United Voice Submission

Ministerial Review of the State Industrial Relations System

Interim Report

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Executive Summary

United Voice welcomes the opportunity to respond on behalf of our members to the Ministerial Review of the State Industrial Relations System Interim Report (**Interim Report**). United Voice previously made a submission to the Review in November 2017 (**Initial Submission**). We have attached our Initial Submission for your reference.

Nationally, workers are facing attacks to their rights at work, the minimum wage has fallen below the poverty line and wage theft is now so common that it has become a business model for some employers. Working people need better and stronger rights at work to reverse growing inequality and keep up with the growing power of employers. This review is a real opportunity to address these inequities and restore the balance between employers and working people for the benefit of all Western Australians.

While the Interim Report does propose some recommendations that the union would support, in general, we are disappointed that the overall impact of the report will weaken the capacity of the Western Australian industrial relations framework to protect the rights of working people. Many of the recommendations will compound the existing disadvantage of workers and skew the Western Australia Industrial Relations Commission (**WAIRC**) in favour of employers at the expense of workers. The impact of the proposed changes would be disproportionately felt by the most vulnerable and disadvantaged in our society.

We have particular concern with recommendations 55 and 56 regarding the updating of State awards. The Interim Report does not provide sufficient evidence that a formal award updating process is necessary. Instead the report proposes an overly complex review process that is a throwback to the flawed federal award modernisation process and will come at a huge cost to government with little benefit for workers.

We are also concerned that the proposed recommendations under term of reference one falls short of the intended objectives to improve the efficiency of the WAIRC. These recommendations seek to mirror aspects of the Fair Work Commission (**FWC**) that will fundamentally change the laypersons jurisdiction of the WAIRC and result in an overly complex and judicial jurisdiction. This will act as a disincentive for workers to access justice and increase existing power imbalance between employers and workers.

The Interim Report does propose some recommendations that we would support. United Voice strongly supports recommendations 37 to remove the domestic worker exclusion from the definition of employee and 35 for the inclusion of an ERO in the *Industrial Relations Act 1979 (WA)* (**IR Act**) as per the QLD model and urges the Review to include these important recommendations in the final report.

As you will be aware, there is a great level of consensus evident across the union movement that the Interim Report falls short of improving the industrial relations framework in a manner that is beneficial to all stakeholders. We expect that this second round of consultation will inform a final report that will deliver positive outcomes for working people and better address the inequity that exists between workers and employers.

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1. State Awards

United Voice strongly rejects the recommendations made under term of reference six and disagrees that a periodical award review process that mirrors the failed national award modernisation is necessary for the State award system.

As was evidenced by our Initial Submission, United Voice's position is that introducing a formal process for the updating of State awards will come at a huge cost to government and will deliver lower outcomes for workers. Our experience with past reviews has been that it is burdensome, unnecessary and has proved detrimental to working people's entitlements.

The Interim Report does not present a persuasive argument in favour of consolidation or review of State awards. While various concerns with State awards are discussed, this is not conclusive of the need for a comprehensive review. The recommendations for a structured review process should be abolished in favour of a mechanism that enables parties to apply for an award variation where necessary to address gaps in award coverage and instances where award conditions fall below minimum conditions. This would address major concerns with State awards in an efficient and cost effective manner. We urge the Review to reconsider these recommendations for the final report.

1.1 Deterioration of entitlements

As was clearly evidenced in our Initial Submission, our experience with award reviews in both the national and state systems has been that worker entitlements are put at risk, resulting in the deterioration of conditions for workers. In response, the Interim Report has included recommendation 55(a) that states employee entitlements will not be reduced under the proposed award review process.

It is naïve to suggest that in practice this will successfully protect workers from any reductions in their entitlements. The Union's experience with various award review processes is that the unintended consequence is the ability to reduce entitlements under the guise of 'modernisation'. The Interim Report seeks to rely on recommendation 55(a) and ignores the very real examples of where entitlements have been lost in the past, despite similar safeguards being in place.

