President's statement

Gender pay equity research – Stage 2 report published

Justice Hatcher, President   Sydney, 4 April 2024

[1]   On 3 February 2023, I issued a Statement announcing that as a result of the amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (SJBP Act) the Commission intended to engage in a research project on occupational segregation and gender undervaluation that would expand on the issues raised in the former President's Statement of 4 November 2022.

[2]   In the *Annual Wage Review 2022-23 decision*[1], the Expert Panel expressed the view that, because of the SJBP Act amendments, any issues of unequal remuneration for work of equal or comparable value or gender undervaluation relating to modern award minimum wage rates could no longer be left to be dealt with on an application-by-application basis, but should now be dealt with in the annual wage review process or in other Commission-initiated proceedings between reviews.[2] The Panel identified two potential issues in this respect[3] and said:

> [137] The issues we have identified are obviously too broad and complex to be resolved within the limited timeframe of this Review, and their resolution will require a body of research to support it. As foreshadowed in the President's statement of 3 February 2023 in relation to expert panels for pay equity and the Care and Community Sector, the Commission is undertaking a research project to identify occupations and industries in which there is gender pay inequity and potential undervaluation of work and qualifications. This research will inform future Reviews. The research will take place in two stages. Stage 1 of the research project will soon commence. It involves an evidence-based process to identify occupations and industries in which gender-based occupational segregation is prevalent, including at the classification level if possible. This stage is expected to identify:
>
> - the modern awards that cover those occupations and industries;
> - whether employees in those occupations and industries are predominantly award-reliant or receive above-award rates of pay by virtue of enterprise agreements or other wage arrangements;
> - any common characteristics of employment in the relevant occupations and industries (including whether employment is insecure due to the prevalence of casual and/or non-ongoing employment); and
> - whether employees within particular modern award classifications are more likely to receive award rates of pay than those classified at other levels within the same award.
>
> [138] A final report on that stage is expected by September of this year. Stage 2 of the research will build on the above expected findings by reporting on the extent to which the gender-segregated occupations, industries and classifications (including undergraduate

---

[1] [2023] FWCFB 3500.
[2] Ibid at [120].
[3] Ibid at [124]–[136].

classifications) identified in Stage 1 have associated indicia that suggest they may also be subject to gender undervaluation.

[139] Once this research project has been completed and the research reports have been published, Commission proceedings will be initiated to consider and, if necessary, address the outcomes of the research project. Depending upon the timing, this may occur as part of or in association with the 2023-24 Review.

[3]   On 15 November 2023, I issued a Statement announcing the publication of a report produced by the UNSW Social Policy Research Centre titled *Gender-based Occupational Segregation: A National Data Profile* (Stage 1 report).

[4]   I identified in my Statement that the Stage 1 report suggests that there are 13 modern awards used to set pay in the 29 large, highly-feminised occupations that were identified within feminised industries. The relevant awards are (with the highly feminised occupations in brackets):

- *Nurses Award 2020* (Midwives, Registered Nurses, Enrolled and Mothercraft Nurses, Nurse Managers)

- *Educational Services (Teachers) Award 2020* (Early Childhood (Pre-Primary School) Teachers; Primary School Teachers)

- *Children's Services Award 2010* (Child Carers)

- *Health Professionals and Support Services Award 2020* (Dental Assistants, Receptionists in Hospitals and General Practice, Medical Technicians, Psychologists)

- *Educational Services (Schools) General Staff Award 2020* (Education Aides)

- *Hair and Beauty Industry Award 2020* (Hairdressers and Beauty Therapists)

- *General Retail Industry Award 2020* (Clothing Retail Sales Assistants and Retail Managers)

- *Aged Care Award 2010* (Nursing Support and Personal Care Workers; Aged and Disabled Carers)

- *Social, Community, Home Care and Disability Services Industry Award 2010* (Aged and Disabled Carers)

- *Pharmacy Industry Award 2020* (Pharmacy Sales Assistants)

- *Legal Services Award 2020* (Conveyancers and Legal Executives)

- *Animal Care and Veterinary Services Award 2020* (Veterinary Nurses)

- *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Award 2020* (Dental Assistants).

[5]   On 5 December 2023, I issued a Statement confirming that Stage 2 of the Commission's research project would examine each of the awards identified above (except the *Aged Care Award 2010*, which continues to be the subject of separate work value proceedings).[4]

[6]   Staff of the Commission have now prepared the Stage 2 report, which is published with this Statement. The Stage 2 report examines the history of these awards to determine whether the Commission (or its predecessors or, where relevant, State tribunals) has ever undertaken a comprehensive work value assessment of classifications within the awards and to identify any other indicia of historic gender-based undervaluation.

[7]   The award histories cover:

- the development of pre-modern federal awards;
- the development of any state-based awards where relevant;
- the award modernisation process; and
- any 4 yearly review or other post-award modernisation matters considering wages.

[8]   The Stage 2 report identifies the history of wage fixing and work value assessments in each of the 12 identified awards in order to aid the identification of any indicia of gender undervaluation. These indicia include a lack of a work value exercise undertaken by the Commission, inadequate application of equal pay principles and the making of consent awards and agreements.

[9]   I foreshadowed in my Statement of 2 February 2024 regarding the timetable and research program for the Annual Wage Review 2023–24[5] that parties would be invited to comment on the research in their submissions to the annual wage review and that further directions would be issued alongside the publication of the report that will provide additional guidance to parties about responding to the report.

[10]   Since the 2 February 2024 Statement was published, the ANMF has made a separate work value application in relation to the *Nurses Award 2020* (matter AM2024/11).

[11]   The Expert Panel in the Annual Wage Review 2023–24 will consider the Stage 1 report, Stage 2 report and parties' submissions in response as part of its further consideration of issues arising in connection with the gender equality objectives of the *Fair Work Act 2009* (Cth).

Next steps

[12]   Parties are now invited to comment on the research in submissions to the Annual Wage Review 2023–24 by **5:00 pm (AEST) on Monday, 29 April 2024.**

---

[4] A comprehensive award history is provided in decision [2024] FWCFB 150 at [96]–[108].
[5] [2024] FWC 278 at [4].

[13]   As mentioned in my 5 December 2023 Statement, parties can comment on both the Stage 1 report and the Stage 2 report. Their submissions may address any issues considered relevant to the statutory gender equality objectives, including whether the Stage 2 report discloses any indicia of historic gender undervaluation in any of the subject modern awards. Any relevant errors or omissions in the reports may also be identified.

PRESIDENT