



Reducing the Gender Pay Gap with multi-employer bargaining

ACTU Research Note (November 2022)

Summary

The *Secure Jobs, Better Pay Bill 2022* will make a substantial difference to reducing Australia's Gender Pay Gap, which has barely changed in the past five years and recently worsened.

The Bill will achieve this through two sets of measures:

I. Making bargaining work for women

It will make it easier for workers to bargain about closing the gender pay gap in their workplace both by expanding access to collective bargaining, and by clarifying for the first time, that gender equity is a matter that can be bargained for and included in collective agreements. This is likely to reduce the gender pay gap in Australia because:

- Women on collective agreements earn \$102.60 more per week on average than women not covered by collective agreements.
- The gender pay gap is lower in workplaces covered by a collective agreement than the national average.
- Countries with higher degrees of multi-employer bargaining than Australia have an average gender pay gap of 10.5% compared to Australia's of 15.3%, using the OECD measure of median full-time earnings from 2021.
- Being able to bargain for pay equity measures has delivered great outcomes in other countries. Belgium, where bargaining at all levels is required to consider measures to close the gender pay gap, the full-time gender pay gap has almost been eliminated.
- The multi-employer bargaining streams proposed in the bill have critical roles to play in lowering the gender pay gap:
 - Of the eight industries which have higher-than-average gender pay gaps, seven of them are industries where **single interest multi-employer bargaining** is most likely to apply.
 - Industries where **supported multi-employer bargaining** is most likely to apply are overrepresented by women on lower pay. This includes aged care, early childhood education care and administration and support services. It therefore has a key role to play in lifting wages of workers in female-dominated workplaces where their work has been undervalued.

II. Strengthening equal pay laws

The Bill will also strengthen equal pay laws in the Fair Work Act, which have only resulted in one successful case since they were introduced in 1993. The Bill will fix this by:

- making gender equality an object of the act,
- strengthening how equal pay cases are assessed,
- establishing expert panels on pay equity and care and community, and
- outlawing pay secrecy clauses in employment contracts that hide pay discrimination against women.¹

The Bill will also strengthen the right to request flexible working arrangements to help people, and especially women, better balance work and care.²

As a comprehensive package of measures to lift the pay of women and close the gender pay gap, the ACTU calls on the Senate to promptly pass the Bill in full. Splitting up the Bill would greatly weaken its ability to reduce the gender pay gap.

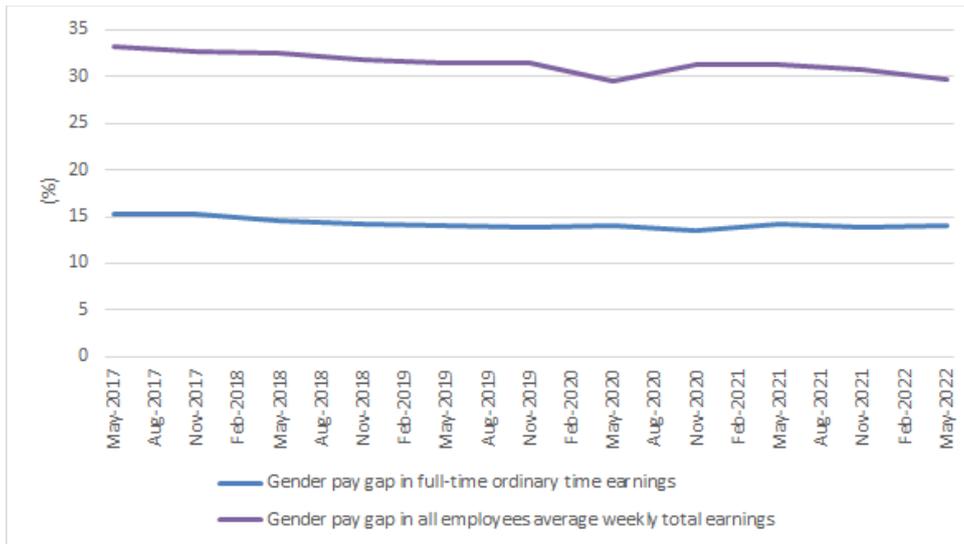
Australia's Gender Pay Gap

Progress in reducing Australia's gender pay gap has flatlined over the past five years, and recently regressed. The gender pay gap stands at 14.1% of full-time ordinary time earnings between women and men, or about \$263.90 per week. However, the gender pay gap between all employees and comparing all of their earnings is far larger at 29.7% or \$471 per week.

