

Chapter 3

Further key issues

Proposed amendments to the bill

3.1 The committee received evidence from a number of inquiry participants highlighting flaws in the bill and suggesting amendments.

3.2 For example, Professor Andrew Stewart, a specialist in employment law and workplace relations at the University of Adelaide who appeared in a private capacity, observed a clear limitation of the bill in relation to coverage:

I do think that there is a strong argument for promoting effective measures to reduce the gender pay gap by reducing the degree of pay secrecy. However, it seems to me that the bill has a number of potential flaws in some respects – seeking to go too far and in other respects not going far enough. It does not, as the explanatory memorandum claims, in my view, 'make sure that workers are allowed to tell their colleagues what they are paid if they wish to without fear of retaliation'. That is because it prohibits pay secrecy terms but not pay secrecy practices. So for example, if workers were told, including in policies and procedures that are not formally part of their employment contract, that they are not to disclose their pay to anyone else then arguably there is restraint there that is not caught by the bill.¹

3.3 Professor Stewart then outlined the way in which the bill would potentially go too far in amending the current legislation:

The aspect in which the amendment potentially goes too far is that it is concerned to remove pay secrecy for any purpose and not just for the purposes of addressing discrimination or gender pay issues. So for example, it would, on the face of it, prevent a company from requiring its employees not to disclose their salaries to a competitor where the competitor's interest is nothing to do with an interest in discrimination but simply wanting to find out what their competitor is doing. I think it might be better if the amendments were re-crafted so as to create a more specific but also more limited right to disclose pay information to co-workers, to unions or to regulators and also a right to ask for that information from co-workers rather than simply having the blunt instrument of prohibiting pay secrecy clauses for any purpose.²

3.4 Furthermore, while acknowledging that increased pay transparency had the potential to address certain aspects of the gender pay gap, Professor Stewart cautioned:

1 Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 2.

2 Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 2.

The questions are still going to be: what is the best way to do it, and does this bill strike the right balance between addressing that issue and respecting what, to me, remain legitimate reasons for having confidentiality of pay arrangements for some purposes.³

3.5 Professor Gaze noted that there is currently no mechanism in Australia that would allow an employee to check whether their pay is fair compared to that of their co-workers. Professor Gaze argued that a transparency provision is therefore essential to prevent pay inequity from remaining hidden.⁴

3.6 While supporting the bill in so far as it would protect an employee who disclosed pay information, Professor Gaze pointed out that it was unclear whether an employee who asked a co-worker to share their pay information would be protected. Professor Gaze observed that the bill could be improved by adding a provision that explicitly protected a worker who requested pay information from a co-worker:

Merely preventing a secrecy term from having effect, as the Bill does, is not the same as creating a positive right to make inquiries about pay equity and comparisons from co-workers rather than the employer. Ensuring that both employees who ask and those who disclose are protected from adverse consequences for such actions is essential to ensure the rights can be exercised without penalty. This could be done by adding to the Bill a provision that expressly protects employees who ask about pay rates from adverse consequences from their employers or fellow employees. Explicit protection for both the person requesting information from co-workers and the person who provides pay information would be the most effective way to proceed. Nothing in the Bill obliges employees to provide that information, but simply asking for it or giving it on request should not be either prohibited or penalised.⁵

3.7 However, Professor Gaze conceded that general pay transparency may be moving too far for some employers in Australia at present. She therefore suggested a compromise position that would protect pay discussions specifically for the purpose of checking pay equity within the workforce, but not for the purpose of generally publicising rates of pay. She noted that the recent changes to the *Equality Act 2010* (UK) embodied such a position.⁶ Representatives from VWL indicated to the committee that their organisation would support something similar as an alternative position.⁷

3 Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 7.

