

Inquiry into Penalty Rates and Fair Pay

Submission

Submitted by:	Victorian Women Lawyers Association Inc (VWL)
Submitted electronically to:	The Secretary Penalty Rates and Fair Pay Select Committee Parliament House, Spring Street EAST MELBOURNE VIC 3002 By email: PenaltyRatesFairPay@parliament.vic.gov.au By eSubmission.
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About Us

Victorian Women Lawyers (VWL) is a voluntary association that promotes and protects the interests of women in the law and in the legal system. Formed in 1996, VWL now has over 1,000 members. VWL provides a network for information exchange, social interaction, and continuing education and reform within the legal profession and broader community.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Inquiry into Penalty Rates and Fair Pay

Since 1996 VWL has advocated for the equal representation of women and promoted the understanding and support of women's legal and human rights by identifying, highlighting, and eradicating discrimination against women in the law and in the legal system, and achieving justice and equality for all women.

VWL submits that the recent decision by the Fair Work Commission to cut Sunday penalty rates to thousands of workers adversely affects workers, and female workers in particular. VWL welcomes the opportunity to make a submission to the Penalty Rates and Fair Pay Select Committee.

The Committee has provided a number of terms of reference to inquire into and report on how the recent decision of the Fair Work Commission affects workers. VWL has elected to narrow its focus to consider how the decision affects women.

Women are disproportionately affected

The Fair Work Commission's (the **Commission**) decision to reduce Sunday penalty rates primarily affects employees working in the hospitality, retail and fast-food industries who are not covered by an enterprise bargaining agreement. As almost 1 in 2 workers in those industries are not covered by EBAs, the decision will have significant impact on this workforce.

VWL submits that the Commission's decision will disproportionately impact women for the following reasons:

1. The industries affected by the decision disproportionately employ women. According to the *Workplace Gender Equality Agency Annual Report 2015-16*, women comprise 58.4% of employees in the retail sector and 51.8% of employees in the accommodation and food services.
2. The decision affects weekend workers, who are predominately female. According to the Australian Bureau of Statistics, most part time workers are women, and the

percentage of women who work part time increases when they have young children.¹ Many female employees who work on weekends due to limited childcare options on weekdays will be affected by the decision to reduce Sunday penalty rates.²

3. The decision affects ‘non-career employees’, who are predominately female.³ The Commission’s decision specifically identifies part-time or casual employees as ‘non-career’ employees’. In some instances, Sunday penalty rates were retained for career employees but reduced for non-career employees.⁴ The assumption that casual employees are regarded as non-career employees ignores the reality that, for many women, casual and part-time work may be their only option.

VWL submits that the proposed reduction in Sunday penalty rates disproportionately affects female workers for the reasons outlined above.

The effect of the decision to reduce Sunday penalty rates

It has been estimated that a casual retail worker that works 48 Sunday shifts each year will lose \$2,186.88 annually as a result of the Commission’s decision.⁵ This is a significant reduction in salary. The reduction in penalty rates occurs at the same time as welfare and family payments are being reduced.⁶ Further, wage growth in the private sector is at an all-time low of 1.8%.⁷ VWL is concerned about the effect of the Commission’s decision on vulnerable workers, including women, single parents and low-income earners in the context of broader societal changes.

VWL submits that the reduction in Sunday penalty rates will increase the wage gap between men and women. The average Australian woman retires with around half the superannuation balance of the average man.⁸ This gender gap emerges because women are more likely to be engaged in part time or casual work to balance caring responsibilities. VWL submits that the Commission’s decision will serve to compound the economic disadvantage for women and increase the wage gap.

Section 134 of the *Fair Work Act 2009* (Cth) requires the Commission to ensure modern awards provide a fair and relevant minimum safety net of terms and conditions. In the current

¹ Australian Bureau of Statistics, Media Release. 31 August 2016. ‘Men and women-how do we compare?’

² Dr Marian Baird, Professor of Gender and Employment Relations, University of Sydney as cited in <http://www.smh.com.au/business/workplace-relations/sunday-penalty-rates-women-to-bare-the-brunt-of-cuts-experts-say-20170224-gukj9u.html>

³ *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 at [1395]

⁴ As above.

⁵ The McKell Institute, *The impact of the Fair Work Commission’s February 23 Sunday Penalty Rates Decision*

⁶ For example, there has been a reduction in the Family Tax Benefit; see ABC News, 9 February 2017, *1.5 million people will see reduction in Family Tax Benefit supplements under welfare changes*; available <http://www.abc.net.au/news/2017-02-09/federal-government-1.5million-people-reduced-family-tax-benefit/8254394>

⁷ Wage Price Index, Australian Bureau of Statistics, December 2016

⁸ Australian Super, Women and Super, available here: <http://www.australiansuper.com/superannuation/women-and-super.aspx>

economic context, VWL submits that the decision to reduce Sunday penalty rates has significantly reduced the safety net for vulnerable workers, particularly women.

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