



***Supplementary Submission to the SDA Submission to the
Finance and Public Administration References Committee
Inquiry into Gender segregation in the workplace and its
impact on women's economic equality***

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1. The SDA makes this supplementary submission to the Finance and Public Administration References Committee Inquiry into Gender segregation.
2. The SDA makes this supplementary submission following the Fair Work Commission Full Bench Decision¹(Penalty Rates Decision) issued on 23 February in relation to applications made to reduce penalty rates in the 4 yearly review of modern awards.
3. The Penalty Rates Decision will have a disproportionate and negative impact on women, and a negative impact on the gender pay gap. The SDA submits that the reason it will have a disproportionate impact on women is that:
 - More women work in the industries affected than men;
 - more women in the industries affected work in a part-time or casual capacity than men; and
 - the reduction in penalty rates will have a greater impact on part-time and casual employees in these industries.
4. For the majority of our members, working Sundays is not a preference. Many women work on Sundays because they are not able to work Monday to Friday because of family responsibilities and availability of child care. Women also work Sunday because the penalty rates they receive for working those unsociable hours is the only means they have to achieve a decent wage to enable them to live and provide for their family.
5. The decision of the FWC further demonstrates the inadequacy of the Fair Work Act 2009 to provide an appropriate mechanism to ensure that wage setting in Australia doesn't further erode women's pay and conditions and instead contains a positive duty on the Fair Work Commission to improve the economic outcome for women and the gender pay gap. Currently, under Section 134 of the Fair Work Act 2009, equal remuneration for men and women employees for work of equal or comparable value, is only one factor of many which can be taken into account when determining the Award.

¹ [2017] FWCFB 1001

6. The SDA submits that rather than being a factor to be considered, this should be an explicit objective of the Fair Work Act and a positive duty when making or varying an Award.
7. This decision also highlights a potential problem with using the existing wording 'for work of equal or comparable value' as a means of promoting gender equity and reducing the gender pay gap. When assessing the impact of a change in penalty rates on section 134(e) of the Act, the Penalty Rates Decision provides that:

[215] Further, even if it was shown that a reduction in Sunday penalty rates disproportionately impacted on women workers that fact would not necessarily enliven s.134(1)(e). Section 134(1)(e) requires that we take into account the principle of equal remuneration for men and women workers 'for work of equal or comparable value'. **Any reduction in Sunday penalty rates in these awards would apply equally to men and women workers.**

[216] However, **if it was shown that a reduction in penalty rates did disproportionately affect female workers then it is likely to have an adverse impact on the gender pay gap.** Such an outcome may well be relevant to an assessment of whether such a change would provide a 'fair and relevant minimum safety net', but **it does not necessarily enliven s.134(1)(e).**

[emphasis added]

8. This highlights two problems with Fair Work Act:
 - a. PN 215 of the decision implies that when looking at Section 134(1)(e) the consideration is made on whether the outcome of the decision applies equally to men and women in relation to the actual wage outcome rather than a broader assessment of equal remuneration for men and women workers performing work of equal or comparable value across a range of occupations or industries.
 - b. even where the FWC has sufficient evidence to demonstrate that a change will have an adverse impact on the gender pay gap this is not enough to enliven Section 134(1)(e) and impact a decision of the Commission.
9. It is concerning that the Full Bench noted in its decision that a disproportionate adverse impact on female workers may be relevant to the assessment of a fair and

relevant minimum safety net, but ultimately did not make that finding, despite it being clearly demonstrated. Gender equity was not properly considered in this decision. The Act must be amended to ensure that any disproportional adverse impact on women identified is remedied or cannot be made in such an instance.

10. The Fair Work Act 2009 must be amended to require that the Fair Work Commission:
 - must ensure equal remuneration for men and women workers performing work of equal or comparable value in the same, and different, occupations and industries;
 - must also ensure gender equity and that a decision of the FWC does not have an adverse impact on the gender pay gap.

11. These must be explicit objects of the Act and should include a positive duty on the Fair Work Commission to consider the impact on gender equity in the consideration of the annual minimum wage review, modern awards and enterprise agreements.