

SUBMISSION TO THE SENATE EDUCATION AND EMPLOYMENT

Standing Committee on the Fair Work Amendment (Gender Pay Gap) Bill 2015

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INTRODUCTION

1. The Shop, Distributive and Allied Employee's Association (SDA) is one of Australia's largest trade unions with over 200,000 members. The majority of these members are women and young people. The SDA's membership is in the Retail Industry, Fast Food sector, warehouses, drug and cosmetic manufacturing and distribution, hairdressing, pharmacies and modelling.
2. The SDA has a long and proud history of advocating for improvements to working conditions and legislation designed to ensure all workers are given equal opportunity in the workplace. The SDA is committed to gender equality in all aspects of employment including access to rewarding ongoing employment and career development, access to flexible working arrangements which value and accommodate family and caring responsibilities and access to equal pay and remuneration.
3. The SDA supports amendments to legislation which are designed to close the gender pay gap, which has seen no improvement in Australia in 20 years. The SDA makes this submission in support of the *Fair Work Amendment (Gender Pay Gap) Bill 2015*.
4. The SDA supports the submission made by the ACTU.

GENDER PAY GAP

5. Despite the increase in the participation of women in the workforce, little has changed to the cultural norm widely accepted in Australia that women undertake the caring responsibilities for children, elderly parents, and family members with a disability.
6. Interruptions in paid employment, working in low-paid sectors and working on a part-time and/or casual basis in order to balance work and family/caring responsibilities has a significant impact on the level of income a woman receives

compared to men. Women spend more time than men in the unpaid workforce as carers, often for long periods and when career earnings potential, and superannuation, is at its highest.

7. Men spend more time in the paid workforce and therefore have a greater capacity to increase their wage and lifetime earnings.
8. The gender pay gap which is currently 18.8% widens throughout a women's lifecycle and exists despite the fact that in Australia more girls complete a high school education. In 2014 12% more women aged between 25 and 29 years than men in the same age group had a bachelor degree or above. There is even a gender pay gap in the starting salaries of graduates with men earning 4.4% more than women. For 15-19 year olds the pay gap is 0.3% rising to 21.8% for 35-44 year olds and 24 % for those aged 45-54.¹
9. The gender pay gap is also much higher for women in leadership and senior roles. 'A survey of 3.9 million employees across Australia conducted by the Workplace Gender Equality Agency has found that the largest gender pay gap occurs at key management personnel level (28.9 per cent), followed by other executives/ general managers (27.5 per cent), then other managers (24.6 per cent) and senior managers (23.5 per cent)². The designed impact of the Fair Work Amendment (Gender Pay Gap) Bill 2015, allowing women to discuss salaries to ensure greater pay transparency, would benefit this group of women most.
10. Another contributing factor of the gender pay gap is the discrimination experienced by women particularly during pregnancy, parental leave and return to work from parental leave. Discrimination during this time has a significant detrimental effect on the career and employment opportunities of women which impacts severely on earnings capacity in the short and long term.
11. The Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, found that 'women who reported being

¹ ANZ, *ANZ Women's Report: Barriers to Achieving Financial Gender Equity*, July 2015, p 10-11

² Ibid, p57

demoted or denied promotions, pay rises or access to training, effectively had their career opportunities abruptly halted by their employers or managers³.

12. Research shows that any interruption to paid employment when women have a child has a significant impact on the gender pay gap. Women generally have the break at a critical time in their career which impacts on their ability to access development and promotion opportunities which are often lost when they return to work. 'The human capital and earnings disadvantages that women incur at this point in their lives seriously jeopardise their ability to recover earnings over the long term and have adverse implications for their ability to prepare for retirement'.⁴ Women who have a break to have a baby incur a 'wage penalty' whether they return to work part-time or fulltime in the form of lower wage growth.⁵

13. Australian women returning to work after 12 months parental leave are subject to an average 7% wage penalty (known as the 'motherhood penalty') increasing to 12 percent over the subsequent year'.⁶

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14. The 'motherhood penalty' is often associated with the fact that women often miss out on wage increases which occur during the period of parental leave, especially if these are tied to performance review processes. Often companies do not have an appropriate process to ensure that the income of women who are on a period of parental leave are keeping pace with others in their organisation who are doing the same job. The employee may miss one or more wage increases during parental leave which results in them returning to work on a lower income than others performing the same job. This gap can then continue through their lifetime earnings.

³ The Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 79

⁴ ANZ, *ANZ Women's Report: Barriers to Achieving Financial Gender Equity*, July 2015, p 42

⁵ Ibid p 54

⁶ Ibid p 8

15. Providing women with the ability to discuss their income with colleagues without the fear of retaliation from their boss is vital to ensure women have full information and transparency and are not disadvantaged when negotiating their income. The ability to discuss their income will assist them to identify whether there are gaps in their income which may relate to discrimination, unconscious bias or lack of company policy or strategy to deal with the gender pay gap.
16. Lack of transparency which is supported by pay secrecy policies has a detrimental impact on women and further contributes to the gender pay gap. Ten years ago the gap was 14.9%. During that time pay secrecy policies, under which employees are prevented from discussing their pay with colleagues, have spread. In a 2009 [report](#) 50% of organisations were found to be discouraging employees from sharing pay information by giving them a verbal warning. