Federal Law Review (2026), **54**, e5, 1–24
doi:10.1017/fed.2026.10018

Australian National University
CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Regulating for Pay Transparency: Can Law Overcome Workplace Secrecy?

Melinda Laundon[1], Andrew Stewart[2], Paula McDonald[3] and Abby Cathcart[4]

[1]Senior Research Fellow, School of Management and Centre for Decent Work and Industry, Queensland University of Technology, Australia; [2]Professor of Work and Regulation, Queensland University of Technology and Adjunct Professor, The University of Adelaide, Australia; [3]Professor of Work and Organisation and Pro Vice Chancellor Research, Queensland University of Technology, Australia and [4]Professor of Governance and Higher Education and Director of Student Success & Teaching Advancement, Queensland University of Technology, Australia
Corresponding author: Melinda Laundon; Email: melinda.laundon@qut.edu.au

(Accepted 5 May 2025)

Abstract
Evidence that gender-based pay inequity is higher when pay is secret has led governments to prohibit pay secrecy clauses and give employees the right to discuss and disclose their pay. However, the effectiveness of regulations prohibiting pay secrecy may be constrained by social and organisational norms that preclude discussion of pay, including employee fears of the implications of pay transparency. This article provides insights from interviews with 32 employees and managers from a large Australian financial services company, revealing that perceptions of pay transparency are shaped by organisational rules, social norms, trust in the employing organisation, and fear of the repercussions of knowing pay is unequal. The implications for the effectiveness of the pay transparency measures in the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) are discussed.

Keywords: pay transparency; pay secrecy; pay equity; gender equality; remuneration; organisational justice; social norms; employment law

I. Introduction

Much has been made of the persistent discrepancy between male and female earnings, an enduring feature of the Australian labour market and others around the world.[1] According to the Workplace Gender Equality Agency ('WGEA'), Australia's total remuneration gender pay gap, which includes base salary, overtime, bonuses, and

[1]Andrew M Penner et al, 'Within-Job Gender Pay Inequality in 15 Countries' (2023) 7(2) *Nature Human Behaviour* 184; World Economic Forum, *Global Gender Gap Report 2023* (Report, 20 June 2023).

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superannuation, was 21.8% as at August 2024.[2] The national gender pay gap based on the weekly base salary of full-time workers also remains substantial at 11.9% (as at November 2024), even though it excludes overtime, bonuses and additional payments for full-time workers, as well as all part-time and casual workers.[3]

Until recently, pay secrecy clauses in employment contracts that threaten sanctions if employees disclose their pay were commonplace. There is evidence that when pay is secret and there is little pay transparency, gender-based pay inequality is higher.[4] This has prompted governments to adopt pay transparency mechanisms such as pay secrecy bans as a tool to improve gender pay equity.

When the Albanese Labor Government came to power at the May 2022 federal election, one of its policy priorities was to 'lead a national push to close the gender pay gap', as part of a National Strategy to Achieve Gender Equality.[5] Labor's policy platform included a commitment to require large companies to publish information about their gender pay gaps, in order to 'boost transparency and encourage action to close gender pay gaps within organisations'.[6] There was also a promise to 'prohibit pay secrecy clauses and give employees the right to disclose their pay', once again with the explicit aim of promoting pay transparency.[7]

The first of those objectives was met by changes to the reporting regime established by the *Workplace Gender Equality Act 2012* (Cth). Relevant employers, including those with 100 or more employees, were already required to prepare annual reports for the WGEA on their performance against certain 'gender equality indicators', including the extent to which male and female employees receive equal remuneration.[8] But under changes made by the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023* (Cth), the WGEA is now required to publish not only industry-level data, but also the gender pay gap information reported by individual employers with 100 or more employees.[9] The first

[2] Workplace Gender Equality Agency, *WGEA Gender Equality Scorecard 2023-24* (Report, November 2024) 16 ('*Gender Equality Scorecard*').

[3] 'Gender Indicators', *Australian Bureau of Statistics* (Web Page, 20 February 2025) <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators#cite-window1>.

[4] Michael Baker et al, 'Pay Transparency and the Gender Gap' (2023) 15(2) *American Economic Journal: Applied Economics* 157; Emilio Castilla, 'Accounting for the Gap: A Firm Study Manipulating Organizational Accountability and Transparency in Pay Decisions' (2015) 26(2) *Organization Science* 311.

[5] Australian Labor Party, *Australian Women: Labor's Plan for a Better Future* (Policy Document, 2022) 3, archived at <https://web.archive.org.au/awa/20220519140754mp_/https://www.alp.org.au/policies/australian_women_labors_plan_for_a_better_future>.

[6] Ibid 8.

[7] Ibid.

[8] *Workplace Gender Equality Act 2012* (Cth) s 13. See also at s 3(1) (definition of 'gender equality indicators').

[9] Ibid s 15A. For discussion and analysis of the gender equality reporting regime, see Meraiah Foley and Sue Williamson, 'Women, Work and Industrial Relations in Australia in 2020' (2021) 63(3) *Journal of Industrial Relations* 321; Fiona Macdonald and Sara Charlesworth, 'Failing to Live Up to the Promise: The Politics of Equal Pay in "New" Workplace and Industrial Relations Institutions' (2018) 53(4) *Australian Journal of Political Science* 446.

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report containing this additional data appeared on the WGEA website in March 2024.[10]

Economic equality and security was also designated as a priority area in the Albanese Government's gender equality strategy, *Working for Women*, released in March 2024.[11] However, the prohibition of pay secrecy provisions was left to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) ('*SJBP Act*'), a measure which contradicted its title by having far more to say about gender at work than job security.[12] Among other things, it:

- made the promotion of 'gender equality' a general object of the *Fair Work Act 2009* (Cth) ('*FW Act*');[13]
- amended that statute's modern awards and minimum wage objectives, which govern the setting and adjustment of what are predominantly industry-based standards for the employment of workers, to include the need to eliminate 'gender-based undervaluation of work';[14]
- similarly confirmed that any reconsideration of award rates on 'work value' grounds must be 'free of assumptions based on gender' and 'include consideration of whether historically the work has been undervalued because of assumptions based on gender';[15]
- broadened the capacity to obtain equal remuneration orders from the Fair Work Commission ('FWC') under Part 2-7 of the *FW Act*, to overcome limitations exposed by previous attempts to use that mechanism;[16]
- required applications for such orders, or for gender-based work value adjustments, to be dealt with by a pay equity panel within the FWC that includes

[10]Workplace Gender Equality Agency, 'An Exploration of Employer Gender Pay Gaps' (Web Page, 2024) <https://www.wgea.gov.au/employer-gender-pay-gaps-data-interactive>.

[11]Department of the Prime Minister and Cabinet, *Working for Women: A Strategy for Gender Equality* (Report, 2024).

[12]Andrew Stewart, Shae McCrystal and Anthony Forsyth, 'Will Pay be Better and Jobs More Secure? Analysing the Albanese Government's First Round of Fair Work Reforms' (2023) 36(2) *Australian Journal of Labour Law* 104, 143–4.

[13]*Fair Work Act 2009* (Cth) s 3(a) ('*FW Act*').

[14]Ibid ss 134(1)(ab), 284(1)(aa). In relation to awards, s 134(1)(ab) also now speaks of 'providing workplace conditions that facilitate women's full economic participation'. The changes to the minimum wage objective prompted the Fair Work Commission in its 2022 wage review to identify 'a systemic problem, of pre-FW Act origins, concerning the way in which modern award minimum wages in female-dominated industries have been set': *Re Annual Wage Review 2022–23* (2023) 323 IR 332, 392–3 [133]. Guided by a research report (see Natasha Cortis et al, 'Gender-Based Occupational Segregation: A National Data Profile' (Final Report, University of New South Wales Social Policy Research Centre, 6 November 2023)), the tribunal has since announced a review that will focus initially on certain priority occupations, including child carers, disability workers, dental assistants, medical technicians, psychologists and pharmacists: *Re Annual Wage Review 2023–24* (2024) 331 IR 248, 300–5 [111]–[123], 318–19 [169]–[171]; *Re Gender Undervaluation – Priority Awards* [2024] FWCFB 280.