Figure 1: Gender pay gap (male earnings above female earnings), per cent, for full-time workers in ordinary hours and all workers in all hours. Seasonally adjusted.

¹ For more information on how the Bill strengthens equal pay laws in the Fair Work Act see *ACTU Submission to the Senate Inquiry into the Secure Jobs Better Pay Bill 2022*, pages 19 to 29.

² The Bill has a range of other measures to support women, including introducing a prohibition on sexual harassment at work into the Fair Work Act as the final legislative measure of the Respect@Work report, and taking steps to restrict the use of fixed term contracts, that are predominantly performed by women and frequently used by employers to limit job security, and tackle wage theft.



Source: ABS (2022) Average Weekly Earnings, May, cat. 6302.0, Table 2.

There are three broad and overlapping reasons why women get paid less than men. Firstly, there is the historic undervaluation of work done in female-dominated industries and occupations and the persistently high levels of occupational and industry segregation along gender lines. Secondly, women face a lack of access to secure, quality and flexible work, particularly due to a lack of support for caring responsibilities. Expensive and inaccessible early childhood education and care, inadequate paid parental leave, unequal parenting of children and no meaningful right to request family friendly work arrangements all contribute to this barrier. Thirdly, gender discrimination continues to play a large role, including in treating women less favourably when it comes to hiring, access to training, and pay and promotion decisions.

These factors continue to undermine women’s workforce participation, and drive the gender pay and retirement income gaps. Together they place incredibly financial, emotion and physical strain on women.

Given the complex causes of the gender pay gap, solutions to it also need to be broad.³ This research note discusses the significant contribution that out workplace laws and in particular collective bargaining can play.

Collective bargaining and gender pay equity

³ For a broader discussion on measures to address the Gender Pay Gap, see: ACTU (August 2022), *Delivering Equity for Women at Work, Job Summit Series – Paper 4* pages 7 to 8.

Australia’s collective bargaining system is almost on life support. Today only about one in seven workers are on a current federally registered agreement. Worryingly, there are now more workers on expired agreements than current ones.⁴ Expired agreements are those that have never been renewed, often leaving workers with outdated pay and conditions simply because the system is overly restrictive and is too easy for employers to evade or undermine.

But even with these significant constraints, collective bargaining in Australia is still making a positive contribution to pay equity for women. Firstly, the gender pay gap among workers covered by collective agreements is lower than workers who are not covered by collective agreements as table 1 demonstrates.

Table 1: Gender pay gaps by method of pay setting (2021).

Gender Pay Gap Type	Collective Agreement	All methods of pay setting ⁵
Full time ordinary earnings	12.9%	13.3%
All employees, all earnings	24.7%	28.2%

Source: ABS Employee Earnings and Hours (May 2021), ACTU calculations.

Secondly, women covered by a collective agreement are also paid more than women not covered by a collective agreement: \$1,269.50 as against \$1,166.90 on average each week.⁶

”Women on collective agreements earn \$102.60 more per week on average than women not covered by collective agreements.”

Thirdly, that advantage is growing as other forms of wage setting have stagnated. From the period 2012 to 2021, wages in collective agreements grew by 9.1% in real terms, whereas wages more generally only grew in real terms by 1.4%.⁷

⁴ Department of Workplace Relations, *Trends in Federal Enterprise Bargaining – June Quarter 2022*

⁵ These gender pay gap calculations are taken from the ABS Employee Earnings and Hours survey of May 2021, to allow for comparison across methods of pay setting. Accordingly they are slightly different from those calculated from the ABS Average Weekly Earnings survey where the official measures are taken from. The pay gap on that official measure in 2022 is 14.1%.