As was evidenced in our Initial Submission, hundreds of thousands of Australian workers have had their pay cut, in some instances by up to 30%, as a direct result of the cuts to penalty rates under the federal award review process. This is despite the fact that the *Fair Work Act 2009 (Cth)* (**FW Act**) explicitly states that the award modernisation process is not intended to result in reductions to take home pay.

The creation of modern awards involved consolidation and simplification of award entitlements on a massive scale. In the process, terms and conditions of employment that had been well entrenched in particular states, sectors or parts of the economy were eliminated. A clear example of this was the creation of the *Aged Care Award 2010* which resulted in the reduction of two weeks annual leave for aged care workers in Western Australia.

Further, this attempt to safeguard employee entitlements will not prevent employers from making applications to reduce entitlements that unions will have to respond to and defend. The implications this will have on resourcing is discussed further below at 1.2.

Plain English drafting

We do not support recommendation 55(f) regarding plain English drafting of State awards. Far from making it easier to navigate awards, this will simply open up well tested terms and conditions of employment for reinterpretation. The union movement will be required to defend every single word of an award against employers who may attempt to use this as a means to reduce entitlements.

Past experience has proved that redrafting under the guise of plain English can in fact increase the ambiguity in awards. The ACTU submission to the Productivity Commission inquiry into the Workplace Relations Framework noted that redrafting in order to clarify or simplify had resulted in critical information being removed from awards, creating a degree of uncertainty.[1]

We urge the panel to give adequate weight to the significant risk to employee entitlements when making their final recommendations.

1.2 Resourcing

It is disappointing that the Interim Report does not adequately deal with the devastating impact on resources this proposed process will have on all stakeholders, most importantly workers. As was evidenced in our Initial Submission, our experience of various award review processes has been that all stakeholders are required to direct a significant amount of resources, time and money to what has proved to be a long and complex process.[2]

The proposed recommendations will require a substantial resource allocation from State Government, employers and unions in order to adequately engage in the proposed process. As has been clearly articulated to the Review, and is acknowledged in the Interim Report, this is not an expense that the union movement or the State Government can afford.[3] Unions have limited resources and multiple competing priorities. Without proper resources to engage in the process the balance of power will be skewed towards employers and there will likely be a significant deterioration in conditions for workers.

Past experience has proved that award entitlements will be contested simply because the review process provides a trigger for doing so. In the 2012 Award Review variation applications were made in relation to 85 out of 122 modern awards. The vast majority of these applications were dismissed on the basis that there was insufficient evidence.[4] This does not discount the significant volume of work that was created for unions, employers, and the FWC as a result of these applications.

In past reviews governments have provided funding to ensure unions can sufficiently engage in the process. Our experience has been that this funding only goes part of the way to mitigating the strain on union resources. As our past experience has shown, this process is not something that can be completed in isolation and will require substantial input from across each individual union including union members, officials and executive.

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[1] ACTU, 'Submission to the Productivity Commission inquiry into the Workplace Relations Framework', (2015), 146.
[2] United Voice, 'Submission to the Industrial Relations Review', (2017), 28-30.
[3] Ministerial Review of the State Industrial Relations System Interim Report, (2018), 1276-1278.
[4] ACTU, 'Submission to the Productivity Commission inquiry into the Workplace Relations Framework', (2015), 147.

We urge the Review to reconsider the resource implications for all stakeholders that is required for a periodical award review process.

1.3 Alternative approach

United Voice has always been an advocate for industry based awards. As a union with diverse coverage, we understand the limitations of bargaining to address the position of low paid workers. Nationally, many of our members work in award-reliant industries. Members in these industries are often in low paid and precarious employment and have little to no bargaining power. These workers are reliant upon industry awards to ensure fair and adequate working conditions, workplace rights and entitlements.

We acknowledge that there are issues with State awards, primarily coverage and minimum conditions of employment. Further, there are workers who fall outside the coverage of all existing awards and are essentially award free. However, these issues do not necessitate the requirement for a complete overhaul of the State award system.