4 Professor Beth Gaze, *Submission 17*, p. 1.

5 Professor Beth Gaze, *Submission 17*, pp. 1–2; see also Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 4.

6 Professor Beth Gaze, *Submission 17*, p. 2.

7 Ms Sophie Brown, Co-Chair of Work Practices Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 31.

3.8 Professor Baird and Ms Heron went further and suggested that the bill be amended to expressly ban pay secrecy clauses. They also recommended that the Fair Work Information Statement which is given to an employee at the beginning of their employment by their employer be amended to include a statement about the change made by the bill in order to inform employees about pay transparency.⁸

3.9 During the public hearing the ACTU indicated it supported these proposals. Ms McCoy noted:

It is important...to ensure that workers are aware of their rights to disclose information about their pay. Allowing pay gag provisions, even if they are invalid, to remain in workplace agreements or policies will have the effect of discouraging workers from identifying and challenging unfair pay.⁹

3.10 Over the longer term, Professor Gaze suggested that gender pay equity would be advanced by enabling employees to check pay information such as pay grades and performance pay criteria.¹⁰

3.11 The Law Council suggested that the bill be amended to more closely reflect the aims outlined in the Explanatory Memorandum and ensure the aims of the bill were effectively achieved. The Law Council noted that the bill as currently drafted would allow employees to tell people other than their work colleagues what they are paid. However, the Law Council argued that 'the stated purpose of this bill does not appear to be advanced by permitting such conduct'. Rather, the Industrial Law Committee of the Law Council proposed that the bill could be restricted to its stated purpose by adding the following bolded words to proposed section 333B:

- (a) prohibits an employee from disclosing **to other employees of the employer, an industrial association or professional adviser**, the amount of, or information about, the employee's pay or earnings¹¹

3.12 Mr Jonathan Kirkwood from the Law Council also noted that this particular amendment may assist in alleviating some of the concerns expressed by employer associations:

The intent behind the amendment is really to clarify, or to perhaps address, a concern that has been expressed by employer groups that if there is a right to simply disclose remuneration to the public at large that could impinge upon legitimate commercial interests of employers. So we sought to draft something that makes it more focused on achieving the stated objectives of the bill – to address pay equity within the workplace...

8 Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 7; see also Victorian Women Lawyers, *Submission 11*, p. 2.

9 Ms Erin McCoy, Industrial Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 27 October 2016, p. 38.

10 Professor Beth Gaze, *Submission 17*, p. 2.

11 Law Council of Australia, *Submission 13*, p. 5, emphasis in original.

I suspect with all proposals of this type, it is a matter of balancing competing interests. To the mind of the members of the Industrial Law Committee, some weight does have to be given to the concerns employers might hold that information about the remuneration of employees is commercially sensitive – certainly, vis-à-vis other firms and competitors – and that that information, in the hands of a competitor, could be used to damage a particular business.¹²

3.13 VWL took a different position to the Law Council on this proposed amendment and stated that its primary position would be to have employees entitled to disclose their remuneration regardless of context. At the public hearing VWL representatives raised concerns that any type of limited disclosure could potentially result in confusion and reluctance on the part of employees to make any disclosures at all.¹³

3.14 Similarly, the ACTU commented that it did not support restricting the operation of the provisions to disclosures made for particular purposes and stated that limiting the disclosure right would make the provisions 'unnecessarily complex'.¹⁴

3.15 The Law Council also argued that the bill as currently drafted does not create a workplace right for employees to reveal their remuneration to fellow employees. This means that the bill does not offer protection under the *Fair Work Act 2009* if an employer took adverse action against an employee for revealing their remuneration to fellow employees.¹⁵ The Law Council noted, however, that if a new workplace right were to be created it would need to be appropriately balanced by a similar workplace right to choose not to disclose remuneration. This would ensure protection for employees who might be pressured to reveal their remuneration.¹⁶

3.16 The Law Council suggested this matter could be addressed by creating a workplace right in the form of a sub-provision that stated:

...an employee has the right to disclose or not disclose to other employees of the employer, an industrial association or professional adviser, their pay and earnings [or remuneration]¹⁷

12 Mr Jonathan Kirkwood, Member of the Industrial Law Committee, Federal Litigation and Dispute Resolution Section, Law Council of Australia, *Proof Committee Hansard*, 27 October 2016, p. 30.

