

Senate Standing Committee on Education and Employment
ANSWERS TO QUESTIONS ON NOTICE
Fair Work Amendment (Gender Pay Gap) Bill 2015

Witness: Amanda McIntyre, First Assistant Secretary, Office for Women, Department of the Prime Minister and Cabinet

Reference: page 47 of proof Hansard

Question:

CHAIR: It was an open-ended free kick to the Workplace Gender Equality Agency by Senator Marshall, and I just wondered if you had anything to add. I might ask both of you: what are some of the technical issues arising from the proposed amendments, or what could be? Ms Woods?

Ms Woods: I might pass that to you, Amanda, in the first instance, if you do not mind.

Ms McIntyre: I think the biggest issue is that we do not really understand what the regulatory burden would be versus the benefit achieved, so I would like to understand that better.

CHAIR: Right.

Senator MARSHALL: What sort of regulatory burden could there be by simply putting in place a provision that someone cannot do something? If they cannot do it and it is then unenforceable, you would think there would be no regulatory burden.

Ms McIntyre: I would have to take that on notice in terms of what specific impact it would have, just noting that there has not been any regulatory impact assessment done.

Answer:

As the Bill is not Government policy a Regulation Impact Statement has not been undertaken. There are a range of technical issues arising out of the Bill which include ambiguity regarding what is meant by the terms 'pay' and 'earnings' used in the Bill where the term 'pay' is used in various contexts throughout the *Fair Work Act 2009* and the term 'earnings' is used specifically in the context of the annual earnings guarantee contained in Division 3, Part 2-9 of the *Fair Work Act 2009* and whether pay gagging clauses which apply to rates of pay contained in Individual Flexibility Arrangements would be caught by the amendment.

Senate Standing Committee on Education and Employment
ANSWERS TO QUESTIONS ON NOTICE
Fair Work Amendment (Gender Pay Gap) Bill 2015

Witness: Amanda McIntyre, First Assistant Secretary, Office for Women, Department of the Prime Minister and Cabinet

Reference: page 48 of proof Hansard

Question:

Senator WATERS: I want to question you further on your claim that there have not been any benefits from overseas regulation in this regard. We had one of the earlier witnesses, Professor Brown, saying that there had been a four to 12 per cent improvement in women's pay as a result of the US abolition of pay secrecy clauses. That seems to run counter to what you have suggested in claiming that there was no benefit. How do you reconcile those two? As I noted, unfortunately I was unable to hear the previous evidence and I would be interested to know how that particular evidence is being regarded—just the secrecy clause and whether there were any other changes in that time. I will have to look at that evidence—

Ms McIntyre: I suggest you do.

CHAIR: Senator Waters, are you suggesting that the change to that clause was the only initiative from that particular government in that society over six years that resulted in that decrease in the gender pay gap?

Ms McIntyre: Is that a question for me? That is my understanding, but I will go to Professor Brown too. She goes into it in quite good detail in her submission.

Senator WATERS: That would be useful. I would caution you against saying there is not any evidence when perhaps you just have not had time to look at the evidence. Obviously, we do not want to imply that these things are not working when it looks like there is evidence that they are working. I understand you have not done an assessment of risk and nor is it appropriate to do that given that this is a private member's bill, but I hope that it does have the support of the larger parties.

Answer:

The evidence provided by Professor Michelle Brown regarding the study from the US (Kim, 2015) which indicates that, in states where pay secrecy clauses have been outlawed, there has been a decrease in the gender pay gap, has been reviewed by the Office for Women.

While the study uses a large sample size and accounts for a number of other factors that could contribute to wage discrepancies, such as education level and sector, it also suggests that “banning pay secrecy may not be what increases pay for women, but rather a larger culture that supports women” (p. 658) in the states that have introduced these laws. The Office for Women maintains that cultural change is an important driver in improving gender equality, including addressing the gender pay gap in Australia.

The introduction of minimum wage provisions in these states also had an impact, and men's and women's wages were both positively affected. This indicates that there has been broader legislative and cultural change that cannot be discounted as contributors to the reduction in the gender pay gap in those states. While the outlawing of pay secrecy clauses appears to have a positive effect in the evidence presented, it is not the only factor contributing to this positive change.

Reference:

Kim, Marlene (October 2015), "Pay Secrecy and the Gender Wage Gap in the United States", in *Industrial Relations* 54 (4).