise in the SJPB amendments plus the one specified from the Loopholes amendments.

Further qualification can be included in the instructions/guidelines we give to potential stakeholder submissions (see below).

- b. The division of responsibilities between Alison and I also needs clarification, but perhaps this is something Alison and I will sort out between ourselves?

2. Deadlines/deliverables:

- a. Is there one (or more) similar report that could serve as a model for two dimensions of: i) format, length, structure; and ii) a similar review in the past that was regarded as useful.
- b. I assume that you will want a timetable with deliverables, whether it's part of the contract or not. We would need one, to ensure that we are receiving advice and feedback at appropriate times throughout the process. Can we have a discussion about the following initial timeline, please?

| Stage | Reviewer responsibility | Submission date | Feedback date |
|---|-------------------------|-----------------|---------------|
| Confirm scoping and schedule within a signed contract | Joint | 23 Sept | 23 Sept |
| Emerging propositions, guidance on data, gaps etc | AP/MB separately | Mid Oct | 6 Nov |
| | Joint | Mid Nov | 30 Nov |
| 4. Draft report for review/feedback | Joint | 15 Dec | 22 Dec |

| | | | |
|------------------------|-------|--------|--------|
| tm\lrf\3\lang3081\fs24 | Joint | 24 Jan | 31 Jan |
|------------------------|-------|--------|--------|

Alternatively, perhaps the deadlines should focus on substantive area/sections of the report?

3. Sources of data

It will be great (and necessary) to get the Department to provide or arrange the following, and in some instances conduct some initial analysis. Is the sort of work that the secretariat that was mentioned will do?

a. Documentary sources:

like previous submissions by stakeholders to inquiries, tribunal and courts decisions since the amendments came into operation, Hansard extracts, policy statements and newspapers reports.

b. Statistics:

from the ABS, DEWR and FWC plus potentially other sources. I am particularly familiar with the DEWR's WAD database of collective agreements and can quickly describe how I'd like these presented. I am sure Alison can similarly specify early gender-related statistical data and how she'd like them presented. We might need assistance on some of the more specialised topic areas.

c. Stakeholders:

My assumption, given the Terms of Reference (and the timeline, with December-January downtime), is that the Department will oversee a call for public submissions as soon as is practicable. You obviously have experience in this process that we do not, but we imagine something along the lines of:

- Specification of rationale (ie. legislation), and scope (ie. only SJBPA amendments and the Loopholes amendments).
- Specification of three main issues from Terms of Reference:

- consider whether the operation of the amendments are appropriate and effective

- identify any unintended consequences of the amendments

tm\lrf\3\lang3081\fs22 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.

- It would then list the areas from the (revised) list above.
- Further instructions would need to specify deadlines, dates, possibly format etc.

4. DEWR support:

- We would appreciate a single point of DEWR contact, to be available over the whole period to end of January 2024.
- It will be important for us to have a dedicated secretariat, with clear lines of communication.
- This Secretariat would not only insert drafts into report format etc, but members of the Secretariat need to be capable of setting up the website, finding data, in some cases undertaking initial analysis, and organising/managing stakeholder relations.
- Members of the Secretariat therefore need to be highly skilled and available over the summer period.

5. Sounding boards:

I'd like specific mention in the contract that a small number of discrete and expert people beyond the DEWR Secretariat can be used by the reviewers to sound out ideas, consider the viability of recommendations and run drafts past. I'm happy to talk about this because I'm sure there's pros and cons.

That's all for now. I'm sure there's much more.

Cheers,

Mark

\qc\ri100\sb100OFFICIAL: Sensitive

s 22(1)

From: s 22(1)
Sent: Monday, 16 September 2024 6:17 PM
To: alison.preston@uwa.edu.au
Cc: s 22(1)
Subject: Disclosures [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Attachments: Preston - Disclosures.docx

OFFICIAL: Sensitive//Personal Privacy

Evening Alison,

As discussed at the end of our chat this afternoon, can you please complete the attached declarations?

It would be really appreciated if these could be completed as quickly as possible.

s 22(1)
Director

M: s 22(1)
Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

OFFICIAL: Sensitive//Personal Privacy

REVIEWER CONFLICT OF INTEREST DECLARATION

Name: Professor Alison Preston
 Position Title: Reviewer
 Branch / Division: Safety and Industry Policy Division

I, _____ (Name of Reviewer), declare that:

- (a). I am aware of my responsibilities in relation to the proposed engagement by the Commonwealth comprised of the independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023. (Engagement)*. These include an obligation to behave honestly and with integrity, to disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the Engagement and not make improper use of (a) Commonwealth confidential information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- (b). the list of my outside employment or associations, any publicly held positions or views, and private interests and relationships at Annexure A has been prepared on the basis of the particular roles and responsibilities of the Engagement; and
- (c). I undertake to immediately inform the Department of Employment and Workplace Relations of any changes to:
 - (i) my responsibilities or to the issue or subjects on which I am required to make decision or give advice; and
 - (ii) my personal circumstances,

that could affect the contents of this declaration and to provide an amended declaration(s) using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of should circumstances arise in which I consider that they could or could be seen to influence any decision I am taking or the advice I am giving in connection with the Engagement.

I understand that this would require the consent of the family member to the collection by the Department of Employment and Workplace Relations of personal information, and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I understand that I will not be permitted to take part in the discussions or decision-making processes where a material conflict of interest exists unless a member of the Senior Executive Service in the Department of Employment and Workplace Relations determines otherwise.

Signed _____

Date _____

ANNEXURE A

PRIVATE INTERESTS DECLARATION

| | |
|-------------------------------------|---|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|---|

Please answer the following questions by circling the reply that applies to your personal circumstances. **If you answer “yes” to any question, please provide details in the provided attachment to this form, signed and dated.** Please note that answering “yes” to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

| | |
|---|--------------------|
| 1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)? | Yes / No |
| 2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)? | Yes / No |
| 3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act 1996 (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? (b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? | Yes / No or N/A |
| 4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement? | Yes / No |
| 5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party? | Yes / No |
| 6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts? | Yes / No |
| 7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation? | Yes / No |
| 8. Have you ever been dismissed from employment because of a discipline or misconduct issue? | Yes / No |
| 9. Are you the director of a company? <u>If yes, please provide details in the following page.</u> | Yes / No |
| 10. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed? If yes, include advice in a separate attachment on how this conflict of interest would be managed. | Yes / No |
| 11. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory? If yes, please provide details in a separate attachment. | Yes / No |
| 12. Are you currently employed by the Commonwealth, the Administration of a | Yes / No |

| | |
|--|----------|
| Territory, or a public statutory corporation or incorporated company owned by the Commonwealth on a full-time/part-time basis? If yes, please provide details. | |
| 13. Is there any other information, which could be relevant to a reasonable perception that you are unable to discharge your obligations or duties in an objective and independent manner to the best of your ability? Please include any outside employment or associations (including advisory roles/not-for-profit boards or any other sector related roles) and publicly held positions or views.. | Yes / No |

ASSURANCE

| | | |
|---|-----------|------|
| <p>I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.</p> <p>I also undertake to advise the responsible minister should a situation arise in the future, which might cause a conflict of interest with my responsibilities under this appointment.</p> | | |
| Name | Signature | Date |
| | | |

PRIVATE INTERESTS DECLARATION - ATTACHMENT**PROPOSED POSITION
& ORGANISATION**Independent reviewer for the Secure Jobs Better Pay Act
and Closing Loopholes Act

Please provide details for all 'yes' answers to any question on the Private Interests Declaration form. Please detail how any conflict(s), actual or perceived, will be managed if appointed. Please note that responses to Q12 may be relevant to remuneration payable for part-time appointments with reference to section 7(11) of the *Remuneration Tribunal Act 1973* (Cth). The Act provides that a person is not entitled to remuneration for part-time appointments when holding certain full-time employment, engagement or appointment. Your responses will be treated as confidential and will only be used for purposes connected with the proposed appointment.

Please provide any conflict mitigation strategy/ies for all directorships and advisory boards.

| QUESTION | DETAILS WITH CONFLICT MITIGATION STRATEGY |
|----------|---|
| | |

ASSURANCE

I declare that to the best of my knowledge, the information provided above is true and correct.

.....
Name

.....
Signature

Date

From: s 22(1)
Sent: Mon, 16 Sep 2024 08:15:55
To: mark.bray@newcastle.edu.au
Cc: s 22(1)
Subject: Disclosures [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: Normal
Sensitivity: None
Attachments: Bray - Disclosures.docx 

\ri100OFFICIAL: Sensitive//Personal Privacy

Evening Mark,

As discussed at the end of our chat this afternoon, can you please complete the attached declarations?

It would be really appreciated if these could be completed as quickly as possible.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

REVIEWER CONFLICT OF INTEREST DECLARATION

Name: Emeritus Professor Mark Bray
 Position Title: Reviewer
 Branch / Division: Safety and Industry Policy Division

I, _____ (Name of Reviewer), declare that:

- (a). I am aware of my responsibilities in relation to the proposed engagement by the Commonwealth comprised of the independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023. (Engagement)*. These include an obligation to behave honestly and with integrity, to disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the Engagement and not make improper use of (a) Commonwealth confidential information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- (b). the list of my outside employment or associations, any publicly held positions or views, and private interests and relationships at Annexure A has been prepared on the basis of the particular roles and responsibilities of the Engagement; and
- (c). I undertake to immediately inform the Department of Employment and Workplace Relations of any changes to:
 - (i) my responsibilities or to the issue or subjects on which I am required to make decision or give advice; and
 - (ii) my personal circumstances,

that could affect the contents of this declaration and to provide an amended declaration(s) using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of should circumstances arise in which I consider that they could or could be seen to influence any decision I am taking or the advice I am giving in connection with the Engagement.

I understand that this would require the consent of the family member to the collection by the Department of Employment and Workplace Relations of personal information, and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I understand that I will not be permitted to take part in the discussions or decision-making processes where a material conflict of interest exists unless a member of the Senior Executive Service in the Department of Employment and Workplace Relations determines otherwise.

Signed _____

Date _____

ANNEXURE A

PRIVATE INTERESTS DECLARATION

| | |
|-------------------------------------|---|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|---|

Please answer the following questions by circling the reply that applies to your personal circumstances. **If you answer “yes” to any question, please provide details in the provided attachment to this form, signed and dated.** Please note that answering “yes” to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

| | |
|---|--------------------|
| 1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)? | Yes / No |
| 2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)? | Yes / No |
| 3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act 1996 (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? (b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? | Yes / No or N/A |
| 4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement? | Yes / No |
| 5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party? | Yes / No |
| 6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts? | Yes / No |
| 7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation? | Yes / No |
| 8. Have you ever been dismissed from employment because of a discipline or misconduct issue? | Yes / No |
| 9. Are you the director of a company? <u>If yes, please provide details in the following page.</u> | Yes / No |
| 10. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed? If yes, include advice in a separate attachment on how this conflict of interest would be managed. | Yes / No |
| 11. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory? If yes, please provide details in a separate attachment. | Yes / No |
| 12. Are you currently employed by the Commonwealth, the Administration of a | Yes / No |

| | |
|--|----------|
| Territory, or a public statutory corporation or incorporated company owned by the Commonwealth on a full-time/part-time basis? If yes, please provide details. | |
| 13. Is there any other information, which could be relevant to a reasonable perception that you are unable to discharge your obligations or duties in an objective and independent manner to the best of your ability? Please include any outside employment or associations (including advisory roles/not-for-profit boards or any other sector related roles) and publicly held positions or views.. | Yes / No |

ASSURANCE

| | | |
|---|-----------|------|
| <p>I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.</p> <p>I also undertake to advise the responsible minister should a situation arise in the future, which might cause a conflict of interest with my responsibilities under this appointment.</p> | | |
| Name | Signature | Date |
| | | |

PRIVATE INTERESTS DECLARATION - ATTACHMENT

**PROPOSED POSITION
& ORGANISATION**

Independent reviewer for the Secure Jobs Better Pay Act
and Closing Loopholes Act

Please provide details for all 'yes' answers to any question on the Private Interests Declaration form. Please detail how any conflict(s), actual or perceived, will be managed if appointed. Please note that responses to Q12 may be relevant to remuneration payable for part-time appointments with reference to section 7(11) of the *Remuneration Tribunal Act 1973* (Cth). The Act provides that a person is not entitled to remuneration for part-time appointments when holding certain full-time employment, engagement or appointment. Your responses will be treated as confidential and will only be used for purposes connected with the proposed appointment.

Please provide any conflict mitigation strategy/ies for all directorships and advisory boards.

| QUESTION | DETAILS WITH CONFLICT MITIGATION STRATEGY |
|----------|---|
| | |

ASSURANCE

I declare that to the best of my knowledge, the information provided above is true and correct.

.....
Name

.....
Signature

Date

s 22(1)

Subject: Discussion with DEWR
Location: Microsoft Teams Meeting

Start: Mon 16/09/2024 4:00 PM
End: Mon 16/09/2024 4:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: S 22(1)
Required Attendees: S 22(1) alison.preston@uwa.edu.au

Some time for my colleague and I to speak with you about the arrangements for the review.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 489 855 895 657

Passcode: 6CxXuk

Dial in by phone

[+61 2 7208 4918,,104176086#](#) Australia, Sydney

[Find a local number](#)

Phone conference ID: 104 176 086#

Join on a video conferencing device

Tenant key: 839060488@t.plcm.vc

Video ID: 132 876 169 2

[More info](#)

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

s 22(1)

Subject: Review introductory discussion
Location: Microsoft Teams Meeting

Start: Mon 16/09/2024 4:30 PM
End: Mon 16/09/2024 5:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: s 22(1)
Required Attendees: s 22(1) alison.preston@uwa.edu.au; Mark Bray

I hope this time is suitable.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 435 131 130 274

Passcode: 67QKs2

Dial in by phone

[+61 2 7208 4918,,171745973#](#) Australia, Sydney

[Find a local number](#)

Phone conference ID: 171 745 973#

Join on a video conferencing device

Tenant key: 839060488@t.plcm.vc

Video ID: 133 701 140 7

[More info](#)

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

s 22(1)
From: s 22(1)
Sent: Mon, 16 Sep 2024 08:12:40
To: s 22(1) s 22(1)
Cc: s 22(1) s 22(1) s 22(1)
Subject: RE: Media release: Independent review of the Secure Jobs, Better Pay Act and Work Health and Safety Changes under the Closing Loopholes Act [SEC=OFFICIAL]
Importance: Normal
Sensitivity: None

s 22(1) had a chat with s 22(1)

Confirmed, include the conflicts declarations in the brief for the Minister's consideration. I've emailed these to the reviewers to complete and asked it be done asap.

s 22(1) has also let s 22(1) know that Alison Preston has let us know she doesn't have authority to do this review from her University yet, but will get that process underway asap. s 22(1) let s 22(1) know we can't make any public announcements until this is all finalised.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

s 22(1)

s 22(1)

From: [Mark Bray](#)
 Mail received time: Mon, 16 Sep 2024 07:35:20
 Sent: Mon, 16 Sep 2024 07:35:03
 To: s 22(1) [Alison Preston](#)
 Cc: s 22(1)
 Subject: Re: Contact details [SEC=OFFICIAL]
 Importance: Normal
 Sensitivity: None

\cbpat3You don't often get email from mark.bray@newcastle.edu.au. [Learn why this is important](#)

\cbpat6\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Thanks, s 22(1) Mark

From: S 22(1)
Sent: Monday, September 16, 2024 5:32:05 PM
To: Mark Bray ; Alison Preston
Cc: S 22(1)
Subject: Contact details [SEC=OFFICIAL]

Thanks for the chat everyone.

Confirming our contact details:

s 22(1)

s 22(1) s 22(1)

s 22(1)

Director

M: s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

s 22(1)

From: s 22(1)
Sent: Mon, 16 Sep 2024 22:08:32
To: [Alison Preston](#)
Cc: s 22(1)
Subject: RE: Disclosures [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: Normal
Sensitivity: None

\ri100OFFICIAL: Sensitive//Personal Privacy

Thanks, Alison. Appreciate you completing this so quickly.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

From: Alison Preston
Sent: Monday, September 16, 2024 8:33 PM
To: S 22(1)
Cc: S 22(1)
Subject: RE: Disclosures [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

\qc\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100

\cbpat9\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

\qc

Thanks s 22(1) Completed form attached.

Best wishes

Alison

\cbpat11Alison Preston


\cbpat11Professor of Economics

[\cbpat11UWA Business School](#) • M251, Perth WA 6009 Australia

[\cbpat11Alison.Preston@uwa.edu.au](#)

[\cbpat11](#)[\cbpat11\qc](#)

[\cbpat11](#)

 \cbpat11We acknowledge we are situated on Noongar land, and that Noongar people remain the spiritual and cultural custodians of their land, and continue to practise their values, languages, beliefs and knowledge. We pay our respects to the traditional owners of the lands on which we live and work across Western Australia and Australia.

\cbpat11

\cbpat11CRICOS Code: 00126G

\qclri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100From: S 22(1) <s 22(1) [dewr.gov.au](#)>
Sent: Monday, September 16, 2024 4:17 PM
To: Alison Preston <[alison.preston@uwa.edu.au](#)>
Cc: S 22(1) <s 22(1) [dewr.gov.au](#)>
Subject: Disclosures [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

\qclri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100

Evening Alison,

As discussed at the end of our chat this afternoon, can you please complete the attached declarations?


It would be really appreciated if these could be completed as quickly as possible.

s 22(1)

Director

\sb240M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
[dewr.gov.au](#)



The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\qclri100\sb100OFFICIAL: Sensitive//Personal Privacy

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

REVIEWER CONFLICT OF INTEREST DECLARATION

Name: Professor Alison Preston
 Position Title: Reviewer
 Branch / Division: Safety and Industry Policy Division

I, Alison [REDACTED] Preston, declare that:

- (a). I am aware of my responsibilities in relation to the proposed engagement by the Commonwealth comprised of the independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023. (Engagement)*. These include an obligation to behave honestly and with integrity, to disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the Engagement and not make improper use of (a) Commonwealth confidential information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- (b). the list of my outside employment or associations, any publicly held positions or views, and private interests and relationships at Annexure A has been prepared on the basis of the particular roles and responsibilities of the Engagement; and
- (c). I undertake to immediately inform the Department of Employment and Workplace Relations of any changes to:
 - (i) my responsibilities or to the issue or subjects on which I am required to make decision or give advice; and
 - (ii) my personal circumstances,

that could affect the contents of this declaration and to provide an amended declaration(s) using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of should circumstances arise in which I consider that they could or could be seen to influence any decision I am taking or the advice I am giving in connection with the Engagement.

I understand that this would require the consent of the family member to the collection by the Department of Employment and Workplace Relations of personal information, and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I understand that I will not be permitted to take part in the discussions or decision-making processes where a material conflict of interest exists unless a member of the Senior Executive Service in the Department of Employment and Workplace Relations determines otherwise.

Signed _____

Date _____

16/9/24

16/9/24

ANNEXURE A

PRIVATE INTERESTS DECLARATION

| | |
|-------------------------------------|---|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|---|

Please answer the following questions by circling the reply that applies to your personal circumstances. **If you answer "yes" to any question, please provide details in the provided attachment to this form, signed and dated.** Please note that answering "yes" to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

| | |
|---|---------------------------|
| 1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)? | Yes / <u>No</u> |
| 2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)? | Yes / <u>No</u> |
| 3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act 1996 (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? (b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? | Yes / <u>No</u> or N/A |
| 4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement? | Yes / <u>No</u> |
| 5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party? | Yes / <u>No</u> |
| 6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts? | Yes / <u>No</u> |
| 7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation? | Yes / <u>No</u> |
| 8. Have you ever been dismissed from employment because of a discipline or misconduct issue? | Yes / <u>No</u> |
| 9. Are you the director of a company? <u>If yes, please provide details in the following page.</u> | Yes / <u>No</u> |
| 10. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed? If yes, include advice in a separate attachment on how this conflict of interest would be managed. | Yes / <u>No</u> |
| 11. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory? If yes, please provide details in a separate attachment. | Yes / <u>No</u> |
| 12. Are you currently employed by the Commonwealth, the Administration of a | Yes / <u>No</u> |

PRIVATE INTERESTS DECLARATION - ATTACHMENT**PROPOSED POSITION
& ORGANISATION**Independent reviewer for the Secure Jobs Better Pay Act
and Closing Loopholes Act

Please provide details for all 'yes' answers to any question on the Private Interests Declaration form. Please detail how any conflict(s), actual or perceived, will be managed if appointed. Please note that responses to Q12 may be relevant to remuneration payable for part-time appointments with reference to section 7(11) of the *Remuneration Tribunal Act 1973* (Cth). The Act provides that a person is not entitled to remuneration for part-time appointments when holding certain full-time employment, engagement or appointment. Your responses will be treated as confidential and will only be used for purposes connected with the proposed appointment.

Please provide any conflict mitigation strategy/ies for all directorships and advisory boards.

| QUESTION | DETAILS WITH CONFLICT MITIGATION STRATEGY |
|----------|---|
| | |

ASSURANCE

I declare that to the best of my knowledge, the information provided above is true and correct.

ALISON HESTON

Name



Signature

16/9/24

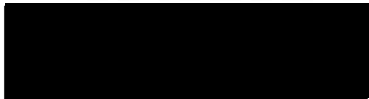
Date

| | |
|--|----------|
| Territory, or a public statutory corporation or incorporated company owned by the Commonwealth on a full-time/part-time basis? If yes, please provide details. | |
| 13. Is there any other information, which could be relevant to a reasonable perception that you are unable to discharge your obligations or duties in an objective and independent manner to the best of your ability? Please include any outside employment or associations (including advisory roles/not-for-profit boards or any other sector related roles) and publicly held positions or views.. | Yes / No |

ASSURANCE

I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.

I also undertake to advise the responsible minister should a situation arise in the future, which might cause a conflict of interest with my responsibilities under this appointment.

| Name | Signature | Date |
|----------------|---|---------|
| ALISON PRESTON |  | 16/9/24 |

From: dewr.gov.au
Sent: Tuesday, 17 September 2024 5:27:06 PM
To: [Alison Preston Mark Bray](#)
Subject: RE: Public profiles [SEC=OFFICIAL]
Importance: Normal
Sensitivity: None

Of course, makes sense. Thanks, Alison.

Also, great news about the uni request. Let me know if you run into any difficulties.

Director

M:

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Alison Preston
Sent: Tuesday, September 17, 2024 4:54 PM
To: ; Mark Bray
Subject: RE: Public profiles [SEC=OFFICIAL]

\cbpat8\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

\qc

Hi s 22(1)

Thank you for the opportunity to input into the short bio. Could we run with the version pasted below? I've dropped the parts about UnionsWA and Dept of IR – not because I'm trying to hide anything and more because these roles were >30 years ago.

Also, my request for university approval is in the system and being considered! Hopefully it will pop out soon!

Best wishes

Alison

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Alison is a Professor of Economics in the Business School at The University of Western Australia (UWA), a position she has held since

2013. Prior to that she was employed at Curtin University. She holds a PhD in labour economics and industrial relations. Her research interests include wage determination and gendered aspects of labour markets, employment, and economic security. She teaches in the areas of micro-economics and public policy.

During her professional career she has held many senior leadership roles including as Deputy Dean of the UWA Faculty of Business, Director of the Curtin Graduate School of Business and Deputy Chair of Curtin University's Academic Board. She has also served on numerous advisory bodies including the Committee for the Economic Development of Australia (CEDA, WA Branch) and the WA Women's Advisory Council and consulted for various organisations, including the Fair Work Commission and the Minerals Council of Australia.

From: S 22(1) <S 22(1) dewr.gov.au>
Sent: Tuesday, 17 September 2024 11:29 AM
To: Mark Bray <mark.bray@newcastle.edu.au>; alison.preston@uwa.edu.au
Subject: Public profiles [SEC=OFFICIAL]

Morning Mark and Alison,

I wanted to run some summary biographies past you to make sure you're comfortable with them (below). We've sourced the information from your university academic profile and from other media outlets.

The biographies will be used in media releases when announcing the review and for other publications as required. Please let me know if you'd like any changes (particularly if we have something wrong).

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. **As well as his primary affiliation, he-and** is an honorary professor at **both** RMIT University **and** University of Sydney.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Professor Alison Preston has been employed by the University of Western Australia (UWA) since 2013 as a Winthrop Professor of Economics in the UWA Business School. Alison teaches in the areas of micro-economics and public policy.

Alison's research interests are in gendered aspects of employment, pension savings and financial literacy. Other interests include labour economics, specifically wage determination and labour market structures.

Alison has held visiting appointments at the International Labour Organisation in Geneva and has served as an expert witness on wage setting tribunals.

Prior to entering academia, Alison was Senior Economist with UnionsWA and later as Director of Workplace Research with the Department of Industrial Relations in Canberra.

s 22(1)

Director

\sb240M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

From: dewr.gov.au
Sent: Wednesday, 18 September 2024 8:23:37 AM
To: [Mark Bray](#) [Alison Preston](#)
Cc: **s 47(F)**
Subject: RE: Approval
Importance: Normal
Sensitivity: None

That's exceptional news! Really glad to have that confirmed, Alison.

s 47(F) (and Mark and Alison), we are in the processing of finalising the contracts for consideration. I would hope to have them to you all for review in the near future.

s 22(1)

Director

M: s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Mark Bray
Sent: Tuesday, September 17, 2024 8:17 PM
To: Alison Preston ; **s 22(1)**
Cc: **s 47(F)**
Subject: RE: Approval

\cbpat7\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

\qc

We;; done, Alison. Mark

From: Alison Preston <alison.preston@uwa.edu.au>
Sent: Tuesday, 17 September 2024 8:16 PM
To: **s 22(1)** <**s 22(1)** dewr.gov.au>; Mark Bray <mark.bray@newcastle.edu.au>
Cc: **s 47(F)** <**s 47(F)** uwa.edu.au>
Subject: Approval

Dear ^{s 22(1)} and Mark

I'm delighted to advise that I've been granted approval to participate in the review.

I'm including **S 47(F)** from UWA's Office of Industry and Commercial Development. ^{s 47(F)} role in this process will be to advise on the content for any contract. The final contract will go to my Head of School for approval.

Thanks again for the opportunity.

Best wishes

Alison

\cbpat9Alison Preston

\cbpat9Professor of Economics & Honours & PG (Economics) Course Coordinator

[\cbpat9UWA Business School](#) • M251, Perth WA 6009 Australia

[\cbpat9Alison.Preston@uwa.edu.au](#)

[\cbpat9](#)

[\cbpat9\qc](#)

\cbpat9

[\cbpat9](#)



\cbpat9

\cbpat9We acknowledge we are situated on Noongar land, and that Noongar people remain the spiritual and cultural custodians of their land, and continue to practise their values, languages, beliefs and knowledge. We pay our respects to the traditional owners of the lands on which we live and work across Western Australia and Australia.

\cbpat9CRICOS Code: 00126G

From: dewr.gov.au
 Sent: Tuesday, 17 September 2024 11:29:15 AM
 To: mark.bray@newcastle.edu.au alison.preston@uwa.edu.au
 Subject: Public profiles
 Importance: Normal
 Sensitivity: None

Morning Mark and Alison,

I wanted to run some summary biographies past you to make sure you're comfortable with them (below). We've sourced the information from your university academic profile and from other media outlets.

The biographies will be used in media releases when announcing the review and for other publications as required. Please let me know if you'd like any changes (particularly if we have something wrong).

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021 and is an honorary professor at RMIT University.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Professor Alison Preston has been employed by the University of Western Australia (UWA) since 2013 as a Winthrop Professor of Economics in the UWA Business School. Alison teaches in the areas of micro-economics and public policy.

Alison's research interests are in gendered aspects of employment, pension savings and financial literacy. Other interests include labour economics, specifically wage determination and labour market structures.

Alison has held visiting appointments at the International Labour Organisation in Geneva and has served as an expert witness on wage setting tribunals.

Prior to entering academia, Alison was Senior Economist with UnionsWA and later as Director of Workplace Research with the Department of Industrial Relations in Canberra.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: dewr.gov.au
Sent: Tuesday, 17 September 2024 2:05:22 PM
To: [Mark Bray](#)
Cc: [Alison Preston](#)
Subject: RE: Public profiles [SEC=OFFICIAL]
Importance: Normal
Sensitivity: None

Thanks for the updates, Mark. Greatly appreciated.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Mark Bray
Sent: Tuesday, September 17, 2024 1:46 PM
To: s 22(1)
Cc: Alison Preston
Subject: RE: Public profiles [SEC=OFFICIAL]

\cbpat8\qcCAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

\qc

s 22(1)

I'm still working on the disclosure form. Thanks for sending it.

The bio is nice. Good job. I'd just change a little in the first paragraph (as below) and add a comma in the third (as below).

Cheers,

Mark

From: s 22(1) <s 22(1) dewr.gov.au>
Sent: Tuesday, 17 September 2024 11:29 AM

To: Mark Bray <mark.bray@newcastle.edu.au>; alison.preston@uwa.edu.au

Subject: Public profiles [SEC=OFFICIAL]

Morning Mark and Alison,

I wanted to run some summary biographies past you to make sure you're comfortable with them (below). We've sourced the information from your university academic profile and from other media outlets.

The biographies will be used in media releases when announcing the review and for other publications as required. Please let me know if you'd like any changes (particularly if we have something wrong).

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. **As well as his primary affiliation, he** ~~and~~ **is an honorary professor at both RMIT University and University of Sydney.**

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Professor Alison Preston has been employed by the University of Western Australia (UWA) since 2013 as a Winthrop Professor of Economics in the UWA Business School. Alison teaches in the areas of micro-economics and public policy.

Alison's research interests are in gendered aspects of employment, pension savings and financial literacy. Other interests include labour economics, specifically wage determination and labour market structures.

Alison has held visiting appointments at the International Labour Organisation in Geneva and has served as an expert witness on wage setting tribunals.

Prior to entering academia, Alison was Senior Economist with UnionsWA and later as Director of Workplace Research with the Department of Industrial Relations in Canberra.

s 22(1)

Director

\sb240M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

s 22(1)

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Wednesday, 18 September 2024 11:12 AM
To: s 22(1)
Subject: RE: Public profiles [SEC=OFFICIAL]- doc 1
Attachments: Scan_20240918 (5).pdf

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I hope this works – revised doc 1 – first page.
 Mark

From: s 22(1)
Sent: Wednesday, 18 September 2024 9:17 AM
To: Mark Bray
Subject: RE: Public profiles [SEC=OFFICIAL]

Morning Mark,

How are you going with the disclosure? We are hoping to get the final materials to the Minister today if possible so he can consider as quickly as possible. Is that achievable for you?

s 22(1)
 Director

M: s 22(1)
 Bargaining Policy | Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Tuesday, September 17, 2024 1:46 PM
To: s 22(1) <s 22(1) dewr.gov.au>
Cc: Alison Preston <alison.preston@uwa.edu.au>
Subject: RE: Public profiles [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I'm still working on the disclosure form. Thanks for sending it.

The bio is nice. Good job. I'd just change a little in the first paragraph (as below) and add a comma in the third (as below).

Cheers,

Mark

From: s 22(1) <s 22(1) dewr.gov.au>
Sent: Tuesday, 17 September 2024 11:29 AM
To: Mark Bray <mark.bray@newcastle.edu.au>; alison.preston@uwa.edu.au
Subject: Public profiles [SEC=OFFICIAL]

Morning Mark and Alison,

I wanted to run some summary biographies past you to make sure you're comfortable with them (below). We've sourced the information from your university academic profile and from other media outlets.

The biographies will be used in media releases when announcing the review and for other publications as required. Please let me know if you'd like any changes (particularly if we have something wrong).

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. **As well as his primary affiliation, he and** is an honorary professor at **both** RMIT University **and University of Sydney**.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Professor Alison Preston has been employed by the University of Western Australia (UWA) since 2013 as a Winthrop Professor of Economics in the UWA Business School. Alison teaches in the areas of micro-economics and public policy.

Alison's research interests are in gendered aspects of employment, pension savings and financial literacy. Other interests include labour economics, specifically wage determination and labour market structures.

Alison has held visiting appointments at the International Labour Organisation in Geneva and has served as an expert witness on wage setting tribunals.

Prior to entering academia, Alison was Senior Economist with UnionsWA and later as Director of Workplace Research with the Department of Industrial Relations in Canberra.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

REVIEWER CONFLICT OF INTEREST DECLARATION

Name: Emeritus Professor Mark Bray
Position Title: Reviewer
Branch / Division: Safety and Industry Policy Division

I, Mark [REDACTED] Bray, declare that:

- (a). I am aware of my responsibilities in relation to the proposed engagement by the Commonwealth comprised of the independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023. (Engagement)*. These include an obligation to behave honestly and with integrity, to disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the Engagement and not make improper use of (a) Commonwealth confidential information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- (b). the list of my outside employment or associations, any publicly held positions or views, and private interests and relationships at Annexure A has been prepared on the basis of the particular roles and responsibilities of the Engagement; and
- (c). I undertake to immediately inform the Department of Employment and Workplace Relations of any changes to:
 - (i) my responsibilities or to the issue or subjects on which I am required to make decision or give advice; and
 - (ii) my personal circumstances,

that could affect the contents of this declaration and to provide an amended declaration(s) using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of should circumstances arise in which I consider that they could or could be seen to influence any decision I am taking or the advice I am giving in connection with the Engagement.

I understand that this would require the consent of the family member to the collection by the Department of Employment and Workplace Relations of personal information, and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I understand that I will not be permitted to take part in the discussions or decision-making processes where a material conflict of interest exists unless a member of the Senior Executive Service in the Department of Employment and Workplace Relations determines otherwise.

Signed _____

Date 17/09/2024

s 22(1)

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Wednesday, 18 September 2024 11:08 AM
To: s 22(1)
Subject: RE: Public profiles [SEC=OFFICIAL]- doc 2
Attachments: Scan_20240918 (2).pdf

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I hope this works for doc 2.
 Mark

From: s 22(1)
Sent: Wednesday, 18 September 2024 9:17 AM
To: Mark Bray
Subject: RE: Public profiles [SEC=OFFICIAL]

Morning Mark,

How are you going with the disclosure? We are hoping to get the final materials to the Minister today if possible so he can consider as quickly as possible. Is that achievable for you?

s 22(1)
 Director

M: s 22(1)
 Bargaining Policy | Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Tuesday, September 17, 2024 1:46 PM
To: s 22(1) <s 22(1) dewr.gov.au>
Cc: Alison Preston <alison.preston@uwa.edu.au>
Subject: RE: Public profiles [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I'm still working on the disclosure form. Thanks for sending it.

The bio is nice. Good job. I'd just change a little in the first paragraph (as below) and add a comma in the third (as below).

Cheers,

Mark

From: s 22(1) <s 22(1) dewr.gov.au>
Sent: Tuesday, 17 September 2024 11:29 AM
To: Mark Bray <mark.bray@newcastle.edu.au>; alison.preston@uwa.edu.au
Subject: Public profiles [SEC=OFFICIAL]

Morning Mark and Alison,

I wanted to run some summary biographies past you to make sure you're comfortable with them (below). We've sourced the information from your university academic profile and from other media outlets.

The biographies will be used in media releases when announcing the review and for other publications as required. Please let me know if you'd like any changes (particularly if we have something wrong).

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. **As well as his primary affiliation, he and** is an honorary professor at **both** RMIT University **and University of Sydney**.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Professor Alison Preston has been employed by the University of Western Australia (UWA) since 2013 as a Winthrop Professor of Economics in the UWA Business School. Alison teaches in the areas of micro-economics and public policy.

Alison's research interests are in gendered aspects of employment, pension savings and financial literacy. Other interests include labour economics, specifically wage determination and labour market structures.

Alison has held visiting appointments at the International Labour Organisation in Geneva and has served as an expert witness on wage setting tribunals.

Prior to entering academia, Alison was Senior Economist with UnionsWA and later as Director of Workplace Research with the Department of Industrial Relations in Canberra.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

PRIVATE

PROPOSED POSITION
& ORGANISATION

Please provide details for:
how any conflict(s), actual
relevant to remuneration p
Tribunal Act 1973 (Cth). T
when holding certain full-ti
confidential and will only b

Please provide any conflict

QUESTION

10.

13.

Neither position brings any potential financial gain from the Review, while neither individual will gain access to confidential or restricted data gained during the Review nor will they influence the content of the final Report. So, I see no way in which these personal relationships will compromise my obligation to avoid perceived bias and behave honestly and with integrity in undertaking the Review.

During a long academic career, I have researched and published on various aspects of Australian labour law and industrial relations. This is part of acquiring the expert skills and knowledge required to undertake the Review. Despite my on-going research interest in these matters, I am no longer employed by any University (note that my Emeritus status and my two roles as Honorary Professor are unpaid), nor do I enjoy any financial gain from any "outside association". At times, I have expressed views about these matters, including the content of the Fair Work Act 2009. I do not see how any of this could contribute to any "reasonable perception that [I am] unable to discharge [my] obligations or duties in an objective and independent manner to the best of [my] ability". Indeed, they do not impact at all upon my capacity and commitment to offer a fair and evidence-based Review.

ASSURANCE

I declare that to the best of my knowledge, the information provided above is true and correct.

Mark [redacted] Bray

17/09/2024

Name

Signature

Date

s 22(1)

From: s 22(1)
 Sent: Thursday, 19 September 2024 1:42:18 PM
 To: s 22(1)
 Cc: s 22(1) s 22(1) [DLO Watt](#)
 Subject: RE: Short turnaround approval: SJBP Review Panel briefing [SEC=OFFICIAL:Sensitive]
 Importance: Normal
 Sensitivity: None

Thanks very much s 22(1)

s 22(1)

P: s 22(1) | M: s 22(1) | s 22(1) [dewr.gov.au](#)

From: s 22(1)
Sent: Thursday, September 19, 2024 1:41 PM
To: s 22(1)
Cc: s 22(1) ; s 22(1) ; DLO Watt
Subject: RE: Short turnaround approval: SJBP Review Panel briefing [SEC=OFFICIAL:Sensitive]

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100

Thanks s 22(1) Approved



s 22(1)

Director – Workplace Relations

Office of Senator The Hon Murray Watt

Minister for Employment and Workplace Relations

M: s 22(1)

E: s 22(1) [mo.dewr.gov.au](#)

\qc\ri100\sb100OFFICIAL: Sensitive

\sb100**From:** s 22(1) <s 22(1) [dewr.gov.au](#)>
Sent: Thursday, September 19, 2024 1:36 PM
To: s 22(1) <s 22(1) [dewr.gov.au](#)>
Cc: s 22(1) <s 22(1) [dewr.gov.au](#)>; s 22(1) <s 22(1) [dewr.gov.au](#)>; DLO Watt
 s 22(1)
Subject: Short turnaround approval: SJBP Review Panel briefing [SEC=OFFICIAL:Sensitive]

\sb100

Hi s 22(1)

As flagged, I seek your approval for a short turnaround for briefing MS24-000767: Appointment of reviewers to the review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*. The briefing will enable the review panel to be appointed so that the review can commence, and includes a letter to the Prime Minister to inform him of the process. Happy to discuss.

Thanks
s 22(1)

s 22(1)

P: s 22(1) | M: s 22(1) | s 22(1) dewr.gov.au
s 22(1)

s 22(1)

s 22(1)

From: s 22(1)
Sent: Thursday, 19 September 2024 6:14 PM
To: Alison Preston
Subject: Re: Correspondence from Minister Watt [SEC=OFFICIAL]

Congratulations! Look forward to supporting you with your work.

Will progress contracts as soon as humanly possible.

