

The Senate

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Education and Employment  
Legislation Committee

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Fair Work Amendment (Gender Pay Gap)  
Bill 2015

November 2016

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Mr Abe Williamson, Administration Officer

Committee web page:

[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment)

PO Box 6100  
Parliament House  
Canberra ACT 2600

Ph: 02 6277 3521  
Fax: 02 6277 5706  
E-mail: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)



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# RECOMMENDATIONS

## Recommendation 1

**3.56** The committee recommends that the Senate does not pass the bill.

## Recommendation 2

**3.58** 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.





# Chapter 1

## Reference

1.1 In September 2015, during the 44<sup>th</sup> Parliament, Senator Larissa Waters introduced the Fair Work Amendment (Gender Pay Gap) Bill 2015 (the bill).<sup>1</sup>

1.2 On 15 October 2015, the Senate referred the bill to the Senate Education and Employment Legislation Committee (the committee) for inquiry and report by 12 May 2016.<sup>2</sup>

1.3 On 9 May 2016 at the dissolution of the Senate in preparation for a general election on 2 July 2016, the inquiry lapsed.

1.4 On 1 September 2016, after the commencement of the 45<sup>th</sup> Parliament, the Senate re-referred the bill to the committee for inquiry and report by 14 November 2016.<sup>3</sup>

1.5 On 10 November 2016, the Senate agreed to an extension of time to report until 30 November 2016.<sup>4</sup>

## Conduct of the inquiry

1.6 Details of the inquiry begun during the 44<sup>th</sup> Parliament were made available on the committee's website.<sup>5</sup> The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 18 individuals and organisations, as detailed in Appendix 1.

1.7 With the re-referral of the bill in the 45<sup>th</sup> Parliament, the committee resolved not to call for new submissions, but rather to rely on those received during the 44<sup>th</sup> Parliament.<sup>6</sup>

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1 *Journals of the Senate*, No. 118—17 September 2015, p. 3151.

2 *Journals of the Senate*, No. 122—15 October 2015, p. 3260.

3 *Journals of the Senate*, No. 3—1 September 2016, p. 92.

4 *Journals of the Senate*, No. 15—10 November 2016, p. 451.

5 Senate Standing Committee on Education and Employment, Fair Work Amendment (Gender Pay Gap) Bill 2015, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Gender\\_pay\\_gap](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Gender_pay_gap) (accessed 31 October 2016).

6 Senate Standing Committee on Education and Employment, Fair Work Amendment (Gender Pay Gap) Bill 2015, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/GenderPayGap45](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/GenderPayGap45) (accessed 31 October 2016).

1.8 A public hearing was held in Melbourne on 27 October 2016. A list of witnesses who appeared at the hearing is available in Appendix 2.

## **Background**

1.9 The gender pay gap refers to the difference between women's and men's average weekly full-time equivalent earnings, expressed as a percentage of men's earnings. The gender pay gap in Australia is significant, although the exact figures vary slightly depending on the data sources and survey methods.<sup>7</sup>

1.10 According to the submission from the Workplace Gender Equality Agency (WGEA), there is a full-time base salary gender pay gap of 19.1 per cent and a total remuneration gender pay gap of 24.0 per cent. These national gender pay gap calculations do not reflect like-for-like pay gaps, but rather reflect women's overall position in the economy.<sup>8</sup>

1.11 In updated statistics released in November 2016 as part of the latest WGEA gender equality scorecard for Australia (using 2015–16 data), the full-time base salary gender pay gap was listed as 17.7 per cent, with the total remuneration gender pay gap at 23.1 per cent. Additionally, the 2016 scorecard showed a gender pay gap in favour of men in every industry.<sup>9</sup>

1.12 These figures are consistent with other WGEA analysis which shows that the national gender pay gap has hovered between 15 and 19 per cent for the past two decades.<sup>10</sup>

1.13 The gender pay gap is attributable to a wide range of factors including women and men working in different industries and jobs, the lack of women in senior positions, unpaid caring responsibilities, differences in education and experience, and direct and indirect discrimination.<sup>11</sup>

1.14 Some workers, especially those who receive a salary and those in the private sector, are not allowed to discuss their pay with colleagues. Some employment

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7 Workplace Gender Equality Agency, *Submission 15*, p. 4.

8 Workplace Gender Equality Agency, *Submission 15*, p. 4.

9 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) (accessed 16 November 2016).

10 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) (accessed 31 October 2016).

11 Workplace Gender Equality Agency, *Submission 15*, pp. 5–6.

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contracts include pay secrecy clauses, meaning that workers can be disciplined for disclosing information about their pay.<sup>12</sup>

1.15 In May 2016 the gender pay gap in the public sector (where pay is generally set by collective agreements that are public documents) was 12 per cent, compared to 19.6 per cent in the private sector where sometimes other arrangements are more likely to apply.<sup>13</sup>

### **Purpose and overview of the bill**

1.16 The bill seeks to reduce the gender pay gap in Australia by overriding clauses in contracts of employment which prevent workers from disclosing their own pay.

1.17 The bill would amend the *Fair Work Act 2009* to provide that any term of a modern award, enterprise agreement or contract of employment has no effect to the extent that it prohibits workers from discussing their own pay. The bill would also prohibit employers from taking adverse action against employees for disclosing information about their own pay.<sup>14</sup>

### **Compatibility with human rights**

1.18 The bill's statement of compatibility with human rights states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>15</sup>

### **Scrutiny of Bills Committee**

1.19 At the time of drafting, the Senate Standing Committee for the Scrutiny of Bills had not reported on the bill.

### **Financial impact statement**

1.20 The Explanatory Memorandum did not contain a financial impact statement.

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12 See for example Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, pp. 3–4; JobWatch, *Submission 4*, pp. 4–5; Professor Beth Gaze, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 2; Finance Sector Union, answers to questions on notice, 27 October 2016 (received 4 November 2016), p. 1; and Ms Stephanie Milione, Convenor, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 33.

13 Workplace Gender Equality Agency, *Gender pay gap statistics*, August 2016, p. 6, [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) (accessed 31 October 2016).

14 Senator Larissa Waters, Co-Deputy Leader of the Australian Greens, *Senate Hansard*, 17 September 2015, p. 7125.

15 Fair Work Amendment (Gender Pay Gap) Bill 2015, Statement of Compatibility with Human Rights, *Explanatory Memorandum*, p. 3.

## **Acknowledgment**

1.21 The committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions and giving evidence at the public hearing.

## **Notes on references**

1.22 References in this report to the Hansard for the public hearing are to the Proof Hansard. Please note that page numbers may vary between the proof and official transcripts.

# Chapter 2

## Introduction

2.1 The key purpose of the bill is to promote the disclosure of remuneration by prohibiting arrangements that provide for confidentiality.

2.2 While there was widespread recognition that Australia's gender pay gap is inequitable, submitters to the inquiry disagreed about the best way to address it.