[15]*FW Act* (n 13) s 157(2B). See Stewart, McCrystal and Forsyth (n 12) 110.

[16]See Stewart, McCrystal and Forsyth (n 12) 109–10. As to the previous limitations, see *Re Equal Remuneration Decision 2015* (2015) 256 IR 362; Meg Smith and Andrew Stewart, 'Shall I Compare Thee to a Fitter and Turner? The Role of Comparators in Pay Equity Regulation' (2017) 30(2) *Australian Journal of Labour Law* 113.

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a majority of members with expertise in gender pay equity and/or anti-discrimination;[17] and

- expanded the capacity for multi-enterprise bargaining, including through the availability of 'supported bargaining agreements' which are specifically envisaged to help lift wages in low-paid, feminised sectors.[18]

In relation to pay secrecy specifically, Part 7 of Schedule 1 to the *SJBP Act* added a new Division 4 to Part 2-9 of the *Act*. This gives national system employees the right to disclose, or ask others about, the detail of their remuneration.[19] It also precludes national system employers from including or enforcing pay secrecy provisions in an employment contract, with certain exceptions for arrangements in place prior to 7 December 2022.

The aim of these provisions is to allow employees to 'assess whether their remuneration is fair and comparable to that of other employees in the same workplace or industry'.[20] But there is also a broader objective: to 'create greater transparency and accountability for employers to eliminate discrimination against women from their workplaces relating to their remuneration and human resources practices'.[21] The question, however, is whether the new laws will actually have that effect. The point has been made that 'many organisations and professions [have] a culture of secrecy around individual pay that seems likely to continue, even if it cannot be buttressed by contractual restraints'.[22]

The purpose of this article is to explore this potential clash between the new legal prohibitions on pay secrecy, and the organisational and social norms and constraints that may permit it to continue. We commence in Part II with a look at the concept of pay secrecy bans, drawing on literature which discusses the value (and also potential limitations) of pay secrecy bans in promoting not just gender equality, but other social, organisational and economic objectives. Part III reviews international evidence as to the prevalence and effect of pay secrecy bans, before a more detailed explanation in Part IV of the new Australian laws. In Part V, we present previously unpublished data from a case study of pay secrecy practices and attitudes at a large finance and insurance

[17] *FW Act* (n 13) ss 617(6)–(7), 620(1B), 620(2A). There are also provisions for a separate panel to handle pay equity claims concerning the care and community sector: at ss 617(9)–(10), 620(1D). These panels can include outside specialists appointed on a part-time basis. Two of the Albanese Government's appointees to date, Professor Marian Baird and Dr Leonora Risse, are academics with specific expertise in this area: see 'Burke Names FWC Expert Panel Members', *Workplace Express* (online, 6 March 2023) <https://www.workplaceexpress.com.au>.

[18] *FW Act* (n 13) pt 2-4 div 9. See Stewart, McCrystal and Forsyth (n 12) 121–3. For a discussion of the potential for supported bargaining to address low wages in feminised industries, see Sara Charlesworth and Fiona Macdonald, 'Collective Bargaining and Low-Paid Women Workers: The Promise of Supported Bargaining' (2023) 65(4) *Journal of Industrial Relations* 403.

[19] *FW Act* (n 13) pt 2-9 div 4. As to who constitutes a national system employee or employer, see ss 13–14.

[20] Revised Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Cth) 74 [408] ('Revised Explanatory Memorandum').

[21] Ibid xlix [260].

[22] Stewart, McCrystal and Forsyth (n 12) 113.

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company, which sheds useful light on the normative practices of employees and managers with respect to open discussions of remuneration arrangements. Part VI explores the implications of our findings, advancing some tentative suggestions as to the kind of changes that may be necessary in order to ensure that the new laws on pay secrecy achieve their stated objectives.

II. The Value and Limits of Pay Transparency

The extent of pay transparency or pay secrecy within an organisation depends on both the amount of information the organisation makes available regarding its employees' pay and the extent to which those employees are free to discuss their pay.[23] This section examines the research evidence regarding pay transparency and the value and theorised effects of pay secrecy bans.

The nature and extent of pay secrecy in an organisation have material impacts that may be desirable or undesirable. These impacts include employee performance, productivity, and satisfaction; employee justice perceptions and trust; turnover intentions and retention; and the quality of relationships between supervisors and employees.[24]

Research shows that organisations may be highly motivated to implement or retain pay secrecy provisions. These motivations can include retaining a competitive advantage in the labour market, preventing requests for pay rises among current employees,[25] minimising conflict between employees who become aware of pay inequities,[26] and avoiding reduced performance and satisfaction among employees who may perceive injustice in salary distribution.[27] Studies with findings that support a business case for pay transparency generally conclude that it allows pay to signal desirable performance to current workers,[28] or that transparency can be used as an employer branding exercise by communicating to job seekers competitive pay levels and a culture of pay

[23]Frank Hartmann and Sergeja Slapničar, 'Pay Fairness and Intrinsic Motivation: The Role of Pay Transparency' (2012) 23(20) *International Journal of Human Resource Management* 4283; Shelly Marasi and Rebecca J Bennett, 'Pay Communication: Where Do We Go from Here?' (2016) 26(1) *Human Resource Management Review* 50.

[24]Michelle Brown et al, 'Pay Information Disclosure: Review and Recommendations for Research Spanning the Pay Secrecy–Pay Transparency Continuum' (2022) 48(6) *Journal of Management* 1661.

[25]Leonard Bierman and Rafael Gely, '"Love, Sex and Politics? Sure. Salary? No Way": Workplace Social Norms and the Law' (2004) 25(1) *Berkeley Journal of Employment and Labor Law* 167; Zoe B Cullen and Bobak Pakzad-Hurson, 'Equilibrium Effects of Pay Transparency' (2023) 91(3) *Econometrica* 765.

[26]Ian Burn and Kyle Kettler, 'The More You Know, the Better You're Paid? Evidence from Pay Secrecy Bans for Managers' (2019) 59 *Labour Economics* 92; Bilma Canales, 'Closing the Federal Gender Pay Gap Through Wage Transparency' (2018) 55(4) *Houston Law Review* 959; Marasi and Bennett (n 23).

[27]Nadja Bergmann, Alexandra Scheele and Claudia Sorger, 'Variations of the Same? A Sectoral Analysis of the Gender Pay Gap in Germany and Austria' (2019) 26(5) *Gender, Work and Organization* 668; Brown et al (n 24).

[28]Elena Belogolovsky and Peter A Bamberger, 'Signalling in Secret: Pay for Performance and the Incentive and Sorting Effects of Pay Secrecy' (2014) 57(6) *Academy of Management Journal* 1706; Zoe Cullen and Ricardo Perez-Truglia, 'The Salary Taboo: Privacy Norms and the Diffusion of Information' (2023) 222 *Journal of Public Economics* 104890.

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transparency.[29] Transparency may also improve team and group performance by allowing employees to identify and seek assistance from colleagues with the required knowledge and competencies.[30]

Some organisations claim their employees want pay details kept secret for privacy reasons,[31] though actual evidence of pay transparency preferences is scant.[32] The privacy rationale is underpinned by strong social norms that limit discussions of pay. For example, concern for self and a desire to avoid feelings of jealousy or shame can lead some employees to choose not to disclose their own pay or attempt to find out about their colleagues' pay. This is because a 'humiliation effect' may result from revelations an employee is paid less than others in similar roles, who have commensurate knowledge, skills and attributes.[33] Employees may also prefer pay secrecy if they fear that a revelation of pay inequity will damage collegial relationships, undermine their trust in the organisation, or threaten their perceptions of how highly their employer values them.[34] Others may prefer (or fear) pay transparency because it allows workers to make judgements about the relative fairness of their own and their colleagues' pay based on perceived effort, expertise and experience.[35] Organisational justice theory provides some support for this proposition. It posits that *individual perceptions* of the fairness of pay, and the fairness of pay communication, are strong predictors of organisational commitment, job satisfaction and other desirable organisational outcomes.[36] Workers have also been found to make justice judgements even in the absence of specific information about salaries, instead using pay communication or pay allocation procedures as proxies for actual pay information.[37]

Studies demonstrate that social norms are influential in limiting pay discussions; a problem that may limit the effectiveness of achieving pay transparency via legislation of the type discussed later in this article.[38] For example, a field experiment with more

[29]Filip Lievens and Jerel E Slaughter, 'Employer Image and Employer Branding: What We Know and What We Need to Know' (2016) 3(1) *Annual Review of Organizational Psychology and Organizational Behavior* 407.

