

**Senate Education and Employment Legislation Committee Inquiry  
Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022**

Associate Professor Meg Smith, Western Sydney University

Dr Michael Lyons, Western Sydney University

1. We welcome this opportunity to make a submission to the Senate Education and Employment Legislation Committee's inquiry into the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 ('the Bill').
2. Our submission focuses on the Bill's gender equality provisions, most specifically those provisions that address equal remuneration and gender pay gaps.
3. Associate Professor Meg Smith has published and presented widely in the field of employment relations with a specific interest in gender pay equity. This work has included research consultancies for state and federal government departments and agencies and the provision of expert opinion and submissions to tribunal and parliamentary inquiries. Her expertise in the concept of gender undervaluation was reflected in her appointment by the FWC to complete a research-based independent report to assist parties to the proceedings under Part 2 – 7 of the Fair Work Act 2009 (Cth) (together with Professor Andrew Stewart and Dr Robyn Layton). She has previously undertaken research case studies, highlighting undervaluation, that were the basis of examination in the NSW Pay Equity Inquiry and provided expert witness evidence (with Dr Michael Lyons) to proceedings in the Fair Work Commission (FWC) to vary modern awards to increase the minimum wages of aged care sector workers. She has co-edited a special issue of the *Journal of Industrial Relations* assessing the application of the principle of equal pay for work of equal value, as expressed in the International Labour Organization (ILO) Equal Remuneration Convention (No.100) of 1951. Based on case studies from Australia, New Zealand and three East Asian countries (Japan, South Korea and China), the special issue examined the ways in which this principle has been given effect within different regulatory regimes, identifying limitations to its incorporation into legislation and wage-setting processes, barriers to its implementation in practice and inconsistencies in its application over time.

4. Dr Michael Lyons has expertise in the areas of Australian industrial relations, workplace relations, including issues of gender relations and equality and with a particular interest in the employment relations of the children's services industry. He has researched and published in these areas. Dr Lyons has previously applied his expertise in identifying undervaluation of award classifications in evidence to both the Industrial Relations Commission of New South Wales (IRC of NSW) and the Queensland Industrial Relations Commission (QIRC). In both matters, the respective Full Bench accepted his evidence that undervaluation existed.<sup>1</sup>
  
5. The Bill specifically addresses gender equality in a number of ways including through amendments to the following sections of the Fair Work Act (FW Act). Our submission will address each of these proposed amendments in turn.
  - The objects (s 3)
  - The equal remuneration provisions in Part 2-7
  - The modern award provisions in Part 2-3 (s 134, s 157)
  - The minimum wage provisions in Part 2-6 (s 284)
  - The expert panel provisions in Part 5-1 (s 617).
  
6. The Australian Parliament's consideration of amendments to the FW Act occurs in the context of a labour market characterised by a persistent gender pay gap (GPG). The Work+Family Policy Roundtable (2022, p. 10) noted that progress in addressing the gap has been 'incremental, uneven and slow'. In 2001, the GPG for full-time ordinary earnings was 15.4% - twenty one years later in May 2022 it was 14.0% (equal to a \$263.90 per week gap). The GPG is wider for full-time total earnings (20.0%) (ABS, 2022). Wage gaps are evident in hourly, weekly and annual wages (KPMG, 2019).

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<sup>1</sup> *Re Miscellaneous Workers' Kindergartens and Child Care Centres etc (State) Award* (2006) 150 IR 290 at [101-108,199]; *LHMU v Children's Service Employers Association* (2006) 182 QGIG 318.

*Objects of the Act*

7. Part 4 of the Bill would amend section 3 of Division 2, Part 1-1 of the Fair Work Act (FW Act) to stipulate the promotion of gender equity into the object of the FW Act. The inclusion of gender equity address the previous exclusion of gender equity as a purposive objective for the FWC. Elsewhere, the Explanatory Memorandum (paragraph 6) notes that the ‘FWC must take into account the object of the FW Act when performing functions or exercising its powers under the FW Act’.
8. The Explanatory Memorandum (paragraph 335) provides further guidance on how gender equity will be promoted through the FW Act, noting explicit changes to the modern awards objective (section 134) and minimum wages objective (section 284). Elsewhere the Explanatory Memorandum (paragraph 251) implicitly references the FWC’s consideration of gender equity, in relation to setting conditions of employment in modern awards and its review of minimum wages.

