

# Australian Greens' Dissenting Report

1.1 The gender pay gap in Australia is unacceptably high, and governments have struggled to find concrete solutions to address it. The Australian Greens introduced the Fair Work Amendment (Gender Pay Gap) Bill 2015 (the bill) to help fix the gender pay gap by banning 'pay gag clauses'.

1.2 According to the Workplace Gender Equality Agency (WGEA), the gender pay gap is currently 17.7 per cent for full-time base salaries and 23.1 per cent for total remuneration which takes into account perks, bonuses, superannuation and other components.<sup>1</sup> A different dataset kept by the Australian Bureau of Statistics shows the gender pay gap at 16.2 per cent on the basis of a much broader sample of employers. WGEA analysis shows that the national gender pay gap has hovered between 15 and 19 per cent for the past two decades.<sup>2</sup>

1.3 We are very pleased that the bill has received support from a wide cross-section of groups, including academics, unions, lawyers, social service organisations and professional associations. Of the 18 submissions received by the committee, 12 were supportive of the bill, while four opposed it (all employer associations).

1.4 This bill is certainly not the only solution to the gender pay gap. To finally close the gender pay gap we must work for wholesale gender equality, including addressing discrimination, differential access to education and resources, industrial and occupational segregation (the predominance of women and men in different industries or jobs), the lack of women in senior positions, the lack of part time or flexible roles, and the unequal burden of unpaid domestic and caring labour. This bill is, however, an important first step.

1.5 The government cannot directly influence many of the above causes of the gender pay gap, which is why the opportunity to take concrete steps forward which are supported by robust expert evidence and opinion is so exciting.

1.6 The Australian Greens would like to directly acknowledge Professor Michelle Brown, Professor Beth Gaze and Ms Leanne Griffin for their leadership and crucial research on this issue. Their evidence to the committee, including at the public hearing in Melbourne, was key to ensuring the evidence in support of reform was well understood.

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1 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](http://www.wgea.gov.au/sites/default/files/2015-16-gender-equality-scorecard.pdf)

2 Workplace Gender Equality Agency, *Gender pay gap statistics*, August 2016, p. 3, [www.wgea.gov.au/sites/default/files/Gender\\_Pay\\_Gap\\_Factsheet\\_final.pdf](http://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet_final.pdf)

1.7 We note that a great wealth of evidence in support of the bill has been well explored in the majority committee report and will not duplicate it here.

### **Outline of the bill**

1.8 Many workers, especially those who receive a salary and those in the private sector, are not allowed to talk about their pay with colleagues. Many employment contracts include a 'gag clause', which means that workers can be disciplined or even sacked for discussing their pay.

1.9 Data collected by the WGEA shows that where pay is set in secret, the gender pay gap is worse. For instance, the gender pay gap is much smaller in the public sector (12.3 per cent) where workers are allowed to talk about their pay compared to the private sector (22.4 per cent) where discussion is often prohibited.<sup>3</sup>

1.10 The bill makes sure that workers are allowed to tell their colleagues what they are paid if they wish to, without fear of retaliation from their boss.

1.11 The bill would not force anyone to discuss their pay, but it would make sure that employers could not pressure their employees to stay quiet.

1.12 Sometimes people do not feel comfortable talking about their pay, but making sure that employers cannot impose secrecy clauses is the first step towards cultural change.

1.13 Importantly, many women on low incomes work in industries and occupations which are largely reliant on collective bargaining in setting wages. These industries are often overwhelmingly dominated by women. Collective action, strong unions, and equal pay cases in the Fair Work Commission will all continue to play an important role in raising the wages of these women.

1.14 Our view is that this bill would assist all workers, including those on low incomes and those on award wages, as being able to freely discuss pay and conditions is a key part of a healthy workplace culture and provides an important safeguard against discrimination, underpayment or exploitation by employers.

### **Proposed amendments to the bill**

1.15 Some submitters and witnesses made suggestions about how the bill could be improved to better achieve its purpose of protecting employees who want to speak about their own pay. Most of these suggestions are sensible, and we intend to integrate many of them into an updated version of the bill.

