

THE PRICE OF SILENCE

**A worker perspective on pay
secrecy at CBA**



Background

In late 2021 the FSU asked CBA workers about their experience of pay secrecy, what it means, if it's enforced and the impact of pay secrecy on their working environment. This report sets out the results.

There were 284 CBA workers who responded to the survey, 61% of respondents identified as female, 34% as male and the remaining 5% either as non binary or preferred not to disclose. We had respondents in every State and Territory except the Northern Territory with the vast majority working on the east coast which is reflective of the location of the CBA workforce. Almost 90% of respondents were union members.

At the Commonwealth Bank there is a standard template contract that is issued to all new staff. These contracts all contain a confidentiality clause that would prevent an employee from discussing their pay. The latest version says:

Confidential information

You must treat all confidential information relating to our business, our related bodies corporate or any of our clients (or those of a related body corporate) with the strictest secrecy. This requirement commences on the date you enter this agreement and will continue after your employment with us has ended. You must not use or disclose such information to any person (nor copy or reproduce it), except where the law requires disclosure or as part of the proper performance of your duties.

This clause does not apply to any information which enters the public domain (except as a consequence of a breach of duty by you).

In particular, the terms and conditions of your employment (including remuneration arrangements) are strictly confidential.

It is a condition of your employment that you do not discuss these matters with any other person other than your legal or financial advisers or immediate family members.

On termination of your employment, you must immediately return to us all books, records, documents and any other property relating to our business (or that of any of our related bodies corporate or clients) or your duties, functions and responsibilities.

These types of pay secrecy clauses are not unique to the Commonwealth Bank, but in 2021, CBA singled themselves out as the only one of the Big 4 unwilling to commit to never enforcing the clauses. On 23 September 2021, while in front of a House of Representative Standing Committee on Economics, CBA CEO Matt Comyn said that these clauses were not enforced, but would not commit to removing them in spite of saying that "I don't think that's good policy - one that you're not going to enforce." That same year, an FSU member was fired for - amongst other things - talking about his pay with colleagues. This action highlighted the equivocating response of Matt Comyn before Parliament.

In front of a Senate hearing on job security eleven weeks later, CBA's Andrew Culleton - Executive General Manager, Group People Services - said about the sacking that "Our practice is not to enforce this but it was definitely one of the seven reasons why the employee was terminated from the group," and that CBA "were looking at the clauses." When asked if Mr Comyn had corrected the record, the bank's general manager of government, industry and sustainability, Euan Robertson, said: "I wouldn't say we've seen the need to correct the record", and that "as Matt said, these are not clauses we primarily rely on."

It has always been the FSU's position that it doesn't matter that CBA say they don't sack people for this (even if they do). The credible threat and possibility, along with management feedback is what is responsible for causing negative pay equity outcomes.

We conducted this survey to demonstrate the extent to which this is true at CBA.

The outcomes are clear.

Most CBA workers believe that they aren't allowed to discuss their pay with their colleagues and believe that if they do, they will face negative consequences.

Background	CBA workers' experience of pay secrecy	What happens when they talk about pay anyway?	The impact	Why does CBA insist on keeping this a secret?	Is it even legal?	Conclusion	Appendix 1 & 2
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"I was told that I cannot disclose my pay to anybody, and were I to do so, it would result in disciplinary action."

CBA workers' experience of pay secrecy

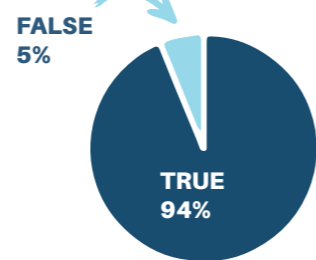
When asked how pay secrecy is enforced, most CBA workers surveyed reported that they are told verbally by their managers not to talk about pay. CBA workers reported that they were often reminded about pay secrecy at team meetings when an issue had been raised and that they were also told directly that their pay was confidential in one-on-one meetings whenever pay or bonuses were discussed.