*The Bill would promote Article 11(1) of the CEDAW by requiring the FWC to consider gender equity when performing functions or exercising its powers under the FW Act, including when setting conditions in modern awards and reviewing minimum wages. Under the amendments, the FWC would be required to consider the principles of equal remuneration, address gender-based undervaluation of work and promote fair working conditions for women, in order to prevent discrimination against women in employment.*

9. The language used by the Explanatory Memorandum does not limit the FWC’s address of gender equity to the exercise of its functions in relation to modern awards or the review of minimum wages. Additionally there are explicit provisions addressing equal remuneration in the legislation (Part 2-7) which are also the subject of proposed amendments. What is less clear through the amendments and the additional material provided by the Explanatory Memorandum, is what guidance is provided to the FWC in its address of gender equity in the approval of enterprise agreements. We will address this matter at a further point in this submission.
10. Acknowledging gender equity as an object of the FW Act recognises its importance and underlines the FWC’s role in achieving this object. While acknowledging this positive development, a preferred term in lieu of *gender equity*, would be *gender equality* as it is a term that more comprehensively encompasses substantive equality in impact, outcome or result for a wider range of industrial and employment matters.

*Proposed Amendments to Part 2-7*

11. The proposed amendments to Part 2-7 positively address limitations to the application of equal remuneration provisions in federal labour law. Part 2-7 provides for the FWC to issue equal remuneration orders where the objective of equal remuneration for work of equal or comparable value is not met. In the last twenty years, there has been only one successful application for equal remuneration orders in the federal jurisdiction, an outcome that reflects unresolved limitations in the construction and interpretation of the FW Act's equal remuneration provisions (Smith and Whitehouse 2020).
12. Whitehouse and Smith (2020 p. 521) identify equal pay (or equal remuneration) for work of equal value (or equal and comparable value) principles as measures that have sought to redress gender pay inequalities in work that extended beyond a formal 'like with like' equality. These principles had a wider objective though extending equal pay or equal remuneration beyond those instances where women and men were performing the same work. Addressing equal value required approaches to wage setting and work value assessment that were able to accommodate women and men undertaking different work.
13. Yet federal labour law's historic address of principle of equal pay for work of equal value, and the principle of equal remuneration for work of equal or comparable value, has been highlighted by contradictory and highly contested changes in the regulatory framework and interpretation of that framework (Whitehouse and Smith, 2020; Smith and Lyons, 2022).
14. Smith and Lyons (2022, paragraphs 86-87) summarise the transitory and contested nature of equal remuneration regulation in the following way:

*The 1972 equal pay for work of equal principle, with its explicit focus on equal value and lack of explicit need for a male comparator, was limited through the Commission's unwillingness to extend comparisons beyond similar work. The extension to a legislated entitlement to equal remuneration for work of equal value in 1993 was limited in practice by constraints on the capacity to demonstrate equal value, including the Commission's interpretation of the requirement to 'prove' that disparate rates of pay arose from discrimination and the individualisation of comparison that this test imposed. The model that emerged in state jurisdictions from NSW and Queensland pay equity inquiries in the late 1990s and early 2000s, embedded in equal remuneration principles for establishing gender-based undervaluation that did not require comparators or proof of discrimination.*

*The subsequent expansion of the federal jurisdiction has precluded further application of the NSW and Queensland principles in the private sector. More recently the interpretation of the federal equal remuneration provisions in the Fair Work Act as undergone a significant change, such that the concept of gender-based undervaluation cannot be utilised in support of equal remuneration claims. This is evident most recently in the requirement for a binary and gendered comparator, and emphasised in the Commission's acknowledgment that applications for equal remuneration orders will be more straightforward when the workers are performing similar work under similar conditions.*

