



President's statement

Pay equity and the Care and Community Sector - Expert panels

Acting President Hatcher

Sydney, 3 February 2023

[1] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) amends the *Fair Work Act 2009* (Fair Work Act) to establish new Expert Panels within the Commission.

[2] An Expert Panel will be required when the Commission is considering changes to modern awards which relate to gender pay equity or the Care and Community Sector and when deciding whether to make an equal remuneration order.

[3] The Secure Jobs, Better Pay Act requires that the majority of Members on an expert panel have knowledge of, or experience in, gender pay equity, anti-discrimination or the Care and Community Sector (as appropriate).

Overview of the amendments

[4] Schedule 1, Part 6 of the Secure Jobs, Better Pay Act amends the Fair Work Act to provide for the constitution, reconstitution and functions of the new Expert Panels, which comprise part-time expert panel Members (EPMs) and other appropriately qualified Commission Members.

[5] The Revised Explanatory Memorandum to the Secure Jobs Better Pay Bill states that the expert panel amendments:

‘...would ensure the FWC has the expertise it needs to better assess pay and conditions for people working in the Care and Community Sector and other women workers. The expertise required for the new Expert Panels would be provided by either part-time Expert Panel members or appropriately qualified FWC members.’¹

[6] Under the amendments, the expert panels perform the following functions:

- Expert panel for pay equity (new ss.617(6)–(7)):
 - making a determination under s.157(2) of the Fair Work Act (a determination varying modern award minimum wages for work value reasons), other than one that the President considers might relate to the Care and Community Sector, ‘if the President considers that substantive gender pay equity matters might require the making

¹ Explanatory memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Cth), [360].

of [such] a determination?

- making an order under s.302 (an equal remuneration order), other than one that the President considers might relate to the Care and Community Sector
- Expert Panel for the Care and Community Sector (new s.617(8)):
 - making a determination under s.157(1) (a determination making, revoking or varying a modern award, other than varying minimum wages or a default fund term) that the President considers might relate to the Care and Community Sector
- Expert Panel for pay equity in the Care and Community Sector (new ss.617(9)–(10)):
 - making a determination under s.157(2) (a determination varying modern award minimum wages for work value reasons) that the President considers might relate to the Care and Community Sector
 - making an order under s.302 (an equal remuneration order) that the President considers might relate to the Care and Community Sector.

[7] New ss 620(1B)–(1D) prescribe the constitution of the new expert panels. Each panel must consist of at least three Commission Members, including (subject to reconstitution under s 622) the President, or a Vice President or Deputy President ‘appointed by the President to be the Chair of the Panel’, together with:

- for an Expert Panel for pay equity—at least two EPs or other Commission Members with knowledge of or experience in gender pay equity and/or anti-discrimination;
- for an Expert Panel for the Care and Community Sector—at least two EPs or other Commission Members with knowledge of or experience in the Care and Community Sector;
- for an Expert Panel for pay equity in the Care and Community Sector:
 - at least one EPM or other Commission Member with knowledge of or experience in gender pay equity and/or anti-discrimination, and
 - at least one EPM or other Commission Member with knowledge of or experience in the Care and Community Sector.

[8] In addition, an Expert Panel may include such other Commission Members as the President considers appropriate, provided that the panel has a majority of members with the relevant requisite knowledge or experience.

Implementation

[9] Deputy President O'Neill will be the Commission's National Practice Leader for pay equity and the Care and Community Sector, and her role will include oversight of the operation of the expert panel system, consultation and public engagement in these areas. A small implementation project team has been established to support the National Practice Leader.

Current matters before the Commission

[10] The Secure Jobs, Better Pay Act provides that the new expert panel provisions will apply to matters already before the Commission. The Commission is currently undertaking an audit to identify existing matters that may require the formation of an expert panel.

[11] Parties to existing matters that may need to be determined by an Expert Panel will be notified by the Commission after the audit is complete.

New Forms

[12] The *Form F46 – Application to vary a modern award* is the form used to apply to vary a modern award. The introduction of Expert Panels for matters concerning gender pay equity and the Care and Community Sector means that the form will need to be amended.

[13] The F46 form will be updated to provide information about the Expert Panels and ask applicants to indicate if they believe their application relates to gender pay equity, the Care and Community Sector or both.

[14] A new *Form F46A – Application to make an Equal Remuneration Order* will also be created. This form will note that applications to make an EROs are determined by an expert panel and will also ask applicants to indicate if the application relates to the Care and Community Sector.

[15] Subscribers to the announcements subscriber list will be notified once the updated F46 and new F46A forms are finalised.

[16] The Commission's procedural rules relating to these forms will also be amended to deal with service requirements. Draft rules amendments will be published for consultation shortly.

Research program

[17] The Commission intends to engage in a research project on occupational segregation and gender undervaluation which will expand on the issues raised in the President's statement on occupational segregation and gender undervaluation issued on 4 November 2022. It is anticipated that this research will contribute toward the identification of priority occupations and industries affected by gender pay equity issues, underpin any future review

of awards and support the Commission's ongoing capacity to determine equal remuneration and work value matters.

[18] Further details concerning the research program will be announced in due course.

PRESIDENT