13 Ms Sophie Brown, Co-Chair of Work Practices Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 31.

14 Ms Erin McCoy, Industrial Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 27 October 2016, p. 38.

15 The relevant part is Part 3-1 of the *Fair Work Act 2009* which relates to general workplace protections.

16 Law Council of Australia, *Submission 13*, p. 6.

17 Law Council of Australia, *Submission 13*, p. 6.

3.17 In relation to workplace rights, the ACCI informed the committee that it would 'strongly object to any interpretation of the provision that would suggest the creation of a new workplace right'.¹⁸

3.18 The Law Council also submitted that the use of the words 'pay or earnings' in proposed section 333B would not necessarily capture all the non-monetary benefits that the explanatory memorandum seeks to have protected. The Law Council therefore argued that section 333B could be improved by replacing the words 'pay or earnings' with the word 'remuneration'. This would better align the intention of the bill with the well-understood (albeit undefined) meaning of the word 'remuneration' under the *Fair Work Act 2009* as encompassing 'all monetary and non-monetary compensation for work done'.¹⁹

3.19 The ACTU, Professor Stewart and Professor Gaze expressed agreement with this point from the Law Council.²⁰ As Professor Stewart noted during the hearing:

The better term to use would be, as Professor Gaze just said, 'remuneration', because although that too is not defined in the bill, it has been used in the Fair Work Act and previous federal legislation over many years. And there is a fair amount of case law that has been built up. In fact, in many ways, what is said in the explanatory memorandum for this bill would be captured more accurately if the term 'remuneration' were used, rather than 'pay' or 'earnings'.²¹

3.20 JobWatch was of the view that proposed section 333B might not fully achieve its intended objectives. In particular, the amendment would only apply to situations where a modern award, enterprise agreement or employment contract specifically prohibits workers talking about their pay. JobWatch pointed out that the bill does not cover situations where a prohibition is absent, but where the employer simply directs a worker not to talk about their pay. This may be justified as a 'lawful and reasonable direction' or, even if not lawful and reasonable, a worker would nevertheless be inclined to adhere to it. Jobwatch therefore recommended inserting a clause in the dictionary of the *Fair Work Act 2009* stating:

...a lawful and reasonable direction has its ordinary meaning at common law or as defined in the Fair Work Regulations. The Fair Work Regulations could define what is not considered to be a reasonable and lawful direction, being a direction by an employer to an employee not to talk about their pay and other entitlements.²²

18 Ms Alana Matheson, Deputy Director of Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 27 October 2016, p. 18.

19 Law Council of Australia, *Submission 13*, pp. 5–6.

20 Ms Erin McCoy, Australian Council of Trade Unions, *Proof Committee Hansard*, 27 October 2016, p. 38; Professor Beth Gaze, *Proof Committee Hansard*, 27 October 2016, p. 7.

21 Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 8.

22 JobWatch, *Submission 4*, p. 6.

3.21 The Queensland Nurses' Union (QNU) noted that under the *Fair Work Act 2009*, employers can make individual flexibility arrangements with their employees to vary the wages set out in a modern award or enterprise agreement. The QNU therefore recommended the explicit inclusion of 'individual flexibility arrangement' within the wording of proposed section 333B and within the wording of 'Application of section 333B'.²³

Reducing the gender pay gap

3.22 The committee received evidence from inquiry participants signalling that there were other methods available to reduce the gender pay gap that were not reliant on legislated pay transparency.