*The Commission's current reasoning and requirement for a binary and gendered comparator in Part 2-7 proceedings has reaffirmed the place of masculinised benchmarks in federal equal remuneration regulation. This requirement needs to be read alongside the Commission's acknowledgment that applications for equal remuneration orders will be more straightforward when the workers, featured in the application, are performing similar work under similar conditions. Such a requirement favours an individual woman or a small group of women claiming equal pay for work of equal value on the basis of a comparison with a male worker or workers in a single workplace (Smith and Whitehouse 2020). These issues have highlighted complexities within equal remuneration and work value discourses in addressing equivalences across different areas of work (Smith and Stewart 2017, pp. 133-34).*

15. This contradiction and uncertainty in federal labour law has impacted the accessibility of equal remuneration orders and the assessment of the work value of highly feminised industries and occupations. The current interpretation of Part 2-7 has limited the capacity for the tribunals to assess whether there have been weaknesses in past assessments of work value and whether current rates of pay are in accord with the tribunal's contemporary assessment of the value of work (Smith and Stewart 2017).
  
16. The proposed amendments to the FW Act address a number of these anomalies. By way of Part 5 of the Bill, amendments to subsection 302(3) of the FW Act make it explicit that the FWC is able to take into account whether 'historically the work has been undervalued on the basis of gender'. We also highlight the proposed new paragraph 302(3)(a), granting the FWC discretion to make an ERO on its own initiative. This amendment would respond to an observation made by a Full Bench of the Industrial Relations Commission of New South Wales in 2019.<sup>2</sup>

*Since the inception of the Equal Remuneration Principle, all major cases have been brought by way of application by Unions. Cases such as this are extremely resource and time intensive and this raises the question of whether it is appropriate that Unions, funded by a declining member base, are able to*

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<sup>2</sup> *Crown Employees (School Administrative and Support Staff) Award* [2019] NSWIRComm 1082 at [41].

*bring all such cases at the rate they need to be to effect the reforms the Principles were intended to deliver. A question arises as to whether there might be a need for legislative and/or bureaucratic solutions to ensure that all Pay Equity Cases that should be, are brought before the Commission.*

17. Additionally while the FWC is able to take into account comparisons within and between occupations and industries to establish whether the work has been undervalued on the basis of gender, such comparisons are not limited to similar work. Nor is the comparison limited to a male-dominated occupation or industry. The proposed amendments concerning the absence of a requirement for a male comparator in equal remuneration would be strengthened if they more directly reflected the language of the Explanatory Memorandum. The Explanatory Memorandum (paragraph 55) notes that a requirement for a comparison with a male dominated industry or occupation is no longer a jurisdictional prerequisite of the granting of an equal remuneration order. Appreciating the combined effect of both (proposed) 302(3A) and 302(3B), there would be improved clarity through a footnote to the provisions of paragraph 302(3A)(a) which stipulates that ‘A comparison with a male-dominated occupation or industry is not a requirement in a Part 2-7 application’.
18. The proposed amendments recognise that gender may have impacted the proper valuation of work. Smith and Lyons (2022, paragraph 56) summarise research and industrial assessments of gender undervaluation as follows:

*Gender-based undervaluation and related terms refer to work value practices that are impacted by gender and which contribute to a failure to recognise work value in assigned wages. The relation between gender and the valuation of work is multi-dimensional as evident in both industrial and research assessments of undervaluation. Industrial assessments of undervaluation and its relation to gender have placed weight on inadequacies in the description and classification of work, the absence of work value assessments, incomplete or inadequate work value assessments and the impact of normative assumptions about feminised areas of work on the industrial value of the work. Research assessments of undervaluation examine how male-dominated occupations, or stereotypical male tasks, are rewarded more highly than highly feminised work or stereotypical feminised tasks. This research identifies the contribution of socially constructed understandings of gender on the assessment of skill and work value.*

19. The explicit recognition of the undervaluation of work on the basis of gender, and the lack of a requirement for comparators with male dominated occupations or industries, means that the underlying test for the equal remuneration for work of equal or

comparable value will not revert routinely to a male standard or benchmark. Comparisons within and between occupations and industries are not required in order to establish undervaluation of work. Male ‘comparators’ might be used for illustrative purposes but are not an evidentiary precondition.

