

## Spotlight on the gender pay gap in Australia

GENDER PAY GAP SERIES - NO. 8

The principle of “equal pay for equal work” was introduced in Australia in 1969 and legislation prohibiting discrimination on the basis of sex first passed in 1984. Notwithstanding, women still earn less than men in Australia.



### Current gender pay gap situation in Australia

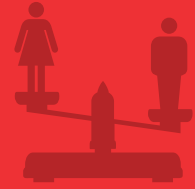
A government statutory agency called the Workplace Gender and Equality Agency is tasked with promoting and improving gender equality in Australian workplaces.

The Agency defines the gender pay gap as “the difference between women’s and men’s average weekly full-time equivalent earnings, expressed as a percentage of men’s earnings. It is a measure of women’s overall position in the paid workforce and does not compare like roles.”

As of February 2018, the Agency reported that Australia’s full-time gender pay gap was 15.3%. This means that, currently, women earn on average AUD 253.70 per week less than men. The gender pay gap in Australia has hovered between 15% and 19% for the past two decades.

## The Workplace Gender Equality Act

The Agency was established in 2012 by the Workplace Gender Equality Act. The Act is the primary legislation that specifically addresses the gender pay gap in Australia, establishes gender pay reporting requirements (see below) and generally aims to promote equality for both men and women in the workplace.



### Who is within the scope of the Act?

- All non-public sector employers with 100 or more employees for any six months between 1 April and 31 March the following year must file public reports on workplace gender equality. All employees (headcount, not full-time equivalent) count.
- For corporations that are part of a corporate group, the 100-or-more-employees threshold applies to the combined total of employees in Australia of the parent corporation plus the employees of any subsidiaries in Australia.



### Reporting requirements — what data must be reported to the Agency?

Under the Act (and relevant legislative instruments), covered employers must file an annual report with the Agency on the following:

- The gender composition of the workforce and the governing bodies
- Remuneration/pay between men and women
- Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and working arrangements supporting employees with family or caring responsibilities
- Consultation with employees on issues concerning gender equality in the workplace
- Any other matters specified by the minister for the reporting period (e.g., sex-based harassment and discrimination).

Covered employers must acknowledge that the report has been signed by the relevant CEO by adding her/his name and ticking the relevant box. Employers must also inform employees and shareholders that it has lodged its report with the Agency and advise how the report may be accessed.

In addition, all non-public sector employers with over 500 employees must meet minimum standards set by the legislation. These standards require employers to have a formal policy or strategy in place in relation to one or more of the above.

Pay is defined as an annualized base salary, as if the employee has worked full-time and for a year. Total remuneration is also reported, which includes base salary, superannuation and any other payments the employee has received.

Employers must complete an online “workplace profile” before the required report can be submitted to the Agency.



### Where is the data reported?

- The report is submitted to the Agency and is available for public use.
- The information is publicly available on the Agency’s website and is used by the Agency to report to the minister and is laid before parliament.
- There are no civil or criminal penalties for employers who fail to report. However, non-compliant employers may not be eligible to tender for contracts under some government frameworks and may not be eligible for some government grants or other financial assistance. There are also reputation issues to consider as the Agency publishes a list of non-compliant organizations.
- Once a report is filed, employers must notify employees and shareholders as soon as is practicable and make it available to them. It must also notify relevant employee



organizations within seven days. Employees and relevant employee organizations must also be informed that they can provide comments on the report.

- The Agency's annual report on gender pay statistics sets out the relevant pay gap across different occupations, industries and types of employment. The Agency does not name employers when making gender pay gap information public. However, the Agency has previously named employers which have not complied with the Act.



### Proposed reforms to achieve gender pay equity in Australia

❖ In 2017, the Senate Standing Committee on Finance and Public Administration conducted an inquiry into gender segregation in the workplace and its impact on women's economic inequality. The Committee made nine recommendations:

1. Develop and implement a national policy framework to achieve gender pay equity in Australia.
2. Amend the Fair Work Act 2009 to improve its capacity to address equal remuneration.
3. The government should conduct a comprehensive consultation process with expert stakeholders to achieve these reforms.
4. The government should restore and protect the budget of the Pay Equity Unit that was previously established as part of the Fair Work Commission.
5. The Department of Education and Training should update the National Career Development Strategy and the Australian Blueprint for Career Development to address the need for gender-sensitive career guidance and counseling in all Australian schools and training institutions.
6. The Department of Education and Training should undertake a national evaluation of all programs and initiatives associated with the increasing number of girls in STEM education.
7. The government should conduct a review of recent gender pay reporting initiatives in the UK.
8. The government should conduct a review of labor force data with particular attention to job classifications used by the Australian Bureau of Statistics.
9. The Australian Bureau of Statistics "Time Use" study should recommence on a regular basis.

At the time of publication, there is no pending legislation implementing these recommendations. However, they are significant and may well be implemented in the future.

- ❖ In addition, the [Fair Work Amendment \(Gender Pay Gap\) Bill 2015](#) remains before parliament. The Bill amends the Fair Work Act 2009 to remove restrictions on employees' rights to disclose the amount of, or information about, their pay and earnings. It also prohibits employers from taking adverse action against employees for disclosing this information.

This Bill was restored to parliament in August 2016 and a second reading debate on the Bill was held on 19 March 2018. As with other potential reforms in this area, it is a case of "watch this space!"

BY

[Sinan Alnajjar](#)

BY

[Ben Burke](#)

## Our gender pay gap series

The Baker McKenzie Gender Pay Gap series will be spotlighting gender pay gap regulations in key jurisdictions and exploring the central issues, including how to narrow the gap.

For more on the global picture and how our global network of over 700 labor and employment lawyers are helping clients address this issue, see our [Gender Pay Gap series](#).

