

Chapter 1

Reference

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

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 2016.²

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 45th Parliament, the Senate re-referred the bill to the committee for inquiry and report by 14 November 2016.³

1.5 On 10 November 2016, the Senate agreed to an extension of time to report until 30 November 2016.⁴

Conduct of the inquiry

1.6 Details of the inquiry begun during the 44th Parliament were made available on the committee's website.⁵ 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 45th Parliament, the committee resolved not to call for new submissions, but rather to rely on those received during the 44th Parliament.⁶

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 (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 (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.⁷

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.⁸

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.⁹

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.¹⁰

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.¹¹

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

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 (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 (accessed 31 October 2016).

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

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

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.¹³

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.¹⁴

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*.¹⁵

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.

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 (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.