20. The Explanatory Memorandum notes that the proposed amendments to subclause 302(3A) incorporates key elements of the equal Remuneration Principle (ERP) set out in the *Industrial Relations Act 2016* (Qld) to guide the FWC’s consideration of equal remuneration cases. The influence of the Queensland ERP is evident in the reference to historical undervaluation of work based on gender, the explicit exclusion of a requirement for a male comparator and the lack of requirement for applicants to demonstrate discrimination.
21. The proposed amendments to the FW Act do not include a federal ERP but have alternatively included explicit provisions directly into Part 2-7 that approximate the Queensland ERP. A further relevant consideration is that specific guidance on the valuation of work is included in those parts of the FW Act concerning modern awards and the review of minimum wages.
22. A matter for consideration is whether the objective of gender equity (or gender equality) and the principle of equal remuneration for work of equal or comparable value would also be assisted by an explicit gender equality principle (GEP) operating as a schedule to the Act. The GEP would be in addition of the proposed amendments to the FW Act. The GEP would support the assessment of gender equality in all relevant parts of the FW Act, including considerations of working time. The GEP would support the address of common barriers to the identification and redress of gender-based undervaluation such as difficulties in identifying comparators and limitations to the scope of remedies. The GEP could usefully incorporate the explicit considerations of the Queensland ERP and matters referenced in referenced in principles developed to address pay equity matters in New Zealand (Te Kawa Mataaho Public Service Commission, 2020, p. 6) notably:
  - Any social, cultural or historical factors which may have led to undervaluing or devaluing of the work and the remuneration paid for it
  - There is or has been some characterisation of the work as “women’s work”

- Any social, cultural or historical phenomena whereby women are considered to have “natural” or “inherent” qualities not required to be accounted for in wages paid
23. The proposed amendments to the FW Act also introduce a requirement for the FWC to make an equal remuneration order if it is satisfied that, for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value. This amendment removes the present discretion available to the FWC, noting that the current provisions state that the FWC may make an order.
24. In summary the proposed amendments to Part 2-7 address key deficiencies in the FW Act that have impacted the FWC’s consideration of gender-based undervaluation of work and gendered wage outcomes. A gender equality principle would provide additional support for the consistent and substantive address of gender equity (or gender equality).

#### *Modern Awards*

25. The proposed amendments to the modern award objective of the FW Act explicitly address gender equity. By way of a new paragraph (134(1)(ab)) in the modern awards objective, the amendment recognises ‘the need to achieve gender equity in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women’s full economic participation’. However, we are uncertain if this consideration will be given high, low or no priority by the FWC. An issue commented on by Smith and Lyons (2022, paragraphs 182-183).

*When the FWC conducted a review of the Aged Care Award in 2013 Deputy President Gooley indicated the difficulties in varying a modern award to “achieve the modern awards objective ” or because an award is operating other than “effectively, without anomalies or technical problems” (United Voice and others [2013] FWC 5696; Leigh Svendsen’s statement, paragraph 227 & Tab 157 of Exhibit LS-1, p. 1529 at [85]).*

*With the next review of Aged Care Award in 2019 the FWC again highlighted these challenges: “The obligation to take into account the s.134 considerations means that each of these matters, insofar as they are relevant, must be treated as a matter of significance in the decision-making process. No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award” ([2019] FWCFB 5078 at [10]).*



