



**Submission to the
Senate Education and Employment
Standing Committee**

Fair Work Amendment (Gender Pay Gap) Bill 2015

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Introduction

The Queensland Nurses' Union (QNU) thanks the Senate Education and Employment Standing Committee (the Committee) for the opportunity to make a submission to the inquiry into the *Fair Work Amendment (Gender Pay Gap) Amendment Bill 2015* (the Bill).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNU is the principal health union in Queensland covering all categories of workers that make up the nursing workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 53,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNU.

The QNU welcomes the introduction of the Bill and its aims to remove legal prohibitions on workers discussing their own pay.

The Bill does not intend to force anyone to discuss their pay, rather it aims to ensure employers do not put pressure on employees not to divulge this information.

Recommendation

The QNU recommends:

The Senate supports passage of the Bill through the parliament with the following amendments:

333B Terms prohibiting disclosure of pay have no effect

A term of a modern award, an enterprise agreement, **individual flexibility arrangement** or a contract of employment has no effect to the extent that the term:

- (a) prohibits an employee from disclosing the amount of, or information about, the employee's pay or earnings; or
- (b) permits, or has the effect of permitting, an employer to take adverse action against an employee if the employee discloses the amount of, or information about, the employee's pay or earnings.

Application of section 333B

Section 333B of the amended Act applies in relation to a modern award, enterprise agreement, **individual flexibility arrangement** or a contract of employment that is in operation on or after the day on which this item commences, whether or not the award, agreement or contract was made or entered into before that day.

As nursing and midwifery is a highly feminised workforce, the QNU continually seeks to break down barriers preventing our members from obtaining pay and conditions of employment that properly reflect their skills and education. For this reason, we promote a gender analysis of all proposed tax/fiscal/policy changes as effects may differ between men and women. In this case, preventing disclosure of wage-related information is a restrictive practice that may disadvantage women and must therefore be addressed.

Women in the Workforce

Women face unique challenges that affect their ability and confidence to negotiate their salary. Time out of the workforce to raise children, caring for elders, running a single-parent household, illness and divorce are some of the many hurdles they often face throughout their lives. However, despite these factors, women do not form a 'niche' market. They are a powerful consumer group that makes significant contributions to the nation's economic and social wealth.

Women's disadvantage is exacerbated by the gender wages gap¹ currently standing at 18.8% (Australian Bureau of Statistics, 2014a), the fact they live longer than men (Australian Bureau of Statistics, 2014b) and other structural factors that effectively reduce their lifetime earnings. Breaking down structural barriers women face in their working and social lives will need to take into account their patterns of work, the gender wages gap, caring

¹ The gender wages gap is the difference between women's and men's average weekly full-time equivalent earnings, expressed as a percentage of men's earnings. Based on 2014 data, this means on average, a man working full-time earns \$1,587.40 per week whereas a woman working full-time earns \$1289.30 per week. That equates to difference of \$298.10 per week (ABS, 2014a; Workplace Gender Equality Agency, 2015). The Workplace Gender Equality Agency (2015) is an Australian Government statutory agency charged with promoting and improving gender equality in Australian workplaces in accordance with the Workplace Gender Equality Act 2012. The Agency's vision is for women and men to be equally represented, valued and rewarded in the workplace.

responsibilities, employment opportunities and longevity. All of these factors mitigate against women's long term earning capacity.

The Fair Work Commission (2015) established the Australian Workplace Relations Study (AWRS) in May 2013 as part of an initiative to enhance the breadth and quality of information available to inform its work, and provide a valuable public resource to the Australian community more generally. A key finding of the AWRS in respect to the gender pay gap is that Australian women are financially falling behind their male counterparts because of their reluctance to negotiate pay rises at work.

The following information extracted from the AWRS provides an overview of the extent of the problem.

- 43% of employees indicated that they negotiated their wage/salary with their employer. More males (51%) than females (36%) reportedly negotiated their wage/salary with their employer.
- More males than females indicated that they had attempted (with or without success) to attain a better wage/salary through negotiation with their employer, with 19% of males indicating that they had attained a better wage without changing roles or had attempted to (2%) compared to 13% of females who had been successful or had unsuccessfully attempted to (2%). Almost one third (30%) of employees indicated that they had not attempted to attain a better wage/salary since they commenced their employment.
- 19.2% of men have attained a better wage through negotiation, compared to 12.7% of women.
- 33.8% of women have not attempted to attain a better salary at their current employer, compared to only 25.6% of men. This reluctance financially disadvantages women, who end up earning less for the same jobs and in the longer term lack economic security in retirement.
- Women earned only 81 cents in the dollar when pay was negotiated, compared to an industry award rate, where it was 92 cents in the dollar.
- Female adult non-casual, non-managerial employees earned 83% of the average hourly ordinary time cash earnings (AHOTCE) of all male adult non-casual, non-managerial employees.

Several reasons may explain why women are not as successful as men in negotiating their own pay. These include gender stereotypes around behaviour during negotiations and women may have lower expectations so they ask for less and settle for less.

Individual Contracts in Nursing and Midwifery in Queensland

When there are contractual provisions prohibiting the disclosure of information related to pay, women are at a disadvantage.

Under the *Fair Work Act 2009* (Cth) employers can make Individual Flexibility Arrangements (IFAs) with their employees that can vary the wages set out in a modern award (section 144) or enterprise agreement (section 202). Employment conditions that can be modified through an IFA include a range of wage-related clauses, including, but not limited to, penalty rates, overtime, allowances and leave loading. The AWRS data indicated that 14% of enterprises reported making an IFA with an employee to modify wages since 1 July 2012. As IFAs could potentially prohibit disclosure of wage-related information², we recommend the Bill also applies to these instruments.

The QNU is aware of cases where employers offer individual nurses or midwives a contract of employment that sets terms and conditions outside the applicable enterprise agreement or award. In one case, a large employer is currently attempting to move all Nurse Unit Managers and Midwife Unit Managers onto contracts. Not only will this decollectivise the workforce (recognising here that this is a key objective of the strategy) it also undermines the nursing and midwifery career and classification structure. Nurses and midwives who seek to move into these middle management positions will have no choice but to enter into an individual contract. For many this will be a disincentive as they will be forced to choose between an agreement negotiated with the assistance of their union or career advancement where they will negotiate the terms of their employment on their own.

Conclusion

We support any moves to break down the structural and social impediments that are currently restricting women's low incomes during their working lives and the consequences when they wish to retire. These barriers can be lowered or overcome if governments make a sincere commitment to social and wage justice. Removing any contractual or agreement impediments such as the ability of employees to discuss their salary is one mechanism that may work towards greater gender pay equity.

² Currently an IFA would not pass the Better Off Overall Test if it contained such a provision, but we are looking here to protect against any moves to alter this.

Until womens' rights to economic security are realised and they are engaged as fully and effectively as possible in the workforce, then over 50% of the nation's population will not be able to contribute to their capacity - and that is a massive productivity loss.

References

Australian Bureau of Statistics (2014a) *Average Weekly Full-Time Earnings* Cat no. 6302.0.

Australian Bureau of Statistics (2014b) *Life Expectancy at Birth* based on Deaths Australia cat no. 3302 retrieved from

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Workplace Gender Equality Agency (2015) *What is the Gender pay Gap?* Retrieved from <https://www.wgea.gov.au/addressing-pay-equity/what-gender-pay-gap>