CBA workers who have discussed their pay with their colleagues report that they have later been emailed by their managers that should they be caught doing so there would be repercussions. They also report being pulled aside for a "quiet word" or being told they'd be disciplined next time this happened.

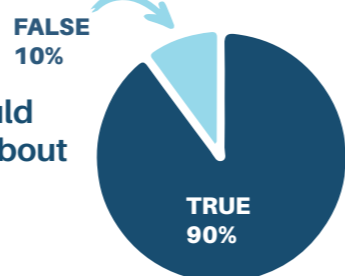
When asked, 94% of respondents reported understanding that they are not supposed to talk about their pay at work, while more than 90% understood that they could get in trouble if they talk about their pay at work.

"I was told that I cannot disclose my pay to anybody, and were I to do so, it would result in disciplinary action. I have never been given the impression by my employrr (sic) that this isn't the case." - Survey respondent

TRUE OR FALSE:
I am not supposed to talk about my pay at work



TRUE OR FALSE:
I understand that I could get in trouble if I talk about my pay at work



What happens when they talk about pay anyway?

CBA workers understand that the ability to discuss their pay is key to ensuring they are paid fairly for the work they do and that pay rates should genuinely reflect the nature and complexity of the roles they are in. In recent years, CBA has increasingly used Individual Flexibility Arrangements (IA) to bypass offering all workers the same terms and conditions set out in the Enterprise Agreement (EA).

CBA only include floor rates in the EA which allows them a mechanism to discourage those on IAs from transferring back to EA terms and conditions. This means that should an employee request to transfer from an IA back to the EA the pay rate they are offered under the EA is the minimum floor rate, which often bears little resemblance to market rate of pay that had previously been paid on the IA. These are some of the reasons that workers are motivated to discuss their pay.

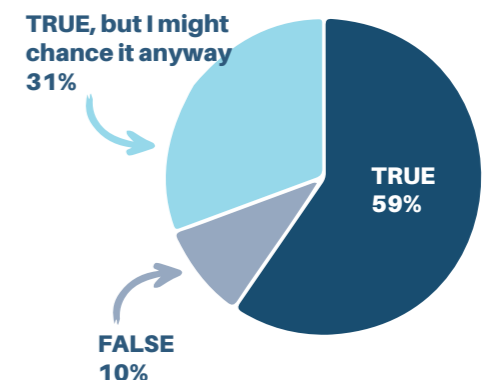
This is particularly common when they are offered a promotion that involves picking up additional work and responsibilities. They want to discuss their pay to make sure they are being fairly compensated for the additional work. Many workers are so concerned about being underpaid that despite the fear of adverse consequences they risk having these discussions (see figure opposite).

"Not knowing if I am being paid sufficiently in line with other colleagues. Recently I accepted a new role at a higher grade and was unaware if the pay I was offered was in line with other colleagues on the same grade and in the same role. In my opinion this allows the bank to get away with paying some people less than others who are in the same role."

- Survey respondent

When asked whether they feel as though they could raise an issue of unfairness at work, even if in doing so they would have to reveal that they had breached confidentiality clauses by discussing pay with their colleagues, fewer than 30% of CBA respondents said that they would raise the issue. A further 24% revealed that they would do it, but it would make them nervous, while just under 50% of respondents felt as though they wouldn't take that chance.

TRUE OR FALSE: I am fearful to talk about pay with colleagues, even if I wanted to ask something about fairness or our rights:



"...this allows the bank to get away with paying some people less than others who are in the same role."



The impact

“It certainly puts a divide between people and only compounds inequality in pay, especially for women.”

Q: What have you seen happen at work when you or your colleagues are caught talking about pay?



Matt Comyn testified to a House of Representatives Economics Committee hearing that he wasn't aware of the pay confidentiality clauses being enforced. CBA staff had different stories to tell.

Survey respondents reported seeing and/or experiencing everything from colleagues being dragged into informal one-on-one's with their line manager to seeing colleagues getting sacked or not making it past probation. CBA workers provided numerous examples where either they or their colleagues suffered adverse consequences.