The terms of reference presuppose that a formalised award updating process for the state system is necessary. As a result, the Interim Report does not provide adequate reasoning regarding the need for a structured award review process. We understand that the Review is constrained by the terms of reference, however we believe the approach taken is flawed. By not adequately addressing the foundational need for an award review, the Interim Report does not sufficiently consider alternative options to fix the problem that would be both beneficial to workers and achievable for stakeholders.

Section 40B

Section 40 and 40B of the IR Act enables awards to be varied by application from parties to awards or by the WAIRC on its own motion. These existing legislative provisions negates the need for a periodical award process as has been proposed by the Interim Report.

The existing legislation provides sufficient scope to modify and update the safety net without causing unnecessary disputation or uncertainty in relation to award entitlements. State awards can be amended to address gaps in award coverage and lift employment conditions where they do not meet minimum conditions of employment. This process will result in State awards that meet the intended objectives of a proper safety net for working people. This would be less expensive for all stakeholders and less resource intensive to engage in.

The Interim Report notes that section 40B has not resulted in significant changes to State awards. It concludes that this was largely due to the resources required by unions and employers to engage in the process and the shift in focus to the federal award modernisation process. With appropriate resources to enable stakeholders to engage there is no reason why this could not prove to be a viable alternative to the proposed award review process.

As noted by the Interim Report, even this scaled option would still require input from the State Government to make sure that the union movement is sufficiently resourced to ensure no worker is left worse off by the review process. This would mean providing funding for at least one FTE for UnionsWA and, as the union party to the majority of affected awards, at least one FTE for United Voice for the duration of this process and any future review.

We urge the Review to reconsider the existing avenues in the IR Act that that provide a clear alternative to the proposed award review process to ensure State awards continue to be adequate safety net for all working people in Western Australia.

2. WAIRC

United Voice supports recommendations made by the UnionsWA submission in relation to term of reference one regarding the structure of the WAIRC. In addition, we seek to comment on some specific recommendations that are of concerns to us.

In general, we are concerned that the proposed recommendations will compound the existing disadvantage of workers and unfairly skews the WAIRC in favour of employers. The proposed recommendations fall short of the terms of reference which contain a clear objective to achieve a more streamlined and efficient structure. Instead what these recommendations propose is an overly complex and legalistic structure, that will impede the efficient resolution of matters and act as a disincentive to workers accessing justice. We strongly reject any recommendation that seeks to legalise what should be a laypersons tribunal.

Further, we note that the recommendations under this term of reference propose a comprehensive restructuring of the WAIRC that will fundamentally change its ultimate purpose and the way stakeholders interact within its jurisdiction. We would urge the panel to consider seeking further consultation with stakeholders on this specific matter prior to making any final recommendations to ensure all stakeholders have an opportunity to understand and sufficiently respond to proposed amendments.

We urge the Review to reconsider term of reference one and make recommendations in the final report that value the importance in our workplace relations system of fairness and addresses the power imbalance between workers and employers.

2.1 Legal nature

The recommendations under term of reference one are united by a common theme of valuing a highly legalised system over the laypersons system. This legalistic theme persists despite the fact that subject to minor issues raised in our Initial Submission, the current layperson system functions relatively well and there is no supporting evidence that this would improve the efficiency of the WARIC.

Recommendation 17 is particularly concerning as by limiting the jurisdiction of commissioners who have no legal background, it would create a sub-class of commissioners who are unable to hear significant portions of the jurisdiction of the WAIRC. The Interim Report fails to adequately consider how this would improve the efficiency of the commission. There is no clear case presented that commissioners without a legal background perform worse than those that do or have more appeals ordered against their decisions. Over a period of time commissioners without a legal qualification will cease to be appointed. The WAIRC benefits from a balance of commissioners from different backgrounds. In the absence of clear supporting evidence, the final report should not recommend changes to the jurisdiction of commissioners who do not hold a legal qualification.