[30]Elena Belogolovsky et al, 'Looking for Assistance in the Dark: Pay Secrecy, Expertise Perceptions, and Efficacious Help Seeking Among Members of Newly Formed Virtual Work Groups' (2016) 31(4) *Journal of Business and Psychology* 459.

[31]Adrienne Colella et al, 'Exposing Pay Secrecy' (2007) 32(1) *Academy of Management Review* 55.

[32]Peter Bamberger, *Exposing Pay: Pay Transparency and What It Means for Employees, Employers, and Public Policy* (Oxford University Press, 2023); Brandon W Smit and Tamara Montag-Smit, 'The Role of Pay Secrecy Policies and Employee Secrecy Preferences in Shaping Job Attitudes' (2018) 28(2) *Human Resource Management Journal* 304.

[33]Colella et al (n 31).

[34]Cullen and Perez-Truglia (n 28); Eric M Scheller and Wayne Harrison, 'Ignorance Is Bliss, or Is It? The Effects of Pay Transparency, Informational Justice and Distributive Justice on Pay Satisfaction and Affective Commitment' (2018) 50(2) *Compensation and Benefits Review* 65.

[35]Ilanit SimanTov-Nachlieli and Peter Bamberger, 'Pay Communication, Justice, and Affect: The Asymmetric Effects of Process and Outcome Pay Transparency on Counterproductive Workplace Behavior' (2021) 106(2) *Journal of Applied Psychology* 230.

[36]Scheller and Harrison (n 34) 2.

[37]Valeria Alterman et al, 'Best Not to Know: Pay Secrecy, Employee Voluntary Turnover, and the Conditioning Effect of Distributive Justice' (2021) 64(2) *Academy of Management Journal* 482.

[38]See Bierman and Gely (n 25); Matthew A Edwards, 'The Law and Social Norms of Pay Secrecy' (2005) 26(1) *Berkeley Journal of Employment and Labor Law* 41; Sarah Lyons, 'Why the Law Should Intervene to

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than 700 bank employees in South East Asia found that 69% of participants felt it was not 'socially acceptable to ask coworkers about their salaries' and 89% said they would feel uncomfortable asking co-workers about their pay.[39]

Pay secrecy bans have been described as a way to promote 'a weak degree of transparency by prohibiting firms from practicing strong forms of pay *secrecy*, that is, to forbid employees from talking about their pay'.[40] A discussion of pay transparency and labour market justice claims that there is a moral argument for relevant pay information to be made public in order to show that pay is just and complies with the law.[41] Others have argued that pay transparency enhances workers' ability to make informed choices within labour markets.[42] Evidence for the effects of legislative pay secrecy bans is discussed in Part III below. Conceptual and experimental research, however, mostly supports policy action to ban pay secrecy on the basis that secret pay decisions are subject to gender and other biases because they do not usually require justification.[43] The scrutiny that accompanies pay secrecy bans may therefore open up possibilities for pay allocation decisions to be more equitable. Pay secrecy bans also make it possible for those who allege gender-based pay discrimination to obtain evidence to support complaints or legal action.[44] An argument follows that greater pay transparency will eventually reduce the gender pay gap because organisations which pay women less will become less competitive and less innovative as they struggle to retain female employees.[45] However, there is also evidence that women can experience negative consequences from requesting or attempting to negotiate higher salaries, and knowing this may serve as a disincentive to discussing pay or acting on pay information.[46]

III. Regulating for Pay Transparency: Lessons from Abroad

Pay secrecy bans — the outlawing of employer actions against workers who discuss their own pay or ask about colleagues' pay — are becoming increasingly common as a legislative tool aimed at reducing the gender pay gap. While pay secrecy bans are the primary focus of this article, this section also discusses some broader pay transparency measures, because pay secrecy bans are often introduced in conjunction with

Disrupt Pay-Secrecy Norms: Analyzing the Lilly Ledbetter Fair Pay Act Through the Lens of Social Norms' (2013) 46(3) *Columbia Journal of Law and Social Problems* 361.

[39]Cullen and Perez-Truglia (n 28) 2.

[40]Daniel Halliday, 'Pay Transparency and Labor Market Justice' (2021) 37(2) *Law in Context* 27, 28.

[41]Ibid, 34.

[42]Cynthia Estlund, 'Extending the Case for Workplace Transparency to Information About Pay' (2014) 4(2) *UC Irvine Law Review* 781; Jeffrey Moriarty, 'Against Pay Secrecy' (2018) 35(4) *Journal of Applied Philosophy* 689.

[43]Castilla (n 4); Nancy E Day, 'Pay Equity as a Mediator of the Relationships Among Attitudes and Communication About Pay Level Determination and Pay Secrecy' (2012) 19(4) *Journal of Leadership & Organizational Studies* 462.

[44]Burn and Kettler (n 26).

[45]Ilka Verena Ohlmer and Amir Sasson, 'Showing Your Cards: Pay Transparency and Overall Pay Dispersion' (2018) 1 *Academy of Management Proceedings* 16544.

[46]Hannah Riley Bowles, Linda Babcock and Lei Lai, 'Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask' (2007) 103(1) *Organizational Behavior and Human Decision Processes* 84.

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other forms of regulation with similar aims of removing impediments to awareness and evidence of unequal pay on the basis of gender.[47] The few studies examining the actual effects of pay transparency arrangements in specific jurisdictions are also discussed.

We categorise pay transparency regulatory measures according to the following typology (with examples provided below):

A. pay secrecy bans that make it illegal for employers to retaliate against employees who discuss pay;
B. mandatory public organisational reporting of gender pay details; and
C. mandatory pay disclosure from an organisation to its employees.

It is important to note that other pay transparency regulations exist but are outside the scope of this article because they do not relate to secrecy of pay between an organisation and its employees. These include mandatory disclosure of salary ranges in job advertisements, government reporting of individual income tax details, and public reporting of government employee salaries. We also set aside the more specific and limited rules that require the disclosure to shareholders of remuneration arrangements for 'key management personnel' at listed companies.[48]

A. Pay Secrecy Bans

Pay secrecy bans are intended to prevent adverse action against employees who discuss, ask about, or disclose pay details. In the United Kingdom ('UK'), for example, s 77 of the *Equality Act 2010* (UK) makes pay secrecy terms unenforceable, though only to the extent they purport to restrain employees from disclosing or asking about pay in order to determine whether they are being discriminated against on the basis of a protected characteristic (such as gender, race or disability). Pay secrecy is also mandated by art 7(5) of a new European Union ('EU') Pay Transparency Directive, which member states will be required to implement by June 2026:

> Workers shall not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay. In particular, Member States shall put in place measures to prohibit contractual terms that restrict workers from disclosing information about their pay.[49]

[47] For overviews on laws promoting pay transparency, see Organisation for Economic Co-operation and Development, *Pay Transparency Tools to Close the Gender Wage Gap* (Report, 2021); International Labour Organization, *Pay Transparency Legislation: Implications for Employers' and Workers' Organizations* (Report, 2022); Martha Ceballos, Annick Masselot and Richard Watt, 'Pay Transparency Across Countries and Legal Systems' (2022) 23(2) *CESifo Forum* 3.

[48] See, eg, *Corporations Act 2001* (Cth) s 300A; Eugene Schofield-Georgeson, 'Regulating Executive Salaries and Reducing Pay Disparities: Is Pay Disclosure the Answer?' (2018) 81 *Journal of Australian Political Economy* 95, 96.

[49] *Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women through Pay Transparency and Enforcement Mechanisms* [2023] OJ L 132/21 ('EU Pay Transparency Directive'). The 'principle of equal pay', as art 1 makes clear, requires 'equal pay for equal work or work of equal value between men and women'.