3.23 The WGEA stated that its extensive work with employers to address gender pay equity had showed that the most effective way to close organisation-specific gender pay gaps was to document and publish a remuneration policy with stated pay equity objectives; and to regularly conduct a gender pay gap analysis and implement corrective actions.²⁴

3.24 In addition, the WGEA observed that best practice proactive remuneration policies to address the gender pay gap have several facets. These include:

- providing managers and employees with guidance on how pay is set, and how performance is evaluated and rewarded;
- setting pay equity objectives such as the elimination of gender bias, transparency and accountability;
- analysing the gender pay gap between comparable roles by level and across the entire organisation; and
- implementing corrective actions such as identifying the cause(s) of any gaps, training, reviewing, setting targets, reporting and evaluation.²⁵

3.25 As such, the WGEA suggested that 'the best way to address gender pay gaps is for organisations to analyse and take remedial action to address gender pay gaps'.²⁶

3.26 The Ai Group noted that it actively promotes gender wage parity between men and women among its members, including a formal policy or strategy on remuneration that includes gender pay equity objectives and gender remuneration gap analysis. The Ai Group was of the view that these types of measures were the most effective way to address the gender pay gap.²⁷

23 Queensland Nurses' Union, *Submission 6*; p. 3.

24 Workplace Gender Equality Agency, *Submission 15*, p. 10.

25 Workplace Gender Equality Agency, *Submission 15*, p. 10.

26 Workplace Gender Equality Agency, *Submission 15*, p. 11.

27 Ai Group, *Submission 14*, pp. 2 and 3.

3.27 Similarly, the MTA suggested that the gender pay gap is best tackled by practical measures to address:

...blatant discrimination; lack of women in senior positions; industrial and occupational segregation; educational differences; and family caring arrangements that place roadblocks in the way of returning women to work.²⁸

3.28 The ACCI was of the view that the bill was a blunt instrument and that 'voluntary, tailored organisational strategies' were a superior means of achieving 'genuine organisational commitment to gender equality'.²⁹

3.29 During the public hearing Ms Matheson from the ACCI reinforced this view:

We refer to some great examples that the Workplace Gender Equality Agency has been promoting. The Commonwealth Bank, as a leader in this space, has implemented some training programs for the people responsible for setting pay to ensure that they were aware of the risks or pitfalls that could impact pay outcomes – things like unconscious bias. That having been said, we still stand by the position that these are voluntary initiatives that organisations are taking up and that they would be more effective in achieving pay quality than people complaining – let's not call it gossiping – to their peers.³⁰

3.30 However, the ACTU pointed out that according to the WGEA data few organisations have even begun to address pay equity:

...the vast majority of organisations have not yet adopted a gender equality strategy or sought to address pay equity issues at the workplace. The most recent data published by the Workplace Gender Equality Agency shows that only 26.3% of reporting organisations conducted a gender pay gap analysis with respect to their employees and only 9.7% reported to the board on pay equity issues.³¹

3.31 Data contained in the most recent gender equality scorecard released by the WGEA in November 2016 indicated that employer action on workplace gender equality had increased in a number of areas. The 2015–16 data indicated that 27.0 per cent of organisations had conducted a remuneration gap analysis and 14.4 per cent reported pay equity metrics to the governing board.³² These statistics show a slight

28 Motor Trade Association of South Australia, *Submission 1*, p. 3.

29 Australian Chamber of Commerce and Industry, *Submission 9*, p. 12.

30 Ms Alana Matheson, Deputy Director of Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 27 October 2016, p. 21.

31 Australian Council of Trade Unions, *Submission 10*, p. 3.

32 Workplace Gender Equality Agency, *Australia's gender equality scorecard – key findings from the Workplace Gender Equality Agency's 2015–16 reporting data*, November 2016, pp. 14–15, www.wgea.gov.au/sites/default/files/2015-16-gender-equality-scorecard.pdf (accessed 16 November 2016).

improvement compared to the 2013–14 figures quoted by the ACTU submission in the previous paragraph.