Recommendation 12 is another clear example of the attempt to legalise the WAIRC. Section 26(1)(a) of the IR Act is a fundamental aspect of a laypersons tribunal in that it protects parties where there

is a minor technicality. The legislation requires the WAIRC to deal with a matter in accordance with equity, good conscience and the substantial merits of the case. The Interim Report doesn't provide sufficient evidence of the need to remove this protection and we assert that removing this would in fact impede the efficiency of the commission.

Recommendation 18 is biased in favour of employers who have infinitely more resources than unions to engage multiple lawyers to represent their interests. This recommendation is entirely antithetical to the WAIRC operating as a laypersons tribunal and remaining an accessible avenue for workers to seek justice.

Further, we would reject recommendation 22 on the basis that employers may seek to use the discovery 'as of right' to make routine discovery requests against unions. This would require significant union resources to not only comply with that request, but to go to the WAIRC to argue that an order should be made to the contrary.

2.2 No cost jurisdiction

The no cost jurisdiction of the WAIRC is an essential component of the right for all workers to access justice. We strongly reject any move to a cost jurisdiction on the grounds that this would disincentive workers from pursuing matters under threat of having a cost order made against them.

This rejection is not tempered by any proposal to limit costs to vexatious proceedings or proceedings without reasonable cause of success. The practical implications of moving to a costs jurisdiction would be application for cost orders as a matter of routine at the conclusion of every proceeding. Unions and workers would bear burden of defending the merits of a claim every time. Cost orders will discourage application to the WAIRC, with a disproportionate impact on the most vulnerable. Claimants would have to weigh up the possibility of having cost orders made against them, and accept the onerousness of defending against cost orders. Moving to a cost jurisdiction would unjustifiably tilt the WAIRC in favour of employers with the resources to withstand a cost order and mount routine argument against workers for cost orders.

We therefore oppose any move to a cost jurisdiction. The final report must contain a recommendation that the WAIRC remains a no cost jurisdiction in all matters.

2.3 President position

While we agree past submissions that have questioned the position of President have merit, we do not support recommendation five for the appointment of a Supreme Court Justice to act as a floating President for applications to the full bench. Such an appointment is out of line with the quasi-judicial nature and layperson's use of the WAIRC and would likely introduce more formality and increase the length of time to deal with matters.

Although the number of matters dealt with by the President has declined significantly, this not necessarily solved by appointing a floating Supreme Court Justice. The Interim Report does not adequately deal with potential impact this will have on listing times for appeals. Nor is this an appropriate blurring of the separation of powers.

2.4 Issues not considered

It is disappointing that the Interim Report does address recommendations proposed in our Initial Submission that would improve the efficiency of the WAIRC. Specifically; the automatic updating of

allowances in awards following the state wage case, timely resolution of matters, website and online filling. We urge the Review to consider these as part of the final report as a means of fostering efficiency and streamlined processes within the WAIRC.

3. Definition of Employee

3.1 Domestic service worker

United Voice supports the removal of the domestic worker exclusion in the definition of employee as proposed by recommendation 37. We urge the panel to include this recommendation in the final report.

As was clearly evidenced by our Initial Submission, it defies belief that this exclusion still operates in Western Australia given the heightened potential for exploitation of these workers, who are often low paid, work in isolation and have little bargaining power.[5] Further, this exclusion it is out of step with the rest of Australia and presents a barrier to the ratification of the ILO's Domestic Workers Convention (No. 189) and Recommendation (No. 201) on forced labour.

As was highlighted in the preliminary opinion of the Review, we note that the domestic service worker exclusion no longer simply applies to workers who might be described as traditional domestic workers such as au pairs, nannies and cleaners. Many domestic service workers are professionally trained disability and aged care workers who provide essential support in individual clients homes. As was discussed in our Initial Submission, with the roll-out of the NDIS is WA, these employment arrangements will continue to contribute to a cohort of workers who are denied access to minimum conditions of employment and denied the right to secure and decent jobs.

Importantly, no stakeholder has been able to provide reasoned grounds for maintaining the current exclusion.

