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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Waters)

# FAIR WORK AMENDMENT (GENDER PAY GAP) BILL 2015

## OUTLINE

This Bill seeks to reduce the gender pay gap by removing legal prohibitions on workers discussing their own pay.

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.

When pay is set in secret by individual negotiation, women are at a disadvantage. While there is no evidence to suggest that women’s abilities to negotiate are any different from men’s, research shows women’s negotiations are often less successful.

Pay secrecy can help hide discrimination, unconscious bias and bad decision making, such as where two people are paid differently for doing the same job. Pay transparency makes sure employers have to justify pay decisions.

The Bill would make sure that workers are allowed to tell their colleagues what they are paid if they wish to, without fear of retaliation from their boss. It does so by amending 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 an employee from disclosing the amount of, or information about, the employee’s pay or earnings, or to the extent that it permits an employer to take adverse action against their workers for discussing their own pay.

The changes introduced by the Bill would apply to all employees covered by the *Fair Work Act 2009* and would apply to all modern awards, enterprise agreements or contracts of employment, including ones already in operation.

The Bill would not force anyone to discuss their pay, but it would make sure that bosses could not pressure their employees to stay quiet, or take any action against them if they do discuss their pay.

## NOTES ON CLAUSES

### Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

### Clause 2: Commencement

2. The Bill’s provisions are to commence the day after the Bill receives Royal Assent..

### Clause 3 – Schedules

4. Each Act specified in a Schedule to this Act is amended or repealed as is set out in the applicable items in the Schedule. Any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1— Amendments

### *Fair Work Act 2009*

#### **Item 1 - Consequential**

6. This item makes an amendment to subsection 5(8) of the Act that is consequential to the changes made by item 3.

#### **Item 2 – Overview**

7. This item amends the guide to Part 2-9 in section 321 to reflect the new Division 4 inserted by item 3.

#### **Item 3 – Certain terms have no effect – added section 333B**

8. This item adds a new Division 4 at the end of Part 2-9 of the Act. Section 333B of Division 4 provides that a term of a modern award, an enterprise agreement 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.
9. The new section 333B is intended to be read broadly. This section is intended to remove restrictions on employees’ rights to disclose a broad range of information about the employee’s pay or earnings. This includes information about whether and in what amounts they receive entitlements such as bonuses, superannuation, share allocations, paid parental leave, allowances, professional memberships, paid overtime, company cars or parking spaces.

#### **Item 4 – Consequential and application**

10. This item inserts a new Part 3 at the end of Schedule 1 to the Act. Clause 13 of Part 3 defines *amended Act*. Clause 14 of Part 3 specifies that the amendments made by the Bill will apply to existing and future modern awards, enterprise agreements or contracts of employment.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

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

This 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*.

#### **Overview of the Bill**

This Bill seeks to reduce the gender pay gap by removing legal prohibitions on workers discussing their own pay.

The Bill would make sure that workers are allowed to tell their colleagues what they are paid if they wish to, without fear of retaliation from their boss. It does so by amending 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 an employee from disclosing the amount of, or information about, the employee's pay or earnings, or to the extent that it permits an employer to take adverse action against their workers for discussing their own pay.

The changes introduced by the Bill would apply to all employees covered by the *Fair Work Act 2009* and would apply to all modern awards, enterprise agreements or contracts of employment, including ones already in operation.

The Bill would not force anyone to discuss their pay, but it would make sure that bosses could not pressure their employees to stay quiet, or take any action against them if they do discuss their pay.

#### **Human rights implications**

This Bill does not negatively engage any of the applicable rights or freedoms.

This Bill seeks to close the gender pay gap and therefore positively engages Article 2 and Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women.

#### **Conclusion**

This Bill is compatible with human rights as it does not negatively engage any human rights issues. It also seeks to close the gender pay gap and therefore contributes to the realisation of full gender equality.

**Senator Waters**