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In the United States ('US'), the *National Labor Relations Act 1935* ostensibly protects the rights of workers to discuss their pay. But its effectiveness is limited because it excludes managers and workers in many sectors and allows employers with legitimate business justifications to apply secrecy provisions. More than 20 states have implemented policies limiting pay secrecy, but these vary substantially by state.[50] The largest national application of pay secrecy bans was President Obama's Executive Order 13665, which prevented employers with US government contracts over the value of $10,000 from retaliating against employees for disclosing or discussing pay information.[51] This covered approximately 28 million workers or 20% of the US workforce when it took effect on 11 January 2016.[52] Similar to the Australian and UK pay secrecy bans, the primary policy intention of the order was to 'enhance the ability of Federal contractors and their employees to detect and remediate unlawful discriminatory practices', though the Executive Order also had a stated intention of avoiding baseless labour disputes over the issue that are burdensome and costly.[53] The Order was subsequently overturned by President Trump in March 2017.[54]

Studies investigating the effects of pay secrecy bans on the gender pay gap are limited and have mostly been conducted in the US context, where longstanding regulations and state differences allowed for analysis and comparison. The findings, however, were not consistent. In 2015, Kim found that in 11 US states with laws prohibiting employer bans on pay disclosure, women had higher wages and a lower gender pay gap than in states that allowed employer pay secrecy.[55] The gap was even lower for college-educated women in states that banned pay secrecy.[56] In contrast, a 2019 study of managers' pay found that, in states with pay secrecy bans, both men and women's pay increased slightly, but the gender pay gap did not close.[57] A separate study found no effect on the gender pay gap in 11 states with pay transparency laws,[58] while a 2023 analysis found that private sector workers' pay actually fell in US states with pay transparency, which the authors attributed to lower individual bargaining power.[59]

[50] Burn and Kettler (n 26); Michael Oswalt, Jake Rosenfeld and Patrick Denice, 'Power and Pay Secrecy' (2024) 99(1) *Indiana Law Journal* 43.

[51] Gerald E Calvasina, Richard V Calvasina and Eugene J Calvasina, 'Pay Secrecy: Legal, Policy, and Practice Issues for Employers' (2015) 18(2) *Journal of Legal, Ethical and Regulatory Issues* 1.

[52] Richard G Trotter, Susan Rawson Zacur and Lisa T Stickney, 'The New Age of Pay Transparency' (2017) 60(4) *Business Horizons* 529.

[53] *Executive Order 13665— Non-Retaliation for Disclosure of Compensation Information*, 79 Fed Reg 20749, s 1 (8 April 2014).

[54] Mary Emily O'Hara, 'Trump Pulls Back Obama-Era Protections for Women Workers', *NBC News* (online, 4 April 4 2017) <https://www.nbcnews.com/news/us-news/trump-pulls-back-obama-era-protections-women-workers-n741041>.

[55] Marlene Kim, 'Pay Secrecy and the Gender Wage Gap in the United States' (2015) 54(4) *Industrial Relations* 648.

[56] Ibid.

[57] Burn and Kettler (n 26).

[58] Srikant Devaraj and Pankaj C Patel, 'State Bans on Pay Secrecy and Earnings: Evidence from the National Longitudinal Survey of Youth 1997' (2022) 60(4) *British Journal of Industrial Relations* 697.

[59] Cullen and Pakzad-Hurson (n 25).

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Research into organisational compliance with pay secrecy bans is even more limited, but a few studies show that the social and organisational norms which discourage pay discussions can constrain pay transparency, even when employees have the legal right to discuss pay.[60] For example, a 2018 US survey found that 35.4% of workers reported that their employing organisation discouraged discussions about pay. Even in states with laws protecting workers' right to discuss pay, 10% of respondents reported that their employer discouraged pay discussions.[61] A 2023 study showed the enduring nature of informal pay secrecy rules in various US states, regardless of the type or severity of employer penalties for violating pay secrecy laws.[62]

B. Mandatory Public Pay Reporting by Employers

Turning to pay reporting legislation, there are marked differences internationally in the extent to which individual, organisational or aggregated industry-level wage gap data are published, and whether salaries are published by the organisations themselves or by a government agency such as WGEA.

Denmark introduced requirements in 2006 for large organisations to report pay by gender. Private companies with more than 35 employees are required to provide salary by gender to an employee representative and, where the group is large enough to protect individual anonymity, gender salary statistics are reported publicly.[63] In the US, President Obama's 2014–2016 pay equity agenda included provisions for companies with 100 or more employees to report compensation data by gender, race and ethnicity to the Department of Labor.[64] From 2017, the UK has required employers with more than 250 employees to report salaries and bonuses by gender.[65] France introduced obligations for companies with more than 50 employees to annually publish their equal pay index on the company website and take action to address inequalities or face financial sanctions.[66] The Canadian province of Ontario requires employers to report gender wage gaps.[67]

Research on the effects of introducing mandatory publishing of gender pay gap data in Canada, Denmark and the UK has found evidence of a smaller gender pay gap in

[60] Bierman and Gely (n 25); Cullen and Perez-Truglia (n 28); Leif Danziger and Eliakim Katz, 'Wage Secrecy as a Social Convention' (1997) 35(1) *Economic Inquiry* 59.

[61] Shengwei Sun, Jake Rosenfeld and Patrick Denice, 'On the Books, Off the Record: Examining the Effectiveness of Pay Secrecy Laws in the US' (Policy Brief, Institute for Women's Policy Research, January 2021).

[62] Oswalt, Rosenfeld and Denice (n 50).

[63] Morten Bennedsen et al, 'Do Firms Respond to Gender Pay Gap Transparency?' (2022) 77(4) *Journal of Finance* 2051.

[64] The White House, 'Fact Sheet: New Steps to Advance Equal Pay on the Seventh Anniversary of the Lilly Ledbetter Fair Pay Act' (Media Release, 29 January 2016).

[65] *Equality Act 2010 (Gender Pay Gap Information) Regulations 2017* (UK) reg 2.

[66] Heather Connolly, 'The Gender Equality Index in France: What is It and How Does It Work?', *Politics of Equality at Work*, The University of Manchester (Web Page, 26 June 2024) <https://politicsofequalityatwork.manchester.ac.uk/blog/2024/06/26/the-gender-equality-index-in-france-what-is-it-and-how-does-it-work-by-heather-connolly/>.

[67] *Pay Transparency Act 2018*, SO 2018, c 5, s 7.

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all three nations, though this may be attributed to pay compression (stalled male pay) rather than higher women's pay closing the gap.[68] A study investigating the effects of the 2011 Austrian pay transparency laws, however, found no discernible difference in the gender pay gap based on analysis of publicly-reported company pay gap data.[69] In a limited number of jurisdictions, individual-level pay reporting has allowed for research into gender pay gaps. A study of the pay levels of Canadian academics found that the gender gap was 1.2% to 2% lower among those whose individual pay was publicly disclosed compared to Canadian academics in provinces not subject to pay transparency laws.[70]

The impact of the new Australian arrangements discussed in the introduction will not be known until comparative data are available, although there has been speculation that the media attention that followed WGEA publishing its first employer-level data in February 2024 may encourage large employers to take measures to reduce gender pay gaps.[71]

C. *Mandatory Pay Disclosure from an Organisation to its Employees*

Mandatory pay disclosure from an organisation to its employees may include either publishing pay details directly for employees to access, providing details to a union or representative, or making comparator pay details available on request to individual employees.

The right to request pay information is the most common measure in this category. For example, workers in Finland, Iceland and the Netherlands have the right to obtain information from their employer on pay and terms of employment. In Norway, workers have the right to request information from their employer about their co-workers' pay levels and remuneration criteria.[72] Like Norway, Portugal's Equal *Pay Law (No 60/2018)* and Germany's Transparency in *Wage Structures Act 2017* give workers the right to request the criteria used to make pay decisions.[73] German employees in organisations with more than 200 employees also have the right to request information about the median salary of a group of comparable employees.[74] Articles 7(1)–(4) of the new

[68] Morten Bennedsen, Birthe Larsen and Jiayi Wei, 'Gender Wage Transparency and the Gender Pay Gap: A Survey' (2023) 37(5) *Journal of Economic Surveys* 1743.