Burden to households

Opposition to the removal of the domestic worker exclusion rely on antiquated notions that this would result in increased regulatory burden to households *"many of whom would not have training or advice as to how to meet their obligations as employers."* (CCI)[6]

Any attempt to use this outdated argument as a means to justify denying basic rights to a cohort of workers is offensive, misguided and should be strongly rejected by the Review. The CCI are seeking to rely on a position from the 1950's that has no place in today's society.

As previously highlighted the domestic worker exclusion in Western Australia is unique to the rest of the country. In other Australian jurisdictions, workers in private residences receive protection under the FW Act as employees (i.e. nannies and au pairs) or as independent contractors. As other jurisdictions have clearly managed to cope with the legal implications of this, there is no reason why Western Australia would find this so burdensome as to justify the retention of the exclusion in the IR Act.

[5] United Voice, 'Submission to the Industrial Relations Review', (2017), 11-13.
[6] Ministerial Review of the State Industrial Relations System Interim Report, (2018), 814.

Right of entry

Some stakeholders have also sought to rely on union and industrial inspector access to domestic homes as a means to justify the removal of the domestic worker exclusion. We strongly reject this argument.

Unions have an institutional compliance function in the industrial relations system. Any restriction on right of entry for compliance purposes erodes their capacity to carry out that function. A significant amount of interaction in the workplace between employers and trade union employee representatives occurs by mutual agreement and without incident or disruption. Where entry and representation arrangements can be agreed by the industrial parties the law should facilitate and not impede those arrangements.

Domestic service workers who undertake work in private residences often do so in isolation in high risk environments. As a result, it is even more important to be able to enter a workplace, specifically where there are concerns for health and safety.

As was considered in the Interim Report, the concerns of right of entry can be managed in Western Australia as they are managed in the rest of the country. In the absence of any clear evidence that this poses a problem in other states, this objection is baseless and must not be used as an excuse to deny workers access to basic rights and entitlements under state industrial laws.

Taskforce

While a taskforce under recommendation 40 will certainly prove to be beneficial for the transition, it should be comprised of the section 50 parties only, being UnionsWA, CCI and the State Government.

3.2 Gig economy

It is disappointing that the Interim Report did not make any definitive recommendations concerning the gig economy in Western Australia. This is a missed opportunity to meaningfully contribute ideas for a more productive, inclusive, equal and fairer industrial relations system that tackles future workforce challenges. This is a failure to look to our future needs in regulating a new workforce in a new economy and a failure to provide ideas for strengthening the regulatory infrastructure and ensure a proper safety net for these coming changes. The Federal Government has made it clear that they are not interested in this cohort of workers. The Labor State Government should be leading the way on these issues and we would expect to see more comprehensive recommendations regarding the gig economy in the final report.

As highlighted in our Initial Submission, people doing work using digital platforms deserve the same protections and rights as other workers. Automation and digital technology offer huge potential to make work and society better. However, they must be used wisely, as tools to build a society with inclusive prosperity, not to widen inequality and make more work insecure.

If left unregulated, the gig economy will continue to undermine the protections and safeguards that are at the heart of the Australian industrial relations system. Flexibility shouldn't mean forcing people to try and make ends meet with temporary or non-standard employment where workers have little social or economic security. There is no reason why technological change should invariably make jobs less secure. Technology and the gig economy can be readily integrated into

social and legal structures that give primacy to job quality and security, provided these matters are collectively prioritised by those making decisions.

Taskforce

As above, we do not agree with the composition of the proposed taskforce regarding the gig economy. This taskforce should be limited to section 50 parties only. There is no clear reason provided as to why the Department of Mines, Industry Regulation and Safety, the State Solicitors Office, or a nominee of the President of the Law Society have been included. Further, the taskforce should be provided with a clear term of reference including timelines to ensure it can contribute constructively.

3.3 Migrant workers

United Voice supports recommendation 45 to increase protections for people working without a visa, or contrary to the terms of their visa, to the extent that this would enable enforcement proceedings against employers in contravention of the IR Act, the *Minimum Conditions of Employment Act 1993 (WA)* (**MCE**) or the *Long Service Leave Act 1958 (WA)* (**LSL Act**).