2.3 Supporters of the bill premised their position on the argument that pay secrecy contributes to the gender pay gap. These submitters argued that the bill would foster merit-based pay decisions, increase the accountability of managers and organisations for their pay decisions, and would empower women in pay negotiations, thereby reducing pay discrimination and the gender pay gap. In summary, these submitters argued that there was no valid reason for compelling employees to abide by pay secrecy provisions or directions, or for punishing employees for disclosing pay information.<sup>1</sup>

2.4 Supporters of the bill considered that the bill effectively balances the needs of both employers and employees in that it continues to protect employee confidentiality because it does not require employees to disclose their pay information to other employees, nor does it require employers to disclose the pay information of employees to other employees.<sup>2</sup>

2.5 Some supporters of the bill also made the argument that pay secrecy decreases productivity and is an inefficient way to run an organisation, while pay transparency increases levels of organisational trust, motivation, performance, and efficiency.<sup>3</sup>

2.6 However, some submitters, while supporting the bill, argued that the bill could be improved by adding a provision that explicitly protected a worker who

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1 See Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*; Good Shepherd Australia New Zealand, *Submission 4*; Professor Marian Baird and Ms Alexandra Heron, *Submission 18*; Finance Sector Union of Australia, *Submission 12*; Professor Beth Gaze, *Submission 17*; Victorian Women Lawyers, *Submission 11*; Law Council of Australia, *Submission 13*; Professionals Australia, *Submission 3*; JobWatch, *Submission 4*; Queensland Nurses' Union, *Submission 6*; Shop, Distributive and Allied Employees' Association, *Submission 7*; Australian Council of Trade Unions, *Submission 10*.

2 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 2.

3 Victorian Women Lawyers, *Submission 11*; Australian Council of Trade Unions, *Submission 10*.

requested pay information from a co-worker,<sup>4</sup> and by expressly banning pay secrecy provisions.<sup>5</sup>

2.7 The Law Council of Australia, JobWatch, and the Queensland Nurses' Union also made several recommendations to improve the clarity of the bill so as to ensure that it was capable of achieving its stated purpose.<sup>6</sup>

2.8 Opponents of the bill argued that the bill should be rejected because it was based on the flawed premise that the non-disclosure of remuneration was a direct cause of the gender pay gap. These submitters argued that the bill was superfluous and would not achieve its stated aims.<sup>7</sup>

2.9 Furthermore, opponents argued that the bill would undermine the ability of organisations to manage workplace performance and maintain workplace harmony. These submitters asserted that the bill would harm business competitiveness, and further add to the regulatory burden imposed by the *Fair Work Act 2009*.<sup>8</sup>

2.10 This chapter will first present evidence put forward by supporters of the bill, before examining the issues raised by opponents of the bill. Chapter 3 will then turn to the problematic aspects of the bill, and go on to explore methods to reduce the gender pay gap that are not reliant on legislated pay transparency.

## **Key issues**

### ***Scope of the national gender pay gap***

2.11 The Workplace Gender Equality Agency (WGEA) is an Australian Government statutory agency charged with promoting and improving gender equality in Australian workplaces. Based on data that it collects<sup>9</sup>, the WGEA found a full-time base salary gender pay gap of 19.1 per cent and a total remuneration gender pay gap

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4 Professor Beth Gaze, *Submission 17*.

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

6 Law Council of Australia, *Submission 13*, pp. 5–6; JobWatch, *Submission 4*, p. 6; Queensland Nurses' Union, *Submission 6*, p. 3.

7 Australian Federation of Employers and Industries, *Submission 16*, p. 1; Motor Trade Association of South Australia, *Submission 1*, p. 4; Ai Group, *Submission 14*, p. 2; Australian Chamber of Commerce and Industry, *Submission 9*, p. 8.

8 Australian Federation of Employers and Industries, *Submission 16*, p. 1; Motor Trade Association of South Australia, *Submission 1*, p. 4; Ai Group, *Submission 14*, p. 2; Australian Chamber of Commerce and Industry, *Submission 9*, p. 5.

9 The WGEA collects data on the gender composition and remuneration of the workforce from non-public sector employers with 100 or more employees.

of 24.0 per cent across all industries and occupations.<sup>10</sup> Furthermore, the gender pay gap in Australia has increased since 2004.<sup>11</sup>

2.12 The Shop, Distributive and Allied Employees' Association (SDA) argued that the gender pay gap widens throughout a woman's working life. The SDA presented data that showed that for 15–19 year olds the pay gap is 0.3 per cent; for graduate starting salaries the gap is 4.4 per cent, it rises to 21.8 per cent for 35–44 year olds and 24 per cent for 45–54 year olds.<sup>12</sup>

2.13 The gender pay gap in professional occupations in Australia is particularly large. The differential is 24.4 per cent in the Professional, Scientific and Technical Services industry,<sup>13</sup> and up to 34 per cent in the legal services sector.<sup>14</sup> In the financial and insurance services industry, the base salary gender pay gap is 27.3 per cent and the total remuneration gender pay gap is 35 per cent.<sup>15</sup>

2.14 The Australian Council of Trade Unions (ACTU) asserted that the gender pay gap imposed a substantial cost on the Australian economy and argued that closing the gap would boost Australia's 'growth, prosperity and international competitiveness':

It is estimated that gender inequality in workforce participation, industry participation and progression into leadership roles results in the forfeiture of a 20 per cent increase in GDP for every year that the problem goes unresolved. This figure represents an annual loss of around \$300 billion to the Australian economy.<sup>16</sup>

### ***Causes of the gender pay gap***

2.15 As noted in the previous chapter, the gender pay gap reflects the overall position of women in the economy (including the concentration of women in lower-paying roles and industries), rather than just a gender pay comparison of equivalent roles. For example, the WGEA cited salary analysis from global talent consulting firm Mercer that identified a 4.4 per cent gender pay gap for equivalent roles.<sup>17</sup>

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10 Workplace Gender Equality Agency, *Submission 15*, p. 4.

11 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 3; Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 2.

12 Shop, Distributive and Allied Employees' Association, *Submission 7*, p. 3; see also Ms Amy Johnstone, Chair of Law Reform Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 35.

13 Professionals Australia, *Submission 3*, p. 1.

14 Victorian Women Lawyers, *Submission 11*, p. 1.

15 Finance Sector Union of Australia, *Submission 12*, p. 1.

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

17 Workplace Gender Equality Agency, *Submission 15*, pp. 4–5.

2.16 The gender pay gap is lower in the public sector than in the private sector (12.0 per cent compared to 19.6 per cent) and lower under awards (9.2 per cent) and collective agreements (16.5 per cent) than under individual arrangements (21.7 per cent). The main method of setting pay in the private sector is by individual arrangement (44.4 per cent), compared to the public sector where 87.2 per cent of pay is set by collective agreement.<sup>18</sup>

2.17 The WGEA noted that:

The public sector predominantly uses collective agreements and has transparent pay levels and scales, therefore standardising pay between women and men and resulting in a smaller gender pay gap than the private sector, where individual agreements are common.<sup>19</sup>

2.18 However, the WGEA also observed that the various factors listed below may contribute to the difference in the gender pay gap between the public and private sectors:

- the public sector operates in a politically-driven environment, while the private sector is market-driven;
- differences in the levels of occupational integration (balanced proportion of women and men in an occupation);
- differences in the implementation of anti-discrimination legislation;
- differences in the size of establishments; and
- differences in the education and qualifications of workers.<sup>20</sup>

2.19 In addition, the WGEA pointed out that gender stereotypes may also influence the gender pay gap:

Women and men often work in different industries (industrial segregation) and different jobs (occupational segregation). Historically, female-dominated industries and jobs have attracted lower wages than male-dominated industries and jobs.<sup>21</sup>

2.20 Furthermore, women undertake most of the unpaid caring work in society, often for long periods, and are therefore more likely to work in a part-time or flexible

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18 Workplace Gender Equality Agency, *Gender pay gap statistics*, August 2016, pp. 6–8, [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) (accessed 31 October 2016).

