

9 February 2024

Associate to Deputy President Millhouse
Fair Work Commission
Level 4, 11 Exhibition Street, Melbourne, VIC, 3000
PO Box 1994, Melbourne, Vic, 3001

By email: chambers.millhouse.dp@fwc.gov.au

Dear Associate

Re: Intractable Bargaining Application by UFU B2023/771

We write in regard to the above matter which is listed for case management conference on Wednesday 14 February 2024.

As the Commission may be aware the *Fair Work Legislation Closing Loopholes Bill (No. 2) Bill* passed the Senate on 8 February 2024 and is expected to be passed by the House of Representatives shortly. It is anticipated that it will receive Royal assent in the very near future.

The Bill contains a number of provisions which have a significant impact upon the matter before the Full Bench.

Firstly, under an amended s 274(3), the date for assessment of when a term is an agreed term, is changed to the day that the application for an intractable bargaining declaration was filed.

Secondly, under a new s.270A, the scope of arbitration will now be limited such that employees cannot be worse off than they are under an existing enterprise agreement.

The first of these changes has a significant effect in that it renders nugatory the decision of the Full Bench. The second will have significant effect upon the conduct of any determination that is to be arbitrated.

For these reasons we submit that the case management conference be adjourned until the new legislation comes into operation so that the future conduct of the case can be considered in the light of the relevant amendments.

FRV and the Minister have been copied into this correspondence.

Yours faithfully



Tonia Sakkas
Principal
Davies Lawyers