CASE STUDY

New starters paid more

A couple of years ago members of our team were having a pay discussion and we discovered that the new recruits were paid significantly more than those with lengthy tenure. We raised this with our team leaders who escalated it to senior management who shut it down immediately. The senior managers asked for the names of those who were involved in the discussions, and we were all pulled aside and told not to discuss our pay with anyone. It was implied that our jobs were at risk if we continued these discussions.

Fear of repercussions for even talking about pay is a key driver of the gender pay gap and other inequalities. CBA workers have shared their frustration at their inability to seek redress for genuine inconsistencies in CBA's approach to pay as they are unable to raise inequities without divulging that they have had conversations with their colleagues about pay in breach of pay confidentiality clauses contained in their employment contracts.

Workers have shared their stories about the impact that keeping silent about their pay rates and bonuses has on them at work. With guarantees of anonymity, many survey respondents disclosed that they had in fact discussed their pay with their colleagues. During these conversations many workers reported discovering that new starters were often paid more than their more experienced colleagues.

Workers shared that pay secrecy has led to disharmony and resentment as they feel unable to seek out the reasons for enormous disparities in pay rates. Workers have indicated that they believe there may be legitimate reasons for pay disparities, but a lack of transparency to seek that peace of mind without fear of repercussion makes it difficult to accept these inconsistencies.

“This allows them to pick and choose salaries for each employee. I believe that as a long-term employee with over 20 years experience in my field, I am paid less than my colleagues who are doing the same role and been in the bank for only a few years.”

“We are hiding from each other. I have colleagues who are now friends and I am well aware they are paid significantly higher. It sucks.”

“I have no idea what I get paid compared to others in the same role so I don't know if I am being adequately paid for my personal performance.”

“It certainly puts a divide between people and only compounds inequality in pay, especially for women.”

“It means some people get paid much less than others for the same roles. It means that you can't raise the issue of pay rises etc as you can't reveal you know someone else is getting more than you. It means that people still share this info privately with their close friends but are afraid to reveal it to colleagues who are not as close for fear of getting dobbed in to management and fired. It means that some employees are getting exploited without recourse. It could also mean that there is lower pay for women.”

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How does CBA benefit?

Why do they insist on keeping pay secret?

When workers are forced to keep their pay a secret the only party that benefits is their employer. Employers have access to all the information required to make informed decisions about pay which gives them the upper hand in pay negotiations. When employees are prohibited from discussing pay and bonuses with their colleagues it allows managers to get away with making decisions about pay based on conscious or unconscious bias – pay confidentiality is well known for contributing to the gender pay gap¹.

It is no surprise to learn that **the finance industry is one of the worst performing industries each year when it comes to the gender pay gap** given their reliance on pay confidentiality clauses.

CBA workers have disclosed their shock in discovering that new employees are offered higher rates of pay than staff with tenure. This is partly due to CBA's interest in matching "market rates" to attract staff, while incumbent staff rely on annual "performance pay" increases that do not keep up with market rates. CBA workers are aware of the benefit that the company enjoys by enforcing pay confidentiality clauses. Expats and migrant sections of the CBA workforce – whose home countries have outlawed this type of pay secrecy – expressed their surprise that it was not allowed, but actively enforced by CBA.

The cost of pay secrecy to workers is enormous.

CBA employs approximately 35,000 workers in Australia (more than half of them women). The bank's total compensation bill is around \$3 Billion. Across the broader finance industry, the gender gap in realised total pay (including bonuses) for full-time workers is estimated at 26.9% (*Workplace Gender Equality Agency* February 2022).² The pay

gap is even larger when we consider women's concentration in part-time jobs. **The FSU estimates that the gender pay gap at CBA results in reduced compensation for women working at the bank worth at least half a billion dollars each year, and likely more.**³ Pay secrecy is an important factor in maintaining this unfair gap in compensation. Workers recognise that it is only CBA that benefits from pay secrecy.

"My personal view is that it is absolutely ridiculous. We can, should and must discuss our pay with our colleagues and employers/management barring us from this is outrageous and disgusting."