3.32 The WGEA gender equality scorecard also stated that according to 2015–16 data, 70.7 percent of reporting organisations had an overall gender equality policy and/or strategy in place, up from 68.4 percent in 2013–14. However, the scorecard also noted that only 23.4 per cent of these organisations had key performance indicators for managers relating to gender equality.³³

3.33 Supporters of the bill acknowledged that pay transparency was just one tool that could contribute to tackling the gender pay gap in Australia. Ms Stephanie Milione, Convenor of VWL asserted:

VWL views improved pay transparency through the passing of this bill as one tool that should be used in combination with a variety of legislative and policy measure to close the gender pay gap. Other mechanisms that can be used to address pay disparity include rigorous workplace gender equality reporting requirements that ensure that employers are accountable for pay decisions that disadvantage women and the implementation of a national education campaign to raise awareness of these legislative changes should they be passed.³⁴

3.34 In addition, Ms Johnstone from VWL emphasised that the multifactorial nature of the gender pay gap necessitated a multifactorial response:

But we do consider that since it is such a multifactorial issue and that there are lots of different things behind it, then the response needs to be multifactorial as well. If we think about the way that a policy goal can be implemented, the legislative reform is just one part. We also need to have education campaigns; we need to have rewards or funding programs; and we could have regulation or reporting requirements.³⁵

3.35 The committee also heard evidence that recognised broader cultural change was required to combat the gender pay gap. Ms Woods from the WGEA emphasised the need for a multi-layered approach that encompassed social and cultural change:

Certainly from the agency's perspective we think that with gender equality it is really important to tackle the stereotypes that men face as well. Normalising caring and flexible work for men is a really important piece in empowering women in the professional world. So, these conversations are

33 Workplace Gender Equality Agency, *Australia's gender equality scorecard – key findings from the Workplace Gender Equality Agency's 2015–16 reporting data*, November 2016, p. 14, www.wgea.gov.au/sites/default/files/2015-16-gender-equality-scorecard.pdf (accessed 16 November 2016).

34 Ms Stephanie Milione, Convenor, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 29.

35 Ms Amy Johnstone, Chair of Law Reform Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 36.

really important and it does sort of go to this business that tackling the pay gap is complex and there are lots of parts to it; there are lots of things that employers can do, and we are very focused on that. And there are bits that are really about the community and society and how our boys and girls go into the world and approach the workforce.³⁶

3.36 Other submitters also had views on the importance of cultural change. Ms Sophie Brown, Co-Chair of the VWL Work Practices Committee observed:

I think it really raises an important point about the bill, which is a formal mechanism to tackle pay transparency, and informal pay secrecy, which is a real cultural thing. I must say that, unusually, we agreed with the Australian Chamber of Commerce when they said that we cannot change culture with regulation. Where we diverge very strongly from the Chamber of Commerce is that in our view the legislation is simply one tool which will help effect cultural change.³⁷

3.37 Alternative approaches to tackling the gender pay gap are evident in the international sphere. For example, the UK has acted on two complementary fronts to address the gender pay gap. In addition to the pay transparency measures discussed in the previous chapter, the UK has also moved to implement a policy of mandatory pay audits for all employers of 250 or more employees. The rationale behind this measure is to increase transparency and employer accountability, as well as encourage remedial action on pay inequities where necessary. Prior to this approach UK equality agencies simply encouraged employers to undertake voluntary pay audits. However, the UK Government judged the uptake of the voluntary audits to be insufficient and subsequently deemed mandatory audits necessary in order to achieve timely and effective progress toward closing the gender pay gap. Section 78 of the *Equality Act 2010* (UK) came into force on 22 August 2016, and draft reporting regulations have been through two stages of consultation. The finalised regulations are expected to be adopted in 2017.³⁸

3.38 Evidence received by the UK House of Commons Women and Equalities Committee to its inquiry into the gender pay gap indicated that many participants welcomed the reporting regulations and believed they had potential to play a part in concentrating organisations' minds on where pay gaps existed and how they might be reduced. However, the inquiry also received evidence emphasising the limitations of pay gap reporting and suggesting how the regulations might be improved. The inquiry

36 Ms Jackie Woods, Acting Director, Workplace Gender Equality Agency, *Proof Committee Hansard*, 27 October 2016, p. 49.

