

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.¹

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.² 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.³

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 (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.⁴

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.⁵

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.⁶

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:

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.

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.⁷

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.⁸

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'.⁹

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).¹⁰

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.¹¹

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

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.