



President's statement

Pay equity and the Care and Community Sector - Expert panels

Justice Hatcher, President

Sydney, 14 March 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 Fair Work Commission (Commission). The amendments commenced on 6 March 2023.

[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] In my [Statement](#) of 3 February 2023, I set out the Commission's plan for implementation of the new Expert Panel provisions. I also noted that the Secure Jobs, Better Pay Act provides that the new Expert Panel provisions will apply to matters already before the Commission, and that the Commission was undertaking an audit to identify matters currently before the Commission that may require an Expert Panel to be constituted.

[4] In my further [Statement](#) on 24 February 2023 I set out my *provisional* views about which current matters might require an Expert Panel at [15]-[17]:

'[15] It is my *provisional* view that once the amendments commence, the following matters must be dealt with by an Expert Panel for the Care and Community Sector. Each of these applications seek to vary modern awards which appear to cover parts of the Care and Community Sector but do not involve issues of work value or substantive gender pay equity:

- AM2023/2 – Application by Mental Health Australia to vary the *Social, Community, Home Care and Disability Services Industry Award 2010*.
- AM2022/28 – Application by the Indigenous Education and Boarding Australia to vary the *Educational Services (Schools) General Staff Award 2020*.
- AM2020/6 – Application by the Federation of Parents & Citizens Associations of New South Wales to vary the *Educational Services (Schools) General Staff Award 2020*.

[16] It is my *provisional* view that once the amendments commence, the following matter must be dealt with by an Expert Panel for pay equity in the Care and Community Sector:

- AM2020/99, AM2021/63 and AM2021/65 – Aged Care Work Value Case.

[17] In respect of matter AM2022/29 – Review of superannuation clauses in all modern awards, this will necessarily encompass awards covering the Care and Community Sector. However, while it is likely that the matter will result in determinations being made to vary awards, including those awards covering the Care and Community Sector, it is not yet apparent that this will require the exercise of power under s 157(1) and it is more likely that the determinations would ultimately be made under s 160. Accordingly, my *provisional* view is that it is not yet necessary to refer this matter to an Expert Panel for the Care and Community Sector.’

[5] Interested parties were invited to file submissions in response to the provisional views. Submissions were filed by:

- Association of Professional Engineers, Scientists and Managers, Australia (APESMA)
- Australian Chamber of Commerce and Industry
- Australian Council of Trade Unions
- Australian Industry Group (Ai Group)
- Health Services Union
- Pharmacy Guild of Australia
- United Workers Union

[6] The *provisional* views set out at [15] to [17] of the 24 February 2023 statement were not opposed in any of the submissions and I confirm those *provisional* views.

Application by the APESMA re Pharmacy Industry Award 2020

[7] On 20 December 2022 the APESMA made an application to the Commission to vary the *Pharmacy Industry Award 2020* seeking to increase to the rates of pay for pharmacy interns for work value reasons (AM2022/34 – Application by the Association of Professional Engineers, Scientists and Managers, Australia).

[8] In my Statement on 24 February 2023 I stated that I had not formed any provisional view as to whether APESMA’s application related to the Care and Community Sector and that I would be assisted by submissions from interested parties about this issue. I also noted that the application was not advanced for work value reasons said to be related to gender pay equity.

[9] In response to the 24 February 2023 statement, the Pharmacy Guild submitted that the APESMA’s application should not be referred to a Care and Community Sector and that the application was not related to gender pay equity issues. The APESMA submitted that the work of community pharmacists comes within the Care and Community sector. It also advanced the following contentions:

‘APESMA intends to submit as part of the current application that the community pharmacy sector has become increasingly feminized, and that this may have contributed to a current and historical undervaluation of the work.

The latest available data from the Pharmacy Board of Australia (AHPRA) indicates that 63.8 per cent of registered pharmacists are women, compared to the earliest publicly-available data from 2012 in which 57.29 per cent of registered pharmacists were women. (The data relates to pharmacy in general and not community pharmacy specifically).

Furthermore, APESMA’s own research suggests that within the community pharmacy sector, women are over-represented at the lower pharmacist classification levels of the Award, resulting in gender pay disparity.

...

The AMESMA therefore submits that pharmacy is a female-dominated occupation and as such it would not be inappropriate for the President to refer Application AM2002/34 which concerns a pay matter to the Expert Panel for Care and Community pay equity matters pursuant to s 617(6).’

(footnotes omitted)

[10] The above contentions concerning gender pay equity have not previously been raised by the APESMA in connection with its application.

[11] The APESMA’s contentions would, *prima facie*, justify the matter being referred to a pay equity Expert Panel (whether or not it relates to the Care and Community Sector). However, the Pharmacy Guild has not yet had an opportunity to respond to these contentions and, following a conference concerning the APESMA’s application conducted on 28 February 2023, the parties have agreed to engage in further discussions concerning the application and related issues before proceeding further. I will therefore defer ruling on whether the application should be referred to an Expert Panel at least until the parties have reported back concerning the outcome of their discussions.

Future matters

[12] In its submission of 3 March 2023, the Ai Group stated:

‘Given that key aspects of the relevant legislative provisions governing which matters must be determined by an Expert Panel are newly introduced, have not been widely applied yet and are not defined by the Act, the Commission should, as a matter of course, provide interested parties with an opportunity to be heard as to whether a new application must be determined by an Expert Panel. In some cases, it may be clear and therefore, uncontroversial, that the Act (as amended) requires that the matter be determined by an Expert Panel. We anticipate, however, that in some instances, that may not be so.’

[13] I accept the gravamen of this submission. In future, if an applicant identifies in an application that a matter should be referred to an Expert Panel, or the Commission on its own initiative considers that this may be necessary, interested parties will be given an opportunity to be heard before a decision is made. Notification of a new application will be made using the Commission's subscription services.

[14] I therefore encourage interested parties to subscribe to receive notifications on the [subscription services page](#) of the Commission's website. Any questions or comments about the contents of this Statement or the Commission's implementation of the Secure Jobs Better Pay Act can be sent to consultation@fwc.gov.au .

PRESIDENT