37 Ms Sophie Brown, Co-Chair of Work Practices Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, pp. 35–36.

38 Professor Beth Gaze, answers to questions on notice, 27 October 2016 (received 3 November 2016), pp. 5–6.

report itself noted that there was nothing in the regulations that would mandate an organisation to take action even if the compulsory reporting uncovered a pay gap.³⁹

3.39 In October 2016 KPMG released a report undertaken on behalf of the WGEA and the Diversity Council Australia (DCA) on the economics of the Australian gender pay gap. The report discovered that gender discrimination continues to be the single largest factor contributing to the gender pay gap, having more of an impact than other influencing factors such as industry and occupation segregation, age and experience, part-time employment, tenure and employer type.⁴⁰

3.40 The report set out a suite of case studies illustrating the initiatives that leading organisations in Australia have implemented to address the multiple factors underpinning the gender pay gap in their respective workplaces.

3.41 For example, AGL in the electrical distribution industry has implemented a remuneration tool to review, manage and deliver market-competitive and performance-based remuneration across all employee levels within the business:

Implemented six years ago, the reporting tool has enabled People and Culture [human resources division] to analyse and compare gender pay equity across the organisation, including distribution of performance and development ratings, and fixed and variable remuneration increases by gender. The real-time reporting alerts leaders if they have any unexpected and potentially gender-biased outcomes.

AGL has also implemented Unconscious Bias Training for all leaders and Remuneration Training educates leaders about the need to consider pay equity when they are making remuneration decisions.⁴¹

3.42 As a result, AGL leaders are made aware of any potential gender bias early in the remuneration cycle and can rectify problems promptly. The case study also noted that the insights gleaned from the initiative encourage target conversations about gender pay equity at calibration meetings for leaders and executives.⁴²

3.43 In another example cited in the KPMG report, the insurance company TAL has successfully closed the gender pay gap in the organisation, and as of 1 April 2016 female employees earn the same as their male counterparts in like for like roles. The case study reported:

39 UK House of Commons Women and Equalities Committee, *Gender Pay Gap: Second Report of Session 2015–16*, March 2016, pp. 73–75.

40 KPMG, *She's Price(d)less: The economics of the gender pay gap. Update report prepared for Diversity Council Australia and the Workplace Gender Equality Agency*, October 2016, pp. 12–14.

41 KPMG, *She's Price(d)less: The economics of the gender pay gap. Update report prepared for Diversity Council Australia and the Workplace Gender Equality Agency*, October 2016, p. 50.

42 KPMG, *She's Price(d)less: The economics of the gender pay gap. Update report prepared for Diversity Council Australia and the Workplace Gender Equality Agency*, October 2016, p. 50.

This success has included taking a holistic approach to promoting gender equity; understanding where the gaps exist and why, securing senior leadership commitment, measuring and reporting regularly to their executive team and board, changing processes and procedures which perpetuate gaps, and raising awareness through education.

TAL conducts an organisational wide pay gap analysis at least twice a year. The controls they look at focus on checking direct correlation between outcomes of reward and performance ratings for males and females across multiple lenses to ensure consistency. This includes analysing gender pay equity by function, job family, by job band, and employment type to ensure they uncover any unintended discrimination and are able to target specific actions to create pay equity in like for like roles.⁴³

3.44 Other initiatives developed by businesses and set out in the report included the use of gender pay analyses (St Barbara Ltd, KPMG), flexible or enhanced provisions for working parents (Caltex, GHD, Henry Davis York, NAB), gender recruitment targets (AECOM), and blind recruitment (King & Wood Mallesons).⁴⁴

Committee view

3.45 The committee recognises that a significant and persistent gender pay gap exists in Australia, clearly illustrated by the evidence received during the course of the inquiry.