I'll give you a call tomorrow about other logistics. I'd like to set up a meeting next week with you and Mark to start game planning where you'd like to start.

s 22(1)

Director

T: s 22(1)

M: s 22(1)

Bargaining Implementation | Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Alison Preston
Sent: Thursday, September 19, 2024 6:11:43 PM
To: Minister Watt
Cc: s 22(1)
Subject: RE: Correspondence from Minister Watt [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear s 22(1)

Just acknowledging receipt of letter.

Best wishes

Alison

From: Minister Watt
Sent: Thursday, 19 September 2024 4:04 PM
To: Alison Preston
Subject: Correspondence from Minister Watt [SEC=OFFICIAL]

Good evening,

Please find **attached** correspondence from the Minister for Employment and Workplace Relations, Senator the Hon Murray Watt.

Kind regards,

s 22(1)

Departmental Liaison Officer - Workplace Relations

Office of Senator the Hon Murray Watt

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country in Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures past and present.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

s 22(1)

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Friday, 20 September 2024 10:36 AM
To: s 22(1)
Subject: RE: Public profiles - doc 2 [SEC=OFFICIAL]
Attachments: Disclosure statement - Bray - revised Attachment.pdf

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I attach a revised Attachment to my earlier Disclosure Statement. It does not change any of the previous answers and simply adds my Honorary positions to the list of Private Interests.

Apologies for this earlier omission.

Best wishes,

Mark

From: s 22(1)
Sent: Friday, 20 September 2024 9:59 AM
To: Mark Bray
Subject: RE: Public profiles - doc 2 [SEC=OFFICIAL]

Thanks for the update Mark. If you could please resubmit that would be great.

s 22(1)
 Assistant Secretary (A/g)

M: s 22(1)
 Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Friday, September 20, 2024 9:40 AM
To: s 22(1) <s 22(1) dewr.gov.au>
Subject: FW: Public profiles [SEC=OFFICIAL]- doc 2

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 22(1)

I realise that my disclosure document (attached) should have included my honorary appointments (at Newcastle, RMIT and Sydney respectively) and a statement that all three do not provide any payment nor do they represent any conflict of interest.

Should I resubmit this page with the declaration?

Mark

From: Mark Bray
Sent: Wednesday, 18 September 2024 11:08 AM
To: s 22(1) <s 22(1) [dewr.gov.au](mailto:s 22(1)@dewr.gov.au)>
Subject: RE: Public profiles [SEC=OFFICIAL]- doc 2

s 22(1)

I hope this works for doc 2.

Mark

From: s 22(1) <s 22(1) [dewr.gov.au](mailto:s 22(1)@dewr.gov.au)>
Sent: Wednesday, 18 September 2024 9:17 AM
To: Mark Bray <mark.bray@newcastle.edu.au>
Subject: RE: Public profiles [SEC=OFFICIAL]

Morning Mark,

How are you going with the disclosure? We are hoping to get the final materials to the Minister today if possible so he can consider as quickly as possible. Is that achievable for you?

s 22(1)

Director

M: s 22(1)
Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Mark Bray <mark.bray@newcastle.edu.au>
Sent: Tuesday, September 17, 2024 1:46 PM
To: s 22(1) <s 22(1) [dewr.gov.au](mailto:s 22(1)@dewr.gov.au)>
Cc: Alison Preston <alison.preston@uwa.edu.au>
Subject: RE: Public profiles [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

I'm still working on the disclosure form. Thanks for sending it.

The bio is nice. Good job. I'd just change a little in the first paragraph (as below) and add a comma in the third (as below).

Cheers,

Mark

From: S 22(1) <S 22(1) dewr.gov.au>
Sent: Tuesday, 17 September 2024 11:29 AM
To: Mark Bray <mark.bray@newcastle.edu.au>; alison.preston@uwa.edu.au
Subject: Public profiles [SEC=OFFICIAL]

Morning Mark and Alison,

I wanted to run some summary biographies past you to make sure you're comfortable with them (below). We've sourced the information from your university academic profile and from other media outlets.

The biographies will be used in media releases when announcing the review and for other publications as required. Please let me know if you'd like any changes (particularly if we have something wrong).

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. **As well as his primary affiliation, he** ~~and~~ is an honorary professor at **both** RMIT University **and** University of Sydney.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)

Professor Alison Preston has been employed by the University of Western Australia (UWA) since 2013 as a Winthrop Professor of Economics in the UWA Business School. Alison teaches in the areas of micro-economics and public policy.

Alison's research interests are in gendered aspects of employment, pension savings and financial literacy. Other interests include labour economics, specifically wage determination and labour market structures.

Alison has held visiting appointments at the International Labour Organisation in Geneva and has served as an expert witness on wage setting tribunals.

Prior to entering academia, Alison was Senior Economist with UnionsWA and later as Director of Workplace Research with the Department of Industrial Relations in Canberra.

s 22(1)

Director

M:s 22(1)

Bargaining Policy | Bargaining and Industry Policy Branch

Safety and Industry Policy Division

Australian Government Department of Employment and Workplace Relations

dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

OFFICIAL: Sensitive//Personal Privacy

PRIVATE INTERESTS DECLARATION - ATTACHMENT

| | |
|-------------------------------------|--|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|--|

Please provide details for all 'yes' answers to any question on the Private Interests Declaration form. Please detail how any conflict(s), actual or perceived, will be managed if appointed. Please note that responses to Q12 may be relevant to remuneration payable for part-time appointments with reference to section 7(11) of the Remuneration Tribunal Act 1973 (Cth). The Review will be conducted in a confidential and will only be disclosed when holding certain full-time positions.

Please provide any conflicts of interest.

| QUESTION | |
|----------|--|
| 10. | |
| 13. | <p>Neither position brings any potential financial gain from the Review, while neither individual will gain access to confidential or restricted data gained during the Review nor will they influence the content of the final Report. So, I see no way in which these personal relationships will compromise my obligation to avoid perceived bias and behave honestly and with integrity in undertaking the Review.</p> <p>During a long academic career, I have researched and published on various aspects of Australian labour law and industrial relations. This is part of acquiring the expert skills and knowledge required to undertake the Review. Despite my on-going research interest in these matters, I am no longer employed by any University (note that my Emeritus status and my two roles as Honorary Professor are unpaid), nor do I enjoy any financial gain from any "outside association". At times, I have expressed views about these matters, including the content of the Fair Work Act 2009. I do not see how any of this could contribute to any "reasonable perception that [I am] unable to discharge [my] obligations or duties in an objective and independent manner to the best of [my] ability". Indeed, they do not impact at all upon my capacity and commitment to offer a fair and evidence-based Review.</p> |

OFFICIAL: Sensitive//Personal Privacy

ASSURANCE

I declare that to the best of my knowledge, the information provided above is true and correct.

Mark [REDACTED] Bray


17/09/2024

Name

Signature

Date

s 22(1)

From: dewr.gov.au
Sent: Tuesday, 24 September 2024 5:12:04 PM
To: mark.bray@newcastle.edu.au
Cc: s 22(1) s 22(1)
Subject: Engagement Agreement
Importance: Normal
Sensitivity: None
Attachments: Emeritus Professor Bray terms of engagement 24 September 2024.docx 

Evening Mark,

Please find attached the Engagement Agreement in relation to your appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

Let me know of any concerns, otherwise, I look forward to receiving the executed scan of the Engagement Agreement at your earliest opportunity.

s 22(1)

Assistant Secretary (A/g)

M:s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

OFFICIAL: Sensitive//Personal Privacy

Date: 24 September 2024

Contact: S 22(1) Assistant Secretary (A/g), Bargaining and Industry Policy Branch

Email: S 22(1) dewr.gov.au

Mobile: S 22(1)

Emeritus Professor Mark Bray
S 47F(1)

By email: mark.bray@newcastle.edu.au

Dear Emeritus Professor Bray

I refer to the letter sent by Senator the Hon Murray Watt, Minister for Employment and Workplace Relations, congratulating you on your appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

The attached documents comprise the terms that govern your appointment, as between you and the Commonwealth of Australia, represented by the Department of Employment and Workplace Relations (**the Commonwealth**).

The scope of the appointment is described in the Agreement Details in the attached Engagement Agreement.

Action required

Please indicate your acceptance of the Engagement Agreement by:

- signing and dating the Engagement Agreement before a witness; and
- returning a scan of the signed and dated Engagement Agreement to the Commonwealth within 7 days after the date of this Letter.

A fully executed scan of the Engagement Agreement will be returned to you upon execution by the Commonwealth.

Yours sincerely

S 22(1)

ry
Safety and Industry Policy Division

24 September 2024

ENGAGEMENT AGREEMENT

AGREEMENT DETAILS

| Item | Cl. ref. | | | |
|-------------------------------|--------------|---|-------------------------------|--------------|
| Parties | - | 1. The Commonwealth of Australia represented by the Department of Employment and Workplace Relations ABN 96 584 957 427 (the Commonwealth) | | |
| | | 2. Emeritus Professor Mark [REDACTED] Bray (the Reviewer) | | |
| Engagement | 2 | <p><i>Nature of appointment</i></p> <p>Section 4 of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> (Secure Jobs Better Pay Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted.</p> <p>Section 4A of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> (Closing Loopholes Act) requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.</p> <p>The Reviewer is appointed to the panel of independent reviewers for the joint review of the Secure Jobs Better Pay Act and the Closing Loopholes Act. The Reviewer must undertake a review of:</p> <ul style="list-style-type: none">the Secure Jobs Better Pay Act in accordance with s 4 of that Act; andthe Closing Loopholes Act in accordance with section 4A of that Act, <p>in accordance with the Terms of Reference at Schedule 1.</p> <p>Without limiting the matters that may be considered when conducting the review, the review must:</p> <ul style="list-style-type: none">- consider whether the operation of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act are appropriate and effective;- identify any unintended consequences of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act; and- consider whether further amendments to the <i>Fair Work Act 2009</i>, or any other legislation, are necessary to improve the operations of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act, or rectify any unintended consequences identified in the review. <p>In conducting the review, the Reviewer must meet the following milestones, unless otherwise agreed by the Commonwealth:</p> <table><tr><td>Commencement of consultations</td><td>October 2024</td></tr></table> | Commencement of consultations | October 2024 |
| Commencement of consultations | October 2024 | | | |

| | | | | | | | | | | | | | |
|---|--|--|-------------------|---|--|-------------------------|--|----------------------|--|---------------------------|--|--|--------|
| | | Emerging propositions, guidance on data and gaps | November 2024 | | | | | | | | | | |
| | | Draft propositions and recommendations | Mid December 2024 | | | | | | | | | | |
| | | Report | 31 January 2025 | | | | | | | | | | |
| | | Incidental matters If incidental materials, services or functions are required in order for the Engagement to be performed (e.g. pre-reading or preparation), they will be taken to be included in the scope of the Engagement and will be accommodated as part of the Engagement at no additional cost to the Commonwealth, notwithstanding that they are not specifically set out in this Agreement. | | | | | | | | | | | |
| Expiry Date | 3.1 | 31 March 2025 | | | | | | | | | | | |
| GST | 4.2/4.3 | Is the Reviewer a natural person who is not registered for GST? Yes [X] No [] If yes, clause 4.2 applies Is the Reviewer a body corporate or an individual operating an enterprise who is registered for GST? Yes [] No [X] If yes, clause 4.3 applies. | | | | | | | | | | | |
| Fees | 4.1 | The Reviewer will be paid Fees based on the actual amount of time they spend on the Engagement, at the rates specified in the 'Rates' item below. Notwithstanding the above, the aggregate of all Fees payable by the Commonwealth to the Reviewer under this Agreement will not exceed \$114,048 , exclusive of any applicable GST. | | | | | | | | | | | |
| Daily Rate | 4.1 /Fees | <table><tr><td colspan="2">The Commonwealth will pay the Reviewer a fixed daily payment based on hours worked on the Engagement, as set out below:</td></tr><tr><td>Full day (over 5 hours)</td><td>\$960.00 (exclusive of any applicable GST)</td></tr><tr><td>Half day (2-5 hours)</td><td>\$640.00 (exclusive of any applicable GST)</td></tr><tr><td>Quarter day (0.5-2 hours)</td><td>\$320.00 (exclusive of any applicable GST)</td></tr><tr><td>No review work completed (less than 0.5 hours)</td><td>\$0.00</td></tr></table> The Reviewer will not be paid for any work on the Engagement that is less than 0.5 hours in one day. | | The Commonwealth will pay the Reviewer a fixed daily payment based on hours worked on the Engagement, as set out below: | | Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | No review work completed (less than 0.5 hours) | \$0.00 |
| The Commonwealth will pay the Reviewer a fixed daily payment based on hours worked on the Engagement, as set out below: | | | | | | | | | | | | | |
| Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | | | | | | | | | | | | |
| Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | | | | | | | | | | | | |
| Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | | | | | | | | | | | |
| No review work completed (less than 0.5 hours) | \$0.00 | | | | | | | | | | | | |

| | | |
|--|-----|--|
| Method of Payment | 4.1 | The Reviewer will be paid monthly in arrears for time spent in the previous month on the Engagement, subject to the terms of the Agreement, receipt of a valid Tax Invoice in accordance with clause 6 below, and provision of a satisfactory timesheet to the Department, which shows time spent by the Reviewer in the relevant month. |
| Superannuation | 4.6 | Will superannuation contributions be payable by the Commonwealth in respect of the Engagement, in addition to the Fees? Yes [] No [X] |
| Travel Arrangements | 5 | <p>Is travel applicable? Are any travel arrangements or entitlements applicable to the Engagement?</p> <p>Yes [X] No [] (domestic travel only)</p> <p>If yes, clause 5 applies. If no, the Reviewer is not entitled to claim any amounts in relation to travel.</p> |
| | | <p>Travel Entitlements</p> <p>Reimbursement for meals and incidental expenses and will be in line with the Department of Employment and Workplace Relations Travel Policy.</p> |
| | | <p>Approval requirements</p> <p>The Reviewer must seek the prior written approval of the Commonwealth prior to accessing travel entitlements</p> |
| | | <p>Arrangements for making travel booking</p> <p>The Department will book and pay for approved travel and accommodation expenses associated with any travel the Reviewer is required to undertake for the Engagement</p> |
| Invoice procedures | 6 | <p>Tax Invoices will be provided by the Reviewer monthly.</p> <p>Tax Invoices are to be addressed to SJBPRReview@dewr.gov.au</p> |
| Insurance | 7 | None specified |
| Intellectual Property | 10 | Clause 10.12 does not apply |
| Commonwealth Confidential Information | 11 | None specified |

| | | |
|------------------------------------|----|---|
| Security | 14 | <p>Is a security clearance required for the Engagement?</p> <p>Yes [<input type="checkbox"/>] No [<input checked="" type="checkbox"/>]</p> <p>If yes, specify the level of clearance required: N/A</p> |
| Commonwealth Representative | 27 | <p>The Commonwealth Representative is s 22(1) Director, Bargaining Policy.</p> |
| Commonwealth's address for notices | 28 | <p>Postal address: GPO Box 9828 Canberra ACT 2601</p> <p>Physical address: Level 9, 215 Adelaide Street</p> <p>Email address: s 22(1) dewr.gov.au</p> |
| Reviewer's address for notices | 28 | <p>Postal address: Emeritus Professor Mark Bray</p> <p>s 47F(1)</p> <p>Physical address: As above</p> <p>Email address: mark.bray@newcastle.edu.au</p> |

PARTIES

This Agreement is made between and binds the Parties shown in the Agreement Details.

CONTEXT

This Agreement is made in the following context:

- A. The Australian Government has requested that the Reviewer undertake the Engagement.
- B. This Agreement sets out the terms and conditions on which the Engagement will be undertaken.

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears, the term:

Agreement Date means the date on which the last person executes this Agreement.

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of, the Engagement under this Agreement. Agreement Material does not include Commonwealth Material.

Applicable WHS Law means any applicable occupational health and safety law, including the WHS Act and any corresponding WHS law (as defined in section 4 of the WHS Act).

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Confidential Information means information of the Commonwealth that:

- (a) is by its nature confidential;
- (b) is identified as such in the Agreement Details or is otherwise designated by the Commonwealth as confidential; or
- (c) the Reviewer knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the Reviewer, as established by written evidence.

Commonwealth Material means any Material provided by or on behalf of the Commonwealth to the Reviewer in connection with this Agreement.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act 1983* (Cth).

Commonwealth Representative means the person identified as such in the Agreement Details or such other person as the Commonwealth may appoint from time to time and advise to the Reviewer by notice in writing.

Daily Rate has the meaning given to that term in the Agreement Details.

Eligible Data Breach has the same meaning as in the Privacy Act.

Engagement means the engagement as described in the Agreement Details.

Expiry Date has the meaning given to that term in the Agreement Details.

Fees means the fees as set out in the Agreement Details.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of an event or circumstance that the Commonwealth considers has or may have an adverse effect on the Reviewer's commercial or financial viability, ability to perform the Engagement or obligations under this Agreement, or the ability of the Commonwealth to enforce its rights under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Method of Payment has the meaning given to that term in the Agreement Details.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Personal Information has the same meaning as the term 'personal information' in the *Privacy Act 1988* (Cth) and includes 'sensitive information'.

Privacy Act means the *Privacy Act 1988* (Cth).

Reviewer means the person identified as such in the Agreement Details table.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

WHS Act means the *Work Health and Safety Act 2011* (Cth).

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (e) a reference to dollars is a reference to Australian dollars;

- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - (g) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (h) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
 - (i) a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
 - (j) a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
 - (k) where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day; and
 - (l) references to clauses are references to clauses of this Agreement.
- 1.3 A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. PERFORMANCE OF THE ENGAGEMENT, STANDARDS AND TIMEFRAMES

- 2.1 The Reviewer will perform the Engagement.
- 2.2 The Engagement must not be subcontracted or performed by any person other than the Reviewer, unless otherwise agreed by the Commonwealth.

3. TERM

- 3.1 This Agreement will commence on the later of:
- (a) the date it has been executed by both parties; or
 - (b) the date upon which the Reviewer provides to the Commonwealth satisfactory evidence of the Reviewer having obtained a security clearance, if one is required under the Agreement Details; and,
- subject to earlier termination in accordance with this Agreement, will expire on the Expiry Date (the **Term**).

4. FEES

- 4.1 Subject to this Agreement and the provision of a correctly rendered Tax Invoice, if the Reviewer undertakes the Engagement to the satisfaction of the Commonwealth, the Commonwealth will pay the Fees in accordance with the Method of Payment.

Individual not registered for GST

- 4.2 If the Agreement Details say that this clause applies:
- (a) the Reviewer represents to the Commonwealth that they are not registered for GST; and
 - (b) no GST has been included in the Fees.

Reviewer is a company or an individual operating an enterprise who is registered for GST

- 4.3 If the Agreement Details say that this clause applies, the Fees are inclusive of GST.

PAYG taxation

- 4.4 The Commonwealth may withhold from amounts payable to the Reviewer the amounts the Commonwealth considers necessary for the Commonwealth to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.
- 4.5 The amount deducted is determined by Australian tax laws and will depend upon a number of factors including:
- (a) whether or not the Reviewer provides a tax file number; and
 - (b) whether or not the Reviewer claims the tax free threshold.

Superannuation

- 4.6 This clause applies if the Agreement Details indicate that Superannuation is payable.
- 4.7 The Commonwealth will make superannuation contributions for the benefit of the Reviewer in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 4.8 The Reviewer must, promptly at the commencement of the Term, provide the Commonwealth with details of a complying superannuation fund into which the Commonwealth may make superannuation payments on behalf of the Reviewer in accordance with this clause 4.6.

Amounts otherwise inclusive

- 4.9 Subject to clause 5, the Fees are inclusive of all other costs of undertaking the Engagement.
- 4.10 The Reviewer is responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.11 The Reviewer must comply with all applicable taxation laws in relation to payments received from the Commonwealth under this Agreement.
- 4.12 No amounts are payable in relation to leave in connection with the Engagement.

5. TRAVEL AND OTHER ALLOWANCES

- 5.1 This clause 5 applies if the Agreement Details say that it applies.
- 5.2 Arrangements for booking, payment or reimbursement of travel, accommodation and travel allowances will be in accordance with the Agreement Details.

6. INVOICE PROCEDURES

- 6.1 The Commonwealth's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 6.2 The Reviewer must provide Tax Invoices (if applicable) during the Term as specified in the Agreement Details.

- 6.3 Subject to this Agreement, correctly rendered Tax Invoices will be paid within 20 days or, in the case of e-invoicing, within 5 days. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 6.4 Tax Invoices must be addressed to the Commonwealth Representative specified in the Agreement Details and must include the following information:
- (a) a description of the Engagement;
 - (b) date and name of the Agreement (including the Contract number applied to the Agreement by the Commonwealth (if any));
 - (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges);
 - (d) details of all work carried out as part of the Engagement in respect of the amount invoiced; and
 - (e) the relevant financial management system reference number as notified by the Commonwealth.
- 6.5 Where any money is due to the Commonwealth under this Agreement or any damages, costs, expenses or other amounts are recoverable by the Commonwealth from the Reviewer in consequence of its breach of this Agreement then the Commonwealth may:
- (a) offset them against any other amounts owing by the Commonwealth to the Reviewer under the Agreement; or
 - (b) invoice the Reviewer for the amount due.

7. INSURANCE

- 7.1 The Reviewer is responsible for ensuring that it has and maintains appropriate insurances including those specified in the Agreement Details.
- 7.2 The Reviewer must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by clause 7.1.

8. CARRYING OUT THE ENGAGEMENT

- 8.1 The Reviewer must carry out the Engagement:
- (a) exercising high professional standards of skill, care and diligence;
 - (b) to ensure that the Engagement achieves its intended purpose, is complete and is performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
 - (c) to ensure that the Commonwealth is fully and accurately informed on all matters which are relevant to the Engagement;
 - (d) to comply with any applicable or relevant Australian standards or, where there are no applicable Australian standards, any other industry standards;
 - (e) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
 - (f) to ensure that all obligations (including deadlines) specified in this Agreement are fully satisfied;

- (g) to ensure that all information provided to the Commonwealth, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect; and
- (h) to ensure that all Agreement Material is neatly and legibly compiled and that it contains adequate information to demonstrate the Engagement undertaken and to support all conclusions, findings and opinions.

9. NO EMPLOYMENT OR AGENCY

- 9.1 The Reviewer is not, by virtue of this Agreement, an employee, partner or agent of the Commonwealth.
- 9.2 The Reviewer must not represent themselves as being an employee, partner or agent of the Commonwealth.
- 9.3 The Reviewer does not have any authority to incur, and must not incur, any obligation on behalf of the Commonwealth.

10. AGREEMENT MATERIAL AND COMMONWEALTH MATERIAL

- 10.1 The Reviewer acknowledges that all of the Agreement Material is made under the direction and control of the Commonwealth.
- 10.2 Title to and risk in relation to the physical property in Agreement Material passes to the Commonwealth upon delivery of the Agreement Material to the Commonwealth.
- 10.3 Subject to clause 10.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in the Commonwealth.
- 10.4 Nothing in this clause 10 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 10.5 Where the Reviewer owns material used in relation to the Engagement, the Reviewer grants to the Commonwealth a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by the Commonwealth. Title to the Commonwealth Material does not pass to the Reviewer by virtue of any delivery to it or any other action taken under this Agreement.
- 10.6 At the Commonwealth's request, the Reviewer must bring into existence, sign, execute or otherwise deal with any document, which may be necessary to give effect to this clause 10.
- 10.7 Subject to clause 10.12 (if applicable), the Reviewer must ensure that all Commonwealth Material, and any Agreement Material to be provided to the Commonwealth, is used, copied, reproduced or supplied by the Reviewer, and any persons to whom the Reviewer supplies Agreement Material (other than the Commonwealth), only for the purposes of this Agreement.
- 10.8 The Reviewer must keep full and accurate records of the location and development of all Commonwealth Material and Agreement Material and make the records available to the Commonwealth on request.
- 10.9 The Reviewer acknowledges that the Commonwealth may, at any time and without notice, demand either orally or in writing, the destruction or delivery to the Commonwealth of all:
 - (a) Commonwealth Material;
 - (b) Agreement Material; or

- (c) other documents that contain Commonwealth Confidential Information, that may be in the Reviewer's possession or control.
- 10.10 The Reviewer must not breach the Intellectual Property rights of any third party in undertaking the Engagement.
- 10.11 To the extent permitted by law the Reviewer consents to any act or omission by the Commonwealth that would otherwise infringe any Moral Rights in the Agreement Material.
- 10.12 This clause applies if the Agreement Details say it applies:
 - (a) the Commonwealth grants to the Reviewer a non-exclusive, royalty-free, non-transferable perpetual license to use Intellectual Property in Agreement Material for non-commercial research purposes; and
 - (b) the Reviewer will obtain the Commonwealth's prior written permission before publishing Agreement Material.

11. DISCLOSURE OF INFORMATION

- 11.1 Except as specified in clause 11.2, or with the prior consent of the Commonwealth, the Reviewer must not make public or disclose to any person other than the Commonwealth any Commonwealth Confidential Information.
- 11.2 Clause 11.1 does not apply to disclosures made by the Reviewer:
 - (a) to the extent required by law, or as required by any government or governmental body, authority or agency;
 - (b) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,but in each case of disclosure, it must give the Commonwealth sufficient notice of any proposed disclosure to enable the Commonwealth to seek a protective order or other remedy to prevent the disclosure.
- 11.3 The Reviewer must ensure that Commonwealth Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
- 11.4 The Reviewer must not transfer Commonwealth Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of the Commonwealth.

12. PRIVACY

- 12.1 Except as set out in clause 12.2, or with the written permission of the Commonwealth Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, the Reviewer must:
 - (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by the Commonwealth;
 - (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement; or
 - (ii) complying with the Privacy Act;

- (c) implement all reasonable measures to meet the requirements of this clause 12;
- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the Commonwealth, including in the investigation of any complaints;
- (e) immediately notify the Commonwealth Privacy Representative if it becomes aware that a disclosure of such Personal Information may be required by law, or when it becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach and provide a written report in relation to such breach or suspected breach within 3 Business Days;
- (f) in the event of a breach of privacy obligations under this clause 12, take steps to limit any further unauthorised access to the relevant Personal Information or the possible compromise of other Personal Information;
- (g) ensure that any person who obtains access from the Reviewer to any Personal Information in respect of which it has obligations under the Privacy Act or this clause 12 signs a confidentiality declaration in a form acceptable to the Commonwealth, if required by the Commonwealth, prior to the access;
- (h) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse and to mitigate the risk of an Eligible Data Breach causing serious harm to any of the individuals to whom it relates. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (i) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
- (j) notify the Commonwealth Representative of, and cooperate with the Commonwealth in the resolution of, any complaint alleging an interference with privacy; and
- (k) upon written notice from the Commonwealth destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

12.2 The Reviewer must:

- (a) refer any requests for access by third parties to Personal Information to the Commonwealth Representative; and
- (b) assist the Commonwealth, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether the Reviewer has possession or control of any records that contain such information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which the Reviewer uses the information; and
 - (iv) the steps the person should take if the person wishes to obtain access to the information.

12.3 The Reviewer's obligations in this Agreement (including this clause 12) are in addition to its obligations under the Privacy Act.

13. CONFLICT OF INTEREST

13.1 For the purposes of this clause 13, a **Conflict of Interest** would include any circumstances where, due to:

- (a) outside employment or association;
- (b) any publicly held position or view; or
- (c) any other direct or indirect relationship or interest (whether personal, financial or otherwise),

the Reviewer is or may reasonably be perceived to be, unable to discharge its obligations or duties in relation to the Engagement in an objective and independent manner to the best of its ability. There need not be an actual conflict for a perception of one to be formed by a reasonable person.

13.2 The Reviewer warrants that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the Reviewer's performance of the Engagement, which has not already been advised to the Commonwealth in writing and consented to by the Commonwealth.

13.3 The Reviewer agrees to:

- (a) use its best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during the Engagement;
- (b) notify the Commonwealth if it becomes aware of any Conflict of Interest or potential Conflict of Interest, while the Reviewer undertakes the Engagement; and
- (c) comply with all directions given by the Commonwealth for dealing with any Conflict of Interest.

13.4 If the Reviewer is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14. SECURITY

14.1 The Reviewer must comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.

14.2 The Reviewer must perform its obligations under this Agreement and the Reviewer must perform the Engagement in accordance with security requirements notified by the Commonwealth from time to time in its absolute discretion, which may include a requirement for the Reviewer to obtain security clearances if specified in the Agreement Details.

14.3 If any breach of any security requirement occurs then, without limiting the Commonwealth's rights under this Agreement, the Reviewer must comply with any reasonable directions of the Commonwealth in order to rectify the issue and prevent further issues. If the Reviewer is unable or unwilling to resolve or deal with a breach of a security requirement, including the maintenance of a security clearance if required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14.4 The Reviewer must:

- (a) take reasonable steps to inform itself of the security requirements; and
- (b) advise the Commonwealth promptly in writing of any relevant circumstances that, in its reasonable opinion, might affect any authorisation or security clearance provided.

15. ACCESS TO PREMISES AND RECORDS

- 15.1 The Reviewer must grant, at all reasonable times, access to premises, records, accounts and other financial material or Material relevant to this Agreement, including the Commonwealth Material and Agreement Material, however and wherever stored or located, in the custody, possession or control of the Reviewer to:
- (a) the Commonwealth or any persons authorised in writing by the Commonwealth; and
 - (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,
- for the purposes of performing their respective statutory functions and/or for inspection and/or copying.
- 15.2 The Reviewer must make available on request, and at no expense to the Commonwealth, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 15.1 to be created.

16. AUDIT REQUIREMENTS

- 16.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by the Commonwealth or its nominee.
- 16.2 The Reviewer must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by the Commonwealth, including on an ad hoc basis if requested by the Commonwealth, for the purpose of ensuring that this Agreement is being properly performed and administered. The Commonwealth may appoint an independent person to assist in the audits.
- 16.3 Each party must bear its own costs of any audits.

17. ARCHIVES ACT 1983

- 17.1 The Reviewer must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Commonwealth and the National Archives of Australia.
- 17.2 Where the Commonwealth and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the Reviewer, the Reviewer must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by National Archives of Australia.
- 17.3 The Reviewer must comply with any direction given by the Commonwealth for the purpose of transferring Commonwealth records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

18. NOTIFICATION OF SIGNIFICANT EVENTS

- 18.1 In this clause 18, **Significant Event** means:
- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Reviewer or its officers, employees, agents or subcontractors that impacts or could

be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or

- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Reviewer or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- 18.2 The Reviewer must immediately issue the Commonwealth a notice on becoming aware of a Significant Event.
- 18.3 The notice issued under clause 18.2 must provide a summary of the Significant Event, including the date that it occurred and whether any other personnel engaged in connection with the Engagement were involved.
- 18.4 The Commonwealth may notify the Reviewer in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Reviewer must issue a notice under clause 18.2 in relation to the event within 3 Business Days of being notified by the Commonwealth.
- 18.5 Where reasonably requested by the Commonwealth, the Reviewer must provide the Commonwealth with any additional information regarding the Significant Event within 3 Business Days of the request.
- 18.6 If requested by the Commonwealth, the Reviewer must prepare a draft remediation plan and submit that draft plan to the Commonwealth for approval within 10 Business Days of the request.
- 18.7 A draft remediation plan prepared by the Reviewer under clause 18.6 must include the following information:
- (a) how the Reviewer will address the Significant Event in the context of the Engagement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Engagement or compliance by the Reviewer with its other obligations under this Agreement;
 - (b) how the Reviewer will ensure events similar to the Significant Event do not occur again; and
 - (c) any other matter reasonably requested by the Commonwealth.
- 18.8 The Commonwealth will review the draft remediation plan and either approve the draft remediation plan or provide the Reviewer with the details of any changes that are required. The Reviewer must make any changes to the draft remediation plan reasonably requested by the Commonwealth and resubmit the draft remediation plan to the Commonwealth for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Commonwealth. This clause 18.8 will apply to any resubmitted draft remediation plan.
- 18.9 Without limiting its other obligations under this Agreement, the Reviewer must comply with the remediation plan as approved by the Commonwealth. The Reviewer agrees to provide reports and other information about the Reviewer's progress in implementing the remediation plan as reasonably requested by the Commonwealth.
- 18.10 A failure by the Reviewer to comply with its obligations under this clause 18 will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1. The Commonwealth's rights under this clause 18 are in addition to and do not otherwise limit any other rights the Commonwealth may have under this Agreement. The performance by the Reviewer of its obligations under this clause 18 will be at no additional cost to the Commonwealth.

19. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- 19.1 For the purposes of this clause 19, **Commonwealth Supplier Code of Conduct** or **Code** means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 19.2 The Reviewer must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 19.3 The Reviewer must:
- (a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
 - (b) on request from the Commonwealth, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Reviewer's compliance with clause 19.2.
- 19.4 The Reviewer must immediately issue the Commonwealth a Notice on becoming aware of any breach of clause 19.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 19.5 Where the Commonwealth identifies a possible breach of clause 19.2, it may issue the Reviewer a Notice, and the Reviewer must, within three (3) Business Days of receiving the Notice, either:
- (a) where the Reviewer considers a breach has not occurred: advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
 - (b) where the Reviewer considers that a breach has occurred: issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 19.
- 19.6 Notwithstanding clause 19.5, a Commonwealth may notify the Reviewer in writing that it considers that the Reviewer has breached clause 19.2, in which case the Reviewer must issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 18.
- 19.7 A failure by the Reviewer to comply with its obligations under any part of this clause will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1.
- 19.8 Nothing in this clause or the Code limits, reduces, or derogates from the Reviewer's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Reviewer of its obligations under this clause will be at no additional cost to the Commonwealth.
- 19.9 The Reviewer agrees that the Commonwealth or any other Commonwealth agency may take into account the Reviewer's compliance with the Code in any future approach to market or procurement process.

20. TERMINATION, REDUCTION OR AMENDMENT TO SCOPE WITHOUT DEFAULT

- 20.1 The Commonwealth may terminate this Agreement, or reduce or amend the scope of the Engagement upon notice in writing to the Reviewer.

- 20.2 A notice issued in accordance with clause 20.1 may provide that termination, reduction or amendment is to be effective:
- (a) immediately; or
 - (b) on any date subsequent to the date the notice is provided in writing to the Reviewer (the **Effective Date**).
- 20.3 If this Agreement is terminated under clause 20.1, the Commonwealth is liable only for payment of Fees for work performed in carrying out the Engagement before the Effective Date of termination as set out in the notice, provided that such work has been rendered in accordance with this Agreement and the Reviewer is not otherwise in breach of this Agreement.
- 20.4 If the Commonwealth, acting in good faith, issues a notice of reduction in scope under clause 20.1, the scope will be reduced in accordance with, and with effect from the date of, the notice and the Reviewer will comply with any reasonable directions given by the Commonwealth in connection with the reduction in scope.
- 20.5 If the Commonwealth issues a notice in accordance with clause 20.1, it will pay the Reviewer for Services performed before the date of the termination or reduction.

21. TERMINATION FOR DEFAULT

- 21.1 Without prejudice to its rights at common law or under any statute, the Commonwealth may by notice to the Reviewer, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of the Reviewer;
 - (b) the Commonwealth is entitled to terminate this Agreement in accordance with clauses 21.2, 21.3 or 21.4;
 - (c) the Reviewer fails to comply with clause 18 or clause 19; or
 - (d) the Reviewer fails to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.
- 21.2 Subject to clause 21.3, if:
- (a) the Reviewer breaches this Agreement; and
 - (b) in the Commonwealth's sole and absolute opinion, a breach is capable of being remedied,
- the Commonwealth will give the Reviewer 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of the Commonwealth, then the Commonwealth may terminate this Agreement under this clause 21.
- 21.3 If the Reviewer commits three or more breaches of this Agreement, the Commonwealth is not required to give it 15 Business Days to remedy the breach under clause 21.2, and may immediately terminate this Agreement under this clause 21.
- 21.4 If:
- (a) the Reviewer breaches this Agreement; and
 - (b) the Commonwealth determines under clause 21.2 that a breach is not capable of being remedied,

the Commonwealth may immediately terminate this Agreement under this clause 21.

22. TERMINATION BY THE REVIEWER

- 22.1 The Reviewer may only terminate this Agreement by giving at least 5 Business Days' notice to the Commonwealth and only if:
- (a) the Commonwealth has not paid a correctly rendered invoice and has not notified the Reviewer that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
 - (b) the Reviewer has given the Commonwealth:
 - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Commonwealth at least 30 days to pay the invoice; and
 - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Commonwealth at least 15 days to pay the invoice; or
 - (c) the Reviewer has submitted notice to the Commonwealth that it wishes to relinquish the appointment which is the subject of this Agreement due to illness or for specific reasons set out in the notice.

23. TRANSITION OUT

- 23.1 In the event of termination or expiration of this Agreement for any reason, the Reviewer must:
- (a) cease access to and use of the Commonwealth's systems, Agreement Material and Commonwealth Material;
 - (b) at the Commonwealth's direction, either return or destroy all:
 - (i) Commonwealth Material;
 - (ii) Agreement Material; or
 - (iii) other documents that contain Commonwealth Confidential Information, that may be in the Reviewer's possession or control;
 - (c) where requested by the Commonwealth deliver to the Commonwealth a statutory declaration made by the Reviewer declaring that to the best of their information and belief (after having made proper inquiries) they have not retained any of the Material specified in clause 23.1(b); and
 - (d) comply with all other obligations in this Agreement, including those relating to Commonwealth Material and Agreement Material.
- 23.2 The following clauses will survive the expiration or termination of this Agreement:
- (a) clause 7 (Insurance);
 - (b) clause 11 (Disclosure of Information);
 - (c) clause 12 (Privacy);
 - (d) clause 14 (Security);
 - (e) clause 15 (Access to Premises and Records);

- (f) clause 16 (Audit Requirements);
- (g) this clause 23 (Transition Out); and
- (h) clause 31 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

24. WARRANTIES

24.1 The Reviewer warrants that:

- (a) it is duly authorised to enter into, perform and observe its obligations under this Agreement;
- (b) its execution of this Agreement is valid and binding on it; and
- (c) it is not entering into this Agreement as a trustee for any trust.

25. COMPLIANCE WITH DIRECTIONS

25.1 In undertaking the Engagement, the Reviewer must comply with:

- (a) all reasonable and lawful directions and instructions issued by the Commonwealth, whether they are issued with respect to the Engagement or any other matter which the Commonwealth considers may be reasonably relevant to the Engagement;
- (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and
- (c) all applicable policies and procedures relating to work health and safety, including those that apply to the Commonwealth's premises when using those premises.

25.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 25.1, the Reviewer will comply with the requirements that produce the highest level of health and safety.

26. PUBLIC ANNOUNCEMENTS

26.1 The Reviewer must not make any public announcement or make any representation to any media representative about or concerning this Agreement or the Commonwealth without the prior written consent of the Commonwealth, which consent may be given subject to such conditions as the Commonwealth in its absolute discretion thinks fit.

27. COMMONWEALTH REPRESENTATIVE

27.1 The Commonwealth Representative is responsible for supervision of this Agreement on behalf of the Commonwealth and has authority to issue and receive any written notices under this Agreement.

28. ADDRESSES FOR NOTICES

28.1 Unless the Reviewer advises the Commonwealth Representative of another address for notice, the Commonwealth will issue any notices or other communications for the Reviewer's attention to the Reviewer's address as listed in the Agreement Details

- 28.2 Unless the Commonwealth Representative advises the Reviewer of another address for notice, the Reviewer will issue any notices or other communications for the Commonwealth's attention to its address as listed in the Agreement Details.