While we do not seek to comment on the constitutional aspect, we support this recommendation on the grounds that it is good policy. Workers are entitled to benefit from a fundamental principle and expectation that workplace exploitation will not result in deportation. This will increase protections for workers from exploitation and make it harder for employers to avoid their legal responsibilities.

It is widely recognised that workers on visas, and people working without a visa, are more vulnerable to workplace exploitation than their local counterparts. They also face higher barriers to accessing remedies. The power asymmetry that exists in any employer/employee relationship is exacerbated in the case of temporary migrant workers, because their right to remain in the country is contingent on them not being found to be in breach of the work conditions on their visa. Any legal irregularity in the employee/employer relationship, whether the fault of the employee or not, can trigger a chain of events that leads to a grievous result for the worker (detention and deportation) that is disproportionate to any negative outcome potentially faced by the employer and is insensitive to the power dynamics.

The punitive, rather than protective impetus of visa regulation in regard to workers themselves leads to situations in which exploited workers who have been compelled to breach a condition of their visa can lose the right to remain and work in Australia. A common instance of this is when student visa holders work more than 40 hours per fortnight on the orders of their employer, and are afraid to come forward out of fear that their visa will be terminated. Effectively, temporary migrant workers are punished for the illegal acts of their employers.

The systemic vulnerabilities that arise from our linked immigration and industrial relations regime are compounded by the range of other impediments commonly faced by temporary migrants in accessing justice, including: language and cultural barriers; economic vulnerability; geographical isolation; young age; lack of access to unions and/or legal services; lack of decent work opportunities; and the threat of more egregious levels of abuse in their home country. Further, the long timeframes for investigation of breaches mean that visa holders have often left the country before they are in a position to receive back pay or compensation for the losses they have suffered as a result.

There should be a fundamental principle and expectation that exploitation should not result in deportation. People working without a visa or contrary to the terms of their visa have a right to seek justice without fear of deportation. That workers from overseas are granted the right to remain in the community until civil and/or criminal claims are resolved is especially important when indicators of modern slavery are found. Applying a protective rather than a punitive approach to regulating migrant labour is simply good policy and we urge the Review to include this recommendation in its final report.

3.4 Sex workers

United Voice supports the inclusion of sex workers in the Western Australian industrial relations system pursuant to recommendation 46(b).

Clear coverage by industrial relations legislation may enable sex workers in Western Australia to access minimum employment conditions. Sex workers experience unique workplace health and safety demands and issues. Formalised application of industrial relations legislation will in part recognise these needs and experiences. However, it is important to note that decriminalisation, as present in New South Wales, is the legal model preferred by Scarlet Alliance and has proven to have better health and safety outcomes for sex workers.[7]

Any legislative change to the legal or industrial relations position of sex work should foreground the experiences and concerns of sex workers. United Voice therefore encourages the Review to seek further consultation with Magenta and Scarlet Alliance as representative organisations for sex workers in Western Australia.

4. Equal Remuneration Order

United Voice strongly supports recommendations 35 and 36 to include an equal remuneration provisions based on the Queensland model and the inclusion of an equal remuneration principle in the IR Act. Although equal remuneration and the gender pay gap are not analogous, equal remuneration will go some way to closing the gender pay gap by addressing the gender-based undervaluation of certain industries.[8] We urge the Review to include these recommendations as proposed in the final report.

4.1 Queensland model

As was evidenced in our Initial Submission, our experience with equal remuneration order (**ERO**) applications under the Fair Work Act (**FW Act**) are that they are lengthy, costly and protracted matters. This is despite the FW Act articulating a clear means for addressing pay inequity.