[69] Andreas Gulyas, Sebastian Seitz and Sourav Sinha, 'Does Pay Transparency Affect the Gender Wage Gap? Evidence from Austria' (2023) 15(2) *American Economic Journal: Economic Policy* 236.

[70] Baker et al (n 4).

[71] See, eg, Kate Lyons, 'Dozens of Australian Businesses Have Gender Pay Gaps Above 50%, Landmark Data Reveals', *The Guardian* (online, 27 February 2024) <https://www.theguardian.com/world/2024/feb/27/australia-gender-pay-gap-new-data-wgea-men-women-salary-difference>; Daniel Ziffer, 'Which Big Employers Have the Largest and Smallest Gender Pay Gaps? New Data Reveals All', *ABC News* (online, 27 February 2024) <https://www.abc.net.au/news/2024-02-27/australia-gender-pay-data-revealed-for-first-time/103487530>.

[72] *Act Relating to Equality and a Prohibition Against Discrimination (Equality and Anti-Discrimination Act) 2017* (Norway) s 32. See also International Labour Organization (n 47) 39.

[73] International Labour Organization (n 47) 39, 33.

[74] Ibid 33.

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EU Pay Transparency Directive will also give workers the right to request information (either through their representative or directly) on the average pay for workers performing work of equal value to them.

Fewer jurisdictions place the onus on employers to provide pay information without employees requesting it. In 2011, Austria introduced a wage transparency law requiring firms with more than 1,000 employees to provide all employees with a wage report every two years, with smaller firms subject to the law at later years.[75] Sweden's law mandates employers and employees (represented by their trade union) to collaborate in pay mapping and analysis of wage setting criteria.[76] The new EU Pay Directive will also introduce 'a joint pay assessment' (pay audit process) overseen by employee representatives for firms that fail to address unexplained gender pay gaps of 5% or more in any job category. Article 6 also stipulates that employers must give workers easy access to pay setting and career progression criteria.[77]

IV. The New Australian Rules on Pay Secrecy

The changes introduced by the *SJBP Act* mark the first time pay secrecy in Australia has been legally constrained, although a previous attempt was made by the Greens in 2015 to ban terms inhibiting pay disclosure.[78] The new provisions in Division 4 of Part 2-9 of the *FW Act* apply to national system employers and their employees.[79] The scope of the term 'national system employer' is dictated both by the main definition in s 14 and the referrals of legislative power from five of the States that support the extended definitions in ss 30D and 30N.[80] In summary, it extends to all non-government employers, with certain exceptions (generally unincorporated employers) in Western Australia; all Commonwealth and Territory government agencies; State government agencies in Victoria; and local government employers in Victoria and Tasmania.[81]

There are four main components to the new pay secrecy regime:

- employees must be free either to disclose or *not* disclose their remuneration and any terms and conditions of their employment that are 'reasonably necessary to determine remuneration outcomes' (s 333B(1));

[75] Rene Boheim and Sarah Gust, 'The Austrian Pay Transparency Law and the Gender Wage Gap' (Discussion Paper, IZA Institute of Labor Economics, March 2021) 5.

[76] International Labour Organization (n 47) 42.

[77] EU Pay Transparency Directive (n 49).

[78] See Fair Work Amendment (Gender Pay Gap) Bill 2015 (Cth), which lapsed in May 2016 with the dissolution of Parliament, prior to a report being issued by the Senate Education and Employment Legislation Committee. For details of the Committee's inquiry, including submissions made on the Bill, see 'Fair Work Amendment (Gender Pay Gap) Bill 2015' *Parliament of Australia* (Web Page) <www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Gender_pay_gap>.

[79] *FW Act* (n 13) s 322.

[80] As to those referrals, see *Industrial Relations (Commonwealth Powers) Act 2009* (NSW); *Fair Work (Commonwealth Powers) Act 2009* (Vic); *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld); *Fair Work (Commonwealth Powers) Act 2009* (SA); *Industrial Relations (Commonwealth Powers) Act 2009* (Tas).

[81] See Andrew Stewart et al, *Creighton & Stewart's Labour Law* (Federation Press, 7th ed, 2024) ch 6.1. This section of the article draws on material originally prepared for that text: ch 15.3(e).

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- employees are now allowed to ask other employees (of either the same or different employers) about their remuneration and other relevant conditions (s 333B(2)), though those employees are not compelled to respond. Both this and the freedom to disclose, constitute workplace rights for the purpose of the 'general protections' in Part 3-1 of the *FW Act*. Among other things, s 340 protects employees against dismissal or other forms of 'adverse action' because of the exercise or proposed exercise of such rights;[82]
- any provision in an employment contract, award or enterprise agreement that prohibits employees from asking about or disclosing their remuneration and other relevant conditions is treated as unenforceable (s 333C); and
- employers are prohibited from including any provision in an employment contract or other written agreement with an employee that is inconsistent with the rules above (s 333D).

The term 'remuneration' is not defined in the *FW Act*. But it is generally understood to cover not just wages or salary but 'all other monetary and non-monetary compensation paid as consideration for service under an employment contract'.[83] That would plainly include bonuses, incentives or share schemes.[84] As for terms and conditions that are 'necessary to determine remuneration', a note to s 333B(1)(b) suggests that this would permit disclosures or questions about hours of work, although that is intended to be a 'non-exhaustive example'.[85]

Under the transitional provisions in cl 59 of Sch 1 to the *FW Act*, pay secrecy clauses in employment contracts agreed to before the amendments took effect on 7 December 2022 remain enforceable, but only up to the point at which any variation to that contract is agreed. This could potentially spark some interesting arguments as to whether a variation has occurred when, for example, a wage rise is granted, or the employee is promoted, or their duties are otherwise altered. If the contract in question is worded in such a way as to permit or accommodate the relevant change, there may technically be no variation. But if not, any continuation of a pay secrecy obligation would become unlawful. Clause 59(6) gave employers a six-month grace period (that is, until 7 June 2023) before they could be penalised for including an invalid term in a contract. But they could still have been liable even before that date under s 340 for taking adverse action against an employee for exercising or proposing to exercise one of their new rights.

The adverse action provisions may also come into play if an employer seeks to get around the pay secrecy prohibitions, for example by exhorting employees to 'respect the privacy' of other employees, as part of a policy that is not incorporated into employment contracts. That may not breach s 333D. But it could potentially be regarded as

[82] See ibid ch 20.2(d).

[83] *Re Equal Remuneration Decision 2015* (2015) 256 IR 362, 439 [276] ('*Equal Remuneration Decision 2015*'), citing *Oliveri v Australian Industrial Relations Commission* (2005) 145 IR 120, 127 [25], *Rofin Australia Pty Ltd v Newton* (1997) 78 IR 78, 81. See also *Australian Education Union v Victoria* (2015) 239 FCR 461, 478–9 [36].

[84] *Equal Remuneration Decision 2015* (n 83) 442 [289].

[85] Revised Explanatory Memorandum (n 20) 74 [411].

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misleading employees as to their workplace rights, in breach of another of the general protections, s 345. On the other hand, employees can still be required to maintain confidentiality about the detail of *other* workers' pay, for example if they are responsible for payroll administration.[86]

Even before the new rules took effect, there were reports that some Australian employers had stopped formally insisting on pay confidentiality.[87] A survey of 604 human resources professionals and business decision-makers conducted in October 2023 asked about their organisations' responses to the legislation. 59% reported that changes had been made both to organisational policies on pay secrecy and employment contracts, although around a third of those did not amend contracts made before December 2022. A further 9% had plans to make changes, but had not yet done so, while 7% said they did not intend to change their pay secrecy clauses or policies. 20% responded that the new laws had no relevance, because they did not have pay secrecy policies or provisions, while the remaining 4% did not know.[88]

V. A Case Study on Organisational Pay Secrecy

The survey results reported in the previous section suggest a moderately positive response to the new legislation, at least from larger employers. But as previously explained, there is reason to believe that the abandonment or avoidance of *formal* rules on pay secrecy may not affect established norms of behaviour concerning pay secrecy. To illustrate that point, we present the results of a study examining employee perceptions of pay transparency within a large Australian finance and insurance company, which we call Finance Co. Single organisation case studies are useful to provide a deep description of significant phenomena within their context, particularly where complex social interactions exist.[89] Though data were gathered prior to the COVID-19 pandemic, they provide insights into pay secrecy norms and practices that remain relevant because they show the entrenched nature of pay secrecy perceptions and behaviours, and demonstrate the deep influence of 'the way things are done' from multiple respondents within an organisation. The case study also responds to persistent gaps in the literature that explore and explain the influence of organisational norms and policies, as well as workplace social dynamics, on employees' pay transparency preferences and behaviours.[90] The timing of data collection also provides insights into employee and manager perceptions prior to the more amplified public and political discussions that led up to the new legislation. Prior to that time, discussions were generally confined to aggregated gender pay reporting and executive pay disclosure requirements.