"Everyone is scared to speak about this. We have the inclination that brand new to the bank employees in similar roles are given higher pay and higher status than a lot of long term experienced staff and that makes experienced staff feel undervalued but as we are not allowed to discuss details we are not sure but when someone that has no limited experience with CBA systems or procedures is employed at a higher status that someone who has done the same jobs for 20 years it can only be to justify must higher pay rates. It's not right."

"Each staff can be on different pay which is lower than other banks as far as I know. So it benefits the bank for staff to keep their pay confidential. Bank pays managers well so managers push staff to keep their voice low about any pay concerns."

"They do enforce the clauses and these clauses are unnecessary because they only protect the company."

"When I raised the validity of my last bonus after discussing comparisons with similarly performing colleagues, I was not admonished but my GM said to me that it was the exact reason they did not want pay discussed. Left me feeling like they are being dishonest. They also used the old chestnut of everyone being different and wouldn't look into it in detail unless I provided the names of the people I spoke to. I wouldn't compromise my colleagues so the discussion went nowhere."

"you can't raise conversations about pay rises are you're not supposed to reveal you know other ppl (sic) are getting more than you. It's a tactic to keep ppl (sic) from asking for fair pay. As a woman I know there are men in my department getting paid more than me for the same role yet I cannot raise it."

"Not knowing if I am being paid sufficiently in line with other colleagues. Recently I accepted a new role at a higher grade and was unaware if the pay I was offered was in line with other colleagues on the same grade and in the same role. In my opinion this allows the bank to get away with paying some people less than others who are in the same role."

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Is it even legal?

What redress do workers have if they face sanctions for talking about pay?

Right now, the Morrison Government has refused to outlaw these draconian clauses. Both the ALP and the Greens support banning pay secrecy clauses.⁴

Pay secrecy clauses are not legal in parts of the United States, the UK and other countries around the world.

These clauses in their current form would constrain an employee from openly discussing their pay. There are some limited protections available under existing industrial protections.

The General Protections provisions of the Fair Work Act offer some limited protections when it comes to discussing pay and conditions. Employees are protected from adverse action by their employer if the reason for that action is that the employee exercised their workplace right made a complaint or enquiry in relation to their employment by Section 340 of the Act. Section 341 of the act outlines that a complaint or enquiry related to pay or conditions of employment are protected enquiries.

