

Ai GROUP SUBMISSION

Senate Standing Committee on
Education and Employment

**Fair Work Amendment (Gender
Pay Gap) Bill 2015**

24 FEBRUARY 2016



1. Introduction

The Australian Industry Group (**Ai Group**) makes this submission to the Senate Standing Committee on Education and Employment with regard to its inquiry into the *Fair Work Amendment (Gender Pay Gap) Bill 2015* (the **Bill**).

Ai Group is a strong advocate for closing the gender pay gap between men and women. Ai Group was heavily involved in the development of the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**) and has a strong and effective working relationship with the Workplace Gender Equality Agency.

Ai Group continues to promote gender wage parity between men and women among its members and provides assistance to members to meet their reporting obligations under the WGE Act. One of the reporting obligations (a minimum standard) is for larger businesses to have a formal policy or formal strategy on remuneration that includes gender pay equity objectives. All businesses are required to report, by gender, on the average salaries paid to specified categories of employees, whether a remuneration policy or strategy is in place, and whether any gender remuneration gap analysis has been conducted. Ai Group was also a committee member of the Australian Standards Committee that developed the Australian Standard for gender-inclusive job evaluation and grading.

These measures genuinely assess an employer's 'gender pay equity performance' and assist employers to change workplace culture and remuneration practices which are susceptible to inequity in men's and women's pay.

The Bill, however, will not achieve the same outcomes as the abovementioned initiatives. The Bill will not reduce the gender pay gap (as the explanatory memorandum to the Bill asserts). It will simply add to the already prescriptive regulation of the employment relationship by the *Fair Work system*.

2. Terms prohibiting the disclosure of pay in awards, enterprise agreements and contracts of employment

The Bill is based on a flawed premise that non-disclosure by employees of their remuneration to their work colleagues, (whether that be because of the terms of their employment contract or personal preference to not disclose), is a direct cause of the gender pay gap.

It is our experience that employees generally do not disclose the level of their remuneration to their work colleagues because this information is considered personal and private on an individual level.

Ai Group and its legal practice, Ai Group Workplace Lawyers, for many years have consulted and provided advice to employers with respect to enterprise agreements and contracts of employment. In our experience, terms prohibiting the disclosure of pay are rare and where they do appear, we have not found them to be necessarily problematic to warrant their prohibition.

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Confidentiality clauses in contracts of employment usually seek to prohibit the disclosure of confidential company information and sometimes may capture terms prohibiting the disclosure of pay. Nonetheless such clauses have been found at times by the Courts to not always be legally enforceable, because there is an insufficient connection between an employer's legitimate business interests and the information sought to be protected.

Private businesses, particularly in white collar sectors, don't typically have collective enterprise agreements whereby wages (or wage bands) are published. These businesses typically recruit on market rates, an indication of which can be generally accessible from salary surveys conducted by private consulting or recruitment firms. This information is generally available for free (or for a small fee) via the internet. Notably Ai Group also publishes a salary and benefits survey of its members to assist members to, among other things, benchmark salaries against the market rate, review employee benefits and reward programs, and design competitive remuneration packages.

With respect to enterprise agreements, as identified above, it is rare for an enterprise agreement to contain a term prohibiting the disclosure of remuneration. Enterprise agreements are generally transparent with regard to the level of remuneration paid to employees. In circumstances where there are genuine issues relating to commercial confidentiality, sometimes the Fair Work Commission will agree to an employer request to not publish the wage rates. These cases are in the minority and of course such requests are assessed by the Commission on their merits. Similarly, industrial awards publish the minimum rates payable to employees and do not include terms prohibiting the disclosure of pay.

Given the above, it is clear that the proposed section 333B is unnecessary and will have little, if any, practical effect in decreasing the gender pay gap between men and women at the workplace.

Rather, employers should be encouraged to comply with their gender reporting obligations under the *Workplace Gender Equality Act*, and encouraged to conduct a gender-pay gap analysis.

The Bill should be rejected.



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