[86] See, eg, *Australian Meat Industry Employees Union v Primo Foods Pty Ltd* [2022] FedCFamC2G 540, a case initiated before the new provisions took effect and involving a worker sacked for breaching confidentiality on salary offers made to others. Cf *McLeod v Project 88 TPF Pty Ltd* [2023] FWC 2630, where a dismissal for unauthorised pay disclosures was held to be unfair on the facts.

[87] See, eg, 'Central Bank Won't Enforce "Pay Secrecy" Clause: Governor', *Workplace Express* (6 April 2021); 'Pressure on Pay Secrecy After CBA, Westpac Retreats', *Workplace Express* (6 April 2022).

[88] Australian Human Resources Institute, *AHRI Quarterly Australian Work Outlook: December Quarter 2023* (Report, 2023) 19–20.

[89] Nicolaj Siggelkow, 'Persuasion with Case Studies' (2007) 50(1) *Academy of Management Journal*, 23.

[90] Brown et al (n 24) 1676–7.

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The financial and insurance services sector has high overall pay dispersion and, at the time of data collection, had amongst the largest gender pay gaps of Australian industries for the past decade. Recent data, however, shows the financial and insurance sector is closer to the national average, with a 22.2% total remuneration gender pay gap, compared with 21.8% for all Australian industries.[91] At the time of data collection, Finance Co was subject to a requirement to disclose remuneration on its website at the end of each financial year. This reporting was at a very broad level, and included the firm's remuneration framework, governance, policy, and practices for all employees. Remuneration data was provided for top level managers, but only at an aggregate level.[92] Finance Co was also required under the *Workplace Gender Equality Act 2012* (Cth) to report annually on whether its formal policies included gender pay equity objectives, transparency of pay scales or salary bands, and whether managers were accountable for pay equity outcomes.[93] Finance Co's pay and reward strategy did not include any of these, though the company did indicate that it included an objective to ensure no gender bias occurs at any point in the remuneration review process (for example at commencement of employment, at salary reviews, and at performance pay reviews).

University human research ethics committee approval was obtained for the study and all participants provided informed consent in writing prior to interview. The study drew on in-depth, semi-structured interviews with 32 Finance Co employees. Following interviews with rewards managers (n=4), a reward manager distributed study recruitment information by email to employees across the organisation. Interested participants contacted the researchers directly. Employees were recruited from two distinct divisions, Insurance (n=15) and Corporate (n=13). The sampling strategy also involved recruiting participants with varying levels of seniority and to ensure a gender composition that was consistent with the organisation's overall workforce (59% women, 41% men). At the end of each interview, participants were asked to email recruitment information to colleagues within their division, with a request to contact the researchers directly. The final sample size (n=32) was broadly consistent with comparable organisational studies.[94]

Interview data were triangulated with relevant documentary sources (eg internal reward and recognition policy documents, the enterprise agreement, and public recruitment information). The research design allowed for comparison of the perceptions of employees from different divisions within the larger organisation and different levels of seniority. Multiple levels of analysis within one organisation enables a rich examination of pay transparency from multiple perspectives.[95] Finance Co made available information about pay components (pay, reward and recognition, benefits, and

[91] *Gender Equality Scorecard* (n 2) 19.

[92] Australian Prudential Regulation Authority, *Prudential Standard APS 330: Public Disclosure May 2015* (2015).

[93] Workplace Gender Equality Agency, *Guide to Gender Pay Equity* (Report, 2016).

[94] Mark NK Saunders and Keith Townsend, 'Reporting and Justifying the Number of Interview Participants in Organization and Workplace Research' (2016) 27(4) *British Journal of Management* 849.

[95] Eric WK Tsang, 'Generalizing from Research Findings: The Merits of Case Studies' (2014) 16(4) *International Journal of Management Reviews* 369.

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Table 1. Interview participant data

Group	Gender	Level	Tenure
Rewards Manager (4)	Male (4)	Employee (1) Manager (2) Executive Manager (1)	0–5Y (3) 5–10Y (1)
Insurance Division (15)	Female (7) Male (8)	Employee (8) Manager (5) Executive Manager (2)	0–5Y (4) 5–10Y (5) 10–15Y (4) >20Y (2)
Corporate Division (13)	Female (9) Male (4)	Employee (8) Manager (5) Executive Manager (2)	0–5Y (6) 5–10Y (1) 10–15Y (3) 15–20Y (1) >20Y (2)

bonuses) and the various pay levels available to employees according to seniority and work responsibilities. Finance Co's divisional and hierarchical structure, and the extent of information that was available about pay, was typical of the finance and insurance services sector in Australia.

Participant characteristics are provided in Table 1. Thirteen interview participants were employees without supervisory responsibilities. Eleven participants were managers (that is, first-line managers responsible for supervising employees). Eight participants were executive managers (that is, managers above first-line supervisor level). Tenure indicates years (Y) of employment at Finance Co.

Each participant was asked a range of questions about their own and others' experiences of pay transparency, including the nature of discussions about pay amongst employees in the company, rules or directives that allowed or constrained pay discussions, and perceived risks associated with sharing pay information.

Interviews were an average of 45 minutes in duration and were recorded, transcribed and open coded.[96] Four dimensions shaping organisational pay transparency were identified: formal rules, managerial influence, faith in a just organisation, and social norms. Excerpts from respondents are identified by gender (M = male, F = Female), group (Reward Manager, Insurance or Corporate), and hierarchical level (Employee, Manager or Executive).

A. Formal Rules

Two of the four reward managers interviewed indicated awareness of the regulatory environment shaping Finance Co's pay transparency levels. This awareness shaped actions taken by the organisation, with one reward manager describing how the company did: 'gender pay equity reviews. But it's mostly focussed on "is it a female getting paid as much as a male? And if not, why not?"' (M, Reward Manager). The reward managers acknowledged that these reviews were conducted in response to the WGEA

[96]David R Thomas, 'A General Inductive Approach for Analyzing Qualitative Evaluation Data' (2006) 27(2) *American Journal of Evaluation* 237.

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reporting requirements and that the outcomes were not reported publicly, nor shared widely within the organisation.

Transparency was also formally documented and available to staff in relation to different types of rewards. Universally available rewards, such as fringe benefits and base pay bands for each of the eight levels below executive level, had a high degree of transparency in that they were published in the company's enterprise agreement. Some limited additional information about the median pay point within each band was also provided to employees via the intranet and organisational policies set out rationales and procedures that underpinned pay decisions. General information about the nature of performance-contingent bonuses and incentive payments was also provided in the enterprise agreement. Employees and managers indicated awareness of pay and reward information published in the enterprise agreement, the median pay point within bands, and pay, benefit and bonus-related information and policies that were published on the intranet.

In contrast, specific information about the distribution of individualised rewards, such as performance-related bonuses, were confidential. Further, employees below executive level, or those without supervisory responsibilities, did not have access to certain policy documents such as the manager's handbook that outlined the process for assigning performance ratings that directly influenced the performance-based component of pay. A reward manager described the handbook as:

> An e-book for new [managers] that tells them around all aspects of leadership and what you need to know about it and it touches around performance, it touches around recognition, but from an employee perspective … If somebody were looking for a total reward overview, it doesn't exist, yeah, and that's something I think is a gap here (M, Reward Manager).