3.46 The committee understands that the gender pay gap is underpinned by a number of factors and therefore requires a multi-faceted solution.

3.47 The committee notes that the Australian Government is already investing in measures to address several of these factors, including measures centred around improving childcare access to increase women's workforce participation, initiatives to address gendered workforce perceptions, and policies to achieve equal representation of women on government boards.⁴⁵

3.48 The committee notes that a number of submissions argued that in certain situations non-disclosure requirements may be a contributing factor to the gender pay gap. However, the committee also notes that no evidence was provided to demonstrate a clear understanding of the extent to which non-disclosure requirements contribute in these circumstances.

43 KPMG, *She's Price(d)less: The economics of the gender pay gap. Update report prepared for Diversity Council Australia and the Workplace Gender Equality Agency*, October 2016, pp. 50–56.

44 KPMG, *She's Price(d)less: The economics of the gender pay gap. Update report prepared for Diversity Council Australia and the Workplace Gender Equality Agency*, October 2016, p. 56.

45 Senator the Hon Michaelia Cash, Minister for Women, 'Equal Pay Day: progress made but more action required', *Media Release*, 8 September 2016.

3.49 The committee notes the raft of amendments suggested by inquiry participants aimed at improving the effectiveness of the bill. These reflect a widespread concern that the bill as drafted was unsatisfactory for many participants. The committee is concerned about the technical issues arising from the bill as it is currently drafted, and considers that in its current form the bill is a relatively blunt tool to address what is an extremely nuanced issue. The committee also takes seriously the strong evidence presented of the risk of the adverse unintended consequences, such as competitive disadvantage for businesses, which may arise should the bill be enacted.

3.50 As such, the committee agrees with the concerns of employer and industry organisations as to the range of potential unintended and negative consequence of the bill in question.

3.51 In addition, the committee is aware of the strategies already employed by some organisations to actively address the gender pay gap, as illustrated previously in the report. The committee considers that these are prime examples of business-led, organisational-specific strategies tailored to ensure genuine organisational commitment and real-world progress to reducing the gender pay gap.

3.52 The committee contends that in order to achieve meaningful progress in closing the gender pay gap there must be employer-led initiatives focused on voluntary, tailored policies designed to effect broader socio-cultural change.

3.53 As the Office for Women stated:

...any new regulation directed at addressing the gender pay gap should be well-informed, supported by strong evidence and ensure that there is social and not just legislative change. Both policy and legislative change need to be made with an understanding of how they will be implemented and the anticipated behavioural change.⁴⁶

3.54 The committee remains concerned about the possible unintended consequences arising from the bill in regard to the ability of businesses to manage workplace performance and remuneration decisions, as well as the potential for competitive disadvantage. The committee is also concerned that the bill includes no protections for employees who do not wish to disclose their remuneration, nor does it acknowledge the legitimate reasons that employees and employers may have for entering into non-disclosure agreements.

Recommendation 1

3.55 The committee recommends that the Senate does not pass the bill.

3.56 To reiterate, the committee neither dismisses nor condones the extent and persistent nature of the gender pay gap in Australia. The current gap is unacceptably

46 Ms Amanda McIntyre, First Assistant Secretary, Office for Women, Department of the Prime Minister and Cabinet, *Proof Committee Hansard*, 27 October 2016, p. 46.

large and the committee encourages the government, businesses and employee representatives to show leadership and accept shared responsibility for determining effective solutions that will engender meaningful cultural change.

Recommendation 2

3.57 The committee recommends that government, employer and industry stakeholders, and employee advocates collaborate to actively promote and implement best-practice strategies to tackle the gender pay gap in Australian workplaces.

Senator Bridget McKenzie

Chair

