

Answers to Questions taken on Notice at Senate Committee Hearing on 4 November 2022

Senator LAMBIE: Why are unions being given power to prosecute a breach of the prohibition on advertising pay rates which are too low? Why doesn't this power—and I don't think this has been changed in New South Wales—lie with the Fair Work Commission?

In addition to the answer given by Professor McCrystal, the ability to enforce proposed s 536AA (Employer obligations in relation to advertising rates of pay) is given both to employee organisations and the Fair Work Ombudsman.¹ This is consistent with many of the civil remedy provisions of the FW Act (eg those relating to underpayment of wages), in which enforcement powers are given to unions, the FWO and other bodies. As well as the expertise unions have, many employees prefer to raise matters of concern with their union than with the FWO. Union enforcement is a vital aspect of ensuring higher levels of compliance with Australia's workplace laws.

Senator BARBARA POCKOCK: I just want to follow up on Senator Lambie's line of questioning. Is there anything to prevent the federal government from making a wage supplement in the areas where it is the head employer? For example, it has been recommended this week by the major employer in the childcare industry that a 10 per cent wage supplement be paid immediately, recognising that any changes in this bill are going to take some time to take effect. Is there anything to stop the government from listening to that request and making an immediate payment that would lift pay for many thousands of workers, deal with a real skills crisis and also help narrow the gender pay gap? What's your view on that, Professor Forsyth and Professor McCrystal?

We understand this to be a reference to the request by Goodstart Early Learning that the Government allocate extra funds through the federal childcare subsidy program to provide for an immediate 10% pay increase for workers in the early childhood education and care sector. We can see no legal impediment to this occurring. It is a matter for the Government to decide upon based on budgetary and other relevant considerations which are beyond our expertise. We note that the industry body Early Childhood Australia and the United Workers Union recently committed to jointly examine options for multi-employer bargaining, which may provide a more sustainable basis for wage increases in this sector. Such an outcome would be facilitated by the Supported Bargaining stream provisions in Part 20 of the Bill.

¹ Proposed item 29AA to be inserted in FW Act, s 539(2).