Reward policy also placed constraints on employees' ability to discuss their own pay. Employees and reward managers revealed both formal and informal pay secrecy obligations that were imposed on employees. Reward managers described a 'standard clause in the contract' that employees signed on commencement with Finance Co that required 'confidentiality of data … that extends to remuneration data' (M, Reward Manager). Finance Co also warned employees verbally, as well as in writing, not to disclose their pay details to others.

B. Managerial Influence

Managerial influence on pay transparency ranged from strong recommendations and explicit directives not to discuss pay, to the imposition of sanctions for discussing pay. A senior manager stated: 'We don't encourage people to share salary' (F, Executive, Corporate). Managers were expected to remind workers at each performance appraisal that their pay details were private and confidential. These pay secrecy provisions were enforced by the organisation. A reward manager explained that employees who disclosed pay details faced reprimands:

> We have clamped down upon some of those individuals who [disclose pay and say], 'I got this and I want that, I should have got this because that's what I

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> understood was being offered' … We always remind leaders or employees and say, 'You're contractually obliged not to be sharing information' (M, Reward Manager).

Employees also discussed how managers policed pay secrecy. For example, one said that a person who had talked about her bonus was 'called into an office by her [manager] and told that this was not acceptable' (F, Employee, Corporate).

C. Social Norms

Employees, supervisors, and executives all indicated that they did not feel as though they could share information about their pay at Finance Co, because it was 'not the way things were done'. Interview participants widely reported that pay discussions were strongly discouraged. Senior managers reported that salary disclosure was discouraged on the basis of privacy: 'it is kind of a private thing' (F, Executive, Corporate) and professional dimensions of the workplace: 'I certainly don't hear anybody talking about their pay. I think we're in a professional environment [where] that doesn't happen' (M, Manager, Corporate). Another manager believed social norms within the organisation preventing discussions of pay were highly effective: 'The team knows better than to sit and discuss their own salary with their peers. That doesn't happen' (F, Manager, Insurance).

Even where employees were not aware of formal pay secrecy provisions, social and professional norms strongly influenced their behaviour. One employee who did not know about the formal pay secrecy clauses, for example, said: 'As far as I am aware there is nothing to say that you can't [discuss your pay] … but I think that socially it is not something we talk about' (F, Employee, Corporate).

Bonuses were especially sensitive. Employees believed that even in the absence of a policy that sanctioned discussions of bonuses, they would face penalties nonetheless: 'Yeah, I think someone could be performance managed [disciplined] for that' (F, Employee, Insurance). Such conversations were policed by peers, as well as managers. One employee, for example, said that he:

> … had a one-on-one chat with one or two of them [colleagues] who were going down that path [of asking about colleagues' bonuses] and just said 'Look, it's not for discussion, do you want to take it further, because you shouldn't'" (M, Employee, Insurance).

This peer enforcement of pay secrecy indicates a cascading effect of managerial influence over pay transparency to lower levels of the organisation.

D. Faith in a Just Organisation

Formal rules, managerial influence and social norms influenced many interviewees to rationalise pay secrecy as appropriate and justified on the basis that Finance Co was a trustworthy organisation. These beliefs further entrenched pay secrecy and were expressed in a number of forms. The first was faith that employees were being rewarded fairly and as a result, there was no value in changing the status quo. This clear individualising of the issue also reflected a resistance to collective thought and action on pay

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at Finance Co. This was evident in comments from employees and managers, such as: 'You have this assumption that your employer will pay you a fair pay for a fair day's work' (F, Executive, Corporate) and 'I think I am well paid for what I do, absolutely.' (F, Executive, Insurance).

Faith was also expressed in relation to the organisation's commitment to equal opportunities in reward policies. A manager expressed this as:

> I think it is fair to employees. There is no bias in that. Policy-wise everything is - we're a big equal opportunity employer and every policy that we have makes sure on delivering to that principle (M, Manager, Insurance).

This comment aligns with organisational justice literature showing that where employees do not have access to information about actual allocation of pay (distributive justice), they will make heuristic judgements about the fairness of policies influencing pay (procedural justice).[97] A further example of a heuristic evaluation was expressed by a manager: 'I think [Finance Co] try to be transparent. I mean the whole pay bands and the processes are all accessible … So yes, I think they do try' (F, Executive, Corporate).

Other participants similarly expressed the view that the limited comparative information of minimum base pay levels and median pay points within each salary band that was available to Finance Co staff was sufficient:

> We publish our pay ranges on the intranet, it gives people a sense of our measurement of where they sit in the scheme of things. So, if you're [in] a pay band, you'll look at whether you're at the low point versus the high point. It's a measure of 'what's my value and what am I getting paid relative to that range' (M, Manager, Corporate).

A small number of interviews lamented pay differences, particularly in relation to gender, but claimed individual responsibility for the inequities:

> I am aware that there are others in my pay band or that are certainly earning a lot more than I am and usually men. I do feel there is a pay differentiation between men and women and that is on me and my ability to negotiate salary and things like that (F, Executive, Insurance).

In general however, participants believed that even if pay was not equitable, there was a justified need for secrecy in relation to this inequity. Although they acknowledged that increased transparency would probably lead to more equitable reward outcomes, this would come at a significant cost to the organisation:

> If someone tells you they are on $X, this person can go to their manager and say, 'I want $X' — [and this will result in an] escalation of cost throughout [the company] (M, Employee, Insurance).

A female insurance employee expressed a similar concern that pay openness would put company profitability at risk if it meant paying people the same for comparable roles.

[97] Hartmann and Slapničar (n 23).

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These views reflected a belief that pay secrecy is an effective and legitimate defensive strategy to avoid requests or demands for pay rises and hence, higher overall salary costs.

Employees also argued that if their suspicions about pay inequity were confirmed, this may upset them or others, negatively impacting the workplace milieu. A supervisor from the Insurance division, for example, stated:

> Ignorance is bliss sometimes. I know I have found out how much other people have been paid and it frustrates me if they don't do their job and they are being paid more [than me] (M, Manager, Insurance).

An executive expressed similar views: 'If I knew that some of the under-performers around the business were on more, I'd probably question that and question the fairness of that' (F, Executive, Corporate). A base level employee also had reservations about knowing their colleagues' pay levels because:

> Jealousy is an ugly beast, where you look at people and you go, 'Ooh, hang on a second. They are at that level, I am at that level. I am doing twice the amount of work that they are' (M, Employee, Corporate).

Others expressed concern about the broader social impacts of pay transparency, including threats to harmony, morale and collaboration, particularly in an industry that required teamwork. One insurance manager for example, stated: 'It probably shouldn't be discussed more openly. It probably wouldn't help collaboration between areas either' (M, Manager, Insurance). Another envisaged a range of undesirable outcomes for Finance Co:

> My gut feeling is that it would do more harm than good. I think having people - having that level of visibility, I think would result in all sorts of engagement challenges and you would see people leaving the organisation, going elsewhere, or just constantly entering into discussions with their leader around their salary. It would just be a constant distraction (M, Manager, Corporate).

Some even expressed the view that although pay equity was important and could be advanced by bringing pay levels into the open, it was less important than avoiding conflict: 'It might end up more fair, but… you have opened that up to a morale nightmare' (F, Manager, Corporate).

Employees also feared that if different pay levels amongst colleagues doing the same job were open knowledge, it could lead to unfair judgements. For example, an Insurance employee feared jealousy from her peers if her pay was revealed to be comparatively higher: 'They would think, "How did she get that?"' (F, Employee, Insurance). The fear of judgements from colleagues was underpinned by an assumption that what they are paid is a direct and accurate reflection of what they are worth. A Corporate employee said:

> I don't want people knowing how much I'm worth … At [a previous company] I've had to justify to colleagues who have found [out] … I'd never want to have it again because it can cause resentment (M, Employee, Corporate).

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A supervisor felt that managers would face harsh assessments by their subordinates if their earnings were revealed: 'I think there would also be a lot of judgements around leaders. Are they worth *that* much?' (F, Manager, Corporate).