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3 Workplace Gender Equality Agency, *Gender Pay Gap Statistics*, May 2015, [www.wgea.gov.au/sites/default/files/Gender\\_Pay\\_Gap\\_Factsheet.pdf](http://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf)

1.16 In particular, we will strongly consider the following suggestions:

- Professor Beth Gaze suggested that employees who ask about the pay of other employees should be protected, as well as those who disclose their own pay.<sup>4</sup>
- Professor Marian Baird and Ms Alexandra Heron proposed that the Bill be expanded to expressly ban pay gag clauses, especially where employers keep gag clauses in employment contracts, potentially misleading employees.<sup>5</sup> This suggestion was supported by the Australian Council of Trade Unions (ACTU).
- Victorian Women Lawyers (VWL) suggested including a civil remedy provision to deter employers from including pay gag clauses in contracts.<sup>6</sup>
- Professor Andrew Stewart and the JobWatch both identified the fact that employers may prohibit discussions about pay via policies or via a direction, and that the bill should be expanded to prevent those prohibitions as well.<sup>7</sup>
- The Law Council of Australia (Law Council), Professor Gaze and Professor Stewart suggested minor, sensible amendments to the terminology used in the bill to refer to 'remuneration' rather than 'pay or earnings'.<sup>8</sup>
- The Queensland Nurses' Union identified the need to ensure that 'individual flexibility arrangements' are captured by the bill.<sup>9</sup>

1.17 The Law Council and Professor Stewart both suggested that the bill could be restricted to protect only disclosures to other employees of the same employer or to employee representatives.<sup>10</sup> Professor Gaze also raised this possibility as an alternative to the bill as it currently stands.<sup>11</sup> Our view is that such qualifications or restrictions would present an unnecessary and unreasonable obstacle to women or other workers disclosing their pay. We agree with the ACTU, VWL, and

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

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

6 Victorian Women Lawyers, *Submission 11*, p. 2.

7 Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 2; JobWatch, *Submission 4*, p. 6.

8 Law Council of Australia, *Submission 13*, pp. 5–6 and Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 8.

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

10 Law Council of Australia, *Submission 13*, p. 5 and Professor Andrew Stewart, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 2.

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

Professor Baird and Ms Heron that such restrictions risk creating an atmosphere of uncertainty, especially where employers are eager to keep pay discussions to a minimum.<sup>12</sup>

## **Conclusion**

1.18 The Australian Greens would like to thank all those who made a submission to this inquiry, and all those individuals and organisations that appeared as witnesses at the hearing in Melbourne. We would also like to thank the other senators, including government senators who engaged thoughtfully with the complex issues raised in this inquiry. We are therefore disappointed that the majority committee report recommends that the Senate not pass the bill.

1.19 It is especially disappointing that the majority committee report relies on voluntary action by employers and others as a solution to the gender pay gap. This problem has persisted for many decades, and while voluntary action is welcome, it has not solved the problem yet and regulatory reform is required.

## **Recommendation 1**

**1.20 That the Senate pass the bill with minor amendments to ensure it achieves its purpose.**

1.21 Clearly the Australian Greens and many of the witnesses think the bill should be passed, with the minor amendments discussed above for clarity. However, given the government's attitude to date, we sadly must accept that passage of the bill in the near future is unlikely. Yet it is crucial that this issue not drop off the political agenda, given the persistently high gender pay gap and given the breadth of support for this reform proposal demonstrated during this inquiry.

## **Recommendation 2**

**1.22 That the government investigate legislative reforms aimed at increasing employees' freedom to discuss their own pay.**

1.23 We are eagerly anticipating the results of the research which Professor Brown and Ms Griffin are currently undertaking on the impact of pay gag clauses on pay equity. In light of this research and other emerging evidence internationally, our view is that the government should consider this issue during this Parliament. The Australian Greens would welcome cross-party support on this issue, and we look forward to working with all parties to achieve gender pay equity.

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12 Ms Erin McCoy, Industrial Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 27 October 2016, p. 38; Ms Sophie Brown, Co-Chair of Work Practices Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 31; and Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 5.

**Recommendation 3**

**1.24 That the Workplace Gender Equality Agency conduct further research on the impacts of pay gag clauses on the gender pay gap in collaboration with academic experts.**

**Senator Larissa Waters**