26. An explicit requirement for the FWC to address gender equity in its address of modern awards recognises the importance of awards to women’s wages and working conditions and economic participation. Women are more likely to be award-reliant than men (Birch and Preston 2021, p. 317) and are thus dependant on the minimum wages established by awards. An examination of whether award rates properly reflect the value of the work is an important foundation to the address of gender equity in Australia. The objective of gender equity is not confined to award rates of pay but award rates have an influence over multiple forms of wage setting. In Australia multiple minimum wage rates are established across the framework of modern awards that set a legally binding minimum wages and conditions of employment. These award rates are relevant for award-reliant employees and also establish legally binding minima for those whose actual rates of pay are determined by over-award payments and enterprise agreements. (Layton Smith and Stewart, 2013, p. 98, p. 126; Pointon et al 2012, p. 4)
27. The Bill would also amend those provisions of the FW Act which provide that the minimum wages in a modern award may be varied if such a variation is justified by work value reasons. Work value reasons are defined in subsection 157(2A) of the FW Act. The proposed amendments to the FW Act introduce a subclause 157(2B) to stipulate that the FWC’s consideration of work value reasons ‘must be free of assumptions based on gender’ and ‘must include consideration of whether historically the work being assessed has been undervalued because of such assumptions’.
28. These proposed amendments reflect recent decisions of the FWC to include consideration of gender based undervaluation in applications to vary modern awards on work value grounds. These decisions have been a recent development in FWC’s consideration of applications to vary awards. Smith and Lyons (2022, paragraphs 89 to 92) summarise the trajectory of the FWC’s (and its predecessors) address of work value in the period from 1987-2008 and conclude that until recently FWC’s primarily focused on assessing *changes* in work value rather than addressing whether rates of pay properly reflected the value of work.

*Work value adjustment to minimum wage rates was an accepted part of the wage fixing principles of both federal and state tribunals, while claims*

*concerning ‘anomalous’ or ‘inequitable’ assessments could also be addressed through the ‘anomalies and inequities’ provisions of those principles (Stewart 2020). It was typically the practice of industrial tribunals in minimum wage determination that claims for an adjustment required evidence that there had been change in the ‘nature of the work, skill and responsibility required or the conditions under which work is performed’, since the last time that the work in question had been formally assessed by the tribunal.*

*This requirement for tribunals to make an adjustment to minimum rates based only on a change in work value has meant that there has been a limited capacity to address what may have been errors and flaws in the setting of minimum rates for work in female dominated industries and occupations. These limitations in the capacity of the tribunal to the proper valuation of the work arises because any potential errors in the valuation of the work, may have predated the last assessment of the work by the tribunals. Errors in the valuation of work may have arisen from the female characterisation of the work, or the lack of a detailed assessment of the work, The time frame or datum point for the measurement of work value which limit assessment of work value to changes of work value, or changes measured from a specific point in time mitigated against a proper, full-scale assessment of the work free of assumptions based on gender.*

*The absence of work value assessments or restraints in work value assessments can contribute to limitations in the skills classifications in awards relevant to feminised industries and occupations. The classification structures may lack relevant description and information of what is required in jobs, including the detailed specifications of the skills required at different skill levels. These omissions are critical as it means that the work undertaken is not properly described, recognised and valued. Weaknesses in classification structures may also mean that there is no mechanism to recognise additional skills (Charlesworth and Smith 2018).*

*The capacity to address the valuation of feminised work has also been limited by the requirement in wage fixing principles and guidelines to position that valuation against masculinised benchmarks. This requirement for a comparator that has been a feature of recent equal remuneration proceedings in the federal jurisdiction has previously been noted but the pivotal role of the metal industry tradesperson in wage fixing is also well documented. As an example the award restructuring requirements of wage fixing principles from 1988 was ultimately designed around a set of masculinised classifications and credentials and thus offered a limited capacity to properly describe, delineate and reward work in feminised industries and occupations.*

29. There is no reference in the current FW Act for any requirement that a particular *change* in work value be established. This provision has tested rarely and was not a feature of early award modernisation proceedings (Macdonald and Charlesworth 2013). The FWC by way of its decision in the early childhood education and care case and its rejection of gender based undervaluation as the basis for assessing applications filed under Part 2-7, indicated that it saw ‘no reason in principle why a claim that the minimum rates of pay

in a modern award undervalue the work to which they apply for gender-related reasons could not be advanced for consideration under s 156(3) or s 157(2).<sup>3</sup>