The FW ERO requirement for a comparator industry is widely acknowledged as being unduly limiting on an application. Comparators obscure inherent undervaluation because this undervaluation is entrenched in not only remuneration but also the organisation and classification of industries as "women's work". The requirement of finding a male comparator is complex and adds to the delay

[7] Barbara Sullivan, 'Working in the Sex Industry in Australia: The Reorganisation of Sex Work in the Wake of Law Reform' Labour & Industry: A Journal of the Social and Economic Relations of Work (2008) 18(3); Scarlet Alliance, 'Decriminalisation Since 1995' (2016) http://www.scarletalliance.org.au/laws/nsw/.
[8] 2017 State Wage Case Order, [101].

and the cost of running ERO cases. It is also retrograde step. The pre-requisite of a male comparator fails to consider the historical, institutional and cultural undervaluation of feminised work and how industrial standards and benchmarks have been set in Australia. This is clearly illustrated by the federal ECEC ERO case study highlighted in our Initial Submission.

In contrast, the Queensland ERO system under Queensland's *Industrial Relations Act 2016* (**Queensland Act**) does not require male comparators in order to establish undervaluation on a gendered basis. This means that unlike the FW Act, "equal or comparable value" in the Queensland Act has not been interpreted to require a comparator industry. As highlighted by the success of the Queensland ECEC and Dental Assistants EROs the Queensland ERO is clearly preferable to the FW Act ERO primarily because there is no requirement for a male comparator industry.

The majority of submission summarised in the Interim Report were not only in favour of an ERO, but preferred the Queensland model over the Federal model as it is widely acknowledged as addressing some of the identified problems with the federal model. We urge the Review to include these recommendations in the final report as written.

5. Access to the WAIRC

United Voice supports the submissions made by UnionsWA and the CSA in relation to the recommendations made under term of reference number two. In addition, we seek to comment on stop bullying orders and general protections.

5.1 Anti-Bullying jurisdiction

Bullying is a persistent and significant problem that adversely affects a significant number of Western Australian employees each year. As highlighted in our Initial Submission, the new anti-bullying provisions introduced into the FW Act in 2014 appear to be providing some relief to employees from this conduct. Our experience with the FWC bullying jurisdiction has been that it has acted as deterrence, promoting employers to act quickly in response to bullying allegations. Further, the legislation has afforded clarity as to what legally constitutes bullying and what does not which aids in making an application.

Incorporating a jurisdiction that mirrors the FW Act would at least give workers some relief and clarity about entitlement to apply for relief. Further, as the FWC has clearly not been overwhelmed by anti-bullying complaints this should to some extent mitigate against concerns of some stakeholders about the negative impact on business of an anti-bullying jurisdiction. We urge the Review to include this as a recommendation in the final report.

5.2 General Protections

It is disappointing that the Interim Report lists general protections as a matter outside the terms of reference. In our opinion this is a missed opportunity to address the gap in the state legislation that would protect workplace rights and freedom of association for all employees and provide protection from workplace discrimination.

As highlighted by our Initial Submission, under the State system, there will be many employees who have been treated harshly or unfairly by their employers, but who will have no, or limited, legal recourse as the IR Act only provides relief where there has been a dismissal. The general protections pursuant to the FW Act would address the gaps that exist in the state system. Further, unlike the

FWC the WAIRC is not restricted by the constitutional limitations of the national system regarding the exercise of judicial power. This means that the WAIRC would be able to hear and determine applications of alleged contraventions of the general protections provisions.

We urge the Review to consider the inclusion of general protection in the final report.

6. Minimum Conditions of Employment

In general, United Voice is supportive of the recommendations proposed under term of reference five regarding the minimum conditions of employment.

6.1 Incorporation of minimum conditions

We support recommendation 47 regarding the incorporation of the MCE into the IR Act as was recommended in our Initial Submission. This would be consistent with the structure of the national system and provide for a single piece of legislation dealing with workplace relations for the State system.

However, we note that a simple incorporation of the MCE is not sufficient as there are some provisions of the National Employment Standards (**NES**) that exceed the provision under the states MCE. The minimum conditions incorporated into the IR Act should reflect the current MCE Act to the extent that they exceed the NES. Where the MCE Act falls short of the NES, the NES should prevail. For example, United Voice strongly supports recommendation 53 to increase the casual loading to 25% to align with the federal system. This should be done automatically. There is no reason that the state system should maintain a casual loading that is lower than federal.