29. ASSIGNMENT

- 29.1 The Reviewer must not assign, in whole or in part, its rights or obligations under this Agreement without the prior written consent of the Commonwealth.

30. ENTIRE AGREEMENT AND VARIATION

- 30.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 30.2 No agreement or understanding that varies or extends this Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 30.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions, which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

31. APPLICABLE LAW

- 31.1 This Agreement will be governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts of that jurisdiction.
- 31.2 The Reviewer must ensure that the work done under this Agreement complies with the laws from time to time in force in the State or Territory in which the Engagement, or any part thereof, is to be carried out.

Executed as an Agreement

SIGNED for and on behalf of the)
Commonwealth of Australia represented)
by the **DEPARTMENT EMPLOYMENT**)
AND WORKPLACE RELATIONS ABN)
96 584 957 427 by its duly authorised)
representative:

Name of authorised representative

Signature

In the presence of:

Name of witness

Signature of witness

Date:.....

SIGNED by **MARK [REDACTED] BRAY**)
)
)

Signature

In the presence of:

Name of witness

Signature of witness

Date:.....

SCHEDULE 1 TERMS OF REFERENCE**Secure Jobs Better Pay Review****Terms of Reference**

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the review is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is

no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable ‘State or Territory Occupational Health and Safety law’.

The amendments give effect to ‘Recommendation 8: Workplace entry of union officials when providing assistance to an HSR’ of the ‘2018 Review of the model WHS laws’ conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at: <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel’s findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.

\qclri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100From: S 22(1) <S 22(1) dewr.gov.au>
Sent: Tuesday, September 24, 2024 3:10 PM
To: Alison Preston <alison.preston@uwa.edu.au>
Cc: S 22(1) <S 22(1) dewr.gov.au>; S 47(F) <S 47(F) jwa.edu.au>; S 22(1) <S 22(1) dewr.gov.au>
Subject: Terms of engagements [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: High

\qclri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100

Evening Alison,

Please find attached the Engagement Agreement in relation to Alison's appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

Let me know of any concerns, otherwise, I look forward to receiving the executed scan of the Engagement Agreement at your earliest opportunity.

s 22(1)

Assistant Secretary (A/g)

\sb240M:s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\qc\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

OFFICIAL: Sensitive//Personal Privacy

Date: 24 September 2024

Contact: S 22(1) Assistant Secretary (A/g), Bargaining and Industry Policy Branch

Email: S 22(1) dewr.gov.au

Mobile: S 22(1)

Professor Alison Preston
The University of Western Australia
35 Stirling Highway
Perth WA, 6009

By email: alison.preston@uwa.edu.au

Dear Professor Preston

I refer to the letter sent by Senator the Hon Murray Watt MP, Minister for Employment and Workplace Relations, congratulating you on your appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

The attached documents comprise the terms that govern your appointment, as between the University of Western Australia (**the University**), as your employer, and the Commonwealth of Australia, represented by the Department of Employment and Workplace Relations (**the Commonwealth**).

The scope of the appointment is described in the Agreement Details in the attached Engagement Agreement.

Action required

Please indicate your acceptance of the appointment by:

- ensuring an authorised representative of the University signs and dates the Engagement Agreement before a witness; and
- returning a scan of the signed and dated Engagement Agreement to the Commonwealth within 7 days after the date of this Letter.

A fully executed scan of the Engagement Agreement will be returned to you upon execution by the Commonwealth.

Yours sincerely

S 22(1)

Secretary

Safety and Industry Policy Division

24 September 2024

ENGAGEMENT AGREEMENT

AGREEMENT DETAILS

| Item | Cl. ref. | |
|------------|----------|--|
| Parties | - | 1. The Commonwealth of Australia represented by the Department of Employment and Workplace Relations ABN 96 584 957 427 (the Commonwealth) |
| | | 2. The University of Western Australia, a body corporate established under section 6 of the <i>University of Western Australia Act 1911</i> ABN 37 882 817 280 (the University) |
| Reviewer | - | Professor Alison Preston |
| Engagement | 2 | <p>Nature of appointment</p> <p>Section 4 of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> (Secure Jobs Better Pay Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted.</p> <p>Section 4A of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> (Closing Loopholes Act) requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.</p> <p>The Reviewer is appointed to the panel of independent reviewers for the joint review of the Secure Jobs Better Pay Act and the Closing Loopholes Act. The Reviewer must undertake a review of:</p> <ul style="list-style-type: none"> the Secure Jobs Better Pay Act in accordance with s 4 of that Act; and the Closing Loopholes Act in accordance with section 4A of that Act, <p>in accordance with the Terms of Reference at Schedule 1.</p> <p>Without limiting the matters that may be considered when conducting the review, the review must:</p> <ul style="list-style-type: none"> consider whether the operation of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act are appropriate and effective; identify any unintended consequences of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act; and consider whether further amendments to the <i>Fair Work Act 2009</i>, or any other legislation, are necessary to improve the operations of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act, or rectify any unintended consequences identified in the review. |

| | | | | | | | | | | |
|--|--|---|-------------------------------|--|--|--|--|--|--------|-----------------|
| | | <p>In conducting the review, the Reviewer must meet the following milestones, unless otherwise agreed by the Commonwealth:</p> <table><tr><td>Commencement of consultations</td><td>October 2024</td></tr><tr><td>Emerging propositions, guidance on data and gaps</td><td>November 2024</td></tr><tr><td>Draft propositions and recommendations</td><td>Mid December 2024</td></tr><tr><td>Report</td><td>31 January 2025</td></tr></table> <p><i>Incidental matters</i></p> <p>If incidental materials, services or functions are required in order for the Engagement to be performed (e.g. pre-reading or preparation), they will be taken to be included in the scope of the Engagement and will be accommodated as part of the Engagement at no additional cost to the Commonwealth, notwithstanding that they are not specifically set out in this Agreement.</p> | Commencement of consultations | October 2024 | Emerging propositions, guidance on data and gaps | November 2024 | Draft propositions and recommendations | Mid December 2024 | Report | 31 January 2025 |
| Commencement of consultations | October 2024 | | | | | | | | | |
| Emerging propositions, guidance on data and gaps | November 2024 | | | | | | | | | |
| Draft propositions and recommendations | Mid December 2024 | | | | | | | | | |
| Report | 31 January 2025 | | | | | | | | | |
| Expiry Date | 3.1 | 31 March 2025 | | | | | | | | |
| GST | 4.2/4.3 | <p>Is the University a natural person who is not registered for GST?</p> <p>Yes [<input type="checkbox"/>] No [<input checked="" type="checkbox"/>]</p> <p>If yes, clause 4.2 applies.</p> <p>Is the University a body corporate or an individual operating an enterprise who is registered for GST?</p> <p>Yes [<input checked="" type="checkbox"/>] No [<input type="checkbox"/>]</p> <p>If yes, clause 4.3 applies.</p> | | | | | | | | |
| Fees | 4.1 | <p>The Reviewer will be paid Fees based on the actual amount of time they spend on the Engagement, at the rates specified in the 'Rates' item below.</p> <p>Notwithstanding the above, the aggregate of all Fees payable by the Commonwealth to the Reviewer under this Agreement will not exceed \$114,048, exclusive of any applicable GST.</p> | | | | | | | | |
| Daily Rate | 4.1 /Fees | <p>The Commonwealth will pay the University a fixed daily payment based on hours worked on the Engagement, as set out below:</p> <table><tr><td>Full day (over 5 hours)</td><td>\$960.00 (exclusive of any applicable GST)</td></tr><tr><td>Half day (2-5 hours)</td><td>\$640.00 (exclusive of any applicable GST)</td></tr><tr><td>Quarter day (0.5-2 hours)</td><td>\$320.00 (exclusive of any applicable GST)</td></tr></table> | Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | |
| Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | | | | | | | | | |
| Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | | | | | | | | | |
| Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | | | | | | | | |

| | | |
|--|-----|---|
| | | <div> <div>No review work completed (less than 0.5 hours)</div> <div>\$0.00</div> </div> <p>The Reviewer will not be paid for any work on the Engagement that is less than 0.5 hours in one day.</p> |
| Method of Payment | 4.1 | The University will be paid monthly in arrears for time spent by the Reviewer in the previous month on the Engagement, subject to the terms of the Agreement, receipt of a valid Tax Invoice in accordance with clause 6 below, and provision of a satisfactory timesheet to the Department, which shows time spent by the Reviewer in the relevant month. |
| Superannuation | 4.6 | <p>Will superannuation contributions be payable by the Commonwealth in respect of the Engagement, in addition to the Fees?</p> <p>Yes [] No [X]</p> |
| Travel Arrangements | 5 | <p>Is travel applicable? Are any travel arrangements or entitlements applicable to the Engagement?</p> <p>Yes [X] No [] (domestic travel only)</p> <p>If yes, clause 5 applies. If no, the University is not entitled to claim any amounts in relation to travel.</p> <p>Travel Entitlements Reimbursement for meals and incidental expenses and will be in line with the Department of Employment and Workplace Relations Travel Policy.</p> <p>Approval requirements The Reviewer must seek the prior written approval of the Commonwealth prior to accessing travel entitlements.</p> <p>Arrangements for making travel booking The Department will book and pay for approved travel and accommodation expenses associated with any travel the Reviewer is required to undertake for the Engagement</p> |
| Invoice procedures | 6 | <p>Tax Invoices will be provided by the University monthly.</p> <p>Tax Invoices are to be addressed to SJBPRReview@dewr.gov.au</p> |
| Insurance | 7 | None specified |
| Intellectual Property | 10 | Clause 10.12 does not apply |
| Commonwealth Confidential Information | 11 | None specified |

| | | |
|---|----|--|
| Security | 14 | <p>Is a security clearance required for the Engagement?</p> <p>Yes [] No [X]</p> <p>If yes, specify the level of clearance required: N/A</p> |
| Commonwealth Representative | 28 | The Commonwealth Representative is S 22(1) Director, Bargaining Policy. |
| Commonwealth's address for notices | 29 | <p>Postal address: GPO Box 9828 Canberra ACT 2601</p> <p>Physical address: Level 9, 215 Adelaide Street</p> <p>Email address: S 22(1) dewr.gov.au</p> |
| University's address for notices | 29 | <p>Postal address: 35 Stirling Highway Perth WA, 6009</p> <p>Physical address: As above</p> <p>Email address: alison.preston@uwa.edu.au</p> |

PARTIES

This Agreement is made between and binds the Parties shown in the Agreement Details.

CONTEXT

This Agreement is made in the following context:

- A. The Australian Government has requested that the Reviewer undertake the Engagement.
- B. This Agreement sets out the terms and conditions on which the Engagement will be undertaken.

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears, the term:

Agreement Date means the date on which the last person executes this Agreement.

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of, the Engagement under this Agreement. Agreement Material does not include Commonwealth Material.

Applicable WHS Law means any applicable occupational health and safety law, including the WHS Act and any corresponding WHS law (as defined in section 4 of the WHS Act).

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Confidential Information means information of the Commonwealth that:

- (a) is by its nature confidential;
- (b) is identified as such in the Agreement Details or is otherwise designated by the Commonwealth as confidential; or
- (c) the University knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the University, as established by written evidence.

Commonwealth Material means any Material provided by or on behalf of the Commonwealth to the University in connection with this Agreement.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act 1983* (Cth).

Commonwealth Representative means the person identified as such in the Agreement Details or such other person as the Commonwealth may appoint from time to time and advise to the University by notice in writing.

Daily Rate has the meaning given to that term in the Agreement Details.

Eligible Data Breach has the same meaning as in the Privacy Act.

Engagement means the engagement as described in the Agreement Details.

Expiry Date has the meaning given to that term in the Agreement Details.

Fees means the fees as set out in the Agreement Details.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of an event or circumstance that the Commonwealth considers has or may have an adverse effect on the Reviewer or University's commercial or financial viability, ability to perform the Engagement or obligations under this Agreement, or the ability of the Commonwealth to enforce its rights under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Method of Payment has the meaning given to that term in the Agreement Details.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Personal Information has the same meaning as the term 'personal information' in the *Privacy Act 1988* (Cth) and includes 'sensitive information'.

Privacy Act means the *Privacy Act 1988* (Cth).

Reviewer means the person identified as such in the Agreement Details table.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

WHS Act means the *Work Health and Safety Act 2011* (Cth).

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (e) a reference to dollars is a reference to Australian dollars;

- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (g) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (h) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- (i) a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
- (j) a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- (k) where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- (l) references to clauses are references to clauses of this Agreement.

1.3 A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. PERFORMANCE OF THE ENGAGEMENT, STANDARDS AND TIMEFRAMES

2.1 The Reviewer will perform the Engagement.

2.2 The Engagement must not be subcontracted or performed by any person other than the Reviewer, unless otherwise agreed by the Commonwealth.

3. TERM

3.1 This Agreement will commence on the later of:

- (a) the date it has been executed by both parties; or
- (b) the date upon which the University provides to the Commonwealth satisfactory evidence of the Reviewer having obtained a security clearance, if one is required under the Agreement Details; and,

subject to earlier termination in accordance with this Agreement, will expire on the Expiry Date (the **Term**).

4. FEES

4.1 Subject to this Agreement and the provision of a correctly rendered Tax Invoice, if the Reviewer undertakes the Engagement to the satisfaction of the Commonwealth, the Commonwealth will pay the Fees in accordance with the Method of Payment.

Individual not registered for GST

4.2 If the Agreement Details say that this clause applies:

- (a) the University represents to the Commonwealth that they are not registered for GST; and

- (b) no GST has been included in the Fees.

University is a company or an individual operating an enterprise who is registered for GST

- 4.3 If the Agreement Details say that this clause applies, the Fees are inclusive of GST.

PAYG taxation

- 4.4 The Commonwealth may withhold from amounts payable to the University the amounts the Commonwealth considers necessary for the Commonwealth to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.
- 4.5 The amount deducted is determined by Australian tax laws and will depend upon a number of factors including:
- (a) whether or not the University provides a tax file number; and
- (b) whether or not the University claims the tax free threshold.

Superannuation

- 4.6 This clause applies if the Agreement Details indicate that Superannuation is payable.
- 4.7 The Commonwealth will make superannuation contributions for the benefit of the Reviewer in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 4.8 The University must, promptly at the commencement of the Term, provide the Commonwealth with details of a complying superannuation fund into which the Commonwealth may make superannuation payments on behalf of the Reviewer in accordance with this clause 4.6.

Amounts otherwise inclusive

- 4.9 Subject to clause 5, the Fees are inclusive of all other costs of undertaking the Engagement.
- 4.10 The University and the Reviewer are responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.11 The University and the Reviewer must comply with all applicable taxation laws in relation to payments received from the Commonwealth under this Agreement.
- 4.12 No amounts are payable in relation to leave in connection with the Engagement.

5. TRAVEL AND OTHER ALLOWANCES

- 5.1 This clause 5 applies if the Agreement Details say that it applies.
- 5.2 Arrangements for booking, payment or reimbursement of travel, accommodation and travel allowances will be in accordance with the Agreement Details.

6. INVOICE PROCEDURES

- 6.1 The Commonwealth's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 6.2 The University must provide Tax Invoices (if applicable) during the Term as specified in the Agreement Details.

- 6.3 Subject to this Agreement, correctly rendered Tax Invoices will be paid within 20 days or, in the case of e-invoicing, within 5 days. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 6.4 Tax Invoices must be addressed to the Commonwealth Representative specified in the Agreement Details and must include the following information:
- (a) a description of the Engagement;
 - (b) date and name of the Agreement (including the Contract number applied to the Agreement by the Commonwealth (if any));
 - (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges);
 - (d) details of all work carried out as part of the Engagement in respect of the amount invoiced; and
 - (e) the relevant financial management system reference number as notified by the Commonwealth.
- 6.5 Where any money is due to the Commonwealth under this Agreement or any damages, costs, expenses or other amounts are recoverable by the Commonwealth from the University in consequence of its breach of this Agreement then the Commonwealth may:
- (a) offset them against any other amounts owing by the Commonwealth to the University under the Agreement; or
 - (b) invoice the University for the amount due.

7. INSURANCE

- 7.1 The University is responsible for ensuring that it has and maintains appropriate insurances including those specified in the Agreement Details.
- 7.2 The University must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by clause 7.1.

8. CARRYING OUT THE ENGAGEMENT

- 8.1 The Reviewer must carry out the Engagement:
- (a) exercising high professional standards of skill, care and diligence;
 - (b) to ensure that the Engagement achieves its intended purpose, is complete and is performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
 - (c) to ensure that the Commonwealth is fully and accurately informed on all matters which are relevant to the Engagement;
 - (d) to comply with any applicable or relevant Australian standards or, where there are no applicable Australian standards, any other industry standards;
 - (e) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
 - (f) to ensure that all obligations (including deadlines) specified in this Agreement are fully satisfied;

- (g) to ensure that all information provided to the Commonwealth, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect; and
- (h) to ensure that all Agreement Material is neatly and legibly compiled and that it contains adequate information to demonstrate the Engagement undertaken and to support all conclusions, findings and opinions.

9. NO EMPLOYMENT OR AGENCY

- 9.1 Neither the University nor the Reviewer is, by virtue of this Agreement, an employee, partner or agent of the Commonwealth.
- 9.2 The University must not represent itself, and must ensure that the Reviewer does not represent themselves, as being an employee, partner or agent of the Commonwealth.
- 9.3 Neither the University nor the Reviewer has any authority to incur, and must not incur, any obligation on behalf of the Commonwealth.

10. AGREEMENT MATERIAL AND COMMONWEALTH MATERIAL

- 10.1 The University and the Reviewer acknowledge that all of the Agreement Material is made under the direction and control of the Commonwealth.
- 10.2 Title to and risk in relation to the physical property in Agreement Material passes to the Commonwealth upon delivery of the Agreement Material to the Commonwealth.
- 10.3 Subject to clause 10.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in the Commonwealth.
- 10.4 Nothing in this clause 10 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 10.5 Where the University or the Reviewer owns material used in relation to the Engagement, the University grants to the Commonwealth a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by the Commonwealth. Title to the Commonwealth Material does not pass to the University or the Reviewer by virtue of any delivery to it or any other action taken under this Agreement.
- 10.6 At the Commonwealth's request, the University or the Reviewer must bring into existence, sign, execute or otherwise deal with any document, which may be necessary to give effect to this clause 10.
- 10.7 Subject to clause 10.12 (if applicable), the University and the Reviewer must ensure that all Commonwealth Material, and any Agreement Material to be provided to the Commonwealth, is used, copied, reproduced or supplied by the University, the Reviewer, and any persons to whom the University or the Reviewer supplies Agreement Material (other than the Commonwealth), only for the purposes of this Agreement.
- 10.8 The University and the Reviewer must keep full and accurate records of the location and development of all Commonwealth Material and Agreement Material and make the records available to the Commonwealth on request.
- 10.9 The University acknowledges that the Commonwealth may, at any time and without notice, demand either orally or in writing, the destruction or delivery to the Commonwealth of all:
 - (a) Commonwealth Material;

- (b) Agreement Material; or
 - (c) other documents that contain Commonwealth Confidential Information,
- that may be in the University's or the Reviewer's possession or control.
- 10.10 The University and the Reviewer must not breach the Intellectual Property rights of any third party in undertaking the Engagement.
- 10.11 To the extent permitted by law the University and the Reviewer consents to any act or omission by the Commonwealth that would otherwise infringe any Moral Rights in the Agreement Material.
- 10.12 This clause applies if the Agreement Details say it applies:
- (a) the Commonwealth grants to the University a non-exclusive, royalty-free, non-transferable perpetual license to use Intellectual Property in Agreement Material for non-commercial research purposes; and
 - (b) the University will obtain the Commonwealth's prior written permission before publishing Agreement Material.

11. DISCLOSURE OF INFORMATION

- 11.1 Except as specified in clause 11.2, or with the prior consent of the Commonwealth, the University and the Reviewer must not make public or disclose to any person other than the Commonwealth any Commonwealth Confidential Information.
- 11.2 Clause 11.1 does not apply to disclosures made by the University or the Reviewer:
- (a) to the extent required by law, or as required by any government or governmental body, authority or agency;
 - (b) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,
- but in each case of disclosure, the University must give the Commonwealth sufficient notice of any proposed disclosure to enable the Commonwealth to seek a protective order or other remedy to prevent the disclosure.
- 11.3 The University and the Reviewer must ensure that Commonwealth Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
- 11.4 The University and the Reviewer must not transfer Commonwealth Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of the Commonwealth.

12. PRIVACY

- 12.1 Except as set out in clause 12.2, or with the written permission of the Commonwealth Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, the University and the Reviewer must:
- (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by the Commonwealth;
 - (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:

- (i) performing the Agreement; or
- (ii) complying with the Privacy Act;
- (c) implement all reasonable measures to meet the requirements of this clause 12;
- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the Commonwealth, including in the investigation of any complaints;
- (e) immediately notify the Commonwealth Privacy Representative if it becomes aware that a disclosure of such Personal Information may be required by law, or when it becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach and provide a written report in relation to such breach or suspected breach within 3 Business Days;
- (f) in the event of a breach of privacy obligations under this clause 12, take steps to limit any further unauthorised access to the relevant Personal Information or the possible compromise of other Personal Information;
- (g) ensure that any person who obtains access from the University or the Reviewer to any Personal Information in respect of which it has obligations under the Privacy Act or this clause 12 signs a confidentiality declaration in a form acceptable to the Commonwealth, if required by the Commonwealth, prior to the access;
- (h) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse and to mitigate the risk of an Eligible Data Breach causing serious harm to any of the individuals to whom it relates. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (i) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
- (j) notify the Commonwealth Representative of, and cooperate with the Commonwealth in the resolution of, any complaint alleging an interference with privacy; and
- (k) upon written notice from the Commonwealth destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

12.2 The University and the Reviewer must:

- (a) refer any requests for access by third parties to Personal Information to the Commonwealth Representative; and
- (b) assist the Commonwealth, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether the University or the Reviewer has possession or control of any records that contain such information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which the University or the Reviewer uses the information; and
 - (iv) the steps the person should take if the person wishes to obtain access to the information.

12.3 The University's obligations in this Agreement (including this clause 12) are in addition to its obligations under the Privacy Act.

13. CONFLICT OF INTEREST

13.1 For the purposes of this clause 13, a **Conflict of Interest** would include any circumstances where, due to:

- (a) outside employment or association;
- (b) any publicly held position or view; or
- (c) any other direct or indirect relationship or interest (whether personal, financial or otherwise),

the Reviewer is or may reasonably be perceived to be, unable to discharge its obligations or duties in relation to the Engagement in an objective and independent manner to the best of its ability. There need not be an actual conflict for a perception of one to be formed by a reasonable person.

13.2 The University warrants that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the Reviewer's performance of the Engagement, which has not already been advised to the Commonwealth in writing and consented to by the Commonwealth.

13.3 The University agrees to:

- (a) use its best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during the Engagement;
- (b) notify the Commonwealth if it becomes aware of any Conflict of Interest or potential Conflict of Interest, while the Reviewer undertakes the Engagement; and
- (c) comply with all directions given by the Commonwealth for dealing with any Conflict of Interest.

13.4 If the University is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14. SECURITY

14.1 The University and the Reviewer must comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.

14.2 The University must perform its obligations under this Agreement and the Reviewer must perform the Engagement in accordance with security requirements notified by the Commonwealth from time to time in its absolute discretion, which may include a requirement for the Reviewer to obtain security clearances if specified in the Agreement Details.

14.3 If any breach of any security requirement occurs then, without limiting the Commonwealth's rights under this Agreement, the University must comply with any reasonable directions of the Commonwealth in order to rectify the issue and prevent further issues. If the University is unable or unwilling to resolve or deal with a breach of a security requirement, including the maintenance of a security clearance if required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14.4 The University must:

- (a) take reasonable steps to inform itself of the security requirements; and

- (b) advise the Commonwealth promptly in writing of any relevant circumstances that, in its reasonable opinion, might affect any authorisation or security clearance provided.

15. ACCESS TO PREMISES AND RECORDS

- 15.1 The University and the Reviewer must grant, at all reasonable times, access to premises, records, accounts and other financial material or Material relevant to this Agreement, including the Commonwealth Material and Agreement Material, however and wherever stored or located, in the custody, possession or control of the Reviewer or University to:
 - (a) the Commonwealth or any persons authorised in writing by the Commonwealth; and
 - (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,for the purposes of performing their respective statutory functions and/or for inspection and/or copying.
- 15.2 The University must make available on request, and at no expense to the Commonwealth, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 15.1 to be created.

16. AUDIT REQUIREMENTS

- 16.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by the Commonwealth or its nominee.
- 16.2 The University and the Reviewer must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by the Commonwealth, including on an ad hoc basis if requested by the Commonwealth, for the purpose of ensuring that this Agreement is being properly performed and administered. The Commonwealth may appoint an independent person to assist in the audits.
- 16.3 Each party must bear its own costs of any audits.

17. ARCHIVES ACT 1983

- 17.1 The University must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Commonwealth and the National Archives of Australia.
- 17.2 Where the Commonwealth and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the University, the University must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by National Archives of Australia.
- 17.3 The University must comply with any direction given by the Commonwealth for the purpose of transferring Commonwealth records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

18. NOTIFICATION OF SIGNIFICANT EVENTS

- 18.1 In this clause 18, **Significant Event** means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the University or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
 - (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the University or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- 18.2 The University must immediately issue the Commonwealth a notice on becoming aware of a Significant Event.
- 18.3 The notice issued under clause 18.2 must provide a summary of the Significant Event, including the date that it occurred and whether any other personnel engaged in connection with the Engagement were involved.
- 18.4 The Commonwealth may notify the University in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the University must issue a notice under clause 18.2 in relation to the event within 3 Business Days of being notified by the Commonwealth.
- 18.5 Where reasonably requested by the Commonwealth, the University must provide the Commonwealth with any additional information regarding the Significant Event within 3 Business Days of the request.
- 18.6 If requested by the Commonwealth, the University must prepare a draft remediation plan and submit that draft plan to the Commonwealth for approval within 10 Business Days of the request.
- 18.7 A draft remediation plan prepared by the University under clause 18.6 must include the following information:
 - (a) how the University will address the Significant Event in the context of the Engagement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Engagement or compliance by the University with its other obligations under this Agreement;
 - (b) how the University will ensure events similar to the Significant Event do not occur again; and
 - (c) any other matter reasonably requested by the Commonwealth.
- 18.8 The Commonwealth will review the draft remediation plan and either approve the draft remediation plan or provide the University with the details of any changes that are required. The University must make any changes to the draft remediation plan reasonably requested by the Commonwealth and resubmit the draft remediation plan to the Commonwealth for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Commonwealth. This clause 18.8 will apply to any resubmitted draft remediation plan.
- 18.9 Without limiting its other obligations under this Agreement, the University must comply with the remediation plan as approved by the Commonwealth. The University agrees to provide reports and other information about the University's progress in implementing the remediation plan as reasonably requested by the Commonwealth.
- 18.10 A failure by the University to comply with its obligations under this clause 18 will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1. The Commonwealth's rights under this clause 18 are in addition to and do not otherwise limit any

other rights the Commonwealth may have under this Agreement. The performance by the University of its obligations under this clause 18 will be at no additional cost to the Commonwealth.

19. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- 19.1 For the purposes of this clause 19, **Commonwealth Supplier Code of Conduct** or **Code** means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 19.2 The Reviewer must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 19.3 The Reviewer must:
- (a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
 - (b) on request from the Commonwealth, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Reviewer's compliance with clause 19.2.
- 19.4 The Reviewer must immediately issue the Commonwealth a Notice on becoming aware of any breach of clause 19.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 19.5 Where the Commonwealth identifies a possible breach of clause 19.2, it may issue the Reviewer a Notice, and the Reviewer must, within three (3) Business Days of receiving the Notice, either:
- (a) where the Reviewer considers a breach has not occurred: advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
 - (b) where the Reviewer considers that a breach has occurred: issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 19.
- 19.6 Notwithstanding clause 19.5, a Commonwealth may notify the Reviewer in writing that it considers that the Reviewer has breached clause 19.2, in which case the Reviewer must issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 18.
- 19.7 A failure by the Reviewer to comply with its obligations under any part of this clause will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1.
- 19.8 Nothing in this clause or the Code limits, reduces, or derogates from the Reviewer's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Reviewer of its obligations under this clause will be at no additional cost to the Commonwealth.
- 19.9 The Reviewer agrees that the Commonwealth or any other Commonwealth agency may take into account the Reviewer's compliance with the Code in any future approach to market or procurement process.

20. TERMINATION, REDUCTION OR AMENDMENT TO SCOPE WITHOUT DEFAULT

- 20.1 The Commonwealth may terminate this Agreement, or reduce or amend the scope of the Engagement upon notice in writing to the University.
- 20.2 A notice issued in accordance with clause 20.1 may provide that termination, reduction or amendment is to be effective:
- (a) immediately; or
 - (b) on any date subsequent to the date the notice is provided in writing to the University (the **Effective Date**).
- 20.3 If this Agreement is terminated under clause 20.1, the Commonwealth is liable only for payment of Fees for work performed in carrying out the Engagement before the Effective Date of termination as set out in the notice, provided that such work has been rendered in accordance with this Agreement and the University is not otherwise in breach of this Agreement.
- 20.4 If the Commonwealth, acting in good faith, issues a notice of reduction in scope under clause 20.1, the scope will be reduced in accordance with, and with effect from the date of, the notice and the University will comply with any reasonable directions given by the Commonwealth in connection with the reduction in scope.
- 20.5 If the Commonwealth issues a notice in accordance with clause 20.1, it will pay the University for Services performed before the date of the termination or reduction.

21. TERMINATION FOR DEFAULT

- 21.1 Without prejudice to its rights at common law or under any statute, the Commonwealth may by notice to the University, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of the University;
 - (b) the Commonwealth is entitled to terminate this Agreement in accordance with clauses 21.2, 21.3 or 21.4;
 - (c) the University fails to comply with clause 18 or clause 19; or
 - (d) the Reviewer fails to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.
- 21.2 Subject to clause 21.3, if:
- (a) the University breaches this Agreement; and
 - (b) in the Commonwealth's sole and absolute opinion, a breach is capable of being remedied,
- the Commonwealth will give the University 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of the Commonwealth, then the Commonwealth may terminate this Agreement under this clause 21.
- 21.3 If the University commits three or more breaches of this Agreement, the Commonwealth is not required to give it 15 Business Days to remedy the breach under clause 21.2, and may immediately terminate this Agreement under this clause 21.
- 21.4 If:
- (a) the University breaches this Agreement; and

- (b) the Commonwealth determines under clause 21.2 that a breach is not capable of being remedied,

the Commonwealth may immediately terminate this Agreement under this clause 21.

22. TERMINATION BY THE UNIVERSITY

- 22.1 The University may only terminate this Agreement by giving at least 5 Business Days' notice to the Commonwealth and only if:
- (a) the Commonwealth has not paid a correctly rendered invoice and has not notified the University that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
 - (b) the University has given the Commonwealth:
 - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Commonwealth at least 30 days to pay the invoice; and
 - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Commonwealth at least 15 days to pay the invoice; or
 - (c) the University has submitted notice to the Commonwealth that it wishes to relinquish the appointment which is the subject of this Agreement due to illness or for specific reasons set out in the notice.

23. TRANSITION OUT

- 23.1 In the event of termination or expiration of this Agreement for any reason, the University must:
- (a) cease access to and use of the Commonwealth's systems, Agreement Material and Commonwealth Material;
 - (b) at the Commonwealth's direction, either return or destroy all:
 - (i) Commonwealth Material;
 - (ii) Agreement Material; or
 - (iii) other documents that contain Commonwealth Confidential Information, that may be in the University's or the Reviewer's possession or control;
 - (c) where requested by the Commonwealth deliver to the Commonwealth a statutory declaration made by the University and the Reviewer declaring that to the best of their information and belief (after having made proper inquiries) they have not retained any of the Material specified in clause 23.1(b); and
 - (d) comply with all other obligations in this Agreement, including those relating to Commonwealth Material and Agreement Material.
- 23.2 The following clauses will survive the expiration or termination of this Agreement:
- (a) clause 7 (Insurance);
 - (b) clause 11 (Disclosure of Information);
 - (c) clause 12 (Privacy);
 - (d) clause 14 (Security);

- (e) clause 15 (Access to Premises and Records);
- (f) clause 16 (Audit Requirements);
- (g) this clause 23 (Transition Out); and
- (h) clause 32 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

24. WARRANTIES

24.1 The University warrants that:

- (a) it is duly authorised to enter into, perform and observe its obligations under this Agreement;
- (b) its execution of this Agreement is valid and binding on it; and
- (c) it is not entering into this Agreement as a trustee for any trust.

25. COMPLIANCE WITH DIRECTIONS

25.1 In undertaking the Engagement, the University and the Reviewer must comply with:

- (a) all reasonable and lawful directions and instructions issued by the Commonwealth, whether they are issued with respect to the Engagement or any other matter which the Commonwealth considers may be reasonably relevant to the Engagement;
- (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and
- (c) all applicable policies and procedures relating to work health and safety, including those that apply to the Commonwealth's premises when using those premises.

25.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 25.1, the University will comply with the requirements that produce the highest level of health and safety.

26. UNIVERSITY TO ENSURE THAT APPOINTEE COMPLIES

- 26.1 The University must ensure that the Reviewer complies with the provisions of this Agreement that are stated to apply to the Reviewer or capable of applying to the Reviewer;
- 26.2 A reference to the University being required to do something or refrain from doing something is taken to include a reference to the University ensuring that the Reviewer also does that thing or refrains from doing that thing.

27. PUBLIC ANNOUNCEMENTS

27.1 The University and the Reviewer must not make any public announcement or make any representation to any media representative about or concerning this Agreement or the Commonwealth without the prior written consent of the Commonwealth, which consent may be given subject to such conditions as the Commonwealth in its absolute discretion thinks fit.

28. COMMONWEALTH REPRESENTATIVE

- 28.1 The Commonwealth Representative is responsible for supervision of this Agreement on behalf of the Commonwealth and has authority to issue and receive any written notices under this Agreement.

29. ADDRESSES FOR NOTICES

- 29.1 Unless the University advises the Commonwealth Representative of another address for notice, the Commonwealth will issue any notices or other communications for the University's attention to the University's address as listed in the Agreement Details
- 29.2 Unless the Commonwealth Representative advises the University of another address for notice, the University will issue any notices or other communications for the Commonwealth's attention to its address as listed in the Agreement Details.

30. ASSIGNMENT

- 30.1 The University must not assign, in whole or in part, its rights or obligations under this Agreement without the prior written consent of the Commonwealth.

31. ENTIRE AGREEMENT AND VARIATION

- 31.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 31.2 No agreement or understanding that varies or extends this Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 31.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions, which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

32. APPLICABLE LAW

- 32.1 This Agreement will be governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts of that jurisdiction.
- 32.2 The University must ensure that the work done under this Agreement complies with the laws from time to time in force in the State or Territory in which the Engagement, or any part thereof, is to be carried out.

Executed as an Agreement

SIGNED for and on behalf of the)
Commonwealth of Australia represented)
by the **DEPARTMENT EMPLOYMENT**)
AND WORKPLACE RELATIONS ABN)
96 584 957 427 by its duly authorised)
representative:)

Name of authorised representative

Signature

In the presence of:

Name of witness

Signature of witness

Date:.....

SIGNED for and on behalf of the)
Commonwealth of Australia represented)
by the **UNIVERSITY OF WESTERN**)
AUSTRALIA ABN 37 882 817 280, a)
body corporate established under section)
6 of the *University of Western Australia*)
Act 1911, by its duly authorised)
representative:)

Name of authorised representative

Signature

In the presence of:

Name of witness

Signature of witness

Date:.....

SCHEDULE 1 TERMS OF REFERENCE

Secure Jobs Better Pay Review

Terms of Reference

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the review is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is

no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable ‘State or Territory Occupational Health and Safety law’.

The amendments give effect to ‘Recommendation 8: Workplace entry of union officials when providing assistance to an HSR’ of the ‘2018 Review of the model WHS laws’ conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at: <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel’s findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.

Evening Alison,

Please find attached the Engagement Agreement in relation to Alison's appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

Let me know of any concerns, otherwise, I look forward to receiving the executed scan of the Engagement Agreement at your earliest opportunity.

s 22(1)

Assistant Secretary (A/g)

\sb240M:s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\qc\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

OFFICIAL: Sensitive//Personal Privacy

Date: 30 September 2024

Contact: S 22(1) Assistant Secretary (A/g), Bargaining and Industry Policy Branch

Email: S 22(1) dewr.gov.au

Mobile: S 22(1)

Professor Alison Preston
The University of Western Australia
35 Stirling Highway
Perth WA, 6009

By email: alison.preston@uwa.edu.au

Dear Professor Preston

I refer to the letter sent by Senator the Hon Murray Watt MP, Minister for Employment and Workplace Relations, congratulating you on your appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

The attached documents comprise the terms that govern your appointment, as between the University of Western Australia (**the University**), as your employer, and the Commonwealth of Australia, represented by the Department of Employment and Workplace Relations (**the Commonwealth**).

The scope of the appointment is described in the Agreement Details in the attached Engagement Agreement.

Action required

Please indicate your acceptance of the appointment by:

- ensuring an authorised representative of the University signs and dates the Engagement Agreement before a witness; and
- returning a scan of the signed and dated Engagement Agreement to the Commonwealth within 7 days after the date of this Letter.

A fully executed scan of the Engagement Agreement will be returned to you upon execution by the Commonwealth.