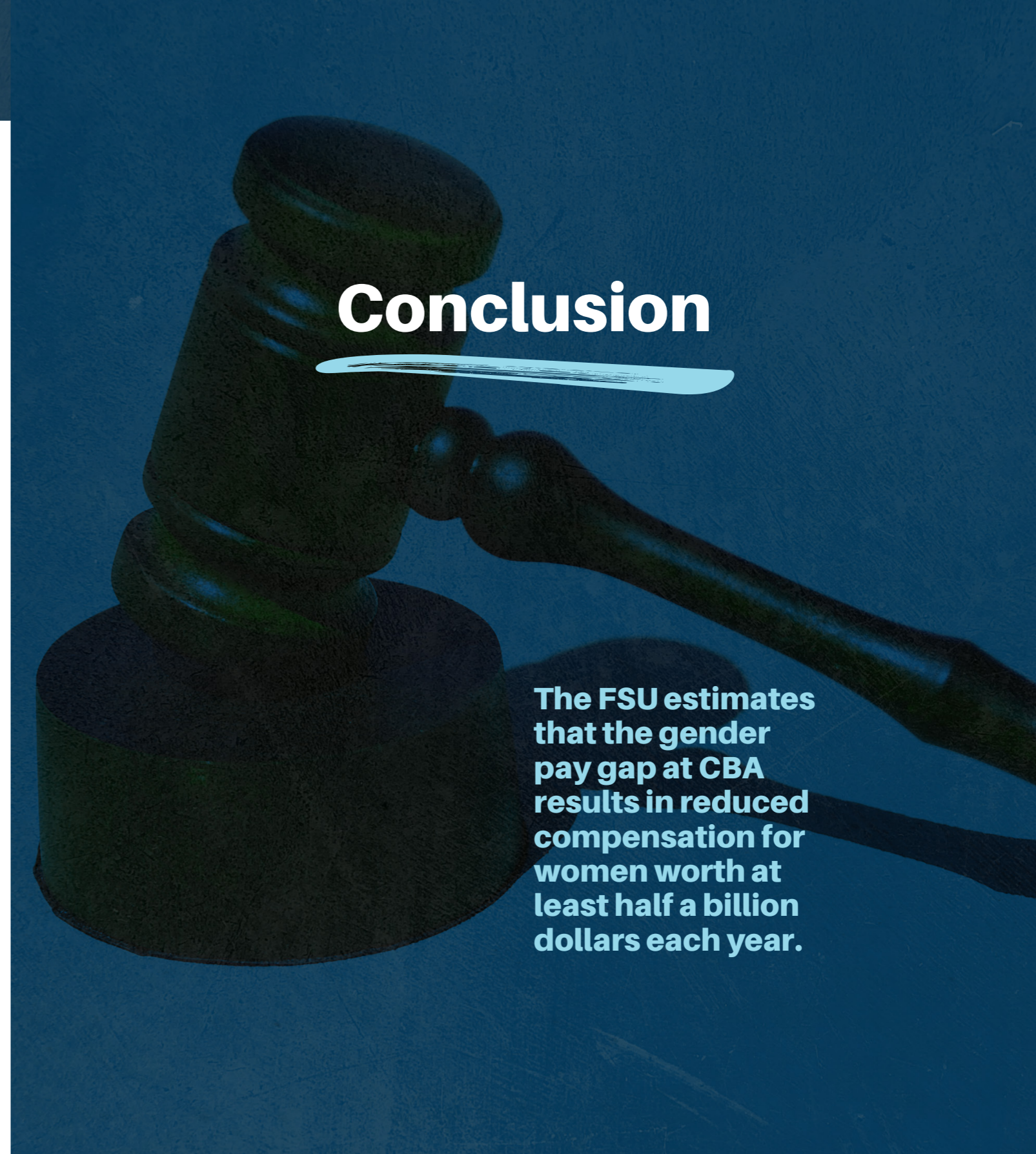
These protections are not absolute, are not easily understood and arguably only cover particular kinds of discussions about terms and conditions of employment.

The lack of a clear protection of discussing pay and conditions means that these clauses in contracts have the effect of discouraging workers from discuss their pay and entitlements, for fear of disciplinary action or dismissal.

Although narrow protections exist, they are not sufficient to prevent the chilling effect these clauses have on open discussions about pay and conditions.

Footnotes:

1. See [Appendix 1](#) for a link to reference material supporting this claim
2. 2021 figures from WGEA Data Explorer. Available <https://data.wgea.gov.au/industries/27> accessed 02.02.2022
3. See Appendix 2 that sets out the methodology of these calculations
4. 'Why it's time to tell others how much you get paid' *The Sydney Morning Herald*. Available <https://www.smh.com.au/lifestyle/life-and-relationships/talking-about-your-pay-with-others-is-awkward-but-don-t-shy-away-from-it-20220202-p59t9e.html> accessed 22.02.2022



Conclusion

The FSU estimates that the gender pay gap at CBA results in reduced compensation for women worth at least half a billion dollars each year.

CBA is the only big bank in Australia that has not committed to removing pay secrecy clauses.

They actively enforce these confidentiality clauses at a local level and threaten staff who seek redress for pay equity issues that have been discovered after discussing pay rates with their colleagues. This is not an accident but a strategic choice that allows

the bank to redirect as much as half a billion dollars each year from workers who would be able to justify a pay increase based on pay transparency.

The only way that these and other workers will be able to prosecute a case for pay equity will be with legislation banning pay confidentiality clauses such as that seen in overseas jurisdictions.