19 Workplace Gender Equality Agency, *Submission 15*, pp. 5–6; see also Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 4; Law Council of Australia, *Submission 13*, p. 5.

20 Workplace Gender Equality Agency, *Submission 15*, p. 6; see also Motor Trade Association of South Australia, *Submission 1*, p. 7.

21 Workplace Gender Equality Agency, *Submission 15*, p. 6; see also Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 2; JobWatch, *Submission 4*, p. 4.



capacity.<sup>22</sup> Given women's contribution to the unpaid caring workforce combined with the lack of part-time management roles, it is more difficult for women to move into higher paid, more senior roles. For example, the WGEA data showed that just 15.4 per cent of women were chief executive officers and only 27.5 per cent of women were employed in the top three levels of management, compared to 40 per cent of women employed in the lowest level of management categories.<sup>23</sup>

2.21 The WGEA also noted that gender discrimination not only impacts women's ability to negotiate pay, but can also lead to male-dominated networks 'hiring and rewarding in their own image'.<sup>24</sup>

### *Non-disclosure of remuneration in Australian workplaces*

2.22 Non-disclosure of remuneration means that employees do not have full information about their colleagues' pay. This can include formal base salary levels, salary structures, informal remuneration salary components, and discretionary performance pay such as bonuses.<sup>25</sup>

2.23 Non-disclosure of remuneration in Australian workplaces is not uncommon, with some data suggesting that 50 per cent of organisations discourage employees from sharing remuneration information.<sup>26</sup>

2.24 Professor Michelle Brown and Ms Leanne Griffin, University of Melbourne academics researching pay secrecy and performance management systems, and JobWatch, reported that in Australia, many employers actively pressure employees not to disclose their pay, even in the absence of a formal pay secrecy clause in the employment contract. The employer may simply give a direction to an employee not to disclose their pay and many employees are fearful of being sanctioned or dismissed on the grounds that they have breached the confidentiality clause in their employment contract. Based on their research, Professor Brown and Ms Griffin noted that penalties appeared to be imposed when an employee used information about a co-workers' pay to make a pay claim or complaint.<sup>27</sup>

2.25 Professor Beth Gaze, co-director of studies in employment and labour relations law at the University of Melbourne (who appeared in a private capacity) also informed the committee that in recent years a practice of explicit prohibitions on pay

22 Workplace Gender Equality Agency, *Submission 15*, p. 6; Queensland Nurses' Union, *Submission 6*, p. 4; Shop, Distributive and Allied Employees' Association, *Submission 7*, pp. 1–2.

23 Workplace Gender Equality Agency, *Submission 15*, p. 6.

24 Workplace Gender Equality Agency, *Submission 15*, p. 6.

25 Workplace Gender Equality Agency, *Submission 15*, p. 7.

26 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 3.

27 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 4; JobWatch, *Submission 4*, pp. 4–5; see also Shop, Distributive and Allied Employees' Association, *Submission 7*, p. 5.

discussion in employment contracts had developed in Australia, owing to increasing American influences in labour law.<sup>28</sup>

2.26 Evidence received from the Finance Sector Union (FSU) indicated that pay confidentiality was widespread in the finance and banking industry. Although the enterprise agreements of the 'Big Four' banks<sup>29</sup> do not contain pay confidentiality clauses, employment contracts issued by the Commonwealth Bank, ANZ Bank and Westpac contain confidentiality clauses related to pay and remuneration. The FSU also stated that out of 100 general and insurance employment contracts provided to the union, 20 per cent of these contained pay confidentiality clauses.<sup>30</sup>

2.27 For example, an excerpt from a CBA contract provided by the FSU contained the following clause:

In particular, the terms and conditions of your employment (including remuneration arrangements) are strictly confidential. It is a condition of your employment that you do not discuss these matters with any other person other than your legal or financial advisers or immediate family members.<sup>31</sup>

2.28 The FSU also provided an excerpt from an American Express contract which stated:

You will appreciate that salary and other employment conditions are confidential and must not be discussed with other employees of American Express.<sup>32</sup>

2.29 Similarly, an excerpt from a BayCorp Australia contract stated:

Details of your remuneration package and future changes to your remuneration are confidential between you and BayCorp. You must not discuss these details with other Baycorp employees.<sup>33</sup>

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28 Professor Beth Gaze, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 2; see also Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 3.

29 The 'Big Four' banks in Australia are the Commonwealth Bank, the National Australia Bank, the ANZ Bank, and Westpac.

30 Finance Sector Union, answers to questions on notice, 27 October 2016 (received 4 November 2016), p. 1.

31 Finance Sector Union, answers to questions on notice, 27 October 2016 (received 4 November 2016), p.1.

32 Finance Sector Union, answers to questions on notice, 27 October 2016 (received 4 November 2016), p.2.

33 Finance Sector Union, answers to questions on notice, 27 October 2016 (received 4 November 2016), p. 2.

2.30 In addition to the evidence the committee received on the finance industry, representatives from Victorian Women Lawyers (VWL) indicated that pay secrecy clauses were also extremely widespread in the legal industry.<sup>34</sup>

2.31 By contrast, the Australian Industry Group (Ai Group) stated that terms prohibiting remuneration disclosure were rare and not necessarily problematic.<sup>35</sup> Noting that confidentiality clauses in employment contracts 'sometimes may capture terms prohibiting the disclosure of pay', this may not always be legally enforceable if 'there is an insufficient connection between an employer's legitimate business interests and the information sought to be protected'.<sup>36</sup>

2.32 The Ai Group also pointed out that private sector remuneration is not completely opaque because the market rates that private enterprise uses to recruit employees is generally freely available or available for a small fee from 'salary surveys conducted by private consulting or recruitment firms'.<sup>37</sup> In addition, the Ai Group itself publishes a salary and benefits survey of its members.

### ***Pay confidentiality and the gender pay gap***

2.33 Submitters in support of the bill argued that pay confidentiality contributes to the gender pay gap in the following ways:

- conscious or unconscious bias and gender stereotyping can persist because organisations are able to make pay and promotion decisions that are not strictly based on objective criteria and employees do not necessarily have the requisite knowledge to challenge the basis of those decisions, and those decisions are not exposed to external scrutiny;
- women are less likely to get high performance ratings compared to men and therefore the gender pay gap is further perpetuated by performance pay remunerations;
- women are reluctant to negotiate over pay and tend to ask for, and accept, lower pay than their male counterparts. As a result, managers often make lower opening pay offers to women during pay negotiations; and
- employees who uncover discriminatory practices or pay decisions are unable to challenge their employer without exposing themselves to the charge that

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34 Ms Stephanie Milione, Convenor, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 33.