30. The guidance by the FWC concerning the use of work value provisions was evident in two subsequent applications. In April 2021 a Full Bench of the FWC addressed an application to vary minimum rates of pay for teachers employed in the early childhood and care sector, alongside an application for an equal remuneration order. The Full Bench rejected an application for an equal remuneration order but assessed that an adjustment to the minimum rates of teachers was justified on work value grounds.<sup>4</sup>
31. In November 2022 Full Bench of the FWC determined that in respect of direct care workers in the aged care sector ‘the evidence establishes that the existing minimum rates do not properly compensate employees for the value of the work’ as performed by nominated classifications of employees. This reasoning led the FWC to support an interim wage increase of 15 per cent.<sup>5</sup> [2022] FWCFB at [922].
32. In summary the proposed amendments address many barriers and constraints to the proper assessment of work value in female dominated industries and occupations by industrial tribunals in Australia. The amendments will support the assessment of whether previous work value assessments were influenced by gendered norms and historical legacies, or whether areas of work have been characterised by an absence of comprehensive work value assessments. These constraints have limited the assessment of work value to changes in work tasks rather than assessing if the value of work is properly set. A statutory constraint in the assessment of work value is not evident in the work value provisions of the FW Act but there has been limited evidence that award modernisation provided the framework for the assessment of work value. The proposed amendments make it clear that the consideration of gender-based undervaluation of work is consistent with the modern award objective.

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<sup>3</sup> *Equal Remuneration Decision 2015* [2015] FWCFB 8200 at [292].

<sup>4</sup> [2021] FWCFB 2051 at [645].

<sup>5</sup> [2022] FWCFB at [922].

33. The proposed amendments will support the FWC's address of the undervaluation of work on the basis of gender through the adjustment of minimum rates in female dominated industries and occupations.
34. The proposed amendments to the modern award objective utilises the term gender equity. Consistent with our submission at paragraph 10, a preferred term would be gender equality.

#### *Minimum Wages Objective*

35. The proposed amendments to the FW Act include a change to the minimum wages objective so that it incorporates 'the need to achieve gender equity, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps'. The Explanatory Memorandum (paragraph 346) notes that the 'FWC would be required to take this new factor into account when performing or exercising its functions or powers under the existing Part 2-6 of the FW Act (which relates to minimum wages) and existing Part 2-3 of the FW Act (which relates to modern awards) as far as it relates to modern award minimum wages (existing subsection 284(2))'.
36. The proposed amendments to the minimum wages objective complement the proposed amendments to the modern award objectives.
37. What is less evident from the amendments is whether the changes to the modern award and minimum wage objectives would support the FWC addressing the changes faced by workers in female-dominated sectors to secure higher wages by way of enterprise bargaining. The feature of enterprise bargaining has previously been recognised by the Queensland Industrial Relations Commission. The QIRC in equal remuneration proceedings has included an Equal Remuneration Component (ERC) in addition to increases to award rates. These components have been awarded where the QIRC was of a view that increases in minimum award rates would not sufficiently address the undervaluation established by the applicants, because of the typical inability of workers

in the relevant sector to secure higher wages through enterprise bargaining (Smith and Stewart, 2014).<sup>6</sup>

38. The matter has also been considered by the FWC in equal remuneration proceedings in the social and community services sector where the Full Bench's decision accommodated wage increases and a loading a recognition of the impediments to bargaining in the industry.<sup>7</sup> An important caveat is that the proceedings concerning the social and community services sector arose from an application for equal remuneration orders under Part 2-7 of the FW Act. In exercising its powers under the under Part 2-7, the FWC is currently required to have regard to the wage-fixing principles established by its own Minimum Wage Panel. Yet the FWC is not constrained by either the modern awards objective in s 134 or the minimum wages objective in section 284, neither of which apply in their terms to an exercise of power under Part 2-7 (Smith and Stewart 2014).
39. The proposed amendments to the modern award objective and the minimum wages objective includes emphasis on the requirement to address the gender undervaluation of work and gender pay gaps. These obligations require that the FWC ensure that changes arising from an application to vary modern awards give consideration to the impediments to bargaining.
40. The proposed amendments to the FW Act do not include explicit guidance to the FWC to support the objective of gender equity when approving enterprise agreements. The proposed amendments address the simplification of the approval process with the Explanatory Memorandum (paragraph 678) noting that 'Part 14 of the Bill would amend Divisions 3 and 4 of Part 2-4 of the FW Act to simplify requirements that need to be met for an enterprise agreement to be approved by the FWC, which are often regarded as overly prescriptive and complex'.
41. Given the explicit address of gender equity in the object of the FW Act, it is incongruous that the FWC is not required to explicitly consider gender equity in its approval of

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<sup>6</sup> See *Liquor Hospitality and Miscellaneous Union* (2005) 180 QGIG 187; *Queensland Services, Industrial Union of Employees* (2009) 191 QGIG 19.