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Appendix 1: Bibliography on pay transparency and the gender pay gap

Baker, Michael, Yosh Halberstam, Kory Kroft, Alexandre Mas, and Derek Messacar (2021). "Pay Transparency and the Gender Gap," Working Paper 25834, National Bureau of Economic Research (Cambridge, MA: NBER).

- » Public sector salary disclosure laws on university faculty salaries in Canada reduced the gender pay gap by 20-40%.

Bennedsen, Morten, Elena Simintzi, Margarita Tsoutsoura, and Daniel Wolfenzon (2019). "Do Firms Respond to Gender Pay Gap Transparency?," Working Paper No. 25435, National Bureau of Economic Research (Cambridge, MA: NBER).

- » A 2006 legislation change in Denmark requiring firms to provide gender disaggregated wage statistics reduced the gender pay gap by approximately two percentage points (or a 13% reduction relative to the pre-legislation mean).

Blundell, Jack (2021). "Wage Responses to Gender Pay Gap Reporting Requirements," Discussion Paper 1750 (London: Centre for Economic Performance).

- » A new UK reporting policy mandates employers to publicly report simple measures of their gender pay gap each year. This requirement led to a 1.6 percentage-point narrowing of the gender pay gap at affected employers. Worker preference against high pay gap employers induces the closing of pay gaps upon information revelation; female workers in particular exhibit a preference for low pay gap employers.

Burn, Ian, and Kyle Kettler (2019). "The More You Know, the Better You're Paid? Evidence from Pay Secrecy Bans for Managers," *Labour Economics* 59(C), pp. 92-109.

- » Eleven US states have laws banning pay secrecy for managers. Pay secrecy bans increased the wages of managers by 3.5%. Below the median wage, female managers experienced a 2.9% increase relative to males, but above the median wage male managers experienced a 2.7% increase relative to females.

Chamberlain, Andrew (2015). *Is Salary Transparency More Than a Trend?* (Mill Valley, CA: Glassdoor).

- » Review of economic literature on [pay transparency and wage inequality. Salary transparency helps expose pay gaps between otherwise similar workers, encouraging underpaid employees to renegotiate or move to better-fitting job. Employees are more productive and engaged when pay structures are transparent and predictable.

Cullen, Zoe B., and Bobak Pakzad-Hurson (2021). "Equilibrium Effects of Pay Transparency," Working Paper 28903, National Bureau of Economic Research (Cambridge, MA: NBER).

- » U.S. state legislation protecting the right of workers to inquire about the salaries of their coworkers lead wages to decline by approximately 2% overall, but declines are progressively smaller in occupations with higher unionization rates.

Heisler, William (2021). "Increasing Pay Transparency: A Guide for Change," *Business Horizons* 64(1), pp. 73-81.

- » Reviews evidence on role of poor pay transparency in reinforcing gender pay differentials, and makes recommendations for strategies for improving pay transparency.

Kim, Marlene (2015). "Pay Secrecy and the Gender Wage Gap in the United States," *Industrial Relations* 54(4), pp. 648-667.

- » Women with higher education in states that have outlawed pay secrecy have higher earnings, and the gender wage gap is consequently reduced. State bans on pay secrecy and federal legislation to amend the FLSA to allow workers to share information about their wages may improve the gender wage gap, especially among women with college or graduate degrees.

Leibbrandt, Andreas, and John A. List (2012). "Do Women Avoid Salary Negotiations? Evidence from a Large Scale Natural Field Experiment," Working Paper No. 18511, National Bureau of Economic Research (Cambridge, MA: NBER).

- » When there is no explicit statement that wages are negotiable, men are more likely to negotiate than women. However, when it is stated that wages are negotiable, this difference disappears. Men prefer jobs where the 'rules of wage determination' are ambiguous. This leads to the gender gap being more pronounced in jobs that leave negotiation of wage ambiguous.

Trotter, Richard G., Susan Rawson Zacur and Lisa T. Stickney (2017). "The New Age of Pay Transparency," *Business Horizons* 60(4), pp. 529-539.

- » A 2016 U.S. Executive Order applies to firms with contracts over \$10,000 with the U.S. government, prohibiting retaliation against employees for disclosure and discussion of compensation. This increases pay transparency for 20% of the U.S. labor force, and will be a useful means to help narrow earnings gaps at the firm level.

Appendix 2

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22 February, 2022

Julia Angrisano
National Secretary
Finance Sector Union of Australia
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RE: Estimates of Aggregate Value of Gender Pay Differential at Commonwealth Bank of Australia

Dear Ms. Angrisano;

As you know, the gender pay gap between men and women is larger in the finance sector than almost any other industry in Australia. I have examined the empirical dimensions of the gender pay gap in banking, and attempted to estimate the likely aggregate value of foregone compensation represented by that gap for female employees of the banks.

I have used the Commonwealth Bank as an illustration to demonstrate the immense size of aggregate earnings which are lost as a result of the underpayment of female employees at a major bank.

The attached table summarises the results of my estimations. Because the Commonwealth Bank has not disclosed data describing the difference in realized earnings (not just base salaries) across its entire workforce (not just for specific occupational categories), we are forced to use data from public sources as representative of the actual magnitudes applying in CBA's operations. These public sources include:

- The CBA's most recent annual report (for the financial year ending 30 June 2021).
- Data on employment and compensation at CBA and in the total banking industry compiled by the Workplace Gender Equality Agency (accessed through its Data Explorer facility).

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- Data published by the Australian Bureau of Statistics on employment and average weekly earnings in the finance sector.

Because we do not have access to precise company data on gender pay differentials, this imposes a certain degree of uncertainty regarding the precise values for the parameters that go into the estimate of the size of overall underpayments to the bank's women workers. For that reason, we calculate two separate estimates – a low case, and a high case – corresponding to low and high estimates for each input parameter. We are reasonably confident that the true value of the aggregate gender pay gap for the bank falls within the range represented by those two estimates, and is almost certainly greater than one-half billion dollars per year. There is no reason to believe that the gender pay gap at a large institution like CBA is not broadly consistent with the observed patterns across the whole financial sector, so I am confident that these calculations provide a valid portrayal of the scope of underpayment of women employed at this bank.

Our low-case estimate suggests that the aggregate value of foregone wages to female CBA employees in 2020 was close to \$500 million. Our high-case estimate suggests the aggregate value was in excess of \$800 million.

It is impossible to confirm what happens to the funds saved by the bank as a result of its systematic underpayment of women employees (since money is fungible, and the bank can respond to the artificially reduced cost of female labour in various ways). But it is safe to assume that a significant portion of those savings is ultimately reflected in increased returns to the company's shareholders. And while there are many factors which contribute to the emergence and maintenance of gender pay gaps, peer-reviewed research published in the international economics literature strongly suggests that a lack of pay transparency in organisations contributes significantly to the systematic underpayment of women employees.

I hope this information is of use in your campaign for pay transparency and gender equity at this bank, and across the financial industry. Please be in touch if I can provide any additional information.

Yours sincerely,



Dr. Jim Stanford
Economist and Director
Centre for Future Work

Estimates of Cumulative CBA Gender Pay Differential		
	Low Case	High Case
Australian Employment	32,252 ¹	37,570 ²
Female Share	56.1% ³	57.5% ⁴
Average Salary (ann.)	\$92,235 ⁵	\$109,511 ⁶
Gender Gap	24.7% ⁷	28.6% ⁸
Total Value (\$mil.)	\$478.5	\$809.8
Source: Calculations by Centre for Future Work. Gender gap defined as difference in pay as share male pay.		
Data Sources:		
1. WGEA Data Explorer, CBA, 2020.		
2. CBA Annual Report, 2021, p.62, FTE.		
3. CBA Annual Report, 2021, p.63.		
4. WGEA Data Explorer, CBA, 2020.		
5. ABS Average Weekly Wages, Table 10i, 2020.		
6. CBA Annual Report, 2021, p. 133 (per head).		
7. WGEA Banking Industry Full-Time Pay Gap.		
8. ABS Annual Weekly Wages, Tables 10c and 10f, 2020.		



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