⁶ ABS, Employee Earnings and Hours Survey (May 2022)

⁷ ACTU calculations from ABS EEH (May 2021), ABS WPI (September 2022), ABS CPI (September 2022).

These positive trends are taking place, even within a restrictive bargaining framework, because collective bargaining is more likely to set transparent and objective pay scales across the workforce and have processes for determining pay progression and classification that are robust. Fundamentally, it also enables the workforce to bargain together to win fair pay increases. But collective bargaining has far more potential to make a difference.

Getting women's wages moving through bargaining.

The features of the Secure Jobs Better Pay Bill that explicitly strengthen equal pay laws are relatively well known and widely supported. As a recap the Bill will:

- make gender equality an object of the Act, and include it in the Modern Awards and Minimum Wages Objectives,
- strengthen how equal pay cases are assessed,
- establish expert panels on pay equity and care and community, and
- outlaw pay secrecy clauses in employment contracts that hide pay discrimination against women.

Less well known however is the substantial contribution that collective bargaining can make to reducing the gender pay gap.

The Bill contains a range of measures to better enable collective bargaining to reduce the gender pay gap. Firstly it makes it possible to bargain about pay equity. At the moment a collective agreement under the *Fair Work Act* can only cover “permitted matters”, generally meaning that any terms need to be expressly linked to an employee’s terms and conditions of employment. Clauses that cover broader aspirations, eg. closing the gender pay gap, may be deemed to be of no effect. There is considerable doubt about whether or not measures to achieve gender equity would be permitted matters.⁸ In addition, an agreement cannot contain any discriminatory terms. Terms that positively discriminate in order to achieve gender equality would likely be considered discriminatory, and therefore unlawful.

⁸ See the discussion in ACTU Submission on the *Secure Jobs, Better Pay Bill*, Pages 41-42. For example, the decision by the Full Bench of the FWC in *United Firefighters’ Union of Australia v Metropolitan Fire and Emergency Services Board* [2016] FWCFB 2894 found that gender quotas in relation to the number of applications to be considered for acceptance by an employer at the beginning of a selection process were not a matter pertaining to the employment relationship.

The Bill seeks to amend the FW Act by confirming that “special measures to achieve equality” are matters an enterprise agreement can cover and are not discriminatory terms.⁹ This means that workers could bargain for measures in enterprise agreements that have been effective in reducing the gender pay gap in a wide range of other OECD countries¹⁰ such as terms requiring employers to:

- Implement a gender equality action plan and measure progress against that plan
- Share the results of pay gap reporting with workers and undertake equal pay audits, including for discretionary pay
- Introduce gender neutral job classification and evaluation systems which determine the value of job classes within an organisation, and correct for the historic undervaluation of female-dominated jobs
- Implement gender neutral evaluation criteria for career progression, such as specific conditions for women returning from parental leave to compensate for career and wage progression breaks, to reduce the gender pay gap in discretionary pay and ensure women are not losing out on the basis of performance criteria such as ‘work attendance’ which don’t acknowledge that women spend less time in paid work than men.

Belgium, the stand-out example, requires that the gender pay gap be addressed in all levels of bargaining, from sectoral agreements to the workplace.¹¹ In 2020, the full-time gender pay gap in the country was just 0.4%, leading some to claim that the gap on this measure “is almost eliminated”.¹²

Secondly, while the Fair Work Act already has multi-employer bargaining streams, they have proven to be almost unusable in practice. The Bill seeks to fix this. It reforms the former “low paid” bargaining stream by broadening the test that the FWC applies and removing other key restrictions under a renamed “supported bargaining” stream. This should enable, in particular, low paid and award-reliant workers¹³, the majority of whom are women, the chance to fairly bargain across employers.