<sup>7</sup> (2012) 208 IR 446 at [69].

enterprise agreements. But we appreciate this is a complex matter requiring careful consideration about how it might be achieved.

### *Expert Panels*

42. Part 6 of the Bill would insert new provisions at Part 5-1 of the FW Act establishing a Pay Equity Expert Panel and a Care and Community Sector Expert Panel within the FWC to determine equal remuneration cases and certain award cases. The amendments would allow for the appointment of members with expertise in gender pay equity, anti-discrimination, and the Care and Community Sector.
43. The proposed amendments acknowledge the requirement for expertise to address nominated applications. This amendment provides the FWC with the capacity to utilise expertise in research that is germane to the application and consequently add to the accumulation of broad expertise and resources.
44. Additional measures for consideration include a Research Unit in the FWC, suitably supported by funding for data collection and research to support the FWC and parties in equal remuneration and award modernisation proceedings.

### References

- ABS (2022) *Average Weekly Earnings, Australia*, May 2022, catalogue number 6302.0. URL: <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/may-2022>
- Birch E. and Preston A (2021) The Australian labour market in 2020, *Journal of Industrial Relations*, vol. 63, no. 3, (3), pp. 303-320.
- KPMG (2019) *She's Price(d)less. The Economics of the Gender Pay Gap (Detailed Report)*. Prepared with Diversity Council Australia (DCA) and the Workplace Gender Equality Agency (WGEA).
- Layton R, Smith M and Stewart A (2013). *Equal Remuneration under the Fair Work Act 2009*, Report for the Pay Equity Unit of the Fair Work Commission, University of Adelaide.
- Macdonald F and Charlesworth S (2013) Equal Pay under the Fair Work Act 2009 (Cth): Mainstreamed or Marginalised? *University of New South Wales Law Journal*, vol. 36, no. 2, pp. 563-586.
- Pointon M, Wheatley T, Ellis, G et al(2012) *Award reliance and differences in earnings by gender*, Research Report 3/2012, Fair Work Australia, Melbourne.
- Smith M and Lyons M (2022) *Report by Associate Professor Meg Smith and Dr Michael Lyons dated October 2021, as amended 2 May 2022 and submitted in Fair Work Commission proceedings, s 158 application to vary or revoke a modern award Aged Care Award 2010, Nurses Award 2020, Social, Community, Home Care and Disability Services Industry Award 2010*. <https://www.fwc.gov.au/hearings-decisions/major-cases/work-value-case-aged-care-industry/submissions-work-value-case>
- Smith M and Stewart A (2014) Equal remuneration and the *Social & Community Services* case: Progress or diversion on the road to gender equity, *Australian Journal of Labour Law*, vol. 27, no. 1, no. pp. 31-56.
- Smith M and Stewart A (2017) Shall I compare thee to a fitter and turner? The role of comparators in pay equity regulation, *Australian Journal of Labour Law*, vol. 30 (2), pp. 113-136.
- Smith M and Whitehouse G (2020) Wage-setting and gender pay equality in Australia: Advances, retreats and future prospects. *Journal of Industrial Relations* 62(4). DOI: 10.1177/0022185620926220.
- Te Kawa Mataaho Public Service Commission (2020) *Pay Equity in New Zealand Context and Principles*. <https://www.publicservice.govt.nz/assets/SSC-Site-Assets/Workforce-and-Talent-Management/Pay-Equity-Context-and-Principles.pdf>
- Whitehouse G and Smith M (2020) Equal pay for work of equal value, wage-setting and the gender pay gap. *Journal of Industrial Relations*, vol. 62, no. 4, pp. 519-532.
- Work + Family Policy Roundtable (2022) *Work Care & Family Policies. Federal Election Benchmarks 2022*, <https://www.workandfamilypolicyroundtable.org/>