Conversely, another employee believed that revealed lower pay could raise questions about her performance, with colleagues likely to ask: 'Why is she only on that?' (F, Employee, Insurance). Some employees explicitly said that they did not want to know comparative reward information, because their perceptions of fair pay were based on their own judgement of their performance and discussions with their manager:

> I don't need to know that. Did I do good? Did I not do good? And is that judgment in line with the way I perceive myself to be, and in line with the conversations that we have had all through the year? If there's that disparity there, then we have a problem. Reward me adequately, so I feel appreciated, and don't complicate it… (M, Employee, Corporate).

Many employees indicated that they would prefer to trust they are paid what they are worth by their organisation. Even those who suspected pay inequities existed at Finance Co indicated that they preferred the pay secrecy status quo.

VI. Discussions and Conclusion

Colella and colleagues surveyed the pay secrecy field in 2007, canvassing a future research agenda of unaddressed issues, including the impact of pay transparency on society.[98] Their observations about the scant empirical evidence and the consequent need for more research into the implications of pay secrecy for national culture, organisational culture, and gender equity are as relevant today as they were almost two decades ago.[99] Nevertheless, some conclusions can be advanced from the research reviewed in this article.

A. Potential Impact of the New Pay Secrecy Laws

Since 7 December 2022, the *FW Act* has allowed employees the right to share or not share information about their pay and ask other employees about their pay, without adverse action from employers (subject to transitional arrangements for prior contracts until they are varied). No employers have yet faced sanctions for breaches of these provisions and there have been few reports of proceedings even being contemplated.[100] It is possible that, as suggested by the survey results quoted earlier,[101] most Australian employers are indeed complying with the letter of the new law. According to the federal government, '[p]roviding the opportunity for employees to understand and gather more information about their remuneration aims to reduce discrimination

[98] Colella et al (n 31).

[99] Ibid.

[100] But see 'Worker Brings Employer to Book for Pay Secrecy "Sacking"', *Workplace Express* (online, 27 June 2023), reporting that a bookstore employee is complaining that she was denied work because she disclosed details of a pay rise and back pay to her co-workers.

[101] See Australian Human Resources Institute (n 88) and accompanying text.

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and narrow the gender pay gap'.[102] The question is whether the reforms will actually have that effect.

To some extent, Australia already has a degree of pay transparency. Minimum rates of pay are set for a majority of Australian employees by a combination of awards and enterprise agreements.[103] The former are available through the websites of both the FWC and the Fair Work Ombudsman,[104] while the latter are also required to be published by the FWC, pursuant to s 601(4) of the *FW Act*.[105] It has been held that the tribunal cannot accede to any request to restrict that publication by redacting wage rates.[106] However, most managers and professionals are not covered by such industrial instruments — and even for those who are, it remains possible for pay to be selectively raised above the mandated minimum on an individualised basis. Certain executives aside,[107] there is no general obligation on employers to reveal even the existence of such arrangements, let alone any details about them.

In the past, employees could be contractually obliged to maintain confidentiality regarding individual pay. That is no longer lawful, at least for national system employees. But the research reported in this article — albeit derived from one organisation — suggests that shifting the propensity of employees to discuss or seek out information about pay is much more complex than merely changing legislation and associated organisational rules. Rather, the continuum of pay secrecy to pay transparency is dependent on complex interactions between regulation and policy, managerial influence, social norms, and beliefs by employees that organisations are trustworthy and justified in providing limited information about worker pay. Both workers and managers in the case study of Finance Co reported in Part V were clear that pay discussions were discouraged and sanctioned across the organisation. Adherence to secrecy was firmly entrenched in the organisation, irrespective of whether formal rules related to pay secrecy were in place, or whether employees were actually aware of secrecy clauses, and they persisted even when employees acknowledged the association between pay secrecy and pay inequity.

B. Limitations and Future Research

The case study revealed new insights into pay transparency from the perspective of employees and managers in a finance organisation. Views on pay transparency were

[102] Department of Employment and Workplace Relations, *Job Security and Gender Equity: Prohibiting Pay Secrecy Clauses* (Factsheet, 2022).

[103] According to the Australian Bureau of Statistics, 57.2% of employees are paid in accordance with either an award or collective agreement: 'Employee Earnings and Hours, Australia', *Australian Bureau of Statistics* (Web Page, May 2023) <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/latest-release>.

[104] See 'Awards', *Fair Work Commission* (Web Page) <www.fwc.gov.au/agreements-awards/awards>; 'Find My Award', *Fair Work Ombudsman* (Web Page) <https://services.fairwork.gov.au/find-my-award>.

[105] See 'Find an Enterprise Agreement', *Fair Work Commission* (Web Page) <www.fwc.gov.au/agreements-awards/enterprise-agreements/find-enterprise-agreement>.

[106] *Australian Workers' Union v Oji Foodservice Packaging Solutions (Aus) Pty Ltd* [2018] FWCFB 7501. As to the need to include proposed pay rates when submitting an agreement to the FWC for approval, see also *Re VIP Plastic Packaging Pty Ltd* [2023] FWCFB 161, [9]–[12].

[107] See above n 48 and accompanying text.

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shaped by an organisational environment in which pay communication was limited, top down, and constrained by managerial directives and social relations between peers. Future research could address how managers and employees view pay transparency and whether pay transparency laws may change attitudes and behaviours. Further research in other industry and national contexts may also illuminate how organisational dynamics and social relations influence employee perceptions of, and adherence to, pay secrecy norms when new regulations are introduced. While some prior studies have investigated the role of broader social taboos around pay, research is needed to understand shifting norms that may or may not be influenced by the implementation of pay transparency regulations.[108]

C. Conclusions

This study's findings support those of other studies showing that even in the presence of legislation prohibiting companies from punishing workers who discuss their pay, many people feel that they cannot or should not talk about pay.[109] That said, it is possible that over time the new regulation protecting employees who wish to discuss their individual pay, or request others to do so, may shift some of the social norms revealed in Finance Co towards more open discussions and information sharing, and less fear that knowing what others get paid will inevitably lead to poor organisational or individual outcomes.

One avenue to allow workers to compare their pay with others undertaking work of equal or comparable value would be to improve the amount and type of pay information made available to workers, rather than expecting them to proactively seek this information out. The advantage of greater disclosure of company pay information is that it allows individual employees to judge the relative fairness of their pay without having to challenge strong social norms. The effects of the new requirements for WGEA reporting of organisation-level pay details mentioned in the introduction are yet to be known in Australia. However, research in the UK, where more than 10,000 firms have been required to publicly disclose their gender pay gap and gender composition along the wage distribution since 2018, indicates significant declines in the gender pay gap compared to pre-policy levels and employer reputation motives to improve gender equality indicators.[110] A continued barrier to progress is that the reporting laws only apply to larger employers and the information is only of indirect value to employees in terms of understanding how they are being paid, relative to others. The initiatives introduced in the EU Pay Directive to make pay and career progression criteria more transparent and introduce pay audit processes for firms with persistent gender pay gaps may help to ensure that pay is set on the basis of objective and gender-neutral criteria. The question is whether, as other countries have done, Australia should go further

[108] See Bierman and Gely (n 25), Cullen and Perez-Truglia (n 28), Danziger and Katz (n 60), Lyons (n 38) for research into how social taboos limit pay discussions. Brown et al (n 24) identified a need for future research into how pay transparency laws and regulations influence pay sharing norms in societies and economies.

[109] Oswalt, Rosenfeld and Denice (n 50).

[110] Duchini, Emma, Stefania Simion and Arthur Turrell, 'Pay Transparency and Cracks in the Glass Ceiling' (Research Paper No 1311, Department of Economics, University of Warwick, October 2020).

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by mandating the disclosure of pay data by employers to their workers, and/or the unions that represent them. This would remove the burden from employees of asking for comparative pay data and reduce the risk of violating social norms.

Acknowledgements. The authors are grateful to Mahya Panahkhahi for her assistance with the preparation of this article, and to the anonymous reviewers for their constructive feedback on an earlier draft.

Cite this article: Laundon M, Stewart A, McDonald P and Cathcart A (2026). Regulating for Pay Transparency: Can Law Overcome Workplace Secrecy? *Federal Law Review* **54**, e5, 1–24. https://doi.org/10.1017/fed.2026.10018

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