Yours sincerely

S 22(1)

First Assistant Secretary
Safety and Industry Policy Division

30 September 2024

ENGAGEMENT AGREEMENT

AGREEMENT DETAILS

| Item | Cl. ref. | |
|------------|----------|--|
| Parties | - | 1. The Commonwealth of Australia represented by the Department of Employment and Workplace Relations ABN 96 584 957 427 (the Commonwealth) |
| | | 2. The University of Western Australia, a body corporate established under section 6 of the <i>University of Western Australia Act 1911</i> ABN 37 882 817 280 (the University) |
| Reviewer | - | Professor Alison Preston |
| Engagement | 2 | <p>Nature of appointment</p> <p>Section 4 of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> (Secure Jobs Better Pay Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted.</p> <p>Section 4A of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> (Closing Loopholes Act) requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.</p> <p>The Reviewer is appointed to the panel of independent reviewers for the joint review of the Secure Jobs Better Pay Act and the Closing Loopholes Act. The Reviewer must undertake a review of:</p> <ul style="list-style-type: none"> the Secure Jobs Better Pay Act in accordance with s 4 of that Act; and the Closing Loopholes Act in accordance with section 4A of that Act, <p>in accordance with the Terms of Reference at Schedule 1.</p> <p>Without limiting the matters that may be considered when conducting the review, the review must:</p> <ul style="list-style-type: none"> consider whether the operation of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act are appropriate and effective; identify any unintended consequences of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act; and consider whether further amendments to the <i>Fair Work Act 2009</i>, or any other legislation, are necessary to improve the operations of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act, or rectify any unintended consequences identified in the review. |

| | | | | | | | | | | |
|--|--|---|-------------------------------|--|--|--|--|--|--------|-----------------|
| | | <p>In conducting the review, the Reviewer must meet the following milestones, unless otherwise agreed by the Commonwealth:</p> <table><tr><td>Commencement of consultations</td><td>October 2024</td></tr><tr><td>Emerging propositions, guidance on data and gaps</td><td>November 2024</td></tr><tr><td>Draft propositions and recommendations</td><td>Mid December 2024</td></tr><tr><td>Report</td><td>31 January 2025</td></tr></table> <p><i>Incidental matters</i></p> <p>If incidental materials, services or functions are required in order for the Engagement to be performed (e.g. pre-reading or preparation), they will be taken to be included in the scope of the Engagement and will be accommodated as part of the Engagement at no additional cost to the Commonwealth, notwithstanding that they are not specifically set out in this Agreement.</p> | Commencement of consultations | October 2024 | Emerging propositions, guidance on data and gaps | November 2024 | Draft propositions and recommendations | Mid December 2024 | Report | 31 January 2025 |
| Commencement of consultations | October 2024 | | | | | | | | | |
| Emerging propositions, guidance on data and gaps | November 2024 | | | | | | | | | |
| Draft propositions and recommendations | Mid December 2024 | | | | | | | | | |
| Report | 31 January 2025 | | | | | | | | | |
| Expiry Date | 3.1 | 31 March 2025 | | | | | | | | |
| GST | 4.2/4.3 | <p>Is the University a natural person who is not registered for GST?</p> <p>Yes [<input type="checkbox"/>] No [<input checked="" type="checkbox"/>]</p> <p>If yes, clause 4.2 applies.</p> <p>Is the University a body corporate or an individual operating an enterprise who is registered for GST?</p> <p>Yes [<input checked="" type="checkbox"/>] No [<input type="checkbox"/>]</p> <p>If yes, clause 4.3 applies.</p> | | | | | | | | |
| Fees | 4.1 | <p>The Reviewer will be paid Fees based on the actual amount of time they spend on the Engagement, at the rates specified in the 'Rates' item below.</p> <p>Notwithstanding the above, the aggregate of all Fees payable by the Commonwealth to the Reviewer under this Agreement will not exceed \$114,048, exclusive of any applicable GST.</p> | | | | | | | | |
| Daily Rate | 4.1 /Fees | <p>The Commonwealth will pay the University a fixed daily payment based on hours worked on the Engagement, as set out below:</p> <table><tr><td>Full day (over 5 hours)</td><td>\$960.00 (exclusive of any applicable GST)</td></tr><tr><td>Half day (2-5 hours)</td><td>\$640.00 (exclusive of any applicable GST)</td></tr><tr><td>Quarter day (0.5-2 hours)</td><td>\$320.00 (exclusive of any applicable GST)</td></tr></table> | Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | |
| Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | | | | | | | | | |
| Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | | | | | | | | | |
| Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | | | | | | | | |

| | | |
|--|-----|---|
| | | <div> <div>No review work completed (less than 0.5 hours)</div> <div>\$0.00</div> </div> <p>The Reviewer will not be paid for any work on the Engagement that is less than 0.5 hours in one day.</p> |
| Method of Payment | 4.1 | The University will be paid monthly in arrears for time spent by the Reviewer in the previous month on the Engagement, subject to the terms of the Agreement, receipt of a valid Tax Invoice in accordance with clause 6 below, and provision of a satisfactory timesheet to the Department, which shows time spent by the Reviewer in the relevant month. |
| Superannuation | 4.6 | <p>Will superannuation contributions be payable by the Commonwealth in respect of the Engagement, in addition to the Fees?</p> <p>Yes [] No [X]</p> |
| Travel Arrangements | 5 | <p>Is travel applicable? Are any travel arrangements or entitlements applicable to the Engagement?</p> <p>Yes [X] No [] (domestic travel only)</p> <p>If yes, clause 5 applies. If no, the University is not entitled to claim any amounts in relation to travel.</p> <p>Travel Entitlements Reimbursement for meals and incidental expenses and will be in line with the Department of Employment and Workplace Relations Travel Policy.</p> <p>Approval requirements The Reviewer must seek the prior written approval of the Commonwealth prior to accessing travel entitlements.</p> <p>Arrangements for making travel booking The Department will book and pay for approved travel and accommodation expenses associated with any travel the Reviewer is required to undertake for the Engagement</p> |
| Invoice procedures | 6 | <p>Tax Invoices will be provided by the University monthly.</p> <p>Tax Invoices are to be addressed to SJBPRReview@dewr.gov.au</p> |
| Insurance | 7 | None specified |
| Intellectual Property | 10 | Clause 10.12 does not apply |
| Commonwealth Confidential Information | 11 | None specified |

| | | |
|---|----|--|
| Security | 14 | <p>Is a security clearance required for the Engagement?</p> <p>Yes [<input type="checkbox"/>] No [<input checked="" type="checkbox"/>]</p> <p>If yes, specify the level of clearance required: N/A</p> |
| Commonwealth Representative | 28 | The Commonwealth Representative is S 22(1) Director, Bargaining Policy. |
| Commonwealth's address for notices | 29 | <p>Postal address: GPO Box 9828 Canberra ACT 2601</p> <p>Physical address: Level 9, 215 Adelaide Street</p> <p>Email address: S 22(1) dewr.gov.au</p> |
| University's address for notices | 29 | <p>Postal address: 35 Stirling Highway Perth WA, 6009</p> <p>Physical address: As above</p> <p>Email address: alison.preston@uwa.edu.au</p> |

PARTIES

This Agreement is made between and binds the Parties shown in the Agreement Details.

CONTEXT

This Agreement is made in the following context:

- A. The Australian Government has requested that the Reviewer undertake the Engagement.
- B. This Agreement sets out the terms and conditions on which the Engagement will be undertaken.

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears, the term:

Agreement Date means the date on which the last person executes this Agreement.

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of, the Engagement under this Agreement. Agreement Material does not include Commonwealth Material.

Applicable WHS Law means any applicable occupational health and safety law, including the WHS Act and any corresponding WHS law (as defined in section 4 of the WHS Act).

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Confidential Information means information of the Commonwealth that:

- (a) is by its nature confidential;
- (b) is identified as such in the Agreement Details or is otherwise designated by the Commonwealth as confidential; or
- (c) the University knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the University, as established by written evidence.

Commonwealth Material means any Material provided by or on behalf of the Commonwealth to the University in connection with this Agreement.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act 1983* (Cth).

Commonwealth Representative means the person identified as such in the Agreement Details or such other person as the Commonwealth may appoint from time to time and advise to the University by notice in writing.

Daily Rate has the meaning given to that term in the Agreement Details.

Eligible Data Breach has the same meaning as in the Privacy Act.

Engagement means the engagement as described in the Agreement Details.

Expiry Date has the meaning given to that term in the Agreement Details.

Fees means the fees as set out in the Agreement Details.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of an event or circumstance that the Commonwealth considers has or may have an adverse effect on the Reviewer or University's commercial or financial viability, ability to perform the Engagement or obligations under this Agreement, or the ability of the Commonwealth to enforce its rights under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Method of Payment has the meaning given to that term in the Agreement Details.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Personal Information has the same meaning as the term 'personal information' in the *Privacy Act 1988* (Cth) and includes 'sensitive information'.

Privacy Act means the *Privacy Act 1988* (Cth).

Reviewer means the person identified as such in the Agreement Details table.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

WHS Act means the *Work Health and Safety Act 2011* (Cth).

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (e) a reference to dollars is a reference to Australian dollars;

- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (g) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (h) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- (i) a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
- (j) a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- (k) where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- (l) references to clauses are references to clauses of this Agreement.

1.3 A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. PERFORMANCE OF THE ENGAGEMENT, STANDARDS AND TIMEFRAMES

2.1 The Reviewer will perform the Engagement.

2.2 The Engagement must not be subcontracted or performed by any person other than the Reviewer, unless otherwise agreed by the Commonwealth.

3. TERM

3.1 This Agreement will commence on the later of:

- (a) the date it has been executed by both parties; or
- (b) the date upon which the University provides to the Commonwealth satisfactory evidence of the Reviewer having obtained a security clearance, if one is required under the Agreement Details; and,

subject to earlier termination in accordance with this Agreement, will expire on the Expiry Date (the **Term**).

4. FEES

4.1 Subject to this Agreement and the provision of a correctly rendered Tax Invoice, if the Reviewer undertakes the Engagement to the satisfaction of the Commonwealth, the Commonwealth will pay the Fees in accordance with the Method of Payment.

Individual not registered for GST

4.2 If the Agreement Details say that this clause applies:

- (a) the University represents to the Commonwealth that they are not registered for GST; and

- (b) no GST has been included in the Fees.

University is a company or an individual operating an enterprise who is registered for GST

- 4.3 If the Agreement Details say that this clause applies, the Fees are inclusive of GST.

PAYG taxation

- 4.4 The Commonwealth may withhold from amounts payable to the University the amounts the Commonwealth considers necessary for the Commonwealth to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.
- 4.5 The amount deducted is determined by Australian tax laws and will depend upon a number of factors including:
- (a) whether or not the University provides a tax file number; and
- (b) whether or not the University claims the tax free threshold.

Superannuation

- 4.6 This clause applies if the Agreement Details indicate that Superannuation is payable.
- 4.7 The Commonwealth will make superannuation contributions for the benefit of the Reviewer in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 4.8 The University must, promptly at the commencement of the Term, provide the Commonwealth with details of a complying superannuation fund into which the Commonwealth may make superannuation payments on behalf of the Reviewer in accordance with this clause 4.6.

Amounts otherwise inclusive

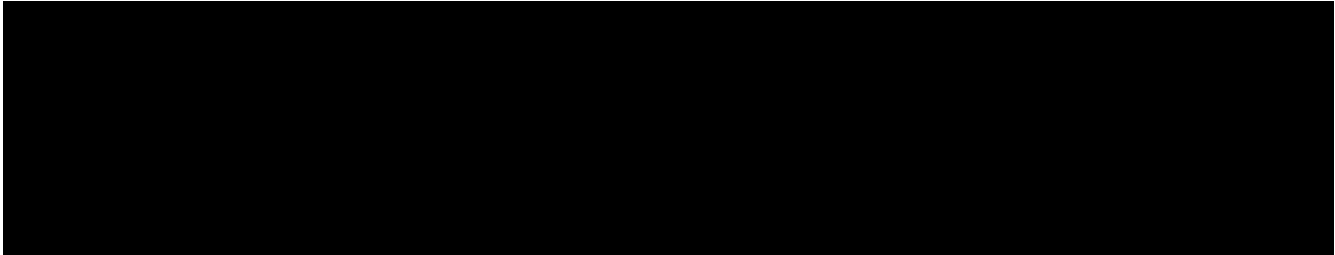
- 4.9 Subject to clause 5, the Fees are inclusive of all other costs of undertaking the Engagement.
- 4.10 The University and the Reviewer are responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.11 The University and the Reviewer must comply with all applicable taxation laws in relation to payments received from the Commonwealth under this Agreement.
- 4.12 No amounts are payable in relation to leave in connection with the Engagement.

5. TRAVEL AND OTHER ALLOWANCES

- 5.1 This clause 5 applies if the Agreement Details say that it applies.
- 5.2 Arrangements for booking, payment or reimbursement of travel, accommodation and travel allowances will be in accordance with the Agreement Details.

6. INVOICE PROCEDURES

- 6.1 The Commonwealth's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 6.2 The University must provide Tax Invoices (if applicable) during the Term as specified in the Agreement Details.

- 6.3 Subject to this Agreement, correctly rendered Tax Invoices will be paid within 20 days or, in the case of e-invoicing, within 5 days. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 6.4 Tax Invoices must be addressed to the Commonwealth Representative specified in the Agreement Details and must include the following information:
- (a) a description of the Engagement;
 - (b) date and name of the Agreement (including the Contract number applied to the Agreement by the Commonwealth (if any));
 - (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges);
 - (d) details of all work carried out as part of the Engagement in respect of the amount invoiced; and
 - (e) the relevant financial management system reference number as notified by the Commonwealth.
- 6.5 Where any money is due to the Commonwealth under this Agreement or any damages, costs, expenses or other amounts are recoverable by the Commonwealth from the University in consequence of its breach of this Agreement then the Commonwealth may:
- (a) offset them against any other amounts owing by the Commonwealth to the University under the Agreement; or
 - (b) invoice the University for the amount due.
- 

7. INSURANCE

- 7.1 The University is responsible for ensuring that it has and maintains appropriate insurances including those specified in the Agreement Details.
- 7.2 The University must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by clause 7.1.

8. CARRYING OUT THE ENGAGEMENT

- 8.1 The Reviewer must carry out the Engagement:
- (a) exercising high professional standards of skill, care and diligence;
 - (b) to ensure that the Engagement achieves its intended purpose, is complete and is performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
 - (c) to ensure that the Commonwealth is fully and accurately informed on all matters which are relevant to the Engagement;

- (d) to comply with any applicable or relevant Australian standards or, where there are no applicable Australian standards, any other industry standards;
- (e) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
- (f) to ensure that all obligations (including deadlines) specified in this Agreement are fully satisfied;
- (g) to ensure that all information provided to the Commonwealth, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect; and
- (h) to ensure that all Agreement Material is neatly and legibly compiled and that it contains adequate information to demonstrate the Engagement undertaken and to support all conclusions, findings and opinions.

9. NO EMPLOYMENT OR AGENCY

- 9.1 Neither the University nor the Reviewer is, by virtue of this Agreement, an employee, partner or agent of the Commonwealth.
- 9.2 The University must not represent itself, and must ensure that the Reviewer does not represent themselves, as being an employee, partner or agent of the Commonwealth.
- 9.3 Neither the University nor the Reviewer has any authority to incur, and must not incur, any obligation on behalf of the Commonwealth.

10. AGREEMENT MATERIAL AND COMMONWEALTH MATERIAL

- 10.1 The University and the Reviewer acknowledge that all of the Agreement Material is made under the direction and control of the Commonwealth.
- 10.2 Title to and risk in relation to the physical property in Agreement Material passes to the Commonwealth upon delivery of the Agreement Material to the Commonwealth.
- 10.3 Subject to clause 10.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in the Commonwealth.
- 10.4 Nothing in this clause 10 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 10.5 Where the University or the Reviewer owns material used in relation to the Engagement, the University grants to the Commonwealth a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by the Commonwealth. Title to the Commonwealth Material does not pass to the University or the Reviewer by virtue of any delivery to it or any other action taken under this Agreement.
- 10.6 At the Commonwealth's request, the University or the Reviewer must bring into existence, sign, execute or otherwise deal with any document, which may be necessary to give effect to this clause 10.
- 10.7 Subject to clause 10.12 (if applicable), the University and the Reviewer must ensure that all Commonwealth Material, and any Agreement Material to be provided to the Commonwealth, is used, copied, reproduced or supplied by the University, the Reviewer, and any persons to whom the University or the Reviewer supplies Agreement Material (other than the Commonwealth), only for the purposes of this Agreement.

- 10.8 The University and the Reviewer must keep full and accurate records of the location and development of all Commonwealth Material and Agreement Material and make the records available to the Commonwealth on request.
- 10.9 The University acknowledges that the Commonwealth may, at any time and without notice, demand either orally or in writing, the destruction or delivery to the Commonwealth of all:
- (a) Commonwealth Material;
 - (b) Agreement Material; or
 - (c) other documents that contain Commonwealth Confidential Information,
- that may be in the University's or the Reviewer's possession or control.
- 10.10 The University and the Reviewer must not breach the Intellectual Property rights of any third party in undertaking the Engagement.
- 10.11 To the extent permitted by law the University and the Reviewer consents to any act or omission by the Commonwealth that would otherwise infringe any Moral Rights in the Agreement Material.
- 10.12 This clause applies if the Agreement Details say it applies:
- (a) the Commonwealth grants to the University a non-exclusive, royalty-free, non-transferable perpetual license to use Intellectual Property in Agreement Material for non-commercial research purposes; and
 - (b) the University will obtain the Commonwealth's prior written permission before publishing Agreement Material.

11. DISCLOSURE OF INFORMATION

- 11.1 Except as specified in clause 11.2, or with the prior consent of the Commonwealth, the University and the Reviewer must not make public or disclose to any person other than the Commonwealth any Commonwealth Confidential Information.
- 11.2 Clause 11.1 does not apply to disclosures made by the University or the Reviewer:
- (a) to the extent required by law, or as required by any government or governmental body, authority or agency;
 - (b) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,
- but in each case of disclosure, the University must give the Commonwealth sufficient notice of any proposed disclosure to enable the Commonwealth to seek a protective order or other remedy to prevent the disclosure.
- 11.3 The University and the Reviewer must ensure that Commonwealth Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
- 11.4 The University and the Reviewer must not transfer Commonwealth Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of the Commonwealth.

12. PRIVACY

- 12.1 Except as set out in clause 12.2, or with the written permission of the Commonwealth Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, the University and the Reviewer must:
- (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by the Commonwealth;
 - (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement; or
 - (ii) complying with the Privacy Act;
 - (c) implement all reasonable measures to meet the requirements of this clause 12;
 - (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the Commonwealth, including in the investigation of any complaints;
 - (e) immediately notify the Commonwealth Privacy Representative if it becomes aware that a disclosure of such Personal Information may be required by law, or when it becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach and provide a written report in relation to such breach or suspected breach within 3 Business Days;
 - (f) in the event of a breach of privacy obligations under this clause 12, take steps to limit any further unauthorised access to the relevant Personal Information or the possible compromise of other Personal Information;
 - (g) ensure that any person who obtains access from the University or the Reviewer to any Personal Information in respect of which it has obligations under the Privacy Act or this clause 12 signs a confidentiality declaration in a form acceptable to the Commonwealth, if required by the Commonwealth, prior to the access;
 - (h) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse and to mitigate the risk of an Eligible Data Breach causing serious harm to any of the individuals to whom it relates. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
 - (i) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
 - (j) notify the Commonwealth Representative of, and cooperate with the Commonwealth in the resolution of, any complaint alleging an interference with privacy; and
 - (k) upon written notice from the Commonwealth destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.
- 12.2 The University and the Reviewer must:
- (a) refer any requests for access by third parties to Personal Information to the Commonwealth Representative; and
 - (b) assist the Commonwealth, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether the University or the Reviewer has possession or control of any records that contain such information;

- (ii) the nature of the information;
- (iii) the main purposes for which the University or the Reviewer uses the information; and
- (iv) the steps the person should take if the person wishes to obtain access to the information.

12.3 The University's obligations in this Agreement (including this clause 12) are in addition to its obligations under the Privacy Act.

13. CONFLICT OF INTEREST

13.1 For the purposes of this clause 13, a **Conflict of Interest** would include any circumstances where, due to:

- (a) outside employment or association;
- (b) any publicly held position or view; or
- (c) any other direct or indirect relationship or interest (whether personal, financial or otherwise),

the Reviewer is or may reasonably be perceived to be, unable to discharge its obligations or duties in relation to the Engagement in an objective and independent manner to the best of its ability. There need not be an actual conflict for a perception of one to be formed by a reasonable person.

13.2 The University warrants that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the Reviewer's performance of the Engagement, which has not already been advised to the Commonwealth in writing and consented to by the Commonwealth.

13.3 The University agrees to:

- (a) use its best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during the Engagement;
- (b) notify the Commonwealth if it becomes aware of any Conflict of Interest or potential Conflict of Interest, while the Reviewer undertakes the Engagement; and
- (c) comply with all directions given by the Commonwealth for dealing with any Conflict of Interest.

13.4 If the University is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14. SECURITY

14.1 The University and the Reviewer must comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.

14.2 The University must perform its obligations under this Agreement and the Reviewer must perform the Engagement in accordance with security requirements notified by the Commonwealth from time to time in its absolute discretion, which may include a requirement for the Reviewer to obtain security clearances if specified in the Agreement Details.

- 14.3 If any breach of any security requirement occurs then, without limiting the Commonwealth's rights under this Agreement, the University must comply with any reasonable directions of the Commonwealth in order to rectify the issue and prevent further issues. If the University is unable or unwilling to resolve or deal with a breach of a security requirement, including the maintenance of a security clearance if required, the Commonwealth may terminate this Agreement in accordance with clause 21.
- 14.4 The University must:
- (a) take reasonable steps to inform itself of the security requirements; and
 - (b) advise the Commonwealth promptly in writing of any relevant circumstances that, in its reasonable opinion, might affect any authorisation or security clearance provided.

15. ACCESS TO PREMISES AND RECORDS

- 15.1 The University and the Reviewer must grant, at all reasonable times, access to premises, records, accounts and other financial material or Material relevant to this Agreement, including the Commonwealth Material and Agreement Material, however and wherever stored or located, in the custody, possession or control of the Reviewer or University to:
- (a) the Commonwealth or any persons authorised in writing by the Commonwealth; and
 - (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,
- for the purposes of performing their respective statutory functions and/or for inspection and/or copying.
- 15.2 The University must make available on request, and at no expense to the Commonwealth, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 15.1 to be created.

16. AUDIT REQUIREMENTS

- 16.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by the Commonwealth or its nominee.
- 16.2 The University and the Reviewer must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by the Commonwealth, including on an ad hoc basis if requested by the Commonwealth, for the purpose of ensuring that this Agreement is being properly performed and administered. The Commonwealth may appoint an independent person to assist in the audits.
- 16.3 Each party must bear its own costs of any audits.

17. ARCHIVES ACT 1983

- 17.1 The University must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Commonwealth and the National Archives of Australia.
- 17.2 Where the Commonwealth and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the University, the University must

comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by National Archives of Australia.

- 17.3 The University must comply with any direction given by the Commonwealth for the purpose of transferring Commonwealth records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

18. NOTIFICATION OF SIGNIFICANT EVENTS

- 18.1 In this clause 18, **Significant Event** means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the University or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the University or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

- 18.2 The University must immediately issue the Commonwealth a notice on becoming aware of a Significant Event.

- 18.3 The notice issued under clause 18.2 must provide a summary of the Significant Event, including the date that it occurred and whether any other personnel engaged in connection with the Engagement were involved.

- 18.4 The Commonwealth may notify the University in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the University must issue a notice under clause 18.2 in relation to the event within 3 Business Days of being notified by the Commonwealth.

- 18.5 Where reasonably requested by the Commonwealth, the University must provide the Commonwealth with any additional information regarding the Significant Event within 3 Business Days of the request.

- 18.6 If requested by the Commonwealth, the University must prepare a draft remediation plan and submit that draft plan to the Commonwealth for approval within 10 Business Days of the request.

- 18.7 A draft remediation plan prepared by the University under clause 18.6 must include the following information:

- (a) how the University will address the Significant Event in the context of the Engagement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Engagement or compliance by the University with its other obligations under this Agreement;
- (b) how the University will ensure events similar to the Significant Event do not occur again; and
- (c) any other matter reasonably requested by the Commonwealth.

- 18.8 The Commonwealth will review the draft remediation plan and either approve the draft remediation plan or provide the University with the details of any changes that are required. The University must make any changes to the draft remediation plan reasonably requested by the Commonwealth and resubmit the draft remediation plan to the Commonwealth for

approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Commonwealth. This clause 18.8 will apply to any resubmitted draft remediation plan.

- 18.9 Without limiting its other obligations under this Agreement, the University must comply with the remediation plan as approved by the Commonwealth. The University agrees to provide reports and other information about the University's progress in implementing the remediation plan as reasonably requested by the Commonwealth.
- 18.10 A failure by the University to comply with its obligations under this clause 18 will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1. The Commonwealth's rights under this clause 18 are in addition to and do not otherwise limit any other rights the Commonwealth may have under this Agreement. The performance by the University of its obligations under this clause 18 will be at no additional cost to the Commonwealth.

19. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- 19.1 For the purposes of this clause 19, **Commonwealth Supplier Code of Conduct** or **Code** means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 19.2 The Reviewer must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 19.3 The Reviewer must:
- (a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
 - (b) on request from the Commonwealth, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Reviewer's compliance with clause 19.2.
- 19.4 The Reviewer must immediately issue the Commonwealth a Notice on becoming aware of any breach of clause 19.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 19.5 Where the Commonwealth identifies a possible breach of clause 19.2, it may issue the Reviewer a Notice, and the Reviewer must, within three (3) Business Days of receiving the Notice, either:
- (a) where the Reviewer considers a breach has not occurred: advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
 - (b) where the Reviewer considers that a breach has occurred: issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 19.
- 19.6 Notwithstanding clause 19.5, a Commonwealth may notify the Reviewer in writing that it considers that the Reviewer has breached clause 19.2, in which case the Reviewer must issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 18.
- 19.7 A failure by the Reviewer to comply with its obligations under any part of this clause will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1.

- 19.8 Nothing in this clause or the Code limits, reduces, or derogates from the Reviewer's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Reviewer of its obligations under this clause will be at no additional cost to the Commonwealth.
- 19.9 The Reviewer agrees that the Commonwealth or any other Commonwealth agency may take into account the Reviewer's compliance with the Code in any future approach to market or procurement process.

20. TERMINATION, REDUCTION OR AMENDMENT TO SCOPE WITHOUT DEFAULT

- 20.1 The Commonwealth may terminate this Agreement, or reduce or amend the scope of the Engagement upon notice in writing to the University.
- 20.2 A notice issued in accordance with clause 20.1 may provide that termination, reduction or amendment is to be effective:
- (a) immediately; or
 - (b) on any date subsequent to the date the notice is provided in writing to the University (the **Effective Date**).
- 20.3 If this Agreement is terminated under clause 20.1, the Commonwealth is liable only for payment of Fees for work performed in carrying out the Engagement before the Effective Date of termination as set out in the notice, provided that such work has been rendered in accordance with this Agreement and the University is not otherwise in breach of this Agreement.
- 20.4 If the Commonwealth, acting in good faith, issues a notice of reduction in scope under clause 20.1, the scope will be reduced in accordance with, and with effect from the date of, the notice and the University will comply with any reasonable directions given by the Commonwealth in connection with the reduction in scope.
- 20.5 If the Commonwealth issues a notice in accordance with clause 20.1, it will pay the University for Services performed before the date of the termination or reduction.

21. TERMINATION FOR DEFAULT

- 21.1 Without prejudice to its rights at common law or under any statute, the Commonwealth may by notice to the University, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of the University;
 - (b) the Commonwealth is entitled to terminate this Agreement in accordance with clauses 21.2, 21.3 or 21.4;
 - (c) the University fails to comply with clause 18 or clause 19; or
 - (d) the Reviewer fails to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.
- 21.2 Subject to clause 21.3, if:
- (a) the University breaches this Agreement; and
 - (b) in the Commonwealth's sole and absolute opinion, a breach is capable of being remedied,

the Commonwealth will give the University 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of the Commonwealth, then the Commonwealth may terminate this Agreement under this clause 21.

21.3 If the University commits three or more breaches of this Agreement, the Commonwealth is not required to give it 15 Business Days to remedy the breach under clause 21.2, and may immediately terminate this Agreement under this clause 21.

21.4 If:

- (a) the University breaches this Agreement; and
- (b) the Commonwealth determines under clause 21.2 that a breach is not capable of being remedied,

the Commonwealth may immediately terminate this Agreement under this clause 21.

22. TERMINATION BY THE UNIVERSITY

22.1 The University may only terminate this Agreement by giving at least 5 Business Days' notice to the Commonwealth and only if:

- (a) the Commonwealth has not paid a correctly rendered invoice and has not notified the University that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- (b) the University has given the Commonwealth:
 - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Commonwealth at least 30 days to pay the invoice; and
 - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Commonwealth at least 15 days to pay the invoice; or
- (c) the University has submitted notice to the Commonwealth that it wishes to relinquish the appointment which is the subject of this Agreement due to illness or for specific reasons set out in the notice.

23. TRANSITION OUT

23.1 In the event of termination or expiration of this Agreement for any reason, the University must:

- (a) cease access to and use of the Commonwealth's systems, Agreement Material and Commonwealth Material;
- (b) at the Commonwealth's direction, either return or destroy all:
 - (i) Commonwealth Material;
 - (ii) Agreement Material; or
 - (iii) other documents that contain Commonwealth Confidential Information,that may be in the University's or the Reviewer's possession or control;
- (c) where requested by the Commonwealth deliver to the Commonwealth a statutory declaration made by the University and the Reviewer declaring that to the best of their information and belief (after having made proper inquiries) they have not retained any of the Material specified in clause 23.1(b); and

- (d) comply with all other obligations in this Agreement, including those relating to Commonwealth Material and Agreement Material.

23.2 The following clauses will survive the expiration or termination of this Agreement:

- (a) clause 7 (Insurance);
- (b) clause 11 (Disclosure of Information);
- (c) clause 12 (Privacy);
- (d) clause 14 (Security);
- (e) clause 15 (Access to Premises and Records);
- (f) clause 16 (Audit Requirements);
- (g) this clause 23 (Transition Out); and
- (h) clause 32 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

24. WARRANTIES

24.1 The University warrants that:

- (a) it is duly authorised to enter into, perform and observe its obligations under this Agreement;
- (b) its execution of this Agreement is valid and binding on it; and
- (c) it is not entering into this Agreement as a trustee for any trust.

25. COMPLIANCE WITH DIRECTIONS

25.1 In undertaking the Engagement, the University and the Reviewer must comply with:

- (a) all reasonable and lawful directions and instructions issued by the Commonwealth, whether they are issued with respect to the Engagement or any other matter which the Commonwealth considers may be reasonably relevant to the Engagement;
- (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and
- (c) all applicable policies and procedures relating to work health and safety, including those that apply to the Commonwealth's premises when using those premises.

25.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 25.1, the University will comply with the requirements that produce the highest level of health and safety.

26. UNIVERSITY TO ENSURE THAT APPOINTEE COMPLIES

26.1 The University must ensure that the Reviewer complies with the provisions of this Agreement that are stated to apply to the Reviewer or capable of applying to the Reviewer;

- 26.2 A reference to the University being required to do something or refrain from doing something is taken to include a reference to the University ensuring that the Reviewer also does that thing or refrains from doing that thing.

27. PUBLIC ANNOUNCEMENTS

- 27.1 The University and the Reviewer must not make any public announcement or make any representation to any media representative about or concerning this Agreement or the Commonwealth without the prior written consent of the Commonwealth, which consent may be given subject to such conditions as the Commonwealth in its absolute discretion thinks fit.

28. COMMONWEALTH REPRESENTATIVE

- 28.1 The Commonwealth Representative is responsible for supervision of this Agreement on behalf of the Commonwealth and has authority to issue and receive any written notices under this Agreement.

29. ADDRESSES FOR NOTICES

- 29.1 Unless the University advises the Commonwealth Representative of another address for notice, the Commonwealth will issue any notices or other communications for the University's attention to the University's address as listed in the Agreement Details
- 29.2 Unless the Commonwealth Representative advises the University of another address for notice, the University will issue any notices or other communications for the Commonwealth's attention to its address as listed in the Agreement Details.

30. ASSIGNMENT

- 30.1 The University must not assign, in whole or in part, its rights or obligations under this Agreement without the prior written consent of the Commonwealth.

31. ENTIRE AGREEMENT AND VARIATION

- 31.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 31.2 No agreement or understanding that varies or extends this Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 31.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions, which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

32. APPLICABLE LAW

- 32.1 This Agreement will be governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts of that jurisdiction.
- 32.2 The University must ensure that the work done under this Agreement complies with the laws from time to time in force in the State or Territory in which the Engagement, or any part thereof, is to be carried out.

Executed as an Agreement

SIGNED for and on behalf of the)
Commonwealth of Australia represented)
by the **DEPARTMENT EMPLOYMENT**)
AND WORKPLACE RELATIONS ABN)
96 584 957 427 by its duly authorised)
representative:)

Name of authorised representative

Signature

In the presence of:

Name of witness

Signature of witness

Date:.....

SIGNED for and on behalf of the)
Commonwealth of Australia represented)
by the **UNIVERSITY OF WESTERN**)
AUSTRALIA ABN 37 882 817 280, a)
body corporate established under section)
6 of the *University of Western Australia*)
Act 1911, by its duly authorised)
representative:)

Name of authorised representative

Signature

In the presence of:

Name of witness

Signature of witness

Date:.....

SCHEDULE 1 TERMS OF REFERENCE**Secure Jobs Better Pay Review****Terms of Reference**

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the review is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is

no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable ‘State or Territory Occupational Health and Safety law’.

The amendments give effect to ‘Recommendation 8: Workplace entry of union officials when providing assistance to an HSR’ of the ‘2018 Review of the model WHS laws’ conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at: <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel’s findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.

From: dewr.gov.au
 Sent: Tuesday, 1 October 2024 1:10:51 PM
 To: [Alison Preston](#) s 47(F)
 Cc: s 22(1) s 22(1) s 22(1)
 Subject: RE: Terms of engagements [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
 Importance: Normal
 Sensitivity: None

Thanks, Alison.

Yes please, later today would be good.

s 22(1)

Assistant Secretary (A/g)

M:s 22(1)

Bargaining and Industry Policy Branch
 Safety and Industry Policy Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Alison Preston
Sent: Tuesday, October 1, 2024 1:01 PM
To: S 47(F) ; s 22(1)
Cc: S 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Terms of engagements [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

\qc\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100

\cbpat9\qc**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

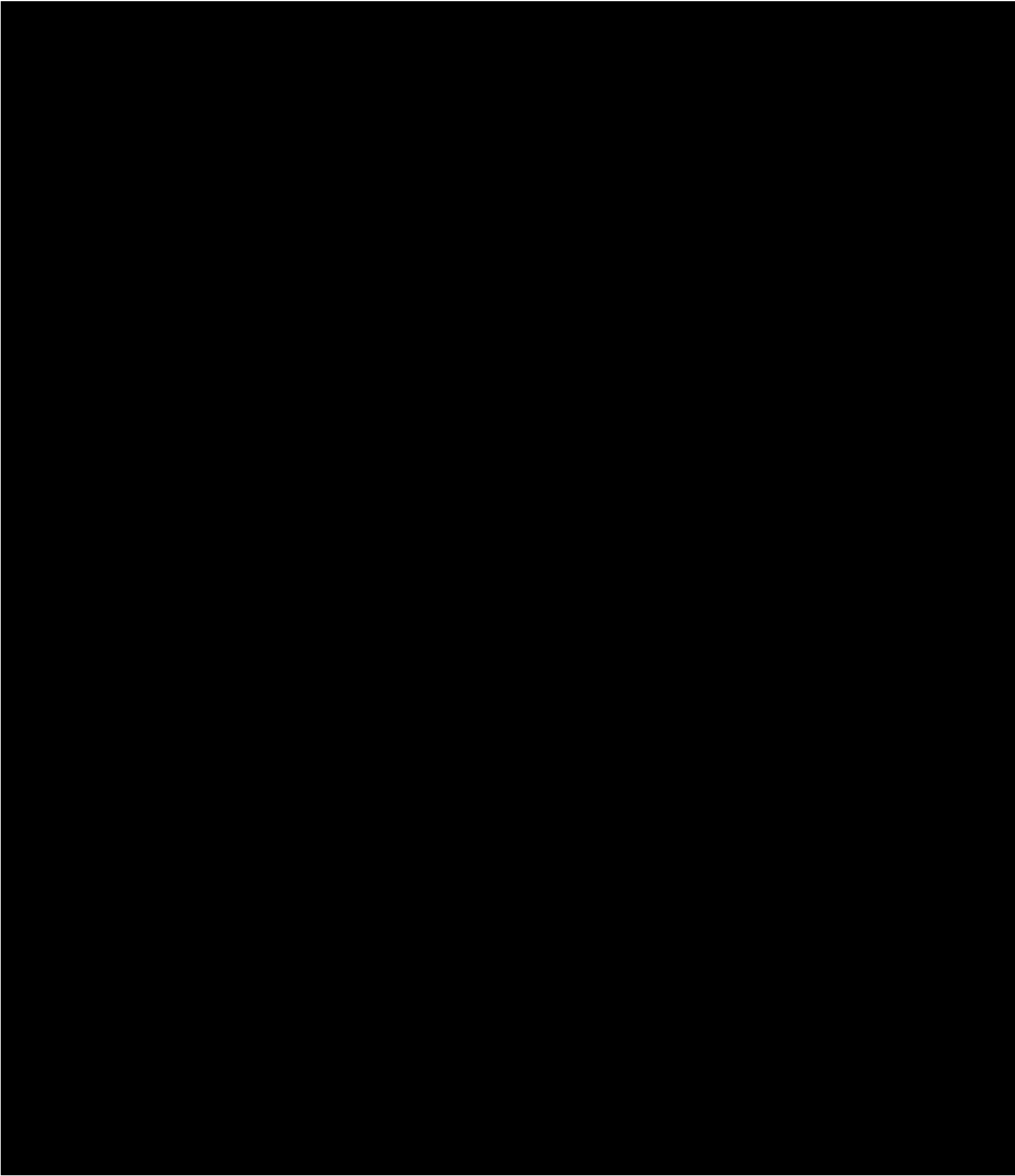
\qc

Thanks for all your help with this ^{s 47(F)} – and to you too ^{s 22(1)}

Re announcement etc., I've just sent the amended contract to my HOS for approval/signature. I shared the earlier version with him last week so hopefully he's in a position to sign quickly. Can I get back to you later today on status of agreement and announcement?

Thanks

Alison



\qc\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100From: S 22(1) <S 22(1) dewr.gov.au>
Sent: Tuesday, September 24, 2024 3:10 PM
To: Alison Preston <alison.preston@uwa.edu.au>
Cc: S 22(1) <S 22(1) dewr.gov.au>; S 47(F) <S 47(F) jwa.edu.au>; S 22(1) <S 22(1) dewr.gov.au>
Subject: Terms of engagements [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: High

\qc\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100

Evening Alison,

Please find attached the Engagement Agreement in relation to Alison's appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

Let me know of any concerns, otherwise, I look forward to receiving the executed scan of the Engagement Agreement at your earliest opportunity.

s 22(1)

Assistant Secretary (A/g)

\sb240M: s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

OFFICIAL: Sensitive//Personal Privacy

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

From: dewr.gov.au
Sent: Tuesday, 1 October 2024 4:09:50 PM
To: [Mark Bray](#) [Alison Preston](#)
Subject: Announcement
Importance: Normal
Sensitivity: None

Afternoon Reviewers,

I have just been told that announcement of appointments and the commencement of the review is happening at 8am tomorrow morning. There's always some possibility for this to change but I think this is pretty certain.


s 22(1)

Assistant Secretary (A/g)

M:s 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: [DEWR - SJBP Review](#)
Sent: Wednesday, 2 October 2024 12:06:26 PM
To: [Mark Bray](#) [Alison Preston](#)
Cc: s 22(1) s 22(1) s 22(1)
Subject: [for completion] Vendor from
Importance: Normal
Sensitivity: None
Attachments: [Vendor Information Request - DEWR.docx](#) 

Hi Mark and Alison

In order to get you into the departments system to pay you, could you please complete the attached vendor information request form.

Please let me know if you have any questions.

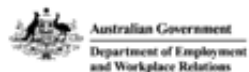
Kind regards

s 22(1) (she/her)

A/Director

\sb240Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.



Vendor Information Request

| | |
|--|---|
| <ul style="list-style-type: none"> To ensure that the Department pays you promptly, please submit this form prior to invoicing. This form should be returned to the address adjacent via email. The standard payment terms are 20 days from the date of receipt of specified goods and services and a correctly rendered tax invoice. | <p>Please return the <u>signed form</u> via email or mail to:</p> <p>SJBPRReview@dewr.gov.au</p> |
|--|---|

If you require assistance completing this form, please contact the Financial Operations Unit – 02 6240 0914

Department Use Only (State/Group Administration Unit to complete)

| | |
|--|--|
| Contact Name | Contact No. |
| <input type="checkbox"/> New Vendor Request <input type="checkbox"/> Amendment to Current Vendor | Existing Vendor No. |
| <input type="checkbox"/> 4400 - Departmental | <input type="checkbox"/> 4500 - Administered |

☐ Small Business

Industry Group

- | | |
|--|---|
| <input type="checkbox"/> Business (including sole traders) | <input type="checkbox"/> Non-Business Individuals (Statement By Supplier) |
| <input type="checkbox"/> Federal Government | <input type="checkbox"/> Australian Disability Enterprises |
| <input type="checkbox"/> State/Local Government | <input type="checkbox"/> Supply Nation Certified |

Vendor Details

| | | | |
|---------------------------|--|--|--|
| Trading Name | | | |
| Legal Name | | | |
| Postal Address | | | |
| State/Territory | Postcode | | |
| Accounts Receivable Email | | | |
| Phone Number | Fax Number | | |
| ABN Registered | <input type="checkbox"/> Yes <input type="checkbox"/> No | ABN Number | |
| GST Registered | <input type="checkbox"/> Yes <input type="checkbox"/> No | Statement by Supplier required if no ABN provided | |

Method of Payment

Australian Government policy is that all payments should be made by Electronic Funds Transfer (EFT) wherever possible.

| | | | | | | | | | | | | |
|----------------|--|--|--|--|--|--|--|--|--|--|--|--|
| Account Name | | | | | | | | | | | | |
| BSB Number | | | | | | | | | | | | |
| Account Number | | | | | | | | | | | | |

If you do not accept EFT payments, please provide an explanation below.

| | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|

Vendor Authorisation (to be completed by the applicable financial controller or director)

| | | | |
|------|-----------|------|-----|
| Name | Signature | Date | / / |
|------|-----------|------|-----|


Department Use Only (Authorisation that these details have been checked)

| | | | |
|------|------|-----|-----------|
| Name | Date | / / | Signature |
|------|------|-----|-----------|

Privacy and Confidentiality: The information in this document is classified as 'commercial in confidence' and is subject to the privacy and confidentiality laws of the Commonwealth. The information is to be used for the sole purpose of transacting business.

Commented [ST1]: Statement by a supplier not quoting an ABN. | Australian Taxation Office (ato.gov.au)

s 22(1)

From: s 22(1)
Sent: Fri, 4 Oct 2024 03:05:37
To: [Alison Preston](#)
Cc: s 47(F) s 22(1) [DEWR - SJBP Review](#)
Subject: RE: Terms of engagements [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: Normal
Sensitivity: None
Attachments: [Professor Preston terms of engagement _ signed.pdf](#) 

ri100OFFICIAL: Sensitive//Personal Privacy

Hi Alison

Please find attached the signed contract for your records.

s 22(1)

s 22(1) (she/her)

A/Director

\sb240Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\q\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100From: S 22(1) <S 22(1) dewr.gov.au>
Sent: Tuesday, September 24, 2024 3:10 PM
To: Alison Preston <alison.preston@uwa.edu.au>
Cc: S 22(1) <S 22(1) dewr.gov.au>; S 47(F) <S 47(F) jwa.edu.au>; S 22(1) <S 22(1) dewr.gov.au>
Subject: Terms of engagements [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: High

\q\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

\sb100

Evening Alison,

Please find attached the Engagement Agreement in relation to Alison's appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

Let me know of any concerns, otherwise, I look forward to receiving the executed scan of the Engagement Agreement at your earliest opportunity.

S 22(1)

Assistant Secretary (A/g)

\sb240M: S 22(1)

Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\q\ri100\sb100OFFICIAL: Sensitive//Personal Privacy

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email

in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

OFFICIAL: Sensitive//Personal Privacy

Date: 30 September 2024

Contact: S 22(1) Assistant Secretary (A/g), Bargaining and Industry Policy Branch

Email: S 22(1) dewr.gov.au

Mobile: S 22(1)

Professor Alison Preston
The University of Western Australia
35 Stirling Highway
Perth WA, 6009

By email: alison.preston@uwa.edu.au

Dear Professor Preston

I refer to the letter sent by Senator the Hon Murray Watt MP, Minister for Employment and Workplace Relations, congratulating you on your appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

The attached documents comprise the terms that govern your appointment, as between the University of Western Australia (**the University**), as your employer, and the Commonwealth of Australia, represented by the Department of Employment and Workplace Relations (**the Commonwealth**).

The scope of the appointment is described in the Agreement Details in the attached Engagement Agreement.

Action required

Please indicate your acceptance of the appointment by:

- ensuring an authorised representative of the University signs and dates the Engagement Agreement before a witness; and
- returning a scan of the signed and dated Engagement Agreement to the Commonwealth within 7 days after the date of this Letter.

A fully executed scan of the Engagement Agreement will be returned to you upon execution by the Commonwealth.

Yours sincerely

s 22(1)

First Assistant Secretary
Safety and Industry Policy Division

30 September 2024

ENGAGEMENT AGREEMENT

AGREEMENT DETAILS

| Item | Cl. ref. | |
|------------|----------|--|
| Parties | - | 1. The Commonwealth of Australia represented by the Department of Employment and Workplace Relations ABN 96 584 957 427 (the Commonwealth) |
| | | 2. The University of Western Australia, a body corporate established under section 6 of the <i>University of Western Australia Act 1911</i> ABN 37 882 817 280 (the University) |
| Reviewer | - | Professor Alison Preston |
| Engagement | 2 | <p>Nature of appointment</p> <p>Section 4 of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> (Secure Jobs Better Pay Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted.</p> <p>Section 4A of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> (Closing Loopholes Act) requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.</p> <p>The Reviewer is appointed to the panel of independent reviewers for the joint review of the Secure Jobs Better Pay Act and the Closing Loopholes Act. The Reviewer must undertake a review of:</p> <ul style="list-style-type: none"> the Secure Jobs Better Pay Act in accordance with s 4 of that Act; and the Closing Loopholes Act in accordance with section 4A of that Act, <p>in accordance with the Terms of Reference at Schedule 1.</p> <p>Without limiting the matters that may be considered when conducting the review, the review must:</p> <ul style="list-style-type: none"> consider whether the operation of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act are appropriate and effective; identify any unintended consequences of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act; and consider whether further amendments to the <i>Fair Work Act 2009</i>, or any other legislation, are necessary to improve the operations of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act, or rectify any unintended consequences identified in the review. |

| | | | | | | | | | | |
|--|--|---|-------------------------------|--|--|--|--|--|--------|-----------------|
| | | <p>In conducting the review, the Reviewer must meet the following milestones, unless otherwise agreed by the Commonwealth:</p> <table><tr><td>Commencement of consultations</td><td>October 2024</td></tr><tr><td>Emerging propositions, guidance on data and gaps</td><td>November 2024</td></tr><tr><td>Draft propositions and recommendations</td><td>Mid December 2024</td></tr><tr><td>Report</td><td>31 January 2025</td></tr></table> <p><i>Incidental matters</i></p> <p>If incidental materials, services or functions are required in order for the Engagement to be performed (e.g. pre-reading or preparation), they will be taken to be included in the scope of the Engagement and will be accommodated as part of the Engagement at no additional cost to the Commonwealth, notwithstanding that they are not specifically set out in this Agreement.</p> | Commencement of consultations | October 2024 | Emerging propositions, guidance on data and gaps | November 2024 | Draft propositions and recommendations | Mid December 2024 | Report | 31 January 2025 |
| Commencement of consultations | October 2024 | | | | | | | | | |
| Emerging propositions, guidance on data and gaps | November 2024 | | | | | | | | | |
| Draft propositions and recommendations | Mid December 2024 | | | | | | | | | |
| Report | 31 January 2025 | | | | | | | | | |
| Expiry Date | 3.1 | 31 March 2025 | | | | | | | | |
| GST | 4.2/4.3 | <p>Is the University a natural person who is not registered for GST?</p> <p>Yes [] No [X]</p> <p>If yes, clause 4.2 applies.</p> <p>Is the University a body corporate or an individual operating an enterprise who is registered for GST?</p> <p>Yes [X] No []</p> <p>If yes, clause 4.3 applies.</p> | | | | | | | | |
| Fees | 4.1 | <p>The Reviewer will be paid Fees based on the actual amount of time they spend on the Engagement, at the rates specified in the ‘Rates’ item below.</p> <p>Notwithstanding the above, the aggregate of all Fees payable by the Commonwealth to the Reviewer under this Agreement will not exceed \$114,048, exclusive of any applicable GST.</p> | | | | | | | | |
| Daily Rate | 4.1 /Fees | <p>The Commonwealth will pay the University a fixed daily payment based on hours worked on the Engagement, as set out below:</p> <table><tr><td>Full day (over 5 hours)</td><td>\$960.00 (exclusive of any applicable GST)</td></tr><tr><td>Half day (2-5 hours)</td><td>\$640.00 (exclusive of any applicable GST)</td></tr><tr><td>Quarter day (0.5-2 hours)</td><td>\$320.00 (exclusive of any applicable GST)</td></tr></table> | Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | |
| Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | | | | | | | | | |
| Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | | | | | | | | | |
| Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | | | | | | | | |

| | | |
|--|-----|---|
| | | <div> <div>No review work completed (less than 0.5 hours)</div> <div>\$0.00</div> </div> <p>The Reviewer will not be paid for any work on the Engagement that is less than 0.5 hours in one day.</p> |
| Method of Payment | 4.1 | The University will be paid monthly in arrears for time spent by the Reviewer in the previous month on the Engagement, subject to the terms of the Agreement, receipt of a valid Tax Invoice in accordance with clause 6 below, and provision of a satisfactory timesheet to the Department, which shows time spent by the Reviewer in the relevant month. |
| Superannuation | 4.6 | <p>Will superannuation contributions be payable by the Commonwealth in respect of the Engagement, in addition to the Fees?</p> <p>Yes [] No [X]</p> |
| Travel Arrangements | 5 | <p>Is travel applicable?</p> <p>Are any travel arrangements or entitlements applicable to the Engagement?</p> <p>Yes [X] No [] (domestic travel only)</p> <p>If yes, clause 5 applies. If no, the University is not entitled to claim any amounts in relation to travel.</p> <p>Travel Entitlements</p> <p>Reimbursement for meals and incidental expenses and will be in line with the Department of Employment and Workplace Relations Travel Policy.</p> <p>Approval requirements</p> <p>The Reviewer must seek the prior written approval of the Commonwealth prior to accessing travel entitlements.</p> <p>Arrangements for making travel booking</p> <p>The Department will book and pay for approved travel and accommodation expenses associated with any travel the Reviewer is required to undertake for the Engagement</p> |
| Invoice procedures | 6 | <p>Tax Invoices will be provided by the University monthly.</p> <p>Tax Invoices are to be addressed to SJBPRReview@dewr.gov.au</p> |
| Insurance | 7 | None specified |
| Intellectual Property | 10 | Clause 10.12 does not apply |
| Commonwealth Confidential Information | 11 | None specified |

| | | |
|---|----|--|
| Security | 14 | <p>Is a security clearance required for the Engagement?</p> <p>Yes [<input type="checkbox"/>] No [<input checked="" type="checkbox"/>]</p> <p>If yes, specify the level of clearance required: N/A</p> |
| Commonwealth Representative | 28 | The Commonwealth Representative is s 22(1) Director, Bargaining Policy. |
| Commonwealth's address for notices | 29 | <p>Postal address: GPO Box 9828 Canberra ACT 2601</p> <p>Physical address: Level 9, 215 Adelaide Street</p> <p>Email address: s 22(1) dewr.gov.au</p> |
| University's address for notices | 29 | <p>Postal address: 35 Stirling Highway Perth WA, 6009</p> <p>Physical address: As above</p> <p>Email address: alison.preston@uwa.edu.au</p> |

PARTIES

This Agreement is made between and binds the Parties shown in the Agreement Details.

CONTEXT

This Agreement is made in the following context:

- A. The Australian Government has requested that the Reviewer undertake the Engagement.
- B. This Agreement sets out the terms and conditions on which the Engagement will be undertaken.

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears, the term:

Agreement Date means the date on which the last person executes this Agreement.

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of, the Engagement under this Agreement. Agreement Material does not include Commonwealth Material.

Applicable WHS Law means any applicable occupational health and safety law, including the WHS Act and any corresponding WHS law (as defined in section 4 of the WHS Act).

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Confidential Information means information of the Commonwealth that:

- (a) is by its nature confidential;
- (b) is identified as such in the Agreement Details or is otherwise designated by the Commonwealth as confidential; or
- (c) the University knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the University, as established by written evidence.

Commonwealth Material means any Material provided by or on behalf of the Commonwealth to the University in connection with this Agreement.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act 1983* (Cth).

Commonwealth Representative means the person identified as such in the Agreement Details or such other person as the Commonwealth may appoint from time to time and advise to the University by notice in writing.

Daily Rate has the meaning given to that term in the Agreement Details.

Eligible Data Breach has the same meaning as in the Privacy Act.

Engagement means the engagement as described in the Agreement Details.

Expiry Date has the meaning given to that term in the Agreement Details.

Fees means the fees as set out in the Agreement Details.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of an event or circumstance that the Commonwealth considers has or may have an adverse effect on the Reviewer or University's commercial or financial viability, ability to perform the Engagement or obligations under this Agreement, or the ability of the Commonwealth to enforce its rights under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Method of Payment has the meaning given to that term in the Agreement Details.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Personal Information has the same meaning as the term 'personal information' in the *Privacy Act 1988* (Cth) and includes 'sensitive information'.

Privacy Act means the *Privacy Act 1988* (Cth).

Reviewer means the person identified as such in the Agreement Details table.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

WHS Act means the *Work Health and Safety Act 2011* (Cth).

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (e) a reference to dollars is a reference to Australian dollars;

- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (g) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (h) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- (i) a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
- (j) a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- (k) where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- (l) references to clauses are references to clauses of this Agreement.

1.3 A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. PERFORMANCE OF THE ENGAGEMENT, STANDARDS AND TIMEFRAMES

2.1 The Reviewer will perform the Engagement.

2.2 The Engagement must not be subcontracted or performed by any person other than the Reviewer, unless otherwise agreed by the Commonwealth.

3. TERM

3.1 This Agreement will commence on the later of:

- (a) the date it has been executed by both parties; or
- (b) the date upon which the University provides to the Commonwealth satisfactory evidence of the Reviewer having obtained a security clearance, if one is required under the Agreement Details; and,

subject to earlier termination in accordance with this Agreement, will expire on the Expiry Date (the **Term**).

4. FEES

4.1 Subject to this Agreement and the provision of a correctly rendered Tax Invoice, if the Reviewer undertakes the Engagement to the satisfaction of the Commonwealth, the Commonwealth will pay the Fees in accordance with the Method of Payment.

Individual not registered for GST

4.2 If the Agreement Details say that this clause applies:

- (a) the University represents to the Commonwealth that they are not registered for GST; and

- (b) no GST has been included in the Fees.

University is a company or an individual operating an enterprise who is registered for GST

- 4.3 If the Agreement Details say that this clause applies, the Fees are inclusive of GST.

PAYG taxation

- 4.4 The Commonwealth may withhold from amounts payable to the University the amounts the Commonwealth considers necessary for the Commonwealth to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.
- 4.5 The amount deducted is determined by Australian tax laws and will depend upon a number of factors including:
- (a) whether or not the University provides a tax file number; and
- (b) whether or not the University claims the tax free threshold.

Superannuation

- 4.6 This clause applies if the Agreement Details indicate that Superannuation is payable.
- 4.7 The Commonwealth will make superannuation contributions for the benefit of the Reviewer in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 4.8 The University must, promptly at the commencement of the Term, provide the Commonwealth with details of a complying superannuation fund into which the Commonwealth may make superannuation payments on behalf of the Reviewer in accordance with this clause 4.6.

Amounts otherwise inclusive

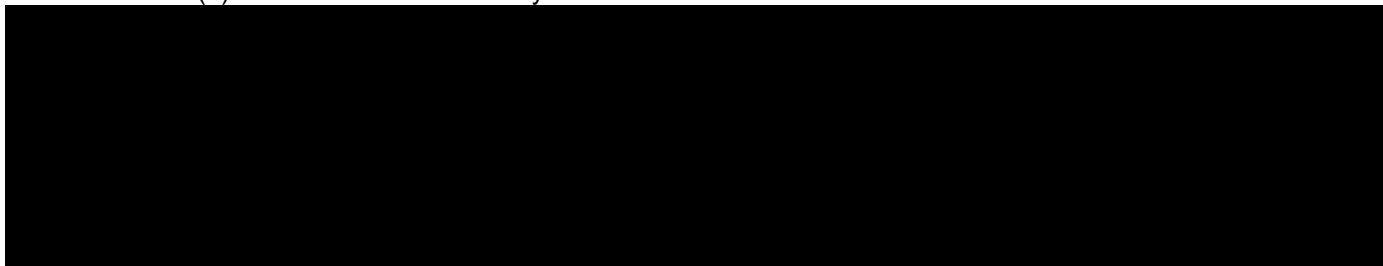
- 4.9 Subject to clause 5, the Fees are inclusive of all other costs of undertaking the Engagement.
- 4.10 The University and the Reviewer are responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.11 The University and the Reviewer must comply with all applicable taxation laws in relation to payments received from the Commonwealth under this Agreement.
- 4.12 No amounts are payable in relation to leave in connection with the Engagement.

5. TRAVEL AND OTHER ALLOWANCES

- 5.1 This clause 5 applies if the Agreement Details say that it applies.
- 5.2 Arrangements for booking, payment or reimbursement of travel, accommodation and travel allowances will be in accordance with the Agreement Details.

6. INVOICE PROCEDURES

- 6.1 The Commonwealth's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 6.2 The University must provide Tax Invoices (if applicable) during the Term as specified in the Agreement Details.

- 6.3 Subject to this Agreement, correctly rendered Tax Invoices will be paid within 20 days or, in the case of e-invoicing, within 5 days. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 6.4 Tax Invoices must be addressed to the Commonwealth Representative specified in the Agreement Details and must include the following information:
- (a) a description of the Engagement;
 - (b) date and name of the Agreement (including the Contract number applied to the Agreement by the Commonwealth (if any));
 - (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges);
 - (d) details of all work carried out as part of the Engagement in respect of the amount invoiced; and
 - (e) the relevant financial management system reference number as notified by the Commonwealth.
- 6.5 Where any money is due to the Commonwealth under this Agreement or any damages, costs, expenses or other amounts are recoverable by the Commonwealth from the University in consequence of its breach of this Agreement then the Commonwealth may:
- (a) offset them against any other amounts owing by the Commonwealth to the University under the Agreement; or
 - (b) invoice the University for the amount due.
- 

7. INSURANCE

- 7.1 The University is responsible for ensuring that it has and maintains appropriate insurances including those specified in the Agreement Details.
- 7.2 The University must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by clause 7.1.

8. CARRYING OUT THE ENGAGEMENT

- 8.1 The Reviewer must carry out the Engagement:
- (a) exercising high professional standards of skill, care and diligence;
 - (b) to ensure that the Engagement achieves its intended purpose, is complete and is performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
 - (c) to ensure that the Commonwealth is fully and accurately informed on all matters which are relevant to the Engagement;

- (d) to comply with any applicable or relevant Australian standards or, where there are no applicable Australian standards, any other industry standards;
- (e) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
- (f) to ensure that all obligations (including deadlines) specified in this Agreement are fully satisfied;
- (g) to ensure that all information provided to the Commonwealth, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect; and
- (h) to ensure that all Agreement Material is neatly and legibly compiled and that it contains adequate information to demonstrate the Engagement undertaken and to support all conclusions, findings and opinions.

9. NO EMPLOYMENT OR AGENCY

- 9.1 Neither the University nor the Reviewer is, by virtue of this Agreement, an employee, partner or agent of the Commonwealth.
- 9.2 The University must not represent itself, and must ensure that the Reviewer does not represent themselves, as being an employee, partner or agent of the Commonwealth.
- 9.3 Neither the University nor the Reviewer has any authority to incur, and must not incur, any obligation on behalf of the Commonwealth.

10. AGREEMENT MATERIAL AND COMMONWEALTH MATERIAL

- 10.1 The University and the Reviewer acknowledge that all of the Agreement Material is made under the direction and control of the Commonwealth.
- 10.2 Title to and risk in relation to the physical property in Agreement Material passes to the Commonwealth upon delivery of the Agreement Material to the Commonwealth.
- 10.3 Subject to clause 10.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in the Commonwealth.
- 10.4 Nothing in this clause 10 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 10.5 Where the University or the Reviewer owns material used in relation to the Engagement, the University grants to the Commonwealth a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by the Commonwealth. Title to the Commonwealth Material does not pass to the University or the Reviewer by virtue of any delivery to it or any other action taken under this Agreement.
- 10.6 At the Commonwealth's request, the University or the Reviewer must bring into existence, sign, execute or otherwise deal with any document, which may be necessary to give effect to this clause 10.
- 10.7 Subject to clause 10.12 (if applicable), the University and the Reviewer must ensure that all Commonwealth Material, and any Agreement Material to be provided to the Commonwealth, is used, copied, reproduced or supplied by the University, the Reviewer, and any persons to whom the University or the Reviewer supplies Agreement Material (other than the Commonwealth), only for the purposes of this Agreement.

- 10.8 The University and the Reviewer must keep full and accurate records of the location and development of all Commonwealth Material and Agreement Material and make the records available to the Commonwealth on request.
- 10.9 The University acknowledges that the Commonwealth may, at any time and without notice, demand either orally or in writing, the destruction or delivery to the Commonwealth of all:
- (a) Commonwealth Material;
 - (b) Agreement Material; or
 - (c) other documents that contain Commonwealth Confidential Information,
- that may be in the University's or the Reviewer's possession or control.
- 10.10 The University and the Reviewer must not breach the Intellectual Property rights of any third party in undertaking the Engagement.
- 10.11 To the extent permitted by law the University and the Reviewer consents to any act or omission by the Commonwealth that would otherwise infringe any Moral Rights in the Agreement Material.
- 10.12 This clause applies if the Agreement Details say it applies:
- (a) the Commonwealth grants to the University a non-exclusive, royalty-free, non-transferable perpetual license to use Intellectual Property in Agreement Material for non-commercial research purposes; and
 - (b) the University will obtain the Commonwealth's prior written permission before publishing Agreement Material.

11. DISCLOSURE OF INFORMATION

- 11.1 Except as specified in clause 11.2, or with the prior consent of the Commonwealth, the University and the Reviewer must not make public or disclose to any person other than the Commonwealth any Commonwealth Confidential Information.
- 11.2 Clause 11.1 does not apply to disclosures made by the University or the Reviewer:
- (a) to the extent required by law, or as required by any government or governmental body, authority or agency;
 - (b) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,
- but in each case of disclosure, the University must give the Commonwealth sufficient notice of any proposed disclosure to enable the Commonwealth to seek a protective order or other remedy to prevent the disclosure.
- 11.3 The University and the Reviewer must ensure that Commonwealth Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
- 11.4 The University and the Reviewer must not transfer Commonwealth Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of the Commonwealth.

12. PRIVACY

- 12.1 Except as set out in clause 12.2, or with the written permission of the Commonwealth Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, the University and the Reviewer must:
- (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by the Commonwealth;
 - (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement; or
 - (ii) complying with the Privacy Act;
 - (c) implement all reasonable measures to meet the requirements of this clause 12;
 - (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the Commonwealth, including in the investigation of any complaints;
 - (e) immediately notify the Commonwealth Privacy Representative if it becomes aware that a disclosure of such Personal Information may be required by law, or when it becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach and provide a written report in relation to such breach or suspected breach within 3 Business Days;
 - (f) in the event of a breach of privacy obligations under this clause 12, take steps to limit any further unauthorised access to the relevant Personal Information or the possible compromise of other Personal Information;
 - (g) ensure that any person who obtains access from the University or the Reviewer to any Personal Information in respect of which it has obligations under the Privacy Act or this clause 12 signs a confidentiality declaration in a form acceptable to the Commonwealth, if required by the Commonwealth, prior to the access;
 - (h) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse and to mitigate the risk of an Eligible Data Breach causing serious harm to any of the individuals to whom it relates. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
 - (i) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
 - (j) notify the Commonwealth Representative of, and cooperate with the Commonwealth in the resolution of, any complaint alleging an interference with privacy; and
 - (k) upon written notice from the Commonwealth destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.
- 12.2 The University and the Reviewer must:
- (a) refer any requests for access by third parties to Personal Information to the Commonwealth Representative; and
 - (b) assist the Commonwealth, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether the University or the Reviewer has possession or control of any records that contain such information;

- (ii) the nature of the information;
- (iii) the main purposes for which the University or the Reviewer uses the information; and
- (iv) the steps the person should take if the person wishes to obtain access to the information.

12.3 The University's obligations in this Agreement (including this clause 12) are in addition to its obligations under the Privacy Act.

13. CONFLICT OF INTEREST

13.1 For the purposes of this clause 13, a **Conflict of Interest** would include any circumstances where, due to:

- (a) outside employment or association;
- (b) any publicly held position or view; or
- (c) any other direct or indirect relationship or interest (whether personal, financial or otherwise),

the Reviewer is or may reasonably be perceived to be, unable to discharge its obligations or duties in relation to the Engagement in an objective and independent manner to the best of its ability. There need not be an actual conflict for a perception of one to be formed by a reasonable person.

13.2 The University warrants that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the Reviewer's performance of the Engagement, which has not already been advised to the Commonwealth in writing and consented to by the Commonwealth.

13.3 The University agrees to:

- (a) use its best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during the Engagement;
- (b) notify the Commonwealth if it becomes aware of any Conflict of Interest or potential Conflict of Interest, while the Reviewer undertakes the Engagement; and
- (c) comply with all directions given by the Commonwealth for dealing with any Conflict of Interest.

13.4 If the University is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14. SECURITY

14.1 The University and the Reviewer must comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.

14.2 The University must perform its obligations under this Agreement and the Reviewer must perform the Engagement in accordance with security requirements notified by the Commonwealth from time to time in its absolute discretion, which may include a requirement for the Reviewer to obtain security clearances if specified in the Agreement Details.

- 14.3 If any breach of any security requirement occurs then, without limiting the Commonwealth's rights under this Agreement, the University must comply with any reasonable directions of the Commonwealth in order to rectify the issue and prevent further issues. If the University is unable or unwilling to resolve or deal with a breach of a security requirement, including the maintenance of a security clearance if required, the Commonwealth may terminate this Agreement in accordance with clause 21.
- 14.4 The University must:
- (a) take reasonable steps to inform itself of the security requirements; and
 - (b) advise the Commonwealth promptly in writing of any relevant circumstances that, in its reasonable opinion, might affect any authorisation or security clearance provided.

15. ACCESS TO PREMISES AND RECORDS

- 15.1 The University and the Reviewer must grant, at all reasonable times, access to premises, records, accounts and other financial material or Material relevant to this Agreement, including the Commonwealth Material and Agreement Material, however and wherever stored or located, in the custody, possession or control of the Reviewer or University to:
- (a) the Commonwealth or any persons authorised in writing by the Commonwealth; and
 - (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,
- for the purposes of performing their respective statutory functions and/or for inspection and/or copying.
- 15.2 The University must make available on request, and at no expense to the Commonwealth, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 15.1 to be created.

16. AUDIT REQUIREMENTS

- 16.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by the Commonwealth or its nominee.
- 16.2 The University and the Reviewer must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by the Commonwealth, including on an ad hoc basis if requested by the Commonwealth, for the purpose of ensuring that this Agreement is being properly performed and administered. The Commonwealth may appoint an independent person to assist in the audits.
- 16.3 Each party must bear its own costs of any audits.

17. ARCHIVES ACT 1983

- 17.1 The University must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Commonwealth and the National Archives of Australia.
- 17.2 Where the Commonwealth and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the University, the University must

comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by National Archives of Australia.

- 17.3 The University must comply with any direction given by the Commonwealth for the purpose of transferring Commonwealth records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

18. NOTIFICATION OF SIGNIFICANT EVENTS

- 18.1 In this clause 18, **Significant Event** means:
- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the University or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
 - (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the University or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- 18.2 The University must immediately issue the Commonwealth a notice on becoming aware of a Significant Event.
- 18.3 The notice issued under clause 18.2 must provide a summary of the Significant Event, including the date that it occurred and whether any other personnel engaged in connection with the Engagement were involved.
- 18.4 The Commonwealth may notify the University in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the University must issue a notice under clause 18.2 in relation to the event within 3 Business Days of being notified by the Commonwealth.
- 18.5 Where reasonably requested by the Commonwealth, the University must provide the Commonwealth with any additional information regarding the Significant Event within 3 Business Days of the request.
- 18.6 If requested by the Commonwealth, the University must prepare a draft remediation plan and submit that draft plan to the Commonwealth for approval within 10 Business Days of the request.
- 18.7 A draft remediation plan prepared by the University under clause 18.6 must include the following information:
- (a) how the University will address the Significant Event in the context of the Engagement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Engagement or compliance by the University with its other obligations under this Agreement;
 - (b) how the University will ensure events similar to the Significant Event do not occur again; and
 - (c) any other matter reasonably requested by the Commonwealth.
- 18.8 The Commonwealth will review the draft remediation plan and either approve the draft remediation plan or provide the University with the details of any changes that are required. The University must make any changes to the draft remediation plan reasonably requested by the Commonwealth and resubmit the draft remediation plan to the Commonwealth for

approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Commonwealth. This clause 18.8 will apply to any resubmitted draft remediation plan.

- 18.9 Without limiting its other obligations under this Agreement, the University must comply with the remediation plan as approved by the Commonwealth. The University agrees to provide reports and other information about the University's progress in implementing the remediation plan as reasonably requested by the Commonwealth.
- 18.10 A failure by the University to comply with its obligations under this clause 18 will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1. The Commonwealth's rights under this clause 18 are in addition to and do not otherwise limit any other rights the Commonwealth may have under this Agreement. The performance by the University of its obligations under this clause 18 will be at no additional cost to the Commonwealth.

19. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- 19.1 For the purposes of this clause 19, **Commonwealth Supplier Code of Conduct** or **Code** means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 19.2 The Reviewer must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 19.3 The Reviewer must:
- (a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
 - (b) on request from the Commonwealth, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Reviewer's compliance with clause 19.2.
- 19.4 The Reviewer must immediately issue the Commonwealth a Notice on becoming aware of any breach of clause 19.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 19.5 Where the Commonwealth identifies a possible breach of clause 19.2, it may issue the Reviewer a Notice, and the Reviewer must, within three (3) Business Days of receiving the Notice, either:
- (a) where the Reviewer considers a breach has not occurred: advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
 - (b) where the Reviewer considers that a breach has occurred: issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 19.
- 19.6 Notwithstanding clause 19.5, a Commonwealth may notify the Reviewer in writing that it considers that the Reviewer has breached clause 19.2, in which case the Reviewer must issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 18.
- 19.7 A failure by the Reviewer to comply with its obligations under any part of this clause will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1.

- 19.8 Nothing in this clause or the Code limits, reduces, or derogates from the Reviewer's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Reviewer of its obligations under this clause will be at no additional cost to the Commonwealth.
- 19.9 The Reviewer agrees that the Commonwealth or any other Commonwealth agency may take into account the Reviewer's compliance with the Code in any future approach to market or procurement process.

20. TERMINATION, REDUCTION OR AMENDMENT TO SCOPE WITHOUT DEFAULT

- 20.1 The Commonwealth may terminate this Agreement, or reduce or amend the scope of the Engagement upon notice in writing to the University.
- 20.2 A notice issued in accordance with clause 20.1 may provide that termination, reduction or amendment is to be effective:
- (a) immediately; or
 - (b) on any date subsequent to the date the notice is provided in writing to the University (the **Effective Date**).
- 20.3 If this Agreement is terminated under clause 20.1, the Commonwealth is liable only for payment of Fees for work performed in carrying out the Engagement before the Effective Date of termination as set out in the notice, provided that such work has been rendered in accordance with this Agreement and the University is not otherwise in breach of this Agreement.
- 20.4 If the Commonwealth, acting in good faith, issues a notice of reduction in scope under clause 20.1, the scope will be reduced in accordance with, and with effect from the date of, the notice and the University will comply with any reasonable directions given by the Commonwealth in connection with the reduction in scope.
- 20.5 If the Commonwealth issues a notice in accordance with clause 20.1, it will pay the University for Services performed before the date of the termination or reduction.

21. TERMINATION FOR DEFAULT

- 21.1 Without prejudice to its rights at common law or under any statute, the Commonwealth may by notice to the University, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of the University;
 - (b) the Commonwealth is entitled to terminate this Agreement in accordance with clauses 21.2, 21.3 or 21.4;
 - (c) the University fails to comply with clause 18 or clause 19; or
 - (d) the Reviewer fails to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.
- 21.2 Subject to clause 21.3, if:
- (a) the University breaches this Agreement; and
 - (b) in the Commonwealth's sole and absolute opinion, a breach is capable of being remedied,

the Commonwealth will give the University 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of the Commonwealth, then the Commonwealth may terminate this Agreement under this clause 21.

21.3 If the University commits three or more breaches of this Agreement, the Commonwealth is not required to give it 15 Business Days to remedy the breach under clause 21.2, and may immediately terminate this Agreement under this clause 21.

21.4 If:

- (a) the University breaches this Agreement; and
- (b) the Commonwealth determines under clause 21.2 that a breach is not capable of being remedied,

the Commonwealth may immediately terminate this Agreement under this clause 21.

22. TERMINATION BY THE UNIVERSITY

22.1 The University may only terminate this Agreement by giving at least 5 Business Days' notice to the Commonwealth and only if:

- (a) the Commonwealth has not paid a correctly rendered invoice and has not notified the University that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- (b) the University has given the Commonwealth:
 - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Commonwealth at least 30 days to pay the invoice; and
 - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Commonwealth at least 15 days to pay the invoice; or
- (c) the University has submitted notice to the Commonwealth that it wishes to relinquish the appointment which is the subject of this Agreement due to illness or for specific reasons set out in the notice.

23. TRANSITION OUT

23.1 In the event of termination or expiration of this Agreement for any reason, the University must:

- (a) cease access to and use of the Commonwealth's systems, Agreement Material and Commonwealth Material;
- (b) at the Commonwealth's direction, either return or destroy all:
 - (i) Commonwealth Material;
 - (ii) Agreement Material; or
 - (iii) other documents that contain Commonwealth Confidential Information,that may be in the University's or the Reviewer's possession or control;
- (c) where requested by the Commonwealth deliver to the Commonwealth a statutory declaration made by the University and the Reviewer declaring that to the best of their information and belief (after having made proper inquiries) they have not retained any of the Material specified in clause 23.1(b); and

- (d) comply with all other obligations in this Agreement, including those relating to Commonwealth Material and Agreement Material.

23.2 The following clauses will survive the expiration or termination of this Agreement:

- (a) clause 7 (Insurance);
- (b) clause 11 (Disclosure of Information);
- (c) clause 12 (Privacy);
- (d) clause 14 (Security);
- (e) clause 15 (Access to Premises and Records);
- (f) clause 16 (Audit Requirements);
- (g) this clause 23 (Transition Out); and
- (h) clause 32 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

24. WARRANTIES

24.1 The University warrants that:

- (a) it is duly authorised to enter into, perform and observe its obligations under this Agreement;
- (b) its execution of this Agreement is valid and binding on it; and
- (c) it is not entering into this Agreement as a trustee for any trust.

25. COMPLIANCE WITH DIRECTIONS

25.1 In undertaking the Engagement, the University and the Reviewer must comply with:

- (a) all reasonable and lawful directions and instructions issued by the Commonwealth, whether they are issued with respect to the Engagement or any other matter which the Commonwealth considers may be reasonably relevant to the Engagement;
- (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and
- (c) all applicable policies and procedures relating to work health and safety, including those that apply to the Commonwealth's premises when using those premises.

25.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 25.1, the University will comply with the requirements that produce the highest level of health and safety.

26. UNIVERSITY TO ENSURE THAT APPOINTEE COMPLIES

26.1 The University must ensure that the Reviewer complies with the provisions of this Agreement that are stated to apply to the Reviewer or capable of applying to the Reviewer;

- 26.2 A reference to the University being required to do something or refrain from doing something is taken to include a reference to the University ensuring that the Reviewer also does that thing or refrains from doing that thing.

27. PUBLIC ANNOUNCEMENTS

- 27.1 The University and the Reviewer must not make any public announcement or make any representation to any media representative about or concerning this Agreement or the Commonwealth without the prior written consent of the Commonwealth, which consent may be given subject to such conditions as the Commonwealth in its absolute discretion thinks fit.

28. COMMONWEALTH REPRESENTATIVE

- 28.1 The Commonwealth Representative is responsible for supervision of this Agreement on behalf of the Commonwealth and has authority to issue and receive any written notices under this Agreement.

29. ADDRESSES FOR NOTICES

- 29.1 Unless the University advises the Commonwealth Representative of another address for notice, the Commonwealth will issue any notices or other communications for the University's attention to the University's address as listed in the Agreement Details
- 29.2 Unless the Commonwealth Representative advises the University of another address for notice, the University will issue any notices or other communications for the Commonwealth's attention to its address as listed in the Agreement Details.

30. ASSIGNMENT

- 30.1 The University must not assign, in whole or in part, its rights or obligations under this Agreement without the prior written consent of the Commonwealth.

31. ENTIRE AGREEMENT AND VARIATION

- 31.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 31.2 No agreement or understanding that varies or extends this Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 31.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions, which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

32. APPLICABLE LAW

- 32.1 This Agreement will be governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts of that jurisdiction.
- 32.2 The University must ensure that the work done under this Agreement complies with the laws from time to time in force in the State or Territory in which the Engagement, or any part thereof, is to be carried out.

Executed as an Agreement

SIGNED for and on behalf of the
Commonwealth of Australia represented
by the **DEPARTMENT EMPLOYMENT
AND WORKPLACE RELATIONS ABN
96 584 957 427** by its duly authorised
representative:

s 22(1)

Name of authorised representative

In the presence of:

s 22(1)

Name of witness

Date: 3/10/24

)
)
)
)
)
s 22(1)

Signature

s 22(1)

Signature of witness

SIGNED for and on behalf of the
Commonwealth of Australia represented
by the **UNIVERSITY OF WESTERN
AUSTRALIA ABN 37 882 817 280**, a
body corporate established under section
6 of the *University of Western Australia
Act 1911*, by its duly authorised
representative:

s 47F(1)

Name of authorised representative

In the presence of:

s 47F(1)

Name of witness

Date: 01/10/2024

)
)
)
)
)
s 47F(1)

Signature

s 47F(1)

Signature of witness

SCHEDULE 1 TERMS OF REFERENCE

Secure Jobs Better Pay Review

Terms of Reference

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the review is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is

no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable ‘State or Territory Occupational Health and Safety law’.

The amendments give effect to ‘Recommendation 8: Workplace entry of union officials when providing assistance to an HSR’ of the ‘2018 Review of the model WHS laws’ conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at: <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.


The Report must detail the Review Panel’s findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.

s 22(1)

From: s 22(1)
Sent: Fri, 4 Oct 2024 03:09:20
To: [Mark Bray](#)
Cc: s 22(1) [DEWR - SJBP Review](#)
Subject: Signed engagement agreement [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Importance: Normal
Sensitivity: None
Attachments: [Bray - Engagement Agreement Bray Anderson signed.pdf](#) 

\ri100OFFICIAL: Sensitive//Personal Privacy

Hi Mark

Please find attached the signed engagement agreement for your records.

Kind regards

^s
(she/her)

A/Director

\sb240Bargaining Policy | Bargaining and Industry Policy Branch
Safety and Industry Policy Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

\ri100\s100OFFICIAL: Sensitive//Personal Privacy

Date: 24 September 2024

Contact: s 22(1) Assistant Secretary (A/g), Bargaining and Industry Policy Branch

Email:

Mobile:

Emeritus Professor Mark Bray

s 47F(1)

By email: mark.bray@newcastle.edu.au

Dear Emeritus Professor Bray

I refer to the letter sent by Senator the Hon Murray Watt, Minister for Employment and Workplace Relations, congratulating you on your appointment to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

The attached documents comprise the terms that govern your appointment, as between you and the Commonwealth of Australia, represented by the Department of Employment and Workplace Relations (the Commonwealth).

The scope of the appointment is described in the Agreement Details in the attached Engagement Agreement.

Action required

Please indicate your acceptance of the Engagement Agreement by:

- signing and dating the Engagement Agreement before a witness; and
- returning a scan of the signed and dated Engagement Agreement to the Commonwealth within 7 days after the date of this Letter.

A fully executed scan of the Engagement Agreement will be returned to you upon execution by the Commonwealth.

Yours sincerely

s 22(1)

First Assistant Secretary
Safety and Industry Policy Division

24 September 2024

ENGAGEMENT AGREEMENT

AGREEMENT DETAILS

| Item | Cl. ref. | | | |
|-------------------------------|--------------|--|-------------------------------|--------------|
| Parties | - | 1. The Commonwealth of Australia represented by the Department of Employment and Workplace Relations ABN 96 584 957 427 (the Commonwealth) | | |
| | | 2. Emeritus Professor Mark [REDACTED] Bray (the Reviewer) | | |
| Engagement | 2 | <p>Nature of appointment</p> <p>Section 4 of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> (Secure Jobs Better Pay Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted.</p> <p>Section 4A of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> (Closing Loopholes Act) requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.</p> <p>The Reviewer is appointed to the panel of independent reviewers for the joint review of the Secure Jobs Better Pay Act and the Closing Loopholes Act. The Reviewer must undertake a review of:</p> <ul style="list-style-type: none">the Secure Jobs Better Pay Act in accordance with s 4 of that Act; andthe Closing Loopholes Act in accordance with section 4A of that Act, <p>in accordance with the Terms of Reference at Schedule 1.</p> <p>Without limiting the matters that may be considered when conducting the review, the review must:</p> <ul style="list-style-type: none">consider whether the operation of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act are <u>appropriate and effective</u>;identify any <u>unintended consequences</u> of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act; andconsider whether <u>further amendments to the Fair Work Act 2009</u>, or any other legislation, are necessary to improve the operations of the amendments made by the Secure Jobs Better Pay Act and Part 16A of Schedule 1 of the Closing Loopholes Act, or rectify any unintended consequences identified in the review. <p>In conducting the review, the Reviewer must meet the following milestones, unless otherwise agreed by the Commonwealth:</p> <table><tr><td>Commencement of consultations</td><td>October 2024</td></tr></table> | Commencement of consultations | October 2024 |
| Commencement of consultations | October 2024 | | | |

| | | | | | | | | | | | | | |
|---|--|--|-------------------|---|--|-------------------------|--|----------------------|--|---------------------------|--|--|--------|
| | | Emerging propositions, guidance on data and gaps | November 2024 | | | | | | | | | | |
| | | Draft propositions and recommendations | Mid December 2024 | | | | | | | | | | |
| | | Report | 31 January 2025 | | | | | | | | | | |
| | | Incidental matters If incidental materials, services or functions are required in order for the Engagement to be performed (e.g. pre-reading or preparation), they will be taken to be included in the scope of the Engagement and will be accommodated as part of the Engagement at no additional cost to the Commonwealth, notwithstanding that they are not specifically set out in this Agreement. | | | | | | | | | | | |
| Expiry Date | 3.1 | 31 March 2025 | | | | | | | | | | | |
| GST | 4.2/4.3 | Is the Reviewer a natural person who is not registered for GST? Yes [X] No [] If yes, clause 4.2 applies Is the Reviewer a body corporate or an individual operating an enterprise who is registered for GST? Yes [] No [X] If yes, clause 4.3 applies. | | | | | | | | | | | |
| Fees | 4.1 | The Reviewer will be paid Fees based on the actual amount of time they spend on the Engagement, at the rates specified in the 'Rates' item below. Notwithstanding the above, the aggregate of all Fees payable by the Commonwealth to the Reviewer under this Agreement will not exceed <u>\$114,048</u> exclusive of any applicable GST. | | | | | | | | | | | |
| Daily Rate | 4.1 /Fees | <table><tr><td colspan="2">The Commonwealth will pay the Reviewer a fixed daily payment based on hours worked on the Engagement, as set out below:</td></tr><tr><td>Full day (over 5 hours)</td><td>\$960.00 (exclusive of any applicable GST)</td></tr><tr><td>Half day (2-5 hours)</td><td>\$640.00 (exclusive of any applicable GST)</td></tr><tr><td>Quarter day (0.5-2 hours)</td><td>\$320.00 (exclusive of any applicable GST)</td></tr><tr><td>No review work completed (less than 0.5 hours)</td><td>\$0.00</td></tr></table> The Reviewer will not be paid for any work on the Engagement that is less than 0.5 hours in one day. | | The Commonwealth will pay the Reviewer a fixed daily payment based on hours worked on the Engagement, as set out below: | | Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | No review work completed (less than 0.5 hours) | \$0.00 |
| The Commonwealth will pay the Reviewer a fixed daily payment based on hours worked on the Engagement, as set out below: | | | | | | | | | | | | | |
| Full day (over 5 hours) | \$960.00 (exclusive of any applicable GST) | | | | | | | | | | | | |
| Half day (2-5 hours) | \$640.00 (exclusive of any applicable GST) | | | | | | | | | | | | |
| Quarter day (0.5-2 hours) | \$320.00 (exclusive of any applicable GST) | | | | | | | | | | | | |
| No review work completed (less than 0.5 hours) | \$0.00 | | | | | | | | | | | | |

| | | |
|---------------------------------------|-----|--|
| Method of Payment | 4.1 | The Reviewer will be paid monthly in arrears for time spent in the previous month on the Engagement, subject to the terms of the Agreement, receipt of a valid Tax Invoice in accordance with clause 6 below, and provision of a satisfactory timesheet to the Department, which shows time spent by the Reviewer in the relevant month. |
| Superannuation | 4.6 | Will superannuation contributions be payable by the Commonwealth in respect of the Engagement, in addition to the Fees? Yes [] No [X] |
| Travel Arrangements | 5 | <p>Is travel applicable? Are any travel arrangements or entitlements applicable to the Engagement? Yes [X] No [] (domestic travel only)</p> <p>If yes, clause 5 applies. If no, the Reviewer is not entitled to claim any amounts in relation to travel.</p> |
| | | <p>Travel Entitlements</p> <p>Reimbursement for meals and incidental expenses and will be in line with the Department of Employment and Workplace Relations Travel Policy.</p> |
| | | <p>Approval requirements</p> <p>The Reviewer must seek the prior written approval of the Commonwealth prior to accessing travel entitlements</p> |
| | | <p>Arrangements for making travel booking</p> <p>The Department will book and pay for approved travel and accommodation expenses associated with any travel the Reviewer is required to undertake for the Engagement</p> |
| Invoice procedures | 6 | <p>Tax Invoices will be provided by the Reviewer monthly.</p> <p>Tax Invoices are to be addressed to SJBPRReview@dewr.gov.au</p> |
| Insurance | 7 | None specified |
| Intellectual Property | 10 | Clause 10.12 does not apply |
| Commonwealth Confidential Information | 11 | None specified |

| | | |
|------------------------------------|----|--|
| Security | 14 | <p>Is a security clearance required for the Engagement?</p> <p>Yes [] No [X]</p> <p>If yes, specify the level of clearance required: N/A</p> |
| Commonwealth Representative | 27 | The Commonwealth Representative is s 22(1), Director, Bargaining Policy. |
| Commonwealth's address for notices | 28 | <p>Postal address: GPO Box 9828 Canberra ACT 2601</p> <p>Physical address: Level 9, 215 Adelaide Street</p> <p>Email address: s 22(1) @dewr.gov.au</p> |
| Reviewer's address for notices | 28 | <p>Postal address: Emeritus Professor Mark Bray</p> <p>s 47F(1)</p> <p>Physical address: As above</p> <p>Email address: mark.bray@newcastle.edu.au</p> |

PARTIES

This Agreement is made between and binds the Parties shown in the Agreement Details.

CONTEXT

This Agreement is made in the following context:

- A. The Australian Government has requested that the Reviewer undertake the Engagement.
- B. This Agreement sets out the terms and conditions on which the Engagement will be undertaken.

1. INTERPRETATION

- 1.1 In this Agreement, unless the contrary intention appears, the term:

Agreement Date means the date on which the last person executes this Agreement.

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of, the Engagement under this Agreement. **Agreement Material** does not include **Commonwealth Material**.

Applicable WHS Law means any applicable occupational health and safety law, including the WHS Act and any corresponding WHS law (as defined in section 4 of the WHS Act).

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Confidential Information means information of the Commonwealth that:

- (a) is by its nature confidential;
- (b) is identified as such in the Agreement Details or is otherwise designated by the Commonwealth as confidential; or
- (c) the Reviewer knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the Reviewer, as established by written evidence.

Commonwealth Material means any Material provided by or on behalf of the Commonwealth to the Reviewer in connection with this Agreement.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act* 1983 (Cth).

Commonwealth Representative means the person identified as such in the Agreement Details or such other person as the Commonwealth may appoint from time to time and advise to the Reviewer by notice in writing.

Daily Rate has the meaning given to that term in the Agreement Details.

Eligible Data Breach has the same meaning as in the Privacy Act.

Engagement means the engagement as described in the Agreement Details.

Expiry Date has the meaning given to that term in the Agreement Details.

Fees means the fees as set out in the Agreement Details.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of an event or circumstance that the Commonwealth considers has or may have an adverse effect on the Reviewer's commercial or financial viability, ability to perform the Engagement or obligations under this Agreement, or the ability of the Commonwealth to enforce its rights under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Method of Payment has the meaning given to that term in the Agreement Details.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Personal Information has the same meaning as the term 'personal information' in the *Privacy Act 1988* (Cth) and includes 'sensitive information'.

Privacy Act means the *Privacy Act 1988* (Cth).

Reviewer means the person identified as such in the Agreement Details table.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

WHS Act means the *Work Health and Safety Act 2011* (Cth).

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (e) a reference to dollars is a reference to Australian dollars;

- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (g) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (h) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- (i) a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
- (j) a reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- (k) where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- (l) references to clauses are references to clauses of this Agreement.

1.3 A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. PERFORMANCE OF THE ENGAGEMENT, STANDARDS AND TIMEFRAMES

2.1 The Reviewer will perform the Engagement.

2.2 The Engagement must not be subcontracted or performed by any person other than the Reviewer, unless otherwise agreed by the Commonwealth.

3. TERM

3.1 This Agreement will commence on the later of:

- (a) the date it has been executed by both parties; or
- (b) the date upon which the Reviewer provides to the Commonwealth satisfactory evidence of the Reviewer having obtained a security clearance, if one is required under the Agreement Details; and,

subject to earlier termination in accordance with this Agreement, will expire on the Expiry Date (the Term).

4. FEES

4.1 Subject to this Agreement and the provision of a correctly rendered Tax Invoice, if the Reviewer undertakes the Engagement to the satisfaction of the Commonwealth, the Commonwealth will pay the Fees in accordance with the Method of Payment.

Individual not registered for GST

4.2 If the Agreement Details say that this clause applies:

- (a) the Reviewer represents to the Commonwealth that they are not registered for GST; and
- (b) no GST has been included in the Fees.

Reviewer is a company or an individual operating an enterprise who is registered for GST

- 4.3 If the Agreement Details say that this clause applies, the Fees are inclusive of GST.

PAYG taxation

- 4.4 The Commonwealth may withhold from amounts payable to the Reviewer the amounts the Commonwealth considers necessary for the Commonwealth to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.
- 4.5 The amount deducted is determined by Australian tax laws and will depend upon a number of factors including:
- (a) whether or not the Reviewer provides a tax file number; and
 - (b) whether or not the Reviewer claims the tax free threshold.

Superannuation

- 4.6 This clause applies if the Agreement Details indicate that Superannuation is payable.
- 4.7 The Commonwealth will make superannuation contributions for the benefit of the Reviewer in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 4.8 The Reviewer must, promptly at the commencement of the Term, provide the Commonwealth with details of a complying superannuation fund into which the Commonwealth may make superannuation payments on behalf of the Reviewer in accordance with this clause 4.6.

Amounts otherwise inclusive

- 4.9 Subject to clause 5, the Fees are inclusive of all other costs of undertaking the Engagement.
- 4.10 The Reviewer is responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.11 The Reviewer must comply with all applicable taxation laws in relation to payments received from the Commonwealth under this Agreement.
- 4.12 No amounts are payable in relation to leave in connection with the Engagement.

5. TRAVEL AND OTHER ALLOWANCES

- 5.1 This clause 5 applies if the Agreement Details say that it applies.
- 5.2 Arrangements for booking, payment or reimbursement of travel, accommodation and travel allowances will be in accordance with the Agreement Details.

6. INVOICE PROCEDURES

- 6.1 The Commonwealth's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 6.2 The Reviewer must provide Tax Invoices (if applicable) during the Term as specified in the Agreement Details.

- 6.3 Subject to this Agreement, correctly rendered Tax Invoices will be paid within 20 days or, in the case of e-invoicing, within 5 days. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 6.4 Tax Invoices must be addressed to the Commonwealth Representative specified in the Agreement Details and must include the following information:
- (a) a description of the Engagement;
 - (b) date and name of the Agreement (including the Contract number applied to the Agreement by the Commonwealth (if any));
 - (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges);
 - (d) details of all work carried out as part of the Engagement in respect of the amount invoiced; and
 - (e) the relevant financial management system reference number as notified by the Commonwealth.
- 6.5 Where any money is due to the Commonwealth under this Agreement or any damages, costs, expenses or other amounts are recoverable by the Commonwealth from the Reviewer in consequence of its breach of this Agreement then the Commonwealth may:
- (a) offset them against any other amounts owing by the Commonwealth to the Reviewer under the Agreement; or
 - (b) invoice the Reviewer for the amount due.

7. INSURANCE

- 7.1 The Reviewer is responsible for ensuring that it has and maintains appropriate insurances including those specified in the Agreement Details.
- 7.2 The Reviewer must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by clause 7.1.

8. CARRYING OUT THE ENGAGEMENT

- 8.1 The Reviewer must carry out the Engagement:
- (a) exercising high professional standards of skill, care and diligence;
 - (b) to ensure that the Engagement achieves its intended purpose, is complete and is performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
 - (c) to ensure that the Commonwealth is fully and accurately informed on all matters which are relevant to the Engagement;
 - (d) to comply with any applicable or relevant Australian standards or, where there are no applicable Australian standards, any other industry standards;
 - (e) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
 - (f) to ensure that all obligations (including deadlines) specified in this Agreement are fully satisfied;

- (g) to ensure that all information provided to the Commonwealth, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect; and
- (h) to ensure that all Agreement Material is neatly and legibly compiled and that it contains adequate information to demonstrate the Engagement undertaken and to support all conclusions, findings and opinions.

9. NO EMPLOYMENT OR AGENCY

- 9.1 The Reviewer is not, by virtue of this Agreement, an employee, partner or agent of the Commonwealth.
- 9.2 The Reviewer must not represent themselves as being an employee, partner or agent of the Commonwealth.
- 9.3 The Reviewer does not have any authority to incur, and must not incur, any obligation on behalf of the Commonwealth.

10. AGREEMENT MATERIAL AND COMMONWEALTH MATERIAL

- 10.1 The Reviewer acknowledges that all of the Agreement Material is made under the direction and control of the Commonwealth.
- 10.2 Title to and risk in relation to the physical property in Agreement Material passes to the Commonwealth upon delivery of the Agreement Material to the Commonwealth.
- 10.3 Subject to clause 10.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in the Commonwealth.
- 10.4 Nothing in this clause 10 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 10.5 Where the Reviewer owns material used in relation to the Engagement, the Reviewer grants to the Commonwealth a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by the Commonwealth. Title to the Commonwealth Material does not pass to the Reviewer by virtue of any delivery to it or any other action taken under this Agreement.
- 10.6 At the Commonwealth's request, the Reviewer must bring into existence, sign, execute or otherwise deal with any document, which may be necessary to give effect to this clause 10.
- 10.7 Subject to clause 10.12 (if applicable), the Reviewer must ensure that all Commonwealth Material, and any Agreement Material to be provided to the Commonwealth, is used, copied, reproduced or supplied by the Reviewer, and any persons to whom the Reviewer supplies Agreement Material (other than the Commonwealth), only for the purposes of this Agreement.
- 10.8 The Reviewer must keep full and accurate records of the location and development of all Commonwealth Material and Agreement Material and make the records available to the Commonwealth on request.
- 10.9 The Reviewer acknowledges that the Commonwealth may, at any time and without notice, demand either orally or in writing, the destruction or delivery to the Commonwealth of all:
 - (a) Commonwealth Material;
 - (b) Agreement Material; or

- (c) other documents that contain Commonwealth Confidential Information, that may be in the Reviewer's possession or control.
- 10.10 The Reviewer must not breach the Intellectual Property rights of any third party in undertaking the Engagement.
- 10.11 To the extent permitted by law the Reviewer consents to any act or omission by the Commonwealth that would otherwise infringe any Moral Rights in the Agreement Material.
- 10.12 This clause applies if the Agreement Details say it applies:
 - (a) the Commonwealth grants to the Reviewer a non-exclusive, royalty-free, non-transferable perpetual license to use Intellectual Property in Agreement Material for non-commercial research purposes; and
 - (b) the Reviewer will obtain the Commonwealth's prior written permission before publishing Agreement Material.

11. DISCLOSURE OF INFORMATION

- 11.1 Except as specified in clause 11.2, or with the prior consent of the Commonwealth, the Reviewer must not make public or disclose to any person other than the Commonwealth any Commonwealth Confidential Information.
- 11.2 Clause 11.1 does not apply to disclosures made by the Reviewer:
 - (a) to the extent required by law, or as required by any government or governmental body, authority or agency;
 - (b) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,but in each case of disclosure, it must give the Commonwealth sufficient notice of any proposed disclosure to enable the Commonwealth to seek a protective order or other remedy to prevent the disclosure.
- 11.3 The Reviewer must ensure that Commonwealth Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
- 11.4 The Reviewer must not transfer Commonwealth Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of the Commonwealth.

12. PRIVACY

- 12.1 Except as set out in clause 12.2, or with the written permission of the Commonwealth Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, the Reviewer must:
 - (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by the Commonwealth;
 - (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement; or
 - (ii) complying with the Privacy Act;

- (c) implement all reasonable measures to meet the requirements of this clause 12;
- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the Commonwealth, including in the investigation of any complaints;
- (e) immediately notify the Commonwealth Privacy Representative if it becomes aware that a disclosure of such Personal Information may be required by law, or when it becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach and provide a written report in relation to such breach or suspected breach within 3 Business Days;
- (f) in the event of a breach of privacy obligations under this clause 12, take steps to limit any further unauthorised access to the relevant Personal Information or the possible compromise of other Personal Information;
- (g) ensure that any person who obtains access from the Reviewer to any Personal Information in respect of which it has obligations under the Privacy Act or this clause 12 signs a confidentiality declaration in a form acceptable to the Commonwealth, if required by the Commonwealth, prior to the access;
- (h) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse and to mitigate the risk of an Eligible Data Breach causing serious harm to any of the individuals to whom it relates. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (i) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
- (j) notify the Commonwealth Representative of, and cooperate with the Commonwealth in the resolution of, any complaint alleging an interference with privacy; and
- (k) upon written notice from the Commonwealth destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

12.2 The Reviewer must:

- (a) refer any requests for access by third parties to Personal Information to the Commonwealth Representative; and
- (b) assist the Commonwealth, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether the Reviewer has possession or control of any records that contain such information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which the Reviewer uses the information; and
 - (iv) the steps the person should take if the person wishes to obtain access to the information.

12.3 The Reviewer's obligations in this Agreement (including this clause 12) are in addition to its obligations under the Privacy Act.

13. CONFLICT OF INTEREST

13.1 For the purposes of this clause 13, a **Conflict of Interest** would include any circumstances where, due to:

- (a) outside employment or association;
- (b) any publicly held position or view; or
- (c) any other direct or indirect relationship or interest (whether personal, financial or otherwise),

the Reviewer is or may reasonably be perceived to be, unable to discharge its obligations or duties in relation to the Engagement in an objective and independent manner to the best of its ability. There need not be an actual conflict for a perception of one to be formed by a reasonable person.

13.2 The Reviewer warrants that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the Reviewer's performance of the Engagement, which has not already been advised to the Commonwealth in writing and consented to by the Commonwealth.

13.3 The Reviewer agrees to:

- (a) use its best endeavours to ensure that a situation does not arise that may result in a *Conflict of Interest arising during the Engagement*;
- (b) notify the Commonwealth if it becomes aware of any Conflict of Interest or potential Conflict of Interest, while the Reviewer undertakes the Engagement; and
- (c) comply with all directions given by the Commonwealth for dealing with any Conflict of Interest.

13.4 If the Reviewer is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14. SECURITY

14.1 The Reviewer must comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.

14.2 The Reviewer must perform its obligations under this Agreement and the Reviewer must perform the Engagement in accordance with security requirements notified by the Commonwealth from time to time in its absolute discretion, which may include a requirement for the Reviewer to obtain security clearances if specified in the Agreement Details.

14.3 If any breach of any security requirement occurs then, without limiting the Commonwealth's rights under this Agreement, the Reviewer must comply with any reasonable directions of the Commonwealth in order to rectify the issue and prevent further issues. If the Reviewer is unable or unwilling to resolve or deal with a breach of a security requirement, including the maintenance of a security clearance if required, the Commonwealth may terminate this Agreement in accordance with clause 21.

14.4 The Reviewer must:

- (a) take reasonable steps to inform itself of the security requirements; and
- (b) advise the Commonwealth promptly in writing of any relevant circumstances that, in its reasonable opinion, might affect any authorisation or security clearance provided.

15. ACCESS TO PREMISES AND RECORDS

15.1 The Reviewer must grant, at all reasonable times, access to premises, records, accounts and other financial material or Material relevant to this Agreement, including the Commonwealth Material and Agreement Material, however and wherever stored or located, in the custody, possession or control of the Reviewer to:

- (a) the Commonwealth or any persons authorised in writing by the Commonwealth; and
- (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,

for the purposes of performing their respective statutory functions and/or for inspection and/or copying.

15.2 The Reviewer must make available on request, and at no expense to the Commonwealth, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 15.1 to be created.

16. AUDIT REQUIREMENTS

16.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by the Commonwealth or its nominee.

16.2 The Reviewer must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by the Commonwealth, including on an ad hoc basis if requested by the Commonwealth, for the purpose of ensuring that this Agreement is being properly performed and administered. The Commonwealth may appoint an independent person to assist in the audits.

16.3 Each party must bear its own costs of any audits.

17. ARCHIVES ACT 1983

17.1 The Reviewer must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Commonwealth and the National Archives of Australia.

17.2 Where the Commonwealth and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the Reviewer, the Reviewer must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by National Archives of Australia.

17.3 The Reviewer must comply with any direction given by the Commonwealth for the purpose of transferring Commonwealth records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

18. NOTIFICATION OF SIGNIFICANT EVENTS

18.1 In this clause 18, **Significant Event** means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Reviewer or its officers, employees, agents or subcontractors that impacts or could

- be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Reviewer or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- 18.2 The Reviewer must immediately issue the Commonwealth a notice on becoming aware of a Significant Event.
- 18.3 The notice issued under clause 18.2 must provide a summary of the Significant Event, including the date that it occurred and whether any other personnel engaged in connection with the Engagement were involved.
- 18.4 The Commonwealth may notify the Reviewer in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Reviewer must issue a notice under clause 18.2 in relation to the event within 3 Business Days of being notified by the Commonwealth.
- 18.5 Where reasonably requested by the Commonwealth, the Reviewer must provide the Commonwealth with any additional information regarding the Significant Event within 3 Business Days of the request.
- 18.6 If requested by the Commonwealth, the Reviewer must prepare a draft remediation plan and submit that draft plan to the Commonwealth for approval within 10 Business Days of the request.
- 18.7 A draft remediation plan prepared by the Reviewer under clause 18.6 must include the following information:
- (a) how the Reviewer will address the Significant Event in the context of the Engagement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Engagement or compliance by the Reviewer with its other obligations under this Agreement;
- (b) how the Reviewer will ensure events similar to the Significant Event do not occur again; and
- (c) any other matter reasonably requested by the Commonwealth.
- 18.8 The Commonwealth will review the draft remediation plan and either approve the draft remediation plan or provide the Reviewer with the details of any changes that are required. The Reviewer must make any changes to the draft remediation plan reasonably requested by the Commonwealth and resubmit the draft remediation plan to the Commonwealth for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Commonwealth. This clause 18.8 will apply to any resubmitted draft remediation plan.
- 18.9 Without limiting its other obligations under this Agreement, the Reviewer must comply with the remediation plan as approved by the Commonwealth. The Reviewer agrees to provide reports and other information about the Reviewer's progress in implementing the remediation plan as reasonably requested by the Commonwealth.
- 18.10 A failure by the Reviewer to comply with its obligations under this clause 18 will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1. The Commonwealth's rights under this clause 18 are in addition to and do not otherwise limit any other rights the Commonwealth may have under this Agreement. The performance by the Reviewer of its obligations under this clause 18 will be at no additional cost to the Commonwealth.

19. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

- 19.1 For the purposes of this clause 19, **Commonwealth Supplier Code of Conduct** or **Code** means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 19.2 The Reviewer must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 19.3 The Reviewer must:
- (a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
 - (b) on request from the Commonwealth, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Reviewer's compliance with clause 19.2.
- 19.4 The Reviewer must immediately issue the Commonwealth a Notice on becoming aware of any breach of clause 19.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 19.5 Where the Commonwealth identifies a possible breach of clause 19.2, it may issue the Reviewer a Notice, and the Reviewer must, within three (3) Business Days of receiving the Notice, either:
- (a) where the Reviewer considers a breach has not occurred: advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
 - (b) where the Reviewer considers that a breach has occurred: issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 19.
- 19.6 Notwithstanding clause 19.5, a Commonwealth may notify the Reviewer in writing that it considers that the Reviewer has breached clause 19.2, in which case the Reviewer must issue a Notice under clause 19.4 and otherwise comply with its obligations under this clause 18.
- 19.7 A failure by the Reviewer to comply with its obligations under any part of this clause will entitle the Commonwealth to terminate this Agreement in accordance with clause 21.1.
- 19.8 Nothing in this clause or the Code limits, reduces, or derogates from the Reviewer's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Reviewer of its obligations under this clause will be at no additional cost to the Commonwealth.
- 19.9 The Reviewer agrees that the Commonwealth or any other Commonwealth agency may take into account the Reviewer's compliance with the Code in any future approach to market or procurement process.

20. TERMINATION, REDUCTION OR AMENDMENT TO SCOPE WITHOUT DEFAULT

- 20.1 The Commonwealth may terminate this Agreement, or reduce or amend the scope of the Engagement upon notice in writing to the Reviewer.

- 20.2 A notice issued in accordance with clause 20.1 may provide that termination, reduction or amendment is to be effective:
- (a) immediately; or
 - (b) on any date subsequent to the date the notice is provided in writing to the Reviewer (the Effective Date).
- 20.3 If this Agreement is terminated under clause 20.1, the Commonwealth is liable only for payment of Fees for work performed in carrying out the Engagement before the Effective Date of termination as set out in the notice, provided that such work has been rendered in accordance with this Agreement and the Reviewer is not otherwise in breach of this Agreement.
- 20.4 If the Commonwealth, acting in good faith, issues a notice of reduction in scope under clause 20.1, the scope will be reduced in accordance with, and with effect from the date of, the notice and the Reviewer will comply with any reasonable directions given by the Commonwealth in connection with the reduction in scope.
- 20.5 If the Commonwealth issues a notice in accordance with clause 20.1, it will pay the Reviewer for Services performed before the date of the termination or reduction.

21. TERMINATION FOR DEFAULT

- 21.1 Without prejudice to its rights at common law or under any statute, the Commonwealth may by notice to the Reviewer, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of the Reviewer;
 - (b) the Commonwealth is entitled to terminate this Agreement in accordance with clauses 21.2, 21.3 or 21.4;
 - (c) the Reviewer fails to comply with clause 18 or clause 19; or
 - (d) the Reviewer fails to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.
- 21.2 Subject to clause 21.3, if:
- (a) the Reviewer breaches this Agreement; and
 - (b) in the Commonwealth's sole and absolute opinion, a breach is capable of being remedied,
- the Commonwealth will give the Reviewer 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of the Commonwealth, then the Commonwealth may terminate this Agreement under this clause 21.
- 21.3 If the Reviewer commits three or more breaches of this Agreement, the Commonwealth is not required to give it 15 Business Days to remedy the breach under clause 21.2, and may immediately terminate this Agreement under this clause 21.
- 21.4 If:
- (a) the Reviewer breaches this Agreement; and
 - (b) the Commonwealth determines under clause 21.2 that a breach is not capable of being remedied,

the Commonwealth may immediately terminate this Agreement under this clause 21.

22. TERMINATION BY THE REVIEWER

- 22.1 The Reviewer may only terminate this Agreement by giving at least 5 Business Days' notice to the Commonwealth and only if:
- (a) the Commonwealth has not paid a correctly rendered invoice and has not notified the Reviewer that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
 - (b) the Reviewer has given the Commonwealth:
 - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Commonwealth at least 30 days to pay the invoice; and
 - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Commonwealth at least 15 days to pay the invoice; or
 - (c) the Reviewer has submitted notice to the Commonwealth that it wishes to relinquish the appointment which is the subject of this Agreement due to illness or for specific reasons set out in the notice.

23. TRANSITION OUT

- 23.1 In the event of termination or expiration of this Agreement for any reason, the Reviewer must:
- (a) cease access to and use of the Commonwealth's systems, Agreement Material and Commonwealth Material;
 - (b) at the Commonwealth's direction, either return or destroy all:
 - (i) Commonwealth Material;
 - (ii) Agreement Material; or
 - (iii) other documents that contain Commonwealth Confidential Information, that may be in the Reviewer's possession or control;
 - (c) where requested by the Commonwealth deliver to the Commonwealth a statutory declaration made by the Reviewer declaring that to the best of their information and belief (after having made proper inquiries) they have not retained any of the Material specified in clause 23.1(b); and
 - (d) comply with all other obligations in this Agreement, including those relating to Commonwealth Material and Agreement Material.
- 23.2 The following clauses will survive the expiration or termination of this Agreement:
- (a) clause 7 (Insurance);
 - (b) clause 11 (Disclosure of Information);
 - (c) clause 12 (Privacy);
 - (d) clause 14 (Security);
 - (e) clause 15 (Access to Premises and Records);

- (f) clause 16 (Audit Requirements);
- (g) this clause 23 (Transition Out); and
- (h) clause 31 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

24. WARRANTIES

24.1 The Reviewer warrants that:

- (a) it is duly authorised to enter into, perform and observe its obligations under this Agreement;
- (b) its execution of this Agreement is valid and binding on it; and
- (c) it is not entering into this Agreement as a trustee for any trust.

25. COMPLIANCE WITH DIRECTIONS

25.1 In undertaking the Engagement, the Reviewer must comply with:

- (a) all reasonable and lawful directions and instructions issued by the Commonwealth, whether they are issued with respect to the Engagement or any other matter which the Commonwealth considers may be reasonably relevant to the Engagement;
- (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and
- (c) all applicable policies and procedures relating to work health and safety, including those that apply to the Commonwealth's premises when using those premises.

25.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 25.1, the Reviewer will comply with the requirements that produce the highest level of health and safety.

26. PUBLIC ANNOUNCEMENTS

26.1 The Reviewer must not make any public announcement or make any representation to any media representative about or concerning this Agreement or the Commonwealth without the prior written consent of the Commonwealth, which consent may be given subject to such conditions as the Commonwealth in its absolute discretion thinks fit.

27. COMMONWEALTH REPRESENTATIVE

27.1 The Commonwealth Representative is responsible for supervision of this Agreement on behalf of the Commonwealth and has authority to issue and receive any written notices under this Agreement.

28. ADDRESSES FOR NOTICES

28.1 Unless the Reviewer advises the Commonwealth Representative of another address for notice, the Commonwealth will issue any notices or other communications for the Reviewer's attention to the Reviewer's address as listed in the Agreement Details

- 28.2 Unless the Commonwealth Representative advises the Reviewer of another address for notice, the Reviewer will issue any notices or other communications for the Commonwealth's attention to its address as listed in the Agreement Details.

29. ASSIGNMENT

- 29.1 The Reviewer must not assign, in whole or in part, its rights or obligations under this Agreement without the prior written consent of the Commonwealth.

30. ENTIRE AGREEMENT AND VARIATION

- 30.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 30.2 No agreement or understanding that varies or extends this Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 30.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions, which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

31. APPLICABLE LAW

- 31.1 This Agreement will be governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts of that jurisdiction.
- 31.2 The Reviewer must ensure that the work done under this Agreement complies with the laws from time to time in force in the State or Territory in which the Engagement, or any part thereof, is to be carried out.

Executed as an Agreement

SIGNED for and on behalf of the
Commonwealth of Australia represented
by the **DEPARTMENT EMPLOYMENT
AND WORKPLACE RELATIONS ABN
96 584 957 427** by its duly authorised
representative:

s 22(1)

Name of authorised representative

In the presence of:

s 22(1)

Name of witness

Date: 3/10/24

s 22(1)

Signature

s 22(1)

Signature of witness

SIGNED by MARK [REDACTED] BRAY

s 22(1)

Name of witness

Date: 30/09/2024

[REDACTED SIGNATURE]

Signature

In the presence of:

s 22(1)

Signature of witness

SCHEDULE 1 TERMS OF REFERENCE**Secure Jobs Better Pay Review****Terms of Reference**

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the review is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is

no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable 'State or Territory Occupational Health and Safety law'.

The amendments give effect to 'Recommendation 8: Workplace entry of union officials when providing assistance to an HSR' of the '2018 Review of the model WHS laws' conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at: <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel's findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.



To Minister for Employment and Workplace Relations

Subject Statutory review of the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

Sent to the MO 7 June 2024

Priority Routine/Low Complexity

Action date Please action by 24 June 2024, to give sufficient time to conduct the review if it is to be completed by the end of 2024.

Recommendations - That you:

- 1) **agree** to indicate your preferred approaches to the statutory review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (SJPB Act) at Attachment A
agreed / not agreed / please discuss
- 2) **note** that a further briefing will be provided seeking your approval of key issues for the review, and the decision maker for the procurement process (if you select this approach).
noted / please discuss

Signature:

25/6/2024

MO Comments

Executive summary

1. The SJPB Act requires that you cause a review to be conducted of the operation of the amendments made by that Act to the *Fair Work Act 2009* (Fair Work Act).
 - a. The review must commence no later than 6 December 2024 (2 years after commencement).
 - b. The reviewer must provide a written report to you within 6 months of the review's commencement.
 - c. You are required to table this report in each House of Parliament within 15 sitting days of receipt.
2. The Department of Employment and Workplace Relations recommends it conduct a tender process for a university or research institute to undertake the review and includes:
 - a. one or more eminent persons with expertise in relevant areas (for example, gender equality) to conduct the review
 - b. a public process for submissions, evidence and consultations, and
 - c. publication of a draft report and public process for comments on the draft report.

3. Commencing the review just before 6 December 2024, with the report provided to you by early June 2025 would maximise the period of operation of the SJPB Act amendments since their commencement, noting:
 - a. the review must accord with the requirements outlined in the SJPB Act, including whether the amendments are operating appropriately and effectively, and
 - b. some provisions in the SJPB Act have had limited use to date.
4. Following your decision on the review approach at Attachment A, the department will brief you further, seeking your approval of key elements of the review, including the assessment criteria for tenders, key expectations, decision maker for any procurement process, terms of reference (if by ministerial appointment), deliverables and reporting requirements, and recommending you write to the Prime Minister to seek approval of (or informing of) the proposed review arrangements.

Key points

Scope of the review

5. The SJPB Act provides that the review must:
 - a. consider whether the operation of the amendments are appropriate and effective
 - b. identify any unintended consequences of those amendments, and
 - c. consider if further amendments to the Fair Work Act, or any other legislation, are necessary to improve the operations or rectify any unintended consequences of those amendments.
6. Requirements of the review will be drafted in the Request for Quote (RFQ) (if by procurement) or terms of engagement (if by ministerial appointment) with key elements, such as assessment criteria for tenders, key expectations, terms of reference (if by ministerial appointment), deliverables and reporting requirements, to be provided to you for approval.

Engagement of a reviewer

7. As outlined in Attachment A, the department recommends:
 - a. procuring a university or research institute that includes eminent person(s) with expertise in gender equity, collective bargaining, job security, and
 - b. that a report is provided to you by June 2025.
8. This approach would ensure the review is independent of government, allows more time for SJPB Act amendments to operate and for thorough research and consultation to occur.
9. If you agree to the recommended approach, the Commonwealth Procurement Rules (CPRs) require the department to use a 'coordinated procurement' process. This procurement would meet the definition of a 'consultancy arrangement' meaning the mandatory, whole-of-government Management Advisory Services Panel (MAS Panel) would need to be used for sourcing a supplier.
 - a. The department will provide a RFQ to suppliers from the MAS Panel (shortlisted based on publicly available information to determine suitability in the required fields) inviting tenders to conduct the review.
 - b. The process will be undertaken in accordance with the CPRs and the department's procurement policies.
10. Alternatively, the review could be conducted by one or more eminent persons appointed by ministerial appointment, a private sector consultancy, or the department. These options are also covered in Attachment A.

Government policy issues and impact on other portfolios

11. The department is engaging with the Department of the Prime Minister and Cabinet on authority requirements for the conduct of the review.
 - a. If you agree to the recommended approach, a letter will be prepared for you to inform the Prime Minister of the review.

- b. If you choose to appoint reviewer(s) to conduct the review by ministerial appointment, you may be required to seek authority from the Prime Minister, consistent with the Prime Minister's correspondence to you of 27 October 2022 (MC22-046184 refers).

Key risks and mitigation

12. **Timing:** If the review report is to be provided to you by 31 December 2024, this will reduce the time available for the review itself and likely be criticised by some stakeholders. To mitigate this risk the department has commenced preparatory work to minimise delays.
13. **Data:** Data limitations exist relating to enterprise bargaining and workplace relations generally, and available data may be further limited due to the short time the SJBPA Act has been in operation.
- a. Stakeholders may criticise the review as insufficient due to these limitations.
 - b. To address these concerns the department will seek suitable mitigations from tenderers.
14. **Consultancies:** Government is focussed on reducing its reliance on consultants.
- a. The MAS Panel has been established to improve the transparency, quality, consistency and efficiency of the procurement of consultancies, with any tenders to represent value for money.

Budget impact, financial considerations

15. No additional funding or staff has been allocated to the department for the review.

Stakeholder consultation

16. Internal stakeholders in Employment Conditions Division, Internal Budgets and Financial Performance and External Budgets have been consulted.

Attachments

Attachment A SJBPA Review Approval Placemat

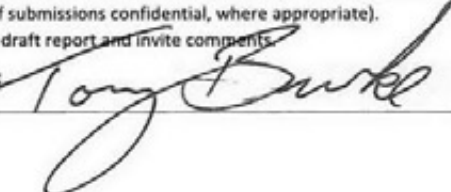
Clearance

Primary Contact Officer: s 22(1)
Bargaining and Industry Policy Branch
| WR | Safety and Industry Policy

Clearance Officer: s 22(1)
| WR | Safety and Industry Policy

A/g Assistant Secretary
Ph: s 22(1)
Mobile: s 22(1)

A/g First Assistant Secretary
Ph: s 22(1)

| Secure Jobs Better Pay (SJB) statutory review | | |
|---|--|---|
| Recommended option | Alternate options | Key benefits and risks |
| 1a. RECOMMENDED OPTION - Reviewer <input checked="" type="checkbox"/> University or research institute procured by the department that must include eminent person(s) to conduct the review, with expertise in: <ul style="list-style-type: none"> gender equity collective bargaining job security. <p>NOTE: Secretariat support would be provided by the reviewer.</p> | 1b. ALTERNATE OPTION - Reviewer <input type="checkbox"/> Ministerial appointment of the reviewer/s: <ul style="list-style-type: none"> <input type="checkbox"/> 1 eminent person <input type="checkbox"/> Panel of 2 eminent persons <input type="checkbox"/> Panel of 3 eminent persons. <p>With secretariat support provided by:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a university or research institute (procured by department) <input type="checkbox"/> a consultancy (procured by department) <input type="checkbox"/> the department. 1c. ALTERNATE OPTION 2 - Reviewer <p>Review to be conducted by:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a university or research institute (without eminent person/s required -procured by department) <input type="checkbox"/> a consultancy (procured by department) <input type="checkbox"/> the department. | RECOMMENDED APPROACH Benefits <ul style="list-style-type: none"> Independent of Government and the department. Best practice review process (i.e., public submissions, consultations). Full 6 months to conduct the review. Likely to be consistent with expectations of stakeholders and cross-bench (recalling amendment was request of Sen D. Pocock). Risks <ul style="list-style-type: none"> Reviewer may have limited experience/credibility with workplace relations stakeholders. ALTERNATIVE OPTIONS - Risks and benefits Direct Ministerial Appointment of reviewer/s <ul style="list-style-type: none"> Ability to directly appoint expert/s with relevant expertise. Risk of stakeholder criticisms on impartiality and independence. Risk of disagreement between panel members on findings and recommendations in written report. Use of consultancy to conduct review <ul style="list-style-type: none"> Streamlined and efficient review processes. Government focus on reducing reliance on consultancies. Likely to be high cost. Departmental review <ul style="list-style-type: none"> Subject matter expertise of departmental staff that worked on the reforms (however, perhaps less experience in conducting reviews). Risk of stakeholder criticisms on impartiality and independence. Resourcing implications for the department. Transparency - Targeted submissions <ul style="list-style-type: none"> Streamlines process of considering submissions. Risk of criticism of limiting breadth of evidence and views. Transparency - Draft report <ul style="list-style-type: none"> Streamlines reporting process. Removes ability of stakeholders to reply to preliminary findings or address submissions of other stakeholders. Timing <ul style="list-style-type: none"> May be inconsistent with stakeholder expectations. Reduces implementation timeframe to be assessed by the review. A timeframe shorter than 6 months would reduce the time for the reviewer to make comprehensive findings. |
| 2a. RECOMMENDED OPTION - Timing <input type="checkbox"/> Commence review by 6 December. <input type="checkbox"/> Report within 6 months of review commencement (June 2025). | 2b. ALTERNATE OPTION - Timing <input type="checkbox"/> Commence review as soon as possible and report within: <ul style="list-style-type: none"> 6 months after review commences (i.e. report likely early 2025). <input checked="" type="checkbox"/> An earlier date (please specify): <u>December</u> | |
| 3a. RECOMMENDED OPTION - Conducting the review <input checked="" type="checkbox"/> Reviewer must call for submissions and evidence from any interested person. <input type="checkbox"/> Reviewer must conduct stakeholder consultation meetings. | 3b. ALTERNATE OPTION - Conducting the review <input checked="" type="checkbox"/> Targeted call for submissions to include: <ul style="list-style-type: none"> <input type="checkbox"/> Employer groups (ACCI, AiG, BCA, MCA, COSBOA) <input type="checkbox"/> Employee groups (ACTU and individual unions) <input type="checkbox"/> Relevant government departments (e.g. DEWR, Treasury) <input type="checkbox"/> State and territory governments <input type="checkbox"/> Members of COIL and NWRCC not otherwise included <input type="checkbox"/> Gender equality experts <input type="checkbox"/> Relevant academics <input type="checkbox"/> Other stakeholders (please specify): _____ <input type="checkbox"/> Leave to discretion of reviewer/s. | |
| 4a. RECOMMENDED OPTIONS - Transparency <input checked="" type="checkbox"/> Reviewer to publish stakeholder submissions (with scope to keep certain submissions or parts of submissions confidential, where appropriate). <input checked="" type="checkbox"/> Reviewer to publish draft report and invite comments. | 4b. ALTERNATE OPTIONS - Transparency <input type="checkbox"/> Stakeholder submissions to remain confidential. <input type="checkbox"/> No public process for draft report. | |
| Minister's signature:  | Date: <u>25.6.24</u> | Additional comments: |

| Secure Jobs Better Pay (SJBP) statutory review | | |
|--|---|--|
| Recommended option | Alternate options | Key benefits and risks |
| 1a. RECOMMENDED OPTION - Reviewer <input type="checkbox"/> University or research institute procured by the department that must include eminent person(s) to conduct the review, with expertise in: <ul style="list-style-type: none"> gender equity collective bargaining job security. NOTE: Secretariat support would be provided by the reviewer. | 1b. ALTERNATE OPTION – Reviewer <input type="checkbox"/> Ministerial appointment of the reviewer/s: <ul style="list-style-type: none"> <input type="checkbox"/> 1 eminent person <input type="checkbox"/> Panel of 2 eminent persons <input type="checkbox"/> Panel of 3 eminent persons. With secretariat support provided by: <ul style="list-style-type: none"> <input type="checkbox"/> a university or research institute (procured by department) <input type="checkbox"/> a consultancy (procured by department) <input type="checkbox"/> the department. 1c. ALTERNATE OPTION 2 – Reviewer Review to be conducted by: <ul style="list-style-type: none"> <input type="checkbox"/> a university or research institute (without eminent person/s required -procured by department) <input type="checkbox"/> a consultancy (procured by department) <input type="checkbox"/> the department. | RECOMMENDED APPROACH <u>Benefits</u> <ul style="list-style-type: none"> Independent of Government and the department. Best practice review process (i.e., public submissions, consultations). Full 6 months to conduct the review. Likely to be consistent with expectations of stakeholders and cross-bench (recalling amendment was request of Sen D. Pocock). <u>Risks</u> <ul style="list-style-type: none"> Reviewer may have limited experience/credibility with workplace relations stakeholders. ALTERNATIVE OPTIONS – Risks and benefits Direct Ministerial Appointment of reviewer/s <ul style="list-style-type: none"> Ability to directly appoint expert/s with relevant expertise. Risk of stakeholder criticisms on impartiality and independence. Risk of disagreement between panel members on findings and recommendations in written report. |
| 2a. RECOMMENDED OPTION – Timing <input type="checkbox"/> Commence review by 6 December. <input type="checkbox"/> Report within 6 months of review commencement (June 2025). | 2b. ALTERNATE OPTION – Timing <input type="checkbox"/> Commence review as soon as possible and report within: <ul style="list-style-type: none"> <input type="checkbox"/> 6 months after review commences (i.e. report likely early 2025). <input type="checkbox"/> An earlier date (please specify): _____. | Use of consultancy to conduct review <ul style="list-style-type: none"> Streamlined and efficient review processes. Government focus on reducing reliance on consultancies. Likely to be high cost. |
| 3a. RECOMMENDED OPTION - Conducting the review <input type="checkbox"/> Reviewer must call for submissions and evidence from any interested person. <input type="checkbox"/> Reviewer must conduct stakeholder consultation meetings. | 3b. ALTERNATE OPTION – Conducting the review <input type="checkbox"/> Targeted call for submissions to include: <ul style="list-style-type: none"> <input type="checkbox"/> Employer groups (ACCI, AiG, BCA, MCA, COSBOA) <input type="checkbox"/> Employee groups (ACTU and individual unions) <input type="checkbox"/> Relevant government departments (e.g. DEWR, Treasury) <input type="checkbox"/> State and territory governments <input type="checkbox"/> Members of COIL and NWRCC not otherwise included <input type="checkbox"/> Gender equality experts <input type="checkbox"/> Relevant academics <input type="checkbox"/> Other stakeholders (please specify): _____. <input type="checkbox"/> Leave to discretion of reviewer/s. | Departmental review <ul style="list-style-type: none"> Subject matter expertise of departmental staff that worked on the reforms (however, perhaps less experience in conducting reviews). Risk of stakeholder criticisms on impartiality and independence. Resourcing implications for the department. Transparency – Targeted submissions <ul style="list-style-type: none"> Streamlines process of considering submissions. Risk of criticism of limiting breadth of evidence and views. Transparency – Draft report <ul style="list-style-type: none"> Streamlines reporting process. Removes ability of stakeholders to reply to preliminary findings or address submissions of other stakeholders. |
| 4a. RECOMMENDED OPTIONS – Transparency <input type="checkbox"/> Reviewer to publish stakeholder submissions (with scope to keep certain submissions or parts of submissions confidential, where appropriate). <input type="checkbox"/> Reviewer to publish draft report and invite comments. | 4b. ALTERNATE OPTIONS – Transparency <input type="checkbox"/> Stakeholder submissions to remain confidential. <input type="checkbox"/> No public process for draft report. | Timing <ul style="list-style-type: none"> May be inconsistent with stakeholder expectations. Reduces implementation timeframe to be assessed by the review. A timeframe shorter than 6 months would reduce the time for the reviewer to make comprehensive findings. |
| Minister's signature: | Date: | Additional comments: |



To Minister for Employment and Workplace Relations

Subject Procurement for review of the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

Sent to the MO 25 July 2024

Priority Urgent/Low Complexity

Action date Please action by 2 August 2024, so the review can start as soon as possible, given you have requested a draft report by 29 November 2024.

Recommendations - That you:

- 1) **agree** the Terms of Reference for the statutory review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (SJBPA) at Attachment A, which will be used as a basis for the Request for Quote (RFQ). (agreed) / not agreed / please discuss
- 2) **agree** s 22(1) ; Deputy Secretary, Workplace Relations, will be the delegate and final decision maker for the process to procure the reviewer of the SJBPA. (agreed) / not agreed / please discuss
- 3) **agree** that you will make an announcement about the commencement of the review after a contract between the Department of Employment and Workplace Relations and the reviewer has been executed. (agreed) / not agreed / please discuss
- 4) **note** that the indicative timeline estimates the reviewer will have at best, approximately 11 weeks to complete the review from finalising the contract, with the draft report provide to the department by 29 November 2024, as outlined at Attachment B. (noted) / please discuss
- 5) **agree** that no draft report will be provided for stakeholder feedback. (agreed) / not agreed / please discuss
- 6) **sign** the letter to the Prime Minister, the Hon Anthony Albanese MP, in relation to arrangements for the review at Attachment C. (signed) / not signed

Signature:

5/8 2024

MO Comments

Executive summary

1. You have agreed the department will conduct a procurement process for a university or research institute to undertake a statutory review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (the review) (MS24-000354 refers).

2. To align with the Australian Government's policy position as set out in rule 3.2 of the *Commonwealth Procurement Rules 2024* (CPRs), and avoid increased probity risks, we recommend you do not personally act as decision maker for the procurement process, despite you having the power to do so.
 - a. The department recommends that s 22(1) be the delegate and final decision maker for the process to procure the reviewer.
3. The department has consulted your office on key details of the RFQ to be sent to potential suppliers to tender for the review. The key requirements for potential suppliers to address in their tender are:
 - a. participation of an eminent person(s) with expertise in gender equity, collective bargaining and job security
 - b. a process for submissions and evidence from any interested person
 - c. publication of stakeholder submissions (where appropriate)
 - d. a draft report to be provided to the department by 29 November 2024.
4. The key elements of the review, including requirements and deliverables are at Attachment A.

Key points

5. The department has considered the procurement process to ensure consistency with the CPRs and related obligations.
 - a. The department must comply with the CPRs when performing duties related to the procurement: rule 2.2.
 - b. This is not an exempt procurement (for example, a statutory appointment or ministerial appointment): rule 2.9.
 - c. The department must use coordinated procurements (that is, panel arrangements): rule 4.2.
 - i. Exemptions from coordinated procurements can be granted jointly by the portfolio Minister and Finance Minister where a special need for an alternative arrangement is demonstrated: rule 4.12.
 - d. If the proposed procurement meets the conditions for a consultancy arrangement, then the Management Advisory Services (MAS) Panel (that is, coordinated procurement) must be used.
 - i. The department's views is that the procurement is a consultancy, which is consistent with statutory review of the Paid Family and Domestic Violent Leave Act.
6. The department has analysed potential suppliers on the MAS Panel who may be provided the RFQ.
7. Three universities have been identified that, on review of publicly available information, demonstrate eminence in the relevant fields—Monash University, Royal Melbourne Institute of Technology and University of New South Wales.
 - a. The Research and Evaluation Services (RES) Panel is an alternative coordinated procurement.
 - i. The RES Panel can only be used if the procurement does not meet the conditions for a consultancy arrangement.
 - b. The full list of universities on the MAS Panel and the RES Panel is at Attachment D.
8. Pursuant to section 71 of the *Public Governance, Performance and Accountability Act 2013*, you as Minister have the power to approve expenditure of relevant money on the procurement, subject to meeting the requirements of that section to record the terms of the approval in writing.
9. Despite this, rule 3.2 of the CPRs sets out the Government's policy position that, except where required by law, ministers will not be involved in the conduct of procurement processes or direct officials about the conduct of procurement processes.

s 42(1)

10. In addition, there may be probity and reputational concerns if you as the Minister are directly involved in the procurement process, as this may adversely impact on the impartiality and integrity of the review.

11. Accordingly, the department recommends that s 22(1) be the delegate and final decision maker for the procurement process.

Timing

12. Indicative timeframes for the draft report to be provided to the department by 29 November 2024 are outlined at [Attachment B](#). The indicative timeline estimates the reviewer will have at best, approximately 11 weeks to complete the review from the time of executing the final contract.
13. If you approve this submission, the department will commence the procurement process with a view to executing a work order with the successful supplier in September 2024.
- The contract for the conduct of the review will commence when the contract is executed by the supplier and the department.
 - Publicly, the review will commence once the department finalises a project plan with the supplier, and an announcement is made.
 - Subject to your agreement, the department will prepare a media release for you to announce the start of the review.
 - Alternatively, you may prefer that the selected supplier make the announcement or there may be no announcement.
 - However, it is likely work on the review will occur during the period the project plan is finalised.

Government policy issues and impact on other portfolios

14. The department has engaged with the Department of the Prime Minister and Cabinet on authority requirements for the conduct of the review. A letter has been prepared for you to inform the Prime Minister of the review at [Attachment C](#).

Key risks and mitigation

15. **Probity in procurement:** The Government position on ministerial involvement in a procurement, stated in the CPRs, aims to avoid probity and reputational risks.
16. **Compressed timeframe:** As requested by your office, the department is working to a 29 November 2024 timeframe for the draft report. This may be perceived as unnecessarily limiting the time available for the review and be criticised by some stakeholders.
- To minimise delays in commencing the procurement, the department has worked to expedite preparation of the necessary documentation for the procurement activity, and is close to finalising this documentation, pending approvals.
 - The department has prepared a Risk Management Plan to mitigate risks of further delays during the procurement process.
17. **Completion date:** The report must be provided to you within 6 months of the review's commencement. The department, supplier and your office will need to agree on the approach to finalising the report and providing it to you, noting there is currently no date specified in the RFQ.
- This approach may raise question about the independence of the final report, due to perceptions of interference by the department or your office. However, it is not unusual to request or receive draft reports in a review process.
18. **Availability of suppliers:** Availability and interest of suppliers, including eminent persons to support the review may be limited given the short timeframe to apply and conduct the review.
- Due to probity requirements, the department cannot test appetite or availability from potential suppliers and instead must rely on the formal process of the RFQ to determine interest.
 - If an appropriate supplier cannot be successfully engaged through the MAS Panel, the department will work with your office on next steps noting this outcome would cause delay.
19. **Data:** Data limitations exist relating to enterprise bargaining and workplace relations generally, and available data may be further limited due to the short time the SJBPA Act has been in operation.
- Stakeholders may criticise the review as insufficient due to these limitations.

- b. To mitigate this issue the department is asking tenderers to outline their approach to data, with this being a consideration in the evaluation of tenders.

Budget impact, financial considerations

20. No additional funding or staff has been allocated to the department for the review.

Stakeholder consultation

21. Internal stakeholders in Procurement, Corporate Legal, Commercial Law, Employment Advice and Internal Budgets have been consulted.

Attachments

Attachment A SJBP Review – Terms of Reference
Attachment B Key timelines
Attachment C Letter to Prime Minister
Attachment D University supplier matrix

Clearance

Primary Contact Officer: s 22(1)
Bargaining and Industry Policy Branch
| WR | Safety and Industry Policy
Clearance Officer: s 22(1)
Workplace Relations Group

A/g Assistant Secretary
Ph: s 22(1)
Mobile: s 22(1)
Deputy Secretary
Ph: s 22(1)



**SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**

Reference: MS24-000541

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

By email: s22(1)

Dear Prime Minister

I write to advise you of details relating to the establishment of the statutory review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Act).

The Act requires that I must cause a review to be conducted of the operation of the amendments made by this Act, including to:

- consider whether the operation of the amendments made by the Act are appropriate and effective
- identify any unintended consequences of the amendments
- consider if further amendments to the *Fair Work Act 2009*, or any other legislation, are necessary to improve the operations or rectify any unintended consequences of those amendments.

I have requested that the Department of Employment and Workplace Relations commence work to procure a university or research institute to undertake the review. Funding for the review will be absorbed by the department. I anticipate the review to commence in September 2024, with a draft report due to the department by the end of November 2024. I will make a public announcement about the review's commencement.

As required by the Act, I will table a copy of the report in each House of Parliament within 15 sittings days of receipt of the final report.

Yours sincerely

MURRAY WATT 5 / 8 / 2024

Terms of Reference

Section 4 of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (the Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the Act to be conducted, starting no later than 2 years after its commencement (being no later than 6 December 2024).

The Act requires that the Reviewer must give the Minister a written report of the review within 6 months of the review's commencement. The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible with a draft report provided to the department by Friday, 29 November 2024.

Without limiting the matters that may be considered when conducting the review, the review must:

- consider whether the operation of the amendments made by the Act is appropriate and effective
- identify any unintended consequences of the amendments made by the Act
- consider whether further amendments to the *Fair Work Act 2009*, or any other legislation, are necessary to: improve the operations of the amendments made by the Act, or rectify any unintended consequences identified in the review.

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and implementation occurred in numerous areas, as outlined in the [Explanatory Memorandum](#) including changes to:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>

Conduct of the review

In conducting the review, the Reviewer should consider available qualitative and quantitative research. Sources may include, but are not limited to the following:

- Department of Employment and Workplace Relations (namely the Workplace Agreements Database)
- Fair Work Commission
- Fair Work Ombudsman
- Workplace Gender Equality Agency
- relevant academic research.

Without limiting other relevant factors and sources of information the reviewer may consider, the review, and the final report, must be informed by stakeholder perspectives.

Interested stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published to be publicly accessible, where appropriate.

The Reviewer must provide a draft report to the department by Friday, 29 November 2024. The draft report must detail the Reviewer's draft findings and recommendations about each of the matters to be considered by the review.

The final report will be publicly released in consultation with the department and Government.

Publication

The Final Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Final Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Supplier must ensure that the online publication of the Final Report, any website or associated material complies with the Web Content Accessibility.

| Task | Finalisation date | 15/07/2024 | 22/07/2024 | 29/07/2024 | 5/08/2024 | 12/08/2024 | 19/08/2024 | 26/08/2024 | 2/09/2024 | 9/09/2024 | 16/09/2024 | 23/09/2024 | 30/09/2024 | 7/10/2024 | 14/10/2024 | 21/10/2024 | 28/10/2024 | 4/11/2024 | 11/11/2024 | 18/11/2024 | 25/11/2024 | 2/12/2024 | 9/12/2024 | 16/12/2024 | 23/12/2024 | 30/12/2024 |
|--|-------------------|------------|------------|------------|-----------|------------|------------|------------|-----------|-----------|------------|------------|------------|-----------|------------|------------|------------|-----------|------------|------------|------------|-----------|-----------|------------|------------|------------|
| Minister clears Ministerial Submission | 2-Aug | | | ▲ | | | | | | | | | | | | | | | | | | | | | | |
| Department finalises procurement documents | 6-Aug | | | ■ | | | | | | | | | | | | | | | | | | | | | | |
| Delegate approval of procurement plan | 9-Aug | | | | ■ | | | | | | | | | | | | | | | | | | | | | |
| RFQ with potential suppliers (open for 2 weeks) | 26-Aug | | | | | ■ | ■ | ■ | | | | | | | | | | | | | | | | | | |
| Evaluation committee assess tenders (4 days) | 29-Aug | | | | | | | ■ | ■ | | | | | | | | | | | | | | | | | |
| Evaluation report prepared and approval by Delegate | 4-Sep | | | | | | | | ■ | ■ | | | | | | | | | | | | | | | | |
| Send notification of successful tender | 5-Sep | | | | | | | | | ■ | | | | | | | | | | | | | | | | |
| Negotiate with preferred supplier | 11-Sep | | | | | | | | | ■ | ■ | | | | | | | | | | | | | | | |
| Final procurement approvals | 13-Sep | | | | | | | | | | ■ | | | | | | | | | | | | | | | |
| Sign contract | 16-Sep | | | | | | | | | | ■ | | | | | | | | | | | | | | | |
| The below timeframes will be negotiated with the successful supplier and are indicative only | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Supplier drafts project plan and provides to department | 30-Sep | | | | | | | | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Department acknowledgement of project plan | 2-Oct | | | | | | | | | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Supplier preparing for stakeholder submission process | 23-Oct | | | | | | | | | | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Stakeholder submissions and evidence process open (min. 2 weeks) | 6-Nov | | | | | | | | | | | | | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Supplier prepares and provides of draft report to department | 29-Nov | | | | | | | | | | | | | | | | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |



SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS

Reference: MS24-000541

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

By email: s22(1)

Dear Prime Minister

I write to advise you of details relating to the establishment of the statutory review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Act).

The Act requires that I must cause a review to be conducted of the operation of the amendments made by this Act, including to:

- consider whether the operation of the amendments made by the Act are appropriate and effective
- identify any unintended consequences of the amendments
- consider if further amendments to the *Fair Work Act 2009*, or any other legislation, are necessary to improve the operations or rectify any unintended consequences of those amendments.

I have requested that the Department of Employment and Workplace Relations commence work to procure a university or research institute to undertake the review. Funding for the review will be absorbed by the department. I anticipate the review to commence in September 2024, with a draft report due to the department by the end of November 2024. I will make a public announcement about the review's commencement.

As required by the Act, I will table a copy of the report in each House of Parliament within 15 sittings days of receipt of the final report.

Yours sincerely

MURRAY WATT / / 2025

| University | MAS Panel | RES Panel | To be approached |
|-------------------------------------|-----------|-----------|------------------|
| Australian Catholic University | ✓ | | |
| Australian National University | ✓ | ✓ | |
| Charles Darwin University | | ✓ | |
| Edith Cowan University | | ✓ | |
| Flinders University | ✓ | ✓ | |
| Griffith University | ✓ | ✓ | |
| La Trobe University | ✓ | ✓ | |
| Monash University | ✓ | ✓ | ✓ |
| Queensland University of Technology | | ✓ | |
| RMIT University | ✓ | ✓ | ✓ |
| Swinburne University of Technology | | ✓ | |
| University of Adelaide | ✓ | ✓ | |
| University of Queensland | ✓ | ✓ | |
| University of Wollongong | ✓ | | |
| University of New South Wales | ✓ | ✓ | ✓ |
| University of South Australia | ✓ | ✓ | |
| University of Technology, Sydney | ✓ | ✓ | |
| University of Newcastle | ✓ | ✓ | |
| University of Melbourne | | ✓ | |
| University of Canberra | | ✓ | |
| University of Tasmania | | ✓ | |
| Victoria University | | ✓ | |

From: "DLO Watt"
Sent: 5/08/2024 4:00:38 PM
To: "DLO" s 22(1)
Cc: "DLO Watt" s 22(1)
Subject: Correspondence from Minister Watt - Secure Jobs, Better Pay review
[SEC=OFFICIAL]
Attachments: MS24-000541 signed letter.pdf

Hi DLOs,

Please find attached correspondence from Minister Watt in relation to the statutory review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*. No hard copy to follow.

Thanks,

S

22(1)

s 22(1)

Departmental Liaison Officer

Workplace Relations | Office of Senator the Hon Murray Watt

P: s 22(1) | M: s 22(1) E: s 22(1)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past and present.

OFFICIAL: Sensitive//Legal Privilege

MS24-000361



Australian Government
Department of Employment
and Workplace Relations

To Minister for Employment and Workplace Relations

Subject Statutory review of amendments made by Part 16A of Sch 1 to the Fair Work Legislation Amendment (Closing Loopholes) Act 2023

Sent to the MO 13 August 2024

Priority Routine/Low Complexity

Action date Please action by 16 August 2024, to ensure the review commences by the legislated date of 15 September 2024.

Recommendation/s - That you:

- 1) **agree** to the department conducting a procurement process to procure an external independent reviewer to conduct the statutory review of the operation of Part 16A of Schedule 1 to the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).
agreed / not agreed / please discuss
- 2) **agree** the Terms of Reference for the statutory review at Attachment A, which will be used as a basis for the Request for Quote (RFQ).
agreed / not agreed / please discuss
- 3) **agree** s 22(1) ; Deputy Secretary, Workplace Relations, will be the delegate for the process to procure the reviewer.
agreed / not agreed / please discuss
- 4) **note** that the indicative timeline estimates the reviewer will have at most, approximately 10 weeks to complete the review, with a draft report due to the department by 29 November 2024.
noted / please discuss
- 5) **sign** the letter to the Prime Minister in relation to arrangements for the review at Attachment B.
signed / not signed

Signature:

21/8/2024

MO Comments

Executive summary

1. The Closing Loopholes Act requires you to cause a review to be conducted of the amendments made by that Act to right of entry in the *Fair Work Act 2009* (Fair Work Act) (the 'Boland Measure').
 - a. The review must start no later than 15 September 2024 (9 months after the Part commenced).
 - b. The reviewer must provide a written report to you within 6 months of the review's commencement.
 - c. You are required to table this report in each House of Parliament within 15 sitting days of receipt.

2. It is proposed that the review utilises a similar process that you agreed to for the Statutory Review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (SJBPA Act) (MS24-000541 refers), including:
 - a. a procurement process undertaken by the department using the Management Advisory Services (MAS) Panel
 - b. the reviewer to be a university with relevant expertise (work health and safety and right of entry in this case). Note the SJBPA review includes a requirement for eminent person/s to be involved, which is not proposed for this review.
 - c. there will be a public process for submissions and evidence, but no requirement for a consultation process
 - d. there will be no publication of a draft report or public process for comments on the draft
 - e. that the Deputy Secretary, Workplace Relations, be the delegate and final decision maker for the process to procure the reviewer
 - f. a draft report to be provided to the department by 29 November 2024.
3. Alternatively, you may prefer that:
 - a. you appoint a reviewer via a ministerial appointment process allowing you to directly appoint expert/s with relevant expertise (rather than a procurement process), and/or
 - b. the review timelines align with the statutory requirements, reporting to you 6 months after review commences (likely February 2025)

Key points

Overview of the Boland Measure

4. The Boland Measure amended the Fair Work Act to give effect to Recommendation 8 of Marie Boland's 2018 review of the model work health and safety laws.
 - a. In summary, it means an official of an organisation is no longer required to hold a Fair Work entry permit while entering premises to assist a health and safety representative – that is, while exercising entry for WHS purposes under an applicable 'State or Territory Occupational Health and Safety law'.
 - b. The Boland Measure includes safeguards against the misuse of entry in this context and commenced on 15 December 2023.

Scope and timing of the review

5. The Closing Loopholes Act requires the review of the Boland Measure to:
 - a. consider whether its operation is appropriate and effective
 - b. identify any unintended consequences of the amendments made by that Part
 - c. consider whether further amendments to the Fair Work Act or any other legislation are necessary to improve the operation, or rectify any unintended consequences, of the Boland Measure, and
 - d. commence no later than 15 September 2024, with a written report provided to you within 6 months of commencement.
6. These statutory requirements are included in the review's terms of reference at Attachment B.
7. This review is separate to the review that is required for the Closing Loopholes Act more broadly, required under section 4 of that Act to start by December 2025.

Engagement of a reviewer

8. If you agree to a procurement approach, the Commonwealth Procurement Rules (CPRs) require the department to use a 'coordinated procurement' process. The procurement would meet the definition of a 'consultancy arrangement' meaning the mandatory, whole-of-government MAS Panel would need to be used for sourcing a supplier.
9. The department would provide a RFQ to suppliers from the 'research' category of the MAS Panel (shortlisted based on publicly available information to determine suitability in the required fields) inviting tenders to conduct the review.

- a. A maximum of 3 providers would be shortlisted given the imperative to conduct a timely procurement process.
10. Alternatively, the review could be conducted by one or more eminent persons appointed by ministerial appointment. If this is the preferred approach, the department can provide further information on options for reviewers and next steps.

Timing

11. If you approve that the review timeframes align with the current SJPB Act review approach, the indicative timeline estimates the reviewer will have at most, approximately 10 weeks to complete the review from the time of executing the final contract to the draft report being provided to the department by 29 November 2024.
12. Following your decision, the department will immediately commence the process, with a view to executing a work order with the successful supplier (if you agree to a procurement) by 15 September 2024.
 - a. Subject to your agreement, the department will prepare a media release for you to announce the start of the review.
 - b. Alternatively, you may prefer that the reviewer make the announcement or there may be no announcement.

Government policy issues and impact on other portfolios

13. A letter to the Prime Minister advising him of the arrangements for the review is at Attachment B.

Key risks and mitigation

14. **CFMEU interaction:** Concerns have been raised in the media about right of entry in the context of the allegations against the CFMEU, and have called for greater restrictions on persons who can obtain right of entry permits. This review may draw attention to the Boland Measure, which could result in criticism that the Government has reduced standards for right of entry permits.
 - a. The original approach proposed for this review was for it to be conducted by the department. Given recent developments, the department considers engaging an external reviewer the most appropriate approach.
15. **Commencement timeframe:** The change to engage an external reviewer means there are challenges for meeting the legislated 15 September 2024 commencement date for the review, given the procurement process that needs to be conducted.
 - a. To minimise delays in commencing the procurement, the department has worked to expedite preparation of the documentation for the procurement activity.
 - b. It is intended to provide suppliers only 5 working days to tender (minimum 10 is best practice) to speed up the procurement process.
 - c. Given this risk, the department will seek advice on any implications of not commencing the review by the legislated date, although we note the legislation does not provide for penalties for missing the commencement date.
16. **Multiple reviews:** There are several statutory reviews in progress (Review of Paid Domestic and Family Violence Leave) or soon to commence (SJPB Act Review). Differing timelines or approach to seeking a reviewer may be criticised by some stakeholders.
17. **Compressed timeframe:** If the review report is to be provided to you earlier than the maximum 6 months provided for by the Closing Loopholes Act, this will reduce the time available for the review and may be perceived as unnecessarily limiting the time available and be criticised by some stakeholders.
 - a. The department has prepared a Risk Management Plan to mitigate risks of further delays during the procurement process.
18. **Completion date:** The report must be provided to you within 6 months of the review's commencement. If a draft report is to be provided to the department by 29 November 2024, the

department, supplier and your office will need to agree on the approach to finalising the report and providing it to you.

- a. This approach may raise question about the independence of the final report, due to perceptions of interference by the department or your office. However, it is not unusual to request or receive draft reports in a review process.

19. **Probity in procurement:** The government position on ministerial involvement in a procurement stated in the CPRs, aims to avoid probity and reputational risks. The greater the involvement from you and your office in the procurement process, the greater the probity risk and increased risk of deviation from government policy that Ministers are not to be involved in the procurement process (as per Department of Finance guidance).
20. **Availability of reviewers:** Availability and interest of a potential reviewer may be limited given the short statutory time frame to commence the review. If a short time frame is selected to complete the review, this may also deter potential reviewers.
 - a. To meet probity requirements, the department cannot test appetite or availability from potential suppliers and instead must rely on the formal process of the RFQ (if procurement is the selected approach) to determine interest of suppliers.
 - b. If an appropriate reviewer cannot be successfully engaged via procurement or ministerial appointment, the department will work with your office on next steps noting this outcome would cause delay.

Budget impact, financial considerations

21. No additional funding or staff has been allocated to the department for the review.

Communications and media strategy

22. A communication and media strategy can be developed in consultation with your Office as required.

Stakeholder consultation

23. Internal stakeholders: Bargaining and Industry Policy Branch, Employment Standards and Institutions Branch.

Attachments

- Attachment A Terms of Reference
Attachment B Letter to the Prime Minister

Clearance

| | |
|---------------------------------------|---------------------|
| Primary Contact Officer: s 22(1) | Assistant Secretary |
| Bargaining and Industry Policy Branch | Mobile: s 22(1) |
| Clearance Officer: s 22(1) | Deputy Secretary |
| WR Workplace Relations Group | Ph: s 22(1) |



Senator the Hon Murray Watt
Minister for Employment and Workplace Relations

Reference: MS24-000361

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

s 22(1)

By email:

Dear Prime Minister

I write to inform you about details relating to the statutory review of the amendments to the right of entry provisions of the *Fair Work Act 2009* (Fair Work Act) made by Part 16A of Schedule 1 to the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Part 16A amended section 494 of the Fair Work Act to clarify that an official of an organisation is no longer required to hold a Fair Work entry permit while entering premises to assist a health and safety representative – that is, while exercising entry for work, health and safety purposes under an applicable ‘State or Territory OHS law’.

The Closing Loopholes Act requires that I must cause a review to be conducted of the operation of the amendments made by Part 16A, and the review must start no later than 15 September 2024, including to:

- consider whether the operation of those amendments is appropriate and effective
- identify any unintended consequences of those amendments
- consider whether further amendments to the Fair Work Act or any other legislation are necessary to improve the operation, or rectify any unintended consequences, of the amendments made by Part 16A.

I have requested that the Department of Employment and Workplace Relations commence work to procure an appropriate person or team from a university, to undertake the review. Funding for the review will be absorbed by the department. I anticipate the review to commence in September 2024 and that I will make a public announcement about the review’s commencement.

The reviewer must provide a final report to me no later than 6 months after it commences. As required by the Closing Loopholes Act, I will table a copy of the report in each House of Parliament within 15 sittings days of receipt.

Yours sincerely

MURRAY WATT

21/8/2024

Attachment A

Terms of Reference

Section 4A of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (the Act) requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by Part 16A of Schedule 1 of the Act (the Part) to be conducted, starting no later than 9 months after Part 16A commences (being 15 September 2024).

The Act requires that the Reviewer must give the Minister a written report of the review within 6 months of the review's commencement. The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible with a final report to the Minister by no later than 6 months after it commences.

Without limiting the matters that may be considered when conducting the review, the review must:

- consider whether the operation of the amendments made by the Part is appropriate and effective
- identify any unintended consequences of the amendments made by the Part,
- consider whether amendments of the *Fair Work Act 2009* (Fair Work Act), or any other legislation, are necessary to:
 - o improve the operation of the amendments made by the Part; or
 - o rectify any unintended consequences identified.

The Part amends section 494 of the Fair Work Act to clarify that an official of an organisation is no longer required to hold a Fair Work entry permit while entering premises to assist a health and safety representative – that is, while exercising entry for work health and safety purposes under an applicable 'State or Territory OHS law'.

The amendment gives effect to recommendation 8 of the 'Review of the model WHS laws' conducted by Marie Boland published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information, please visit: <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Reviewer should consider available qualitative and quantitative research. Sources may include, but are not limited to the following:

- Department of Employment and Workplace Relations
- Safe Work Australia
- Fair Work Commission
- Fair Work Ombudsman
- State-based WHS bodies
- relevant academic research.

Without limiting other relevant factors and sources of information the reviewer may consider, the review, and the final report, must be informed by stakeholder perspectives.

Interested stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published to be publicly accessible, where appropriate.

The Reviewer must provide the draft report to the department by no later than 29 November 2024 to confirm the report meets contractual compliance with the Statement of Work before the delivery of the final report to the Minister.

The Reviewer must provide a final written report to the department. The date for this is to be agreed between the department and Reviewer. The report must detail the Reviewer's findings and recommendations about each of the matters to be considered by the review, including appropriately summarising and considering the views of stakeholders.

Publication

The Final Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Final Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Supplier must ensure that the online publication of the Final Report, any website or associated material complies with the Web Content Accessibility.

The final report will be publicly released in consultation with the Reviewer and department.



Senator the Hon Murray Watt
Minister for Employment and Workplace Relations

Reference: MS24-000361

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

s 22(1)
By email:

Dear Prime Minister

I write to inform you about details relating to the statutory review of the amendments to the right of entry provisions of the *Fair Work Act 2009* (Fair Work Act) made by Part 16A of Schedule 1 to the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Part 16A amended section 494 of the Fair Work Act to clarify that an official of an organisation is no longer required to hold a Fair Work entry permit while entering premises to assist a health and safety representative – that is, while exercising entry for work, health and safety purposes under an applicable ‘State or Territory OHS law’.

The Closing Loopholes Act requires that I must cause a review to be conducted of the operation of the amendments made by Part 16A, and the review must start no later than 15 September 2024, including to:

- consider whether the operation of those amendments is appropriate and effective
- identify any unintended consequences of those amendments
- consider whether further amendments to the Fair Work Act or any other legislation are necessary to improve the operation, or rectify any unintended consequences, of the amendments made by Part 16A.

I have requested that the Department of Employment and Workplace Relations commence work to procure an appropriate person or team from a university, to undertake the review. Funding for the review will be absorbed by the department. I anticipate the review to commence in September 2024 and that I will make a public announcement about the review’s commencement.

The reviewer must provide a final report to me no later than 6 months after it commences. As required by the Closing Loopholes Act, I will table a copy of the report in each House of Parliament within 15 sittings days of receipt.

Yours sincerely

MURRAY WATT

/ / 2025

From: "DLO Watt"
Sent: 22/08/2024 8:06:18 AM
To: "DLO" s 22(1)
Cc: "DLO Watt" s 22(1)
Subject: Correspondence from Minister Watt - Statutory review of amendments to right of entry provisions [SEC=OFFICIAL:Sensitive]
Attachments: MS24-000361 signed letter.pdf

OFFICIAL: Sensitive

Hi DLOs,

Please find attached correspondence from Minister Watt in relation to the statutory review of the amendments to the right of entry provisions made by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*. No hard copy to follow.

Thanks,

S

22/08/24

s 22(1)

Departmental Liaison Officer

Workplace Relations | Office of Senator the Hon Murray Watt

P: s 22(1) | M: s 22(1) | E: s 22(1)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past and present.

OFFICIAL: Sensitive



Australian Government

Department of Employment and Workplace Relations

MS24-000730

Standard Brief

To Minister for Employment and Workplace Relations

CC N/A


Action Required For Decision

Statutory reviews of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*

Timing Please action by **16 September 2024**, to give sufficient time to commence and conduct the reviews.

Recommendations:

| | |
|--|---|
| 1. That you note that the procurement processes to engage reviewers to conduct both the statutory review of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> and Part 16A of Schedule 1 of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> (the reviews) did not receive any submissions | Noted / Please discuss |
| 2. That you agree to the 2 reviews being combined and undertaken as a single review | Agreed / Not Agreed / Please discuss |
| 3. That you agree to appoint a Review Panel of 2 to 3 experts with relevant expertise to conduct the review through a non-statutory ministerial appointment process, with a 31 January 2025 completion date, and the department providing secretariat support, as outlined at Attachment A | Agreed / Not Agreed / Please discuss |
| 4. That you approve the Terms of Reference for the reviews at Attachment B | Approved / Not approved / Please discuss |
| 5. That you note the legislative requirement to commence the review of Part 16A of the Closing Loopholes Act by 15 September 2024 will not be met | Noted / Please discuss |

Minister Watt 

Comments:

Date: 10 / 9 / 2024

| | | | |
|-------------------|---------|---|--------------|
| Clearing Officer: | s 22(1) | Deputy Secretary WR | Mob: s 22(1) |
| Contact Officer: | s 22(1) | Assistant Secretary, Bargaining and Industry Policy Branch WR Safety and Industry Policy | Mob: s 22(1) |

Executive summary:

1. On 8 August 2024, you agreed to the Department of Employment and Workplace Relations conducting a procurement process to secure a reviewer for the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) review (MS24-000541 refers). On 21 August, you agreed to a procurement process for the review of Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (MS24-000361 refers). No submissions were received from suppliers for either process.
2. The department recommends the 2 reviews be undertaken as a combined process, to be conducted by a Review Panel of 2 to 3 experts appointed via non-statutory ministerial appointments, with secretariat support provided by the department.
3. The legislated start date of 15 September 2024 will not be met for the review of Part 16A of the Closing Loopholes Act given that no tenders were received from the procurement process. The implications of missing this deadline are outlined below.

Key Points:

4. Options for the conduct of the review are outlined at **Attachment A**. As a result of the unsuccessful procurements for the 2 reviews, the department recommends the following revised approach:
 - a. Combine the reviews, given that efficiencies can be gained from doing so and noting that similar stakeholders will need to be consulted. It is proposed that a single report be provided for the review, and proposed Terms of Reference are at **Attachment B**.
 - b. Appoint a Review Panel of 2 to 3 experts through a non-statutory ministerial appointment process to ensure there is adequate subject matter coverage, including gender equality, bargaining and work health and safety.
 - c. The department provide secretariat support to the Review Panel, which will ensure appropriate expertise is available to assist the Review Panel and avoid the need for another procurement process to secure external secretariat support.
 - d. Extend the review completion date to 31 January 2025 to allow sufficient time for the conduct of the review.
5. Alternatives to this approach include appointing a single expert, procuring external secretariat support, and/or further extending the completion timeframe.
6. If you agree to the recommended approach, the department suggests your office approach proposed experts to gauge their interest and availability and provide a list of names to the department. We will then support you to make the appointments, including completing relevant background checks and providing instruments of appointment. The department will also draft a letter to the Prime Minister, the Hon Anthony Albanese MP, outlining the revised approach to the reviews and advising him of the appointments.
 - a. The Department of the Prime Minister and Cabinet is comfortable with this approach and has requested that your office engage with the Prime Minister's office on potential appointees and confirm that you will write to the Prime Minister.
7. The review could commence in October and conclude 31 January 2025, pending prompt engagement of the Review Panel.

- a. Noting the review of Part 16A of the Closing Loopholes Act was required to start on 15 September 2024, January is within the legislated 6-month timeframe for the process to be completed.
 - b. The Secure Jobs, Better Pay Act review is required to commence by 6 December 2024 and be completed within 6 months of its commencement.
8. The previously approved terms of reference for the 2 reviews have been combined and refined and are provided at **Attachment B**.

Public Sensitivities:

- 9. The Secure Jobs, Better Pay Act introduced reforms that were controversial with employers and the review was raised by some employer representatives in the context of your recent trip to Western Australia.
- 10. Part 16A of the Closing Loopholes Act amended the *Fair Work Act 2009* to allow union officials without a right of entry permit to enter workplace to assist a health and safety representative. It has been claimed that this has allowed CFMEU members to enter workplaces in the context of allegations of misbehaviour by the union.

Consultation: Yes

- 11. Internal stakeholders in Procurement, Ministerial Appointments and Legal and Assurance Division (LAD) and Workplace Relations Legal (WRL) have been consulted.
- 12. The department has engaged with the Department of the Prime Minister and Cabinet on authority requirements for the revised approach to conducting the reviews.

Legal advice / Legislative impacts:

s 42 (1)

s 42(1)

Financial impacts:

16. No additional funding or staff has been allocated for the reviews, so the costs will be drawn from existing departmental resources.

Stakeholder Implications:

17. The reviews will involve significant stakeholder consultation processes. The department will work with the Review Panel to ensure optimal engagement and minimise stakeholder fatigue.

Attachments:

A: Options for the conduct of the review

B: Terms of Reference

Reviewer options table

| Review conduct options | Benefits | Risks | Department view |
|---|---|--|--|
| Review Panel <ul style="list-style-type: none"> Ministerial appointment of 2 to 3 experts departmental secretariat report by 31 January 2025 <p>Possible adjustments include:</p> <ul style="list-style-type: none"> Appoint a single reviewer External secretariat support Longer completion date | <ul style="list-style-type: none"> Independence of reviewers likely to be consistent with expectations of stakeholders and crossbench Ensures adequate coverage of the subject matters in terms of expertise Eminence of reviewers may bolster credibility of review Secretariat support available as soon as required Engagement process quicker than procurement Reviews will be completed within the legislated 6-month timeframes | <ul style="list-style-type: none"> Suitable candidates may not be available or interested Risk of stakeholder criticisms of impartiality and independence of reviewers and department as secretariat Reviewers' level of knowledge of all required policy areas may be limited Resourcing/staffing implications for department | <ul style="list-style-type: none"> Preferred (2 to 3 experts/ departmental secretariat/ 31 January 2025 completion) |
| Review by university with identified experts <ul style="list-style-type: none"> Retender to a wider group of universities on the Management Advisory Services Panel (MAS Panel) Provide longer timeframes for tender process and conduct of the review | <ul style="list-style-type: none"> Reapproaching a larger number of universities on the MAS Panel may elicit viable responses Reviewer likely to be perceived as independent Longer timeframe may increase likelihood of tenders being provided Potential for minimal staffing implications for the department | <ul style="list-style-type: none"> Previously approached suppliers are unlikely to be interested in tendering Further delays in commencement and completion of the review Potential reviewers may have limited experience/credibility with stakeholders | <ul style="list-style-type: none"> Not Preferred |
| Review by university or consultant <ul style="list-style-type: none"> Retender to entire MAS Panel, including all universities and private sector consultancies Provide longer timeframes for tender process and conduct of the review | <ul style="list-style-type: none"> Maximises the possibility of an appropriate reviewer being identified Reviewer likely to be perceived as independent Timeframe may increase likelihood of tenders Potential for minimal staffing implications for the department | <ul style="list-style-type: none"> Previously approached suppliers are unlikely to be interested in tendering Potential reviewers may have limited experience/credibility with stakeholders Likely to be the costliest option and could require significant support from the department | <ul style="list-style-type: none"> Not Preferred |
| Department-led review <ul style="list-style-type: none"> Department to conduct review process | <ul style="list-style-type: none"> Would utilise the subject matter expertise of the department Speediest option available | <ul style="list-style-type: none"> Significant risk of stakeholder criticism of impartiality and independence Significant resourcing implications for the department | <ul style="list-style-type: none"> Not Preferred |

Review approach options table

| Review approach options | Advantages | Disadvantages | Department view |
|--|--|--|---|
| <ul style="list-style-type: none"> Joint review of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> and Part 16A of Schedule 1 of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> | <ul style="list-style-type: none"> Significant efficiencies in terms of time and cost by joining the reviews Would enable a single consultation process and single point of contact for stakeholders to engage and provide input | <ul style="list-style-type: none"> Reviewers may struggle with workload in the timeframes, impacting quality and delivery May lead to some confusion for some stakeholders | <ul style="list-style-type: none"> Preferred |
| <ul style="list-style-type: none"> Concurrent separate reviews of the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> and Part 16A of Schedule 1 of the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> | <ul style="list-style-type: none"> May be perceived more favourably by stakeholders and crossbench due to the expectation of having separate reviews Reviewers would be able to focus more attention on each review | <ul style="list-style-type: none"> Time and cost of running 2 review processes Department will need to manage 2 separate secretariat teams Stakeholders will be required to engage with 2 reviews, including making separate submissions, noting consultation fatigue that already exists | <ul style="list-style-type: none"> Not Preferred |

Workplace Relations Amendment Acts Review

Terms of Reference

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act).

Scope of the review

The requirement for the reviews is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable 'State or Territory Occupational Health and Safety law'.

The amendments give effect to 'Recommendation 8: Workplace entry of union officials when providing assistance to an HSR' of the '2018 Review of the model WHS laws' conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at:
<https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel's findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.



Australian Government

Department of Employment and Workplace Relations

MS24-000767

Standard Brief

To Minister for Employment and Workplace Relations

CC N/A

Action Required For Decision

Appointment of Review Panel for the review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*

Timing Please action by **20 September 2024** to give sufficient time to commence and conduct the review.

Recommendation/s:

1. That you **approve** the appointment of Emeritus Professor Mark Bray and Professor Alison Preston to conduct a joint statutory review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (together the SJB Review), with both appointed to the role of independent reviewers personally, and the duties of the role unable to be assigned or delegated to another person.

Approved / Not approved / Please discuss

2. That you **sign** the letters of appointment to Emeritus Professor Bray and Professor Preston, at **Attachments A** and **B**.

Signed / Not signed / Please discuss

3. That you **sign** the letter to the Prime Minister outlining the revised approach to the review and advising him of the appointments, at **Attachment C**.

Signed / Not signed / Please discuss

4. That you **approve** the proposed expenditure connected with the appointments, indicating you are satisfied it is a proper use of relevant money in accordance with section 71 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Agreed / Not Agreed / Please discuss

Minister Watt

Date: 19 / 9 / 2024

Comments:

| | | | |
|-------------------|---------|---|--------------|
| Clearing Officer: | s 22(1) | Deputy Secretary WR | Mob: s 22(1) |
| Contact Officer: | s 22(1) | Assistant Secretary, Bargaining and Industry Policy Branch Safety and Industry Policy WR | Mob: s 22(1) |

Executive summary:

1. On 10 September 2024, you agreed to the Department of Employment and Workplace Relations combining the reviews of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) into a joint review. You also agreed to appoint a review panel of 2 to 3 experts with relevant expertise to conduct the SJBP Review through a non-statutory ministerial appointment process (**MS24-000730** refers).
2. In consultation with your office, Emeritus Professor Mark Bray and Professor Alison Preston have agreed to conduct the SJBP Review as relevant experts and you are required to formally appoint them both as reviewers.

Key Points:

3. As the reviewers will be appointed by you, the Commonwealth Procurement Rules (CPRs) will not apply, but general requirements under the PGPA Act will apply.
 - a. In accordance with section 71 (approval of proposed expenditure by a Minister), in making the non-statutory appointments, you will be approving departmental expenditure associated with the appointments. You should only make the appointments if, after making reasonable inquiries, you are satisfied that the proposed expenditure of relevant money connected with the appointments would be a proper use of relevant money.

Next steps

4. In consultation with your office, Professor Bray and Professor Preston have agreed to conduct the SJBP Review. Their biographies are at **Attachment D**.
5. You must formally appoint each reviewer. Please see **Attachments A** and **B**, which are the letters of appointment, for your signature.
 - a. The department is preparing contracts to engage the reviewers, which will set out the expectations and responsibilities during the review.
 - b. Professor Preston has advised that contractual arrangements related to her appointment as reviewer will be through the University of Western Australia (her employer). s42(1)
6. A draft media release has been prepared for you to announce the start of the SJBP Review at **Attachment E**, following execution of contracts by the reviewers.
7. As previously advised (**MS24-000730** refers), a risk associated with direct ministerial appointment of the reviewers and the involvement of the department to support the SJBP Review is potential stakeholder criticisms of impartiality and independence of reviewers.
 - a. Professor Bray has raised with the department that he is in the process of publishing papers, with some commentary on the legislative reform relevant to the SJBP Reviews' scope. Comments are likely to be consistent with his previous public comments.

- b. The department has reviewed the publicly available material, and it is likely that some stakeholders would disagree with Professor Bray's commentary or may raise concerns about the impartiality of his consideration of the issues for review.
- c. Professor Bray and Professor Preston have completed conflict of interest declarations which are at Attachment F.

Public Sensitivities:

- 8. As outlined above, the approach to the SJBP Review and the review panel members, may not be considered independent or impartial by some stakeholders. This risk is partly mitigated by the previous attempts to procure a university to conduct the review, which were unsuccessful.

Consultation: Yes

- 9. Internal stakeholders in Ministerial Appointments, Legal and Assurance Division and Workplace Relations Legal have been consulted on the appointment process and development of the contract. s42(1)
- 10. The department has engaged with the Department of the Prime Minister and Cabinet on authority and appointment requirements for the revised approach to conducting the SJBP Review, including the letter to the Prime Minister for your signature at Attachment C.

Legal advice / Legislative impacts:

S 42(1)

Financial impacts:

- 13. The department proposes the reviewers be remunerated through a daily rate for work completed of \$960 per full day (GST exclusive, if payable). This is comparable with other recent non-statutory ministerial appointments. It is estimated that the maximum cost will be approximately \$114,048 per reviewer. Where prior approval to travel has been given by the department, the reviewers will be supported with travel entitlements consistent with the department's policies.
 - a. The Remuneration Tribunal recommends maximum daily rates of \$2,000 for high-profile, short-term, urgent, part-time work or participation on a taskforce or inquiry (GST inclusive if payable).
- 14. The department estimates an additional expenditure of \$0.922 million to establish a dedicated Secretariat to support the SJBP Review. This expenditure will be absorbed by the department.

Stakeholder Implications:

15. The SJBP Review must undertake stakeholder consultation to inform the review.

Attachments:

- A:** Letter of appointment - Emeritus Professor Mark Bray
- B:** Letter of appointment - Professor Alison Preston
- C:** Letter to the Prime Minister
- D:** Biographies of reviewers
- E:** Draft media release
- F:** Conflict of Interest Declarations – Emeritus Prof Bray and Prof Preston



SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS

MS24-000767

Emeritus Professor Mark Bray
s47F(1)

By email: mark.bray@newcastle.edu.au

Dear Professor Bray

I am pleased to appoint you to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs Better Pay Act) and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

Section 4 of the Secure Jobs Better Pay Act requires me to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted. Section 4A of the Closing Loopholes Act requires me to cause a review of the operation of amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted. Both Acts require the person conducting the review to provide me with a written report within 6 months of the review's commencement. I have determined that the report of the review is to be provided by 31 January 2025.

I am appointing you as a member of the two-person independent panel to conduct the Secure Jobs Better Pay Review, because of your extensive expertise in workplace relations. I am appointing you personally and your duties as reviewer cannot be assigned or delegated to another person.

The Department of Employment and Workplace Relations is responsible for administering both Acts and will be responsible for administering your appointment. Officials from the department will be in contact with you shortly to provide you with a copy of terms of appointment for your consideration, including details such as remuneration, scope of appointment and timeframes. Once you and the department have signed those terms of appointment, your appointment will formally commence.

If you have any questions about your appointment, please contact s22(1) Director of Bargaining Policy, on s22(1) or at s22(1) [s22\(1\)@dewr.gov.au](mailto:s22(1)@dewr.gov.au).

Yours sincerely

MURRAY WATT

19/9/2024



**SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**

MS24-000767

Professor Alison Preston
The University of Western Australia

By email: alison.preston@uwa.edu.au

Dear Professor Preston

I am pleased to appoint you to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs Better Pay Act) and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

Section 4 of the Secure Jobs Better Pay Act requires me to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted. Section 4A of the Closing Loopholes Act requires me to cause a review of the operation of amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted. Both Acts require the person conducting the review to provide me with a written report within 6 months of the review's commencement. I have determined that the report of the review is to be provided by 31 January 2025.

I am appointing you as a member of the two-person independent panel to conduct the Secure Jobs Better Pay Review, because of your expertise including in labour economics and gendered aspects of employment. I am appointing you personally and your duties as reviewer cannot be assigned or delegated to another person.

The Department of Employment and Workplace Relations is responsible for administering both Acts and will be responsible for administering your appointment. Officials from the department will be in contact with you shortly to provide you with a copy of terms of appointment for your consideration, including details such as remuneration, scope of appointment and timeframes. Once you and the department have signed those terms of appointment, your appointment will formally commence.

If you have any questions about your appointment, please contact s22(1) Director of Bargaining Policy, on s22(1) or at [s22\(1\)@dewr.gov.au](mailto:s22(1)@dewr.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Murray Watt'.

MURRAY WATT

19/9/2024



**SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**

MS24-000767

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

s 22(1)
By email:

Dear Prime Minister

I am writing to you in relation to the statutory reviews of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

I recently provided you with letters about the process to be undertaken for these reviews (MS24-000541 and MS24-000361 refer), including that my department would commence a procurement process for a university or research institute to undertake these reviews. These processes have occurred, but no submissions were received from suppliers for either process.

I have subsequently decided to appoint a review panel of 2 experts through a non-statutory ministerial appointment process, to conduct both reviews as a joint process.

I am pleased to advise that I will appoint Emeritus Professor Mark Bray and Professor Alison Preston as the reviewers for the Secure Jobs Better Pay Review. I will shortly be providing Professor Bray and Professor Preston with formal letters of offer.

The review will commence in September 2024, and I plan to make a public announcement about its commencement. The review will occur in accordance with the attached Terms of Reference, with a report provided to Government in January 2025. Funding for the review will be absorbed by the Department of Employment and Workplace Relations.

Given the breadth of the review, it is important that the reviewers have a mix of expertise across relevant workplace relations frameworks and government policy. I believe these individuals bring this expertise. Information on their experience can be found with the attached Biographies of Reviewers.

As you may recall, the review of Part 16A of Schedule 1 of the Closing Loopholes Act was required to start no later than 15 September 2024. As a result of the unsuccessful procurement process, this was not possible. My department has endeavoured to commence the review as soon as possible and the final report will be provided within the required 6-month timeframe. The Secure Jobs, Better Pay Act review must commence by 6 December 2024.

As outlined in the Terms of Reference, the review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review. This process will be important to ensure the various opinions on these reforms can be captured and considered as part of the review.

Yours sincerely



MURRAY WATT

19 / 9 / 2024

Enc: Terms of Reference and Biographies of Reviewers



**SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**

MS24-000767

Emeritus Professor Mark Bray
s47F(1)

By email: mark.bray@newcastle.edu.au

Dear Professor Bray

I am pleased to appoint you to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs Better Pay Act) and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

Section 4 of the Secure Jobs Better Pay Act requires me to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted. Section 4A of the Closing Loopholes Act requires me to cause a review of the operation of amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted. Both Acts require the person conducting the review to provide me with a written report within 6 months of the review's commencement. I have determined that the report of the review is to be provided by 31 January 2025.

I am appointing you as a member of the two-person independent panel to conduct the Secure Jobs Better Pay Review, because of your extensive expertise in workplace relations. I am appointing you personally and your duties as reviewer cannot be assigned or delegated to another person.

The Department of Employment and Workplace Relations is responsible for administering both Acts and will be responsible for administering your appointment. Officials from the department will be in contact with you shortly to provide you with a copy of terms of appointment for your consideration, including details such as remuneration, scope of appointment and timeframes. Once you and the department have signed those terms of appointment, your appointment will formally commence.

If you have any questions about your appointment, please contact s 22(1) , Director of Bargaining Policy, on s 22(1) or at s 22(1)

Yours sincerely

MURRAY WATT / /2025



**SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**

MS24-000767

Professor Alison Preston
The University of Western Australia

By email: alison.preston@uwa.edu.au

Dear Professor Preston

I am pleased to appoint you to the panel of independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs Better Pay Act) and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

Section 4 of the Secure Jobs Better Pay Act requires me to cause a review of the operation of amendments made by the Secure Jobs Better Pay Act to be conducted. Section 4A of the Closing Loopholes Act requires me to cause a review of the operation of amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted. Both Acts require the person conducting the review to provide me with a written report within 6 months of the review's commencement. I have determined that the report of the review is to be provided by 31 January 2025.

I am appointing you as a member of the two-person independent panel to conduct the Secure Jobs Better Pay Review, because of your expertise including in labour economics and gendered aspects of employment. I am appointing you personally and your duties as reviewer cannot be assigned or delegated to another person.

The Department of Employment and Workplace Relations is responsible for administering both Acts and will be responsible for administering your appointment. Officials from the department will be in contact with you shortly to provide you with a copy of terms of appointment for your consideration, including details such as remuneration, scope of appointment and timeframes. Once you and the department have signed those terms of appointment, your appointment will formally commence.

If you have any questions about your appointment, please contact ^{s 22(1)} Director of Bargaining Policy, on ^{s 22(1)} or at ^{s 22(1)}

Yours sincerely

MURRAY WATT / /2025



**SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**

MS24-000767

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

By email: s 22(1)

Dear Prime Minister

I am writing to you in relation to the statutory reviews of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

I recently provided you with letters about the process to be undertaken for these reviews (MS24-000541 and MS24-000361 refer), including that my department would commence a procurement process for a university or research institute to undertake these reviews. These processes have occurred, but no submissions were received from suppliers for either process.

I have subsequently decided to appoint a review panel of 2 experts through a non-statutory ministerial appointment process, to conduct both reviews as a joint process.

I am pleased to advise that I will appoint Emeritus Professor Mark Bray and Professor Alison Preston as the reviewers for the Secure Jobs Better Pay Review. I will shortly be providing Professor Bray and Professor Preston with formal letters of offer.

The review will commence in September 2024, and I plan to make a public announcement about its commencement. The review will occur in accordance with the attached Terms of Reference, with a report provided to Government in January 2025. Funding for the review will be absorbed by the Department of Employment and Workplace Relations.

Given the breadth of the review, it is important that the reviewers have a mix of expertise across relevant workplace relations frameworks and government policy. I believe these individuals bring this expertise. Information on their experience can be found with the attached Biographies of Reviewers.

As you may recall, the review of Part 16A of Schedule 1 of the Closing Loopholes Act was required to start no later than 15 September 2024. As a result of the unsuccessful procurement process, this was not possible. My department has endeavoured to commence the review as soon as possible and the final report will be provided within the required 6-month timeframe. The Secure Jobs, Better Pay Act review must commence by 6 December 2024.

As outlined in the Terms of Reference, the review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review. This process will be important to ensure the various opinions on these reforms can be captured and considered as part of the review.

Yours sincerely

MURRAY WATT / /2025

Enc: Terms of Reference and Biographies of Reviewers

Secure Jobs Better Pay Review

Terms of Reference

The Review Panel will conduct a joint review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) and of the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) (the Secure Jobs Better Pay Review).

Scope of the review

The requirement for the Secure Jobs Better Pay Review is outlined in the respective Acts:

- Secure Jobs, Better Pay Act: Section 4 of the Secure Jobs, Better Pay Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review of the amendments made by the Act to be conducted.
- Closing Loopholes Act: Section 4A of the Act requires the Minister to cause a review of the operation of the amendments made by Part 16A of Schedule 1 of the Closing Loopholes Act to be conducted.

Both Acts require that the:

- persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review
- Minister must cause a copy of the report or the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The Secure Jobs Better Pay Review is to commence as soon as possible and provide a Report to the department by Friday, 31 January 2025.

Without limiting the matters that may be considered when conducting the review of the Secure Jobs, Better Pay Act and Part 16A of the Closing Loopholes Act, the review must:

- consider whether the operation of the amendments are appropriate and effective
- identify any unintended consequences of the amendments
- 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.

Secure Jobs, Better Pay Act

The Act is the first of a series of workplace relations reforms introduced by the Australian Government and includes reforms in the following areas:

- Enterprise bargaining
- Job security and gender equality
- Compliance and enforcement
- Workplace conditions and protections
- Workplace relations institutions
- Workers' compensation.

Further information is available at <https://www.dewr.gov.au/secure-jobs-better-pay>.

Part 16A of the Closing Loopholes Act

Part 16A of the Closing Loopholes Act amends section 494 of the *Fair Work Act 2009* (Fair Work Act) to clarify that an official of an organisation assisting a health and safety representative (HSR) on request is no longer required to hold a Fair Work entry permit while entering premises to assist that HSR – that is, while exercising entry for work health and safety (WHS) purposes under an applicable 'State or Territory Occupational Health and Safety law'.

The amendments give effect to 'Recommendation 8: Workplace entry of union officials when providing assistance to an HSR' of the '2018 Review of the model WHS laws' conducted by Marie Boland and published on 20 March 2020. Recommendation 8 provided that Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.

For further information about the Closing Loopholes Act is available at: <https://www.dewr.gov.au/closing-loopholes>.

Further information about the Review of the model WHS laws is available at:
<https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

Conduct of the review

In conducting the Secure Jobs Better Pay Review, the Review Panel will consider available qualitative and quantitative research.

The review must be informed by stakeholder perspectives and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review.

All submissions and evidence received must be published and be publicly accessible, where appropriate.

The Report must detail the Review Panel's findings and recommendations about each of the matters to be considered by the review.

Publication

The Report must be presented to the Minister in a high-quality, publishable standard. This includes ensuring that the Report is cohesive, written in plain English, has been professionally copy edited and proof-read before its provision to the Minister.

The Report and any website or associated material must comply with Web Content Accessibility Guidelines. For more information please visit: <https://www.stylemanual.gov.au/accessible-and-inclusive-content/make-content-accessible>.

Biographies of Reviewers

Emeritus Professor Mark Bray (BEcons (Hons) USyd., MA UWar., PhD UNSW.)



Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. As well as his primary affiliation, he is an honorary professor at both RMIT University and University of Sydney.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston (BA (Hons) Strath., MBA Curtin, PhD W.Aust.)



Alison is a Professor of Economics in the Business School at The University of Western Australia (UWA), a position she has held since 2013. Prior to that she was employed at Curtin University. She holds a PhD in labour economics and industrial relations. Alison's research interests include wage determination and gendered aspects of labour markets, employment, and economic security. Alison teaches in the areas of micro-economics and public policy.

During Alison's professional career she has held many senior leadership roles including as Deputy Dean of the UWA Faculty of Business, Director of the Curtin Graduate School of Business and Deputy Chair of Curtin University's Academic Board. Alison has also served on numerous advisory bodies including the Committee for the Economic Development of Australia (CEDA, WA Branch) and the WA Women's Advisory Council and consulted for various organisations, including the Fair Work Commission and the Minerals Council of Australia.



SENATOR THE HON MURRAY WATT
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS
SENATOR FOR QUEENSLAND

Weekday, XX September 20XX

Independent review of the Secure Jobs, Better Pay Act

The Australian Government has tasked Emeritus Professor Mark Bray and Professor Alison Preston to conduct an independent review of the Government's first workplace relations reforms.

The Secure Jobs, Better Pay Act was the first of a series of the Government's workplace relations reforms.

This review is an opportunity to consider the impact of these important reforms and will involve extensive stakeholder engagement including a public submissions process.

Minister for Employment and Workplace Relations Senator Murray Watt is encouraging all interested stakeholders to share their experiences.

"These important reforms were designed to modernise Australia's workplace relations system and get wages moving," Senator Watt said.

"I encourage interested parties to share their feedback and engage with the reviewers to provide their perspective on the impact of these significant reforms."

The review will also consider the impact of amendments that clarified the rules about entry to workplaces to assist health and safety representatives on request under work health and safety laws.

These amendments followed recommendations made by the independent *Review of the Model Work Health and Safety Laws* report, led by Marie Boland in 2018.

The Government has since passed the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* as part of its continued commitment to supporting Australian workers.

The review commences today and is to report to Government in January 2025.

The review's terms of reference can be found here.

BIOGRAPHIES

Emeritus Professor Mark Bray served as the Foundation Chair in Employment Studies at the University of Newcastle from 1997 until early 2021. As well as his primary affiliation, he is an honorary professor at both RMIT University and University of Sydney.

Mark has taught Australian and comparative industrial relations, and human resource management and research methods. Since 2005 Mark has been a co-author of *Employment Relations: Theory and Practice*.

Mark's current research interests as Emeritus focus on cooperation at work, especially the role of industrial tribunals in promoting workplace cooperation and performance, and the impact of collaborative employment relations on mental health. Other interests include the structures and processes of labour regulation, including labour law, collective bargaining and awards.

Professor Alison Preston is a Professor of Economics in the Business School at The University of Western Australia (UWA), a position she has held since 2013. Prior to that she was employed at Curtin University. She holds a PhD in labour economics and industrial relations. Alison's research interests include wage determination and gendered aspects of labour markets, employment, and economic security. Alison teaches in the areas of micro-economics and public policy.

During Alison's professional career she has held many senior leadership roles including as Deputy Dean of the UWA Faculty of Business, Director of the Curtin Graduate School of Business and Deputy Chair of Curtin University's Academic Board. Alison has also served on numerous advisory bodies including the Committee for the Economic Development of Australia (CEDA, WA Branch) and the WA Women's Advisory Council and consulted for various organisations, including the Fair Work Commission and the Minerals Council of Australia.

[ENDS]

Media contact: s 22(1)

REVIEWER CONFLICT OF INTEREST DECLARATION

Name: Emeritus Professor Mark Bray
Position Title: Reviewer
Branch / Division: Safety and Industry Policy Division

I, Mark [REDACTED] Bray, declare that:

- (a). I am aware of my responsibilities in relation to the proposed engagement by the Commonwealth comprised of the independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023. (Engagement)*. These include an obligation to behave honestly and with integrity, to disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the Engagement and not make improper use of (a) Commonwealth confidential information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- (b). the list of my outside employment or associations, any publicly held positions or views, and private interests and relationships at Annexure A has been prepared on the basis of the particular roles and responsibilities of the Engagement; and
- (c). I undertake to immediately inform the Department of Employment and Workplace Relations of any changes to:
 - (i) my responsibilities or to the issue or subjects on which I am required to make decision or give advice; and
 - (ii) my personal circumstances,

that could affect the contents of this declaration and to provide an amended declaration(s) using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of should circumstances arise in which I consider that they could or could be seen to influence any decision I am taking or the advice I am giving in connection with the Engagement.

I understand that this would require the consent of the family member to the collection by the Department of Employment and Workplace Relations of personal information, and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I understand that I will not be permitted to take part in the discussions or decision-making processes where a material conflict of interest exists unless a member of the Senior Executive Service in the Department of Employment and Workplace Relations determines otherwise.

Signed _____

Date 17/09/2024

ANNEXURE A

PRIVATE INTERESTS DECLARATION

| | |
|-------------------------------------|---|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|---|

Please answer the following questions by circling the reply that applies to your personal circumstances. **If you answer "yes" to any question, please provide details in the provided attachment to this form, signed and dated.** Please note that answering "yes" to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

| | |
|--|-----|
| 1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)? | No |
| 2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)? | No |
| 3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act 1996 (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? | No |
| (b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? | No |
| 4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement? | No |
| 5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party? | No |
| 6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts? | No |
| 7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation? | No |
| 8. Have you ever been dismissed from employment because of a discipline or misconduct issue? | No |
| 9. Are you the director of a company? <u>If yes, please provide details in the following page.</u> | No |
| 10. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed? If yes, include advice in a separate attachment on how this conflict of interest would be managed. | Yes |
| 11. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory? If yes, please provide details in a separate attachment. | No |
| 12. Are you currently employed by the Commonwealth, the Administration of a | No |

| | |
|---|-----|
| Territory, or a public statutory corporation or incorporated company owned by the Commonwealth on a full-time/part-time basis? If yes, please provide details. | |
| 13. Is there any other information, which could be relevant to a reasonable perception that you are unable to discharge your obligations or duties in an objective and independent manner to the best of your ability? Please include any outside employment or associations (including advisory roles/not-for-profit boards or any other sector related roles) and publicly held positions or views. | Yes |

ASSURANCE

I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.

I also undertake to advise the responsible minister should a situation arise in the future, which might cause a conflict of interest with my responsibilities under this appointment.

| Name | Signature | Date |
|----------------------|------------|------------|
| Mark [REDACTED] Bray | [REDACTED] | 17/09/2024 |

PRIVATE INTERESTS DECLARATION - ATTACHMENT

| | |
|-------------------------------------|--|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|--|

Please provide details for all 'yes' answers to any question on the Private Interests Declaration form. Please detail how any conflict(s), actual or perceived, will be managed if appointed. Please note that responses to Q12 may be relevant to remuneration payable for part-time appointments with reference to section 7(11) of the *Remuneration Tribunal Act 1973* (Cth). The Act provides that a person is not entitled to remuneration for part-time appointments when holding certain full-time employment, engagement or appointment. Your responses will be treated as confidential and will only be used for purposes connected with the proposed appointment.

Please provide any conflict mitigation strategy/ies for all directorships and advisory boards.

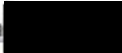
| QUESTION | DETAILS WITH CONFLICT MITIGATION STRATEGY |
|----------|--|
| 10. | s47F(1) |
| 13. | <p>Neither position brings any potential financial gain from the Review, while neither individual will gain access to confidential or restricted data gained during the Review nor will they influence the content of the final Report. So, I see no way in which these personal relationships will compromise my obligation to avoid perceived bias and behave honestly and with integrity in undertaking the Review.</p> <p>During a long academic career, I have researched and published on various aspects of Australian labour law and industrial relations. This is part of acquiring the expert skills and knowledge required to undertake the Review. Despite my on-going research interest in these matters, I am no longer employed by any University (note that my Emeritus status and my two roles as Honorary Professor are unpaid), nor do I enjoy any financial gain from any "outside association". At times, I have expressed views about these matters, including the content of the Fair Work Act 2009. I do not see how any of this could contribute to any "reasonable perception that [I am] unable to discharge [my] obligations or duties in an objective and independent manner to the best of [my] ability". Indeed, they do not impact at all upon my capacity and commitment to offer a fair and evidence-based Review.</p> |

ASSURANCE

| | | |
|---|------------|------------|
| I declare that to the best of my knowledge, the information provided above is true and correct. | | |
| Mark [REDACTED] Bray | [REDACTED] | 17/09/2024 |
| Name | Signature | Date |

REVIEWER CONFLICT OF INTEREST DECLARATION

Name: Professor Alison Preston
Position Title: Reviewer
Branch / Division: Safety and Industry Policy Division

I, Alison  Preston declare that:

- (a). I am aware of my responsibilities in relation to the proposed engagement by the Commonwealth comprised of the independent reviewers for the joint review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023. (Engagement)*. These include an obligation to behave honestly and with integrity, to disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the Engagement and not make improper use of (a) Commonwealth confidential information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- (b). the list of my outside employment or associations, any publicly held positions or views, and private interests and relationships at Annexure A has been prepared on the basis of the particular roles and responsibilities of the Engagement; and
- (c). I undertake to immediately inform the Department of Employment and Workplace Relations of any changes to:
 - (i) my responsibilities or to the issue or subjects on which I am required to make decision or give advice; and
 - (ii) my personal circumstances,


that could affect the contents of this declaration and to provide an amended declaration(s) using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of should circumstances arise in which I consider that they could or could be seen to influence any decision I am taking or the advice I am giving in connection with the Engagement.

I understand that this would require the consent of the family member to the collection by the Department of Employment and Workplace Relations of personal information, and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I understand that I will not be permitted to take part in the discussions or decision-making processes where a material conflict of interest exists unless a member of the Senior Executive Service in the Department of Employment and Workplace Relations determines otherwise.

Signed



Date

16/9/24

16/9/24

ANNEXURE A

PRIVATE INTERESTS DECLARATION

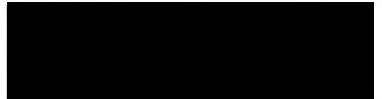
| | |
|-------------------------------------|---|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|-------------------------------------|---|

Please answer the following questions by circling the reply that applies to your personal circumstances. **If you answer "yes" to any question, please provide details in the provided attachment to this form, signed and dated.** Please note that answering "yes" to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

| | |
|---|---------------------------|
| 1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)? | Yes / <u>No</u> |
| 2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)? | Yes / <u>No</u> |
| 3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act 1996 (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? (b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? | Yes / <u>No</u> or N/A |
| 4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement? | Yes / <u>No</u> |
| 5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party? | Yes / <u>No</u> |
| 6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts? | Yes / <u>No</u> |
| 7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation? | Yes / <u>No</u> |
| 8. Have you ever been dismissed from employment because of a discipline or misconduct issue? | Yes / <u>No</u> |
| 9. Are you the director of a company? <u>If yes, please provide details in the following page.</u> | Yes / <u>No</u> |
| 10. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed? If yes, include advice in a separate attachment on how this conflict of interest would be managed. | Yes / <u>No</u> |
| 11. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory? If yes, please provide details in a separate attachment. | Yes / <u>No</u> |
| 12. Are you currently employed by the Commonwealth, the Administration of a | Yes / <u>No</u> |

| | |
|--|----------|
| Territory, or a public statutory corporation or incorporated company owned by the Commonwealth on a full-time/part-time basis? If yes, please provide details. | |
| 13. Is there any other information, which could be relevant to a reasonable perception that you are unable to discharge your obligations or duties in an objective and independent manner to the best of your ability? Please include any outside employment or associations (including advisory roles/not-for-profit boards or any other sector related roles) and publicly held positions or views.. | Yes / No |

ASSURANCE

| | | |
|---|---|----------|
| <p>I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.</p> <p>I also undertake to advise the responsible minister should a situation arise in the future, which might cause a conflict of interest with my responsibilities under this appointment.</p> | | |
| Name | Signature | Date |
| ALISON PRESTON |  | 16/9/24. |

PRIVATE INTERESTS DECLARATION - ATTACHMENT

| | |
|---|--|
| PROPOSED POSITION & ORGANISATION | Independent reviewer for the Secure Jobs Better Pay Act and Closing Loopholes Act |
|---|--|

Please provide details for all 'yes' answers to any question on the Private Interests Declaration form. Please detail how any conflict(s), actual or perceived, will be managed if appointed. Please note that responses to Q12 may be relevant to remuneration payable for part-time appointments with reference to section 7(11) of the *Remuneration Tribunal Act 1973* (Cth). The Act provides that a person is not entitled to remuneration for part-time appointments when holding certain full-time employment, engagement or appointment. Your responses will be treated as confidential and will only be used for purposes connected with the proposed appointment.

Please provide any conflict mitigation strategy/ies for all directorships and advisory boards.

| QUESTION | DETAILS WITH CONFLICT MITIGATION STRATEGY |
|----------|---|
| | |

ASSURANCE

I declare that to the best of my knowledge, the information provided above is true and correct.

ALISON IRZ SEON
[Redacted Signature]
16/9/24
Name Signature Date

From: "DLO Watt"
Sent: 19/09/2024 6:02:30 PM
To: "DLO" s 22(1)
Cc: "DLO Watt" s 22(1)
Subject: Correspondence from Minister Watt - Secure Jobs, Better Pay Review
[SEC=OFFICIAL:Sensitive]
Attachments: MS24-000767 signed letter - PM.pdf

OFFICIAL: Sensitive

Hi DLOs,

Please find attached correspondence from Minister Watt in relation to the Secure Jobs, Better Pay Review. No hard copy to follow.

Thanks,

S

22/11

s 22(1)

Departmental Liaison Officer - Workplace Relations

Office of Senator the Hon Murray Watt

P: s 22(1) | M: s 22(1) | E: s 22(1)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past and present.

OFFICIAL: Sensitive