This is a vital reform in female-dominated sectors that have suffered from the undervaluation of their work. After all, 59% of the non-managerial award reliant workforce were women¹⁴, and the Expert Panel which conducts the FWC’s annual wage review has found that women are disproportionately represented among the

⁹ *Secure Jobs Better Pay Bill 2022*, Part 9, Clause 428, proposed section 172A.

¹⁰ See Khattar, Rose (2021), “Equal Pay in Collective Bargaining”, in *Pay Transparency Tools to Close the Gender Pay Gap*, OECD Publishing, Paris.

¹¹ Khattar Ibid, pages 109-110

¹² Walker, L, (29 September 2022), “Gender wage gap almost eliminated in Belgium for full-time employees”, The Brussels Times: <https://www.brusselstimes.com/296661/gender-wage-gap-almost-eliminated-in-belgium-for-full-time-employment>

¹³ As is the intention described in the *Explanatory Memorandum of Secure Jobs, Better Pay Bill 2022* at page 167.

¹⁴ ABS EEH (May 2021)

low paid, more likely than men to be paid at minimum award rates than bargained rates and substantially more likely to be paid award minimums rather than bargained rates when working in higher classification/skill levels.¹⁵ Getting wages moving again by allowing greater access to bargaining could therefore make an important contribution to lifting their wages and closing the gender pay gap.

If the supported bargaining stream aims to primarily cover low paid workers, those not covered by it would instead rely on the single interest multi-employer bargaining stream. A good proxy for who this might be is those industries with the smallest proportion of employees reliant on the Award safety net – which determines minimum pay and conditions. Those industries also have gender pay gaps larger than the national average. As Table 2 below shows, seven out of the eight industries with above average gender pay gaps, are also the industries where single-interest multi-employer bargaining would have the most application. Both streams of multi-employer bargaining are therefore vital to lifting the wages of women workers.

“...7 out of the 8 industries with above average gender pay gaps, are also the industries where single interest multi-employer bargaining would have the most application.”

¹⁵ [2017] FWCFB 3500 at [78] and [99].

Table 2: Gender pay gap and “non-award reliance” by industry, May 2021.

Industry	% employees non-award reliant	Gender pay gap
Professional, scientific and technical services	94.3	25%
Health care and social assistance	66.7	22%
Financial and insurance services	94.9	19%
Construction	86.6	19%
Rental, hiring and real estate services	77.9	17%
Mining	98.9	16%
Wholesale trade	90	16%
Information media and telecommunications	92.7	15%
All industries	77	14%
Administrative and support services	57.6	14%
Transport, postal and warehousing	87.4	12%
Manufacturing	80.9	12%
Retail trade	70.4	12%
Education and training	92.2	11%
Accommodation and food services	39.6	10%
Public administration and safety	87	9%
Electricity, gas water and waste services	94.2	7%
Arts and recreation services	73.4	7%
Other services	61.9	2%

Source: ABS Employee Earnings and Hours (May 2021). ACTU calculations.

These changes to bargaining will also give workers alternatives to equal remuneration applications to pursue wage increases in low paid and historically undervalued feminised industries. Given that such applications can be lengthy, expensive, and have to be decided by the FWC, the ability to pursue these claims through bargaining is a crucial complementary measure that will lead to quicker outcomes that can be agreed between the parties and will accelerate gender equity in the workplace.