35 Ai Group, *Submission 14*, p. 2.

36 Ai Group, *Submission 14*, p. 3.

37 Ai Group, *Submission 14*, p. 3.

they have discussed their remuneration with a colleague, and thereby risk being sanctioned.<sup>38</sup>

2.34 However, the committee received no evidence that was able to conclusively determine the extent to which pay confidentiality arrangements contributed to the gender pay gap in Australia.

2.35 Professor Brown and Ms Griffin argued that pay confidentiality not only has a negative impact on female employees, but also impedes organisational productivity by:

- limiting the effectiveness of performance pay systems that rely on pay performance messages to be broadly communicated to drive higher levels of organisational performance; and
- reducing employee satisfaction with pay, creating an environment that reduces trust and can promote conflict between employees.<sup>39</sup>

2.36 Professor Brown and Ms Griffin acknowledged that many employers viewed confidentiality arrangements as a way to minimise perceptions of inequity and limit negative employee attitudes. However, they argued that the belief that pay secrecy minimised conflict over pay was misplaced and based on a false assumption that employees are unable to handle the facts about differences in pay rates. Furthermore, they argued that non-disclosure has been shown to increase employee anxiety, encourage rumours, and reduce levels of employee trust and team motivation. By contrast, employees associated pay transparency with integrity.<sup>40</sup>

2.37 Professor Brown elaborated on this point during the public hearing:

There is a body of research that shows that openness is signalling integrity. Employees take the view that if there is a lack of information it means they [employers] have something to hide, whether that is true or not. The natural perception is, 'If you're not telling me something you must be really potentially unfair.' Not only do people begin to doubt the fairness of the pay system but there is also research that shows employees begin to doubt the quality of any other kinds of decisions or activities the organisation is engaging in. So it has a kind of domino impact on other organisational activities.<sup>41</sup>

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38 Workplace Gender Equality Agency, *Submission 15*, pp. 7 and 11; Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, pp.5–7; Good Shepherd Australia New Zealand, *Submission 4*, p. 1; Finance Sector Union of Australia, *Submission 12*, pp. 1–2; JobWatch, *Submission 4*, pp. 4 and 5; Queensland Nurses' Union, *Submission 6*; p. 5; Shop, Distributive and Allied Employees' Association, *Submission 7*, pp. 5–6; Australian Council of Trade Unions, *Submission 10*, pp. 2–4.

39 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, pp. 2 and 8–9; Australian Council of Trade Unions, *Submission 10*, pp. 2 and 5.

40 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, pp. 9–11.

41 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 9.

2.38 The ACTU concurred with the above points and noted that pay secrecy may lead employees to infer that pay procedures and outcomes are unfair even if their employer is acting in good faith. The ACTU was also of the view that pay secrecy infringed on the fundamental right to freedom of association and collective bargaining, enshrined in International Labour Organisation conventions 87 and 98.<sup>42</sup>

2.39 During the public hearing, the committee heard from Ms Erin McCoy, Industrial Officer for the ACTU, who stated that:

...our view is that prohibiting employees discussing their pay tends to have a negative impact on workplace culture, which in turn reduces employee engagement. In our experience, workers are much less likely to be dissatisfied if organisations are transparent about the criteria used to set pay, take steps to ensure that wages are fair and do not prohibit employees discussing their pay with colleagues.<sup>43</sup>

2.40 The committee also received evidence arguing that non-disclosure in organisations had the potential to disproportionately impact women. Professor Brown asserted:

But what we know from research is that organisations are really using pay secrecy as a cost reduction method. By keeping pay secret, they can actually keep their labour costs down, which in and of itself is not a problem, but what you see is that organisations are actually keeping the wages of women lower, rather than the wages of men and women lower.<sup>44</sup>

2.41 Finally, representatives from VWL informed the committee that they considered non-disclosure a contributing factor to the large gender pay gap in the legal industry. Ms Amy Johnstone, chair of the VWL Law Reform Committee observed:

The legal sector provides a fairly unique kind of case study in relation to the pay gap and the role of pay secrecy. This is a sector where women are particularly highly educated and often engage in complex negotiations as part of their job. So it would be hard to imagine that the pay gap exists because they are not negotiating and not asking. The full-time base salary pay gap is about 19 per cent for women in law. We consider that pay secrecy is one factor in that, and it suggests that we obviously need more than a lean-in approach to addressing the pay gap in our sector.<sup>45</sup>

2.42 The WGEA submitted that in contrast to pay secrecy, pay transparency refers to institutional arrangements where salary determination and salary increases are accessible and comprehensible to employees such that employees have information

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42 Australian Council of Trade Unions, *Submission 10*, pp. 5–6.

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

44 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 3.

45 Ms Amy Johnstone, Chair of Law Reform Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 32.

and clarity about their co-workers' salary.<sup>46</sup> Pay transparency can also mean that employees can discuss their pay without the fear of being sanctioned by their employer.<sup>47</sup>

2.43 Professor Brown and Ms Griffin were of the view that in terms of providing greater transparency, the bill struck an effective balance between the needs of employers and employees:

Employees who prefer to keep their pay confidential do not have to reveal their pay and employers are not required to make pay information publicly available. Employers merely need to be able to provide responses to employees who ask for additional information about their pay.<sup>48</sup>

2.44 Supporters of the bill argued that tackling discrimination and unconscious bias when it is hidden by non-disclosure clauses posed a particular challenge. Mr Jonathan Kirkwood, a member of the Industrial Law Committee in the Federal Litigation and Dispute Resolution Section of the Law Council of Australia (Law Council) stated:

In the Law Council's view, removing legal prohibitions on workers discussing their pay will assist in removing pay secrecy, which can hide discrimination and unconscious bias. Discrimination is particularly difficult to remove where it is hidden from view. Accordingly, the Law Council supports the passage of the bill as a necessary and proportionate measure to reduce the gender pay gap, as well as recognising its consistency with Australia's international human rights legal obligations.<sup>49</sup>

2.45 The WGEA, and Professor Brown and Ms Griffin noted that research indicates that pay transparency may improve motivation and trust, minimise unconscious bias and lead to the retention of talented workers. Pay transparency may also empower women in pay negotiations and reduce gender bias by fostering greater employer accountability over pay decisions.<sup>50</sup>

2.46 However, the WGEA stated that there was currently no definitive evidence to link the removal of legal prohibitions on employees discussing their pay and the reduction of gender pay gaps.<sup>51</sup>

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46 Workplace Gender Equality Agency, *Submission 15*, p. 7.

47 Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 3.

48 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 2.

49 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.

50 Workplace Gender Equality Agency, *Submission 15*, pp. 7 and 11; Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, pp. 5–6; see also Australian Council of Trade Unions, *Submission 10*, pp. 3–4.

51 Workplace Gender Equality Agency, *Submission 15*, p. 3.

2.47 Ms Jackie Woods, Acting Director of the WGEA emphasised this position at the public hearing:

... We do not see, or have hard evidence to hand, that removing the secrecy clauses would directly reduce gender pay gaps.

Nevertheless, we do see that transparency in a broad sense can really support pay equity in workplaces. That can be thinking about transparency of remuneration policies and strategies and making sure that people understand what they are, which is a bit of a different issue to individuals knowing each other's pay information.<sup>52</sup>

### ***International approaches to pay transparency***

2.48 The WGEA noted that the role of pay transparency in supporting gender pay equity has been the subject of both international debate and legislative action in countries such as the United Kingdom (UK) and the United States (US).<sup>53</sup>

2.49 In 2010 the UK enacted changes to the *Equality Act 2010* (UK), implementing a limited protection for employees wishing to discuss their pay. The provision prevents an employer from enforcing a term in an employee's contract prohibiting the employee from discussing their pay or asking a colleague (or ex-colleague) about pay matters. However, the protection only applies where the disclosure or request is specifically to discover whether there is discrimination (on sex or other grounds).<sup>54</sup>

2.50 This particular approach does not invalidate pay secrecy clauses, and as Professor Gaze noted:

Unless employees are very well educated on their rights, they may not be aware that they have the right to discuss pay in the face of an apparently valid secrecy clause in their employment document.<sup>55</sup>

2.51 Professor Marian Baird and Ms Alexandra Heron, academics from the University of Sydney Women and Work Research Group, provided comments from a British barrister noting that the changes to the UK law still permit contractual prohibitions on discussing pay to remain in employment contracts and only guards against their enforcement. The comments explained that the provision means the employer may leave a total ban in place (potentially misleading employees as to the state of the law), and observed that it could prove difficult to assess or prove whether an employee intended to make inquiries or a disclosure for the purposes for checking discrimination. As such, Professor Baird and Ms Heron suggested that should the UK

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52 Ms Jackie Woods, Acting Director, Workplace Gender Equality Agency, *Proof Committee Hansard*, 27 October 2016, p. 45.

53 Workplace Gender Equality Agency, *Submission 15*, pp. 8–9.

54 Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 6.

55 Professor Beth Gaze, answers to questions on notice, 27 October 2016 (received 3 November 2016), p. 5.

legislation be used as a model, these problematic aspects should be taken into consideration and remedied.<sup>56</sup>

2.52 In the US context, 11 states have passed laws banning pay secrecy: Michigan (1982); California (1984); Colorado (2008); Illinois (2004); Maine (2009); Vermont (2005); New Jersey (2013); Minnesota (2014); New Hampshire (2014); New York (2015); and Connecticut (2015).<sup>57</sup>

2.53 Professor Brown and Ms Griffin presented evidence of research from the US that found that women's wages were 4 to 12 per cent higher in states that prohibited pay secrecy compared to states that did not prohibit pay secrecy.<sup>58</sup> Furthermore, the committee was informed that enforcement of pay secrecy by companies in the US had decreased from 75 percent in 1985, to 36 percent in 2001, to 23 percent in 2010.<sup>59</sup>

2.54 Additionally, in 2014 US President Barack Obama issued executive orders designed to decrease the gender pay gap through the introduction of provisions to reduce pay secrecy among federal contractors. As Professor Gaze outlined:

The Order amended Executive Order 11246, a longstanding executive policy that deals with positive action requirements in federal government contracting, to add a further area of protection whereby the contractor may not 'discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant'.<sup>60</sup>

2.55 However, Professor Gaze also noted that this transparency approach has been criticised as too weak, as rather than requiring employers to take responsibility for reviewing and remedying pay inequalities, it places responsibility for checking pay equity solely on employees.<sup>61</sup>

2.56 During the hearing Ms Amanda McIntyre, First Assistant Secretary for the Office for Women, part of the Department of the Prime Minister and Cabinet, commented on the international context:

Senators would be aware that the transparency provisions in both the UK and the US have not solved the gender pay gap, which remains high, and there is no substantial evidence that the removing of pay gagging clauses,

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56 Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 6.

57 Professor Marian Baird and Ms Alexandra Heron, *Submission 18*, p. 4.

58 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p. 8.

59 Professor Michelle Brown and Ms Leanne Griffin, *Submission 8*, p.3.

60 Professor Beth Gaze, answers to questions on notice, 27 October 2016 (received 3 November 2016), p. 3; see also Workplace Gender Equality Agency, *Submission 15*, p. 8.

61 Professor Beth Gaze, answers to questions on notice, 27 October 2016 (received 3 November 2016), p. 3.



such as the amendment proposed, have actually contributed to the reduction of the gender pay gap in these countries.<sup>62</sup>

2.57 When subsequently queried on whether the Office for Women was aware of a US study<sup>63</sup> provided by Professor Brown indicating that the gender pay gap had decreased in the states which had outlawed pay secrecy, Ms McIntyre undertook to review the evidence in question.<sup>64</sup>

2.58 In answering the question on notice, the Office for Women concluded:

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.<sup>65</sup>

### ***Employer views on pay transparency***

2.59 In discussions with employers, the WGEA observed a divergence of views regarding this legislation to remove the restrictions on employees discussing their pay. Overall, a majority of employers which responded to the WGEA about the bill, opposed it.<sup>66</sup> Some employers saw pay transparency as a way to progress gender pay equity. For example, the WGEA cited an employer that argued the bill was 'reasonable' because it did not require anyone to discuss their pay.<sup>67</sup>

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

63 The study referred to is: Marlene Kim, 'Pay Secrecy and the Gender Wage Gap in the United States', *Industrial Relations*, vol. 54, no. 4, 2015, pp. 648–677.

64 Ms Amanda McIntyre, First Assistant Secretary, Office for Women, Department of the Prime Minister and Cabinet, *Proof Committee Hansard*, 27 October 2016, p. 48.

65 Office for Women, Department of the Prime Minister and Cabinet, answers to questions on notice, 27 October 2016 (received 11 November 2016), pp 2–3.

66 Workplace Gender Equality Agency, *Submission 15*, p. 9.

67 Workplace Gender Equality Agency, *Submission 15*, p. 9.

2.60 Another employer noted:

All employees should have access to de-identified wage and salary data that shows wages for women and men across all roles within an organisation, so that all employees, especially women, have the opportunity to negotiate fair and equitable wage outcomes.<sup>68</sup>

2.61 By contrast, other employers were of the view that the legislation would lead to workplace conflict and reduce staff morale because employees may not fully understand all aspects of pay decisions. For example, the WGEA noted that one employer expressed concern that the 'fallout' from the bill would outweigh the good intentions of the bill by undermining organisational culture.<sup>69</sup> Another employer stated:

We believe that equal pay is addressed through better communication with managers, better education of decision makers around unconscious bias as well as providing decision-makers with support and guidance by those who help set and regulate pay... Discussion between employees does not address the issue as, in most situations, they do not have all the facts to understand how pay was determined for each individual.<sup>70</sup>

2.62 The Australian Chamber of Commerce and Industry (ACCI) noted that 'the design and implementation of remuneration frameworks is a complex area of human resources management practice' and that the management of employee perceptions around performance and remuneration was particularly challenging. Consequently, employers adopted strategies to minimise potential conflict arising from pay comparisons including preventing employees from disclosing their pay. The ACCI argued that this was done in the interests of maintaining workplace harmony and not because of discrimination.<sup>71</sup>

2.63 Likewise, the Australian Federation of Employers and Industries (AFEI) argued that prohibitions on the disclosure of remuneration by employees are 'not about discrimination' and instead are a necessary part of managing workplace performance.<sup>72</sup>

2.64 On this point, Mr Gary Brack, Chief Executive Officer of the AFEI argued it was difficult for managers to provide objective justifications for pay differences and remuneration strategies that employees would accept:

Once you get involved in the debate about 'because'...then you get involved with people's perceptions and their views about whether or not they should or they should not be up there, and a lot of people think they should be up

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68 Workplace Gender Equality Agency, *Submission 15*, p. 9.

69 Workplace Gender Equality Agency, *Submission 15*, p. 9.

70 Workplace Gender Equality Agency, *Submission 15*, pp. 8–9.

71 Australian Chamber of Commerce and Industry, *Submission 9*, p. 5.

72 Australian Federation of Employers and Industries, *Submission 16*, p. 2.

there even though their position and their contribution do not necessarily warrant it. You argue that this is an equitable proposition, surely they should have the information and you should be able to justify objectively. I am saying that in practice, in the workplace, objective proof is much more difficult to provide to the point where it convinces someone who will then be destabilised. That is the problem.<sup>73</sup>

2.65 Evidence from supporters of the bill countered this view saying that employees are accepting of performance pay as long as the frameworks used to determine it are fair and transparent. Professor Brown stated:

One of the other points that organisations often argue...is that employees cannot cope with pay differences. That argument was probably valid back in the 1990s, but it is now pretty clear that employees accept differences in pay so long as they are based on valid performance management systems. Employers argued through the 1990s that they wanted to move away from the award system; they wanted to have performance-related pay and they wanted to pay people differently. Employees have gone with them and there is an understanding that people get paid differently on the basis of their performance. All pay transparency requires is that organisations articulate those differences.<sup>74</sup>

2.66 Ms McCoy from the ACTU further elaborated on this point during the public hearing:

I think fairness is the key here. Workers accept that different jobs get paid at different rates, and, when they understand why it is that certain work is rewarded or bonuses are given for certain performance outcomes, they are very accepting of that. But the question may be 'why am I being paid less than someone who is doing exactly the same work as me' or 'why does my employer want to hide from me how much my colleagues are getting paid'. The idea that, all of a sudden, if it is known to an employee how much others are getting paid at a general level or even at individual pay rates, that is going to create disharmony in the workplace, I think, is somewhat disingenuous. As you pointed out, the public sector have had that for many years, and it is not a major issue.<sup>75</sup>

2.67 The ACCI pointed out that enabling an employee to ascertain their comparative remuneration would do nothing to foster an objective understanding amongst employees of the underlying reasons for any pay differential. This could lead to an employee making an automatic assumption that gender was the basis for a disparity in remuneration.<sup>76</sup>

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73 Mr Gary Brack, Chief Executive Officer, Australian Federation of Employers and Industries, *Proof Committee Hansard*, 27 October 2016, p. 20.

74 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 9.

75 Ms Erin McCoy, Industrial Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 27 October 2016, p. 41.

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

2.68 Ms Alana Matheson, Deputy Director of Workplace Relations for the ACCI also voiced concerns that pay transparency would not necessarily encourage a disgruntled employee to speak to their managers, but rather would merely foster workplace resentment:

What we do question is whether or not this bill will approach that [conversations between employees and managers on pay differences] or facilitate that in a constructive way. What it might result in is resentment between colleagues, as an example, who perhaps consider that they have worked harder or contributed more than the other person, and vice versa. We would like people who feel that their pay may be set on inappropriate grounds, or may be set unfairly, to be able to discuss these issues openly with the person responsible for pay decisions, and the way to achieve that is to facilitate workplace cultures where the relationship is strong enough to be able to have those conversations.<sup>77</sup>

2.69 The Motor Trade Association of South Australia (MTA) acknowledged that the gender pay gap in the private sector is greater than in the public sector because of collective bargaining and greater political sensitivity in the public sector, whereas market forces typically determine wage outcomes in the private sector.<sup>78</sup>

2.70 However, the MTA argued that greater collectivised bargaining in the private sector would not address the gender pay gap and may cause economic damage. While it acknowledged that better information would improve an employee's ability to negotiate wages, the MTA argued that it was vital that employers kept the ability 'to reward skill differentiation and competency while retaining some control over costs without fear of employees either collectively or individually 'bidding up' wage negotiations'. The MTA also raised the possibility that employers would be left defenceless to deal with an employee who, with the intention of bidding up wages, made a false or misleading disclosure about their pay.<sup>79</sup>

2.71 The ACCI also pointed out that there are a host of legitimate reasons why pay might vary among people performing the same job, role, or occupation. In particular, a focus on personal capacities such as skills, knowledge and abilities meant that people are remunerated according to their performance or worth rather than the job they are doing.<sup>80</sup>

2.72 Mr Brack from the AFEI reinforced this argument when he stated:

It is not that there is a precise science in pay setting, but it is clear that they have to operate within a market, they have to take into account people's

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77 Ms Alana Matheson, Deputy Director of Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 27 October 2016, p. 26.

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

79 Motor Trade Association of South Australia, *Submission 1*, p. 9.

80 Australian Chamber of Commerce and Industry, *Submission 9*, pp. 5–6.

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differential contributions and capacities, they have to look at their education levels and a variety of other things.<sup>81</sup>

2.73 Supporters of the bill acknowledged that there may be legitimate differences between employees, but asserted that pay transparency led to more conscious decisions around pay. Professor Brown observed:

It may well be that there are differences between people, and they are completely legitimate, and all pay transparency does is make sure organisations make very conscious and rational decisions, whereas when it is secret they do tend to be ad hoc – there is no pressure to really think about what you are doing, so that is why you get these kinds of adverse outcomes with one group of people getting paid less than another. I think the key argument for pay transparency is around more rational and conscious decision making around pay.<sup>82</sup>

2.74 Professor Brown also asserted that pay transparency worked to increase the efficacy of performance management systems:

If you do not know you are being paid less, you may not actually change your performance, so you are not getting the kinds of signals that the performance management system is supposed to be sending. We also know that the people who are performing better want to know that they are getting paid more than other people.<sup>83</sup>

2.75 On a similar point, when asked for an opinion on whether pay transparency would be a barrier to implementing performance based pay structure in the finance sector, Ms Wendy Streets, the Local Executive Secretary for the Queensland branch of the FSU responded:

I do not believe for a minute it would be a barrier. I think what they are probably fearful of is what gets exposed in the performance pay information once it is free to be discussed and be out there. It will out an awful lot of discrimination. There is probably at least 75 per cent of people who work in the finance industry on one type or another of performance based systems. We have difficulty – we have tried to enter into pay equity audits with some of our major employers. For all their billions of dollars, sometimes they are quite unable – and, more often than not, most of them are unwilling, but we have had a few who have worked with us – to produce the data.<sup>84</sup>

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81 Mr Gary Brack, Chief Executive Officer, Australian Federation of Employers and Industries, *Proof Committee Hansard*, 27 October 2016, p. 19.

82 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 4.

83 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 3.

84 Ms Wendy Streets, Local Executive Secretary of the Queensland Branch, Finance Sector Union, *Proof Committee Hansard*, 27 October 2016, p. 42.

2.76 Performance criteria and outputs are likely to become increasingly important in a globally competitive business environment. However, the ACCI was concerned that the bill would discourage employers from implementing legitimate remuneration structures based on personal capacities because of a concern that employee discussion of pay outcomes could lead to workplace conflict.<sup>85</sup>

2.77 Professor Brown responded to these concerns by emphasising the potential for reduced productivity under pay secrecy arrangements:

We have a number of studies which show that pay secrecy reduces the effectiveness of pay systems to motivate employee performance and that employee performance is lower under a pay secrecy policy because people cannot see the connection between pay and performance. The lower-performing employees do not know that they are performing poorly and getting less pay, and the high performers have no relative information that says they are working hard and being remunerated for that. The overwhelming body of research shows that pay secrecy is bad for employee performance rather than better for it.<sup>86</sup>

2.78 The ACCI was also concerned that an increased focus on pay risked undervaluing valuable non-monetary or intrinsic rewards such as job challenge, responsibility, autonomy, and task variety.<sup>87</sup>

2.79 Both the AFEI and the ACCI argued that performance pay schemes are closely linked to corporate financial performance, and that the public disclosure of pay structures could inflict damage on market performance.<sup>88</sup>

2.80 Ms Matheson from the ACCI emphasised the commercial and competitive risks of releasing pay-related information when she stated:

The Australian Chamber supports the principle that workplaces should be free of sex-based discrimination, but there are ways to achieve this other than through pay transparency. The bill also raises concerns that its blanket approach of rendering unenforceable clauses preventing employee pay disclosure will see pay-based information land in the hands of competitors.<sup>89</sup>

2.81 Similarly, the MTA argued that the amendment as currently drafted does not reflect the intention of the bill which is designed to capture the disclosure of pay information between colleagues within the same workplace. However, the MTA

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85 Australian Chamber of Commerce and Industry, *Submission 9*, p. 7.

86 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 9.

87 Australian Chamber of Commerce and Industry, *Submission 9*, p. 8.

88 Australian Federation of Employers and Industries, *Submission 16*, p. 2; Australian Chamber of Commerce and Industry, *Submission 9*, p. 9.

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

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argued that because the provisions of the bill could be applied broadly, 'a literal interpretation of the legislation could lead to penalty free disclosure of a workplaces wage structures to business competitors, either inadvertently or by disgruntled employees'. The MTA was of the view that the potential for general disclosure of business wage structures created serious commercial risks.<sup>90</sup>

2.82 Finally, both the ACCI and the MTA pointed out that there were various legislative and regulatory mechanisms already in place to address factors such as discrimination and bias. For example, it is already unlawful to discriminate in pay negotiations on the basis of gender. Furthermore, the Fair Work Commission is already empowered to review employment agreements and respond to allegations of bias and poor decision-making.<sup>91</sup>

2.83 The Office for Women concurred with this point and noted:

The Fair Work Act already contains a number of provisions which support gender equality, including gender pay equity. Employers must also have regard to obligations under state, territory and federal anti-discrimination laws.<sup>92</sup>

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90 Motor Trade Association of South Australia, *Submission 1*, p. 8; see also Australian Chamber of Commerce and Industry, *Submission 9*, p. 9.

91 Australian Chamber of Commerce and Industry, *Submission 9*, p. 8; Motor Trade Association of South Australia, *Submission 1*, p. 9.

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





# 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.<sup>1</sup>

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.<sup>2</sup>

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

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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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> Representatives from VWL indicated to the committee that their organisation would support something similar as an alternative position.<sup>7</sup>

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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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

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 earnings<sup>11</sup>

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...

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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.<sup>12</sup>

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.<sup>13</sup>

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'.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

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]<sup>17</sup>

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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'.<sup>18</sup>

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'.<sup>19</sup>

3.19 The ACTU, Professor Stewart and Professor Gaze expressed agreement with this point from the Law Council.<sup>20</sup> 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'.<sup>21</sup>

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.<sup>22</sup>

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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'.<sup>23</sup>

### ***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.<sup>24</sup>

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.<sup>25</sup>

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'.<sup>26</sup>

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.<sup>27</sup>

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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.<sup>28</sup>

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'.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup> These statistics show a slight

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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](http://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.<sup>33</sup>

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.<sup>34</sup>

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.<sup>35</sup>

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

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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](http://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.



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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.<sup>36</sup>

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.<sup>37</sup>

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.<sup>38</sup>

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

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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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

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.<sup>42</sup>

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:

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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.

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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.<sup>43</sup>

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).<sup>44</sup>

### **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.<sup>45</sup>

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.

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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.<sup>46</sup>

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

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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**



# Labor Senators' Dissenting Report

1.1 Labor senators are concerned by the extent and persistence of the gender pay gap across all industries in Australia.

1.2 In addition, Labor senators are disturbed by the culture of pay secrecy that exists in many Australian workplaces. Evidence received during the inquiry illustrated the prevalence of pay secrecy provisions in employment contracts. Some research asserted that between 50 and 90 per cent of organisations have pay secrecy provisions.<sup>1</sup>

1.3 Labor senators are of the opinion that it is not appropriate to prohibit employees from sharing their personal remuneration information in any context, or to punish employees who have chosen to share it. Conversely, employees who prefer not to disclose their remuneration details should also be able to make that choice.

1.4 On the evidence before the committee, Labor senators have concluded that pay secrecy is an obstacle to achieving gender pay equity in Australian workplaces.

1.5 Pay secrecy contributes to maintaining existing systematic discriminatory pay practices by allowing conscious or unconscious bias and gender stereotyping to persist in organisations.

1.6 As noted in the main committee report, the gender pay gap is lower in the public sector than in the private sector, and lower under awards and collective agreements than under individual arrangements. The main method of setting pay in the private sector is by individual arrangement compared to the public sector where the vast majority of pay is set by collective agreement where details are made public.<sup>2</sup> These figures suggest that the gender pay gap is lower when pay is set by transparent standards.

1.7 Evidence received from the WGEA stated:

Pay is more likely to be unequally distributed between women and men when it is set by individual arrangements with an employer... This suggests the gender pay gap is lower when pay is set using methods which involve increased external oversight or transparent standards, such as awards.<sup>3</sup>

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1 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 3.

2 Workplace Gender Equality Agency, *Gender pay gap statistics*, August 2016, pp. 6–8, [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) (accessed 31 October 2016).

3 Workplace Gender Equality Agency, *Submission 15*, p. 5.

1.8 As outlined in the main committee report, the gender pay gap is a multi-faceted problem that requires a number of different strategies to successfully address all the contributing factors.<sup>4</sup>

1.9 Labor senators are under no illusion that a bill prohibiting pay secrecy will singlehandedly solve the gender pay gap.

1.10 However, we do recognise that enhanced pay transparency is an important tool to support improved outcomes for gender pay equity in Australian workplaces and believe that targeted, well-drafted legislative change is an appropriate mechanism for achieving this.

1.11 Legislated pay transparency would contribute to tackling gender discrimination and assist in minimising the gender pay gap by:

- fostering merit-based pay decisions;
- increasing the accountability of managers and organisations for their pay decisions; and
- empowering women in pay negotiations.

1.12 Labor senators are also of the opinion that pay transparency will promote pay equity on a broader level by ensuring discrimination and bias based on factors other than gender (including race, age or disability) are not perpetuated in remuneration decisions.

1.13 As Professor Michelle Brown, a University of Melbourne academic noted for her research on the relationship between pay secrecy, performance management and the gender pay gap stated in her evidence:

...transparency is going to be helpful in promoting gender pay equity, but it is also going to be useful in promoting pay equity for everybody, so that we do have pay related to the value of the job and the performance of the person in it, rather than assumptions about that person.<sup>5</sup>

1.14 Labor senators do not agree with opinions put forward by employer and industry groups stating that employees are not interested in pay matters. Furthermore Labor senators are not convinced that pay transparency would lead to workplace conflict as claimed by these organisations.<sup>6</sup>

1.15 Evidence from the inquiry suggested that remuneration is important to employees and that far from maintaining workplace harmony, pay secrecy can lead to discontent. As Professor Brown stated:

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4 Majority committee report, pp. 7–9.

5 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, p. 10.

6 Majority committee report, pp. 17–23.



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We know that pay really matters to people. The difference is that it is either discontent with data or discontent in a sense without data. We know that organisations seem to think that, if people have no information about pay, they will not think about pay. That is simply not the way it operates. If people do not have information about pay, they look to other sources of information. They look at what we refer to as positional goods. You will look at someone's lifestyle, the car they drive and the holidays they have and make some assumptions about how much they get paid. All of the studies have showed that we are really lousy at guessing what other people are paid. The idea that, if you have pay secrecy there will be more conflict, is not really consistent with the way employees think about pay. They want to know, and if they do not have information from the employer, they get it from other sources. Those sources are typically inaccurate.<sup>7</sup>

1.16 In addition, Labor senators found attitudes expressed by employer and industry groups positing that employees lack the capacity to understand the factors that determine individual pay and performance measurement systems to be disingenuous and patronising.

1.17 Labor senators note that there is no requirement in the bill to force employees to reveal their remuneration. In doing this, we emphasise that not all employers are opposed to legislative changes prohibiting pay secrecy. Evidence from the WGEA revealed that some employers supported the bill and believed that such pay transparency measures were reasonable and appropriate for tackling the gender pay gap.<sup>8</sup>

1.18 Labor senators recognise the numerous suggestions put forward by submitters aimed at improving the drafting of the bill and are aware that as it currently stands, the bill has problematic aspects that may limit its effectiveness if not remedied.

1.19 Labor senators agree with the suggestion to improve the bill by replacing the words 'pay or earnings' with the word 'remuneration'.<sup>9</sup>

1.20 However, consistent with our view that it is not appropriate to prohibit employees from disclosing their personal remuneration information in any context if they so choose, Labor senators do not support the suggestion to restrict the operation of the provision to disclosures made for a particular purpose (i.e. to check for gender discrimination) to particular parties (i.e. other employees of the employer, an industrial association or professional adviser).<sup>10</sup>

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7 Professor Michelle Brown, private capacity, *Proof Committee Hansard*, 27 October 2016, pp. 8–9.

8 Workplace Gender Equality Agency, *Submission 15*, p. 9.

9 Majority committee report, p. 29.

10 Majority committee report, pp. 27–28.

1.21 As the ACTU and Victorian Women Lawyers noted, such limited disclosure could lead to confusion and discourage employees from making or seeking any disclosure at all.<sup>11</sup>

### **Conclusion**

1.22 In conclusion, Labor senators are of the opinion that the current gender pay gap in Australian workplaces is unacceptable, and that discrimination is particularly difficult to remedy when it is hidden from view.

1.23 While noting that broader cultural change is important, Labor senators believe concrete actions must be taken to resolve the gender pay gap. Labor senators assert that enhanced transparency in regard to personal remuneration would support improved gender pay equality outcomes and represent a positive step for workplace cultures more generally.

1.24 In taking into account the evidence received during the course of the inquiry, Labor senators can see no valid reason for compelling employees to abide by pay secrecy provisions or directions relating to their own personal remuneration information, or for punishing employees for disclosing such information.

### **Recommendation 1**

**1.25 Provided the drafting concerns raised in the main report are adequately addressed, Labor senators recommend that the Senate pass the bill.**

**Senator Gavin Marshall**

**Deputy Chair**

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11 See Ms Sophie Brown, Co-Chair of Work Practices Committee, Victorian Women Lawyers, *Proof Committee Hansard*, 27 October 2016, p. 31; and Ms Erin McCoy, Industrial Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 27 October 2016, p. 38.

# 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**





# Appendix 1

## Submissions and additional information

### Submissions

<b>Number</b>	<b>Submitter</b>
1	Motor Trade Association of South Australia
2	Queensland Law Society
3	Professionals Australia
4	Good Shepherd Australia New Zealand
5	JobWatch
6	Queensland Nurses' Union
7	Shop, Distributive and Allied Employees' Association
8	Professor Michelle Brown and Ms Leanne Griffin
9	Australian Chamber of Commerce and Industry
10	Australian Council of Trade Unions
11	Victorian Women Lawyers
12	Finance Sector Union
13	Law Council of Australia
14	Ai Group
15	Workplace Gender Equality Agency
16	Australian Federation of Employers and Industries
17	Professor Beth Gaze
18	Professor Marian Baird and Ms Alexandra Heron, Women and Work Research Group, The Business School, University of Sydney

**Answers to questions taken on notice**

- 1     Answers to questions taken on notice by the Australian Federation of Employers and Industries at a public hearing in Melbourne on 27 October 2016; received 2 November 2016
- 2     Answers to questions taken on notice by Professor Beth Gaze at a public hearing in Melbourne on 27 October 2016, received 3 November 2016
- 3     Answers to questions taken on notice by the Finance Sector Union at a public hearing in Melbourne on 27 October 2016, received 4 November 2016
- 4     Answers to questions taken on notice by the Office for Women, Prime Minister and Cabinet at a public hearing in Melbourne on 27 October 2016; received 11 November 2016

# **Appendix 2**

## **Public hearing**

*Melbourne, Victoria, 27 October 2016*

**Committee Members in attendance:** Senators McKenzie, Marshall, Hume, Waters

**Witnesses**

**Professor Michelle Brown**, private capacity

**Professor Beth Gaze**, private capacity

**Professor Andrew Stewart**, private capacity

**JobWatch**

Mr Ian Scott, Principal Lawyer

**Australian Federation of Employers and Industries**

Mr Garry Brack, Chief Executive Officer

Ms Jill Allen, Manager, Research and Policy

**Australian Chamber of Commerce and Industry**

Ms Alana Matheson, Deputy Director, Workplace Relations

**Victorian Women Lawyers**

Ms Stephanie Milione, Convenor

Ms Sophie Brown, Co-Chair, Work Practices Committee

Ms Amy Johnstone, Chair, Law Reform Committee

**Law Council of Australia**

Mr Jonathan Kirkwood, Member Industrial Law Committee, Federal Litigation and Dispute Resolution Section

Ms Emma Hlubucek, Senior Policy Lawyer

**Australian Council of Trade Unions**

Ms Erin McCoy, Industrial Officer

**Finance Sector Union**

Ms Wendy Streets, Local Executive Secretary, Queensland Branch

**Workplace Gender Equality Agency**

Ms Jackie Woods, Acting Director

Ms Janin Bredehoeft, Senior Research Advisor

**Office for Women, Department of the Prime Minister and Cabinet**

Ms Amanda McIntyre, First Assistant Secretary