Further, the amended standards in the IR Act should be set higher than the minimum standards set by both the MCE Act and the NES. The state industrial relations system should lead by example when it comes to issues such as family and domestic violence (**FDV**) and pay equity.

In response to recommendation 54, as highlighted in our Initial Submission, we strongly support a FDV clause to be included in the IR Act as a specific minimum condition of employment. The clause should be modelled upon the ACTU's family and domestic violence model clause which provides for 10 days paid leave per year and an additional two day's paid leave per year.

Further, as noted in our Initial Submission standards such as the right to access to flexible working arrangements, Union Delegate Rights and penalty rates should also be included in the IR Act as minimum conditions of employment. We urge the Review to include these in their final report.

6.2 Review of minimum conditions

While we acknowledge that it is beneficial for all parties to have minimum conditions of employment maintained to industry standards, we do not support recommendations 51 and 52 for the implementation of a process of periodic reviews. These recommendations do not provide adequate safeguards to ensure that entitlements cannot be reduced as an unintended consequence of this process.

As considered above at section one regarding State award reviews, any automatic process for updating conditions will be costly for the government and resource intensive for union stakeholders. Despite having legislation that says minimum conditions cannot be reduced, our experience with reviews in both state and federal systems has shown how these protections can be worked around.

Further, our concerns highlighted in the Initial Submission regarding the appropriateness of the WAIRC to make these decisions have not been satisfactorily addressed by the Interim Report. We would still question whether it is appropriate for statutory minimum employment conditions to be amended by an unelected commissioner of the WAIRC who is not accountable to the public. We urge the Review to reconsider these recommendations in the final report.

6.3 Portable LSL

It is disappointing that the Interim Report does not adequately address the Union's recommendation regarding the extension of portable LSL to industries such as cleaning, security and community based workers. It is especially disappointing in the context of developments for these industries in other states such as Victoria.

Our Initial Submission provided substantial evidence on the need for extending portable LSL to these industries to be reflective of modern employment engagement models and to be inclusive for the whole workforce. We urge the Review to reconsider our submission and make clear recommendations in support of portable LSL for cleaning, security and community based workers in the final report.

7. Statutory Enforcement

In general, we support the recommendations made under term of reference seven, in so far as they will provide increased deterrence for unscrupulous employers from taking advantage of vulnerable workers. We are concerned however that the recommendations may have unintended punitive consequences for the union movement. Penalties should be confined to identified conduct by employers such as wages theft and modern slavery.

Further, we do not support recommendation 67 and the proposed changes to right of entry laws and note that regulation of unions is specifically listed as an issue outside the terms of reference.

7.1 Right of Entry

The institutional role of unions in the industrial relations system is multifaceted and is critical. Union membership, freedom of association, the right to organise and the right to collective bargaining are meaningless unless employees have the right to be represented and advised by their union about workplace issues, and to be represented by their union in collective bargaining. There is no evidence of any problems with the current right of entry provisions in the State system that requires review. On these grounds, we urge the Review to remove recommendation 67 from the final report.

7.2 Union ability to prosecute

As was highlighted in our Initial Submission, our experience is that industrial inspectors do not play a sufficient role in compliance. In the past unions have filled the gap left by industrial inspectors. However, reduced union resources have meant that unions are facing difficulties in adequately resourcing prosecutions for non-compliance. It is appropriate for unions to be actively prosecuting for breach of compliance through internal prosecution units. Unions should be entitled to retain penalties or fines from employers that would be used for the sole purpose of recovering money for workers subject to this conduct. We urge the Review to make recommendations confirming the ability for unions to run prosecutions for breaches in the final report.

8. Local Government

United Voice supports the submission made by the Australian Services Union in relation to the recommendations made under term of reference number 8 regarding local government employees.