Finally, the Bill also makes a range of other common-sense changes to get bargaining moving again. For example, it will make it easier for employees to bargain again where an agreement has expired. It would also make it easier to cancel so called “zombie” agreements – agreements concluded in the WorkChoices era

before 2009, but persist to this day, freezing workers' pay and conditions in place. These two measures alone would make bargaining easier for over two million workers.¹⁶

These reforms could lift collective bargaining coverage by 10% and in the first year that took effect, deliver each workers a pay rise of nearly \$1,500 on average, according to research recently published by the Centre for Future Work.¹⁷

Evidence from countries with higher degrees of multi-employer bargaining

The ACTU is confident in advocating for these reforms because they also well work in other countries. Countries that have industrial relations systems that better support multi-employer bargaining also have smaller gender pay gaps than Australia, according to the analysis in table 3 below. In 2021, the average pay gap across the 12 countries included was 10.5% whereas Australia was 15.3%.

These countries were selected using a “centralisation score” developed by the OECD to classify countries based on the degree of centralisation in sectoral collective bargaining.¹⁸ It is a compound score that takes into account the *predominant* level of bargaining, the incidence of additional bargaining at the enterprise level, the degree to which sectoral agreements bind wage setting at the enterprise level and the scope for renegotiation of sectoral agreements at an enterprise level.

We have taken the band of scores for countries that effectively have higher levels of multi-employer or sectoral bargaining than Australia (between 2 and 3 in the OECD measure), but not included more centralised systems which is not contemplated at all by the Bill (scores 3 and above). The countries selected do still vary widely in their industrial relations systems, but generally have broader collective bargaining coverage and the ability to bargain across more than one employer. They therefore serve as a useful point of comparison.

¹⁶ An estimated 450,000 workers are covered by so-called “zombie agreements”, according to Daily Telegraph, (5 November 2022), “Albanese’s industrial relations bill gives workers more pay, overtime”. 16% of the workforce, or about 1.75 million workers are covered by expired collective agreements, according to the DEWR, Trends in Federal Enterprise Bargainin- June Quarter 2022.

¹⁷ Stanford, J, MacDonald F, and Raynes, L, (November 2022), *Collective Bargaining and Wage Growth in Australia*, The Centre for Future Work.

¹⁸ See further [OECD/AIAS ICTWSS Database Codebook](#) , OECD (2021) at p10.

The analysis has then taken the most recent data available from the OECD on the Gender Pay Gap, here measured as the median full time pay gap between men and women. Please note, Australia typically uses the measure of the “average”, rather than “median” wages when calculating the gender pay gap, as this research note does.

Table 3: Gender pay gaps across OECD countries that have higher degrees of multi-employer bargaining than Australia, 2021, median full-time earnings.

	Gender pay gap (at median full times wages) 2021 or latest.	OECD bargaining centralisation score (2019)
Austria	12.4	2.5
Denmark	5.0	2.25
France	11.8	2.5
Germany	14.2	2.5
Italy	7.6	2.5
Netherlands	13.3	2.25
Portugal	11.7	2.5
Spain	8.1	2.375
Sweden	7.4	2.25
Switzerland	13.8	2.375
Norway	4.6	2.25
Finland	16.0	2.25
Average	10.5	
Australia	15.3	1.875

Source: OECD (2022) Gender Wage Gap, and OECD AIAS Database (2020)

These findings are not surprising. As discussed above, the OECD has showed collective bargaining can help reduce the pay gap through:

- Promoting transparency of pay scales and progression
- Better achieving gender-neutral occupational classification structures
- Delivering targeted pay increases to compensate for undervaluation of women’s work
- A high prevalence of worker representatives to support women to secure pay equity.

Beyond the issue of gender equity, the OECD has also shown that strongly coordinated multi-employer systems achieve better employment and unemployment outcomes than decentralised firm-level systems, as Australia currently has. And all systems with stronger multi-employer options achieve greater equality and economic inclusion than decentralised systems.¹⁹

Given the overwhelming evidence of how multi-employer bargaining can get wages moving and deliver pay equity at work for women the ACTU urges the Australian Parliament to promptly pass the *Secure Jobs Better Pay Bill* in its entirety.

¹⁹ Denk O, Garnero A, Hijzen A, and Martin S, "The role of collective bargaining systems for labour market performance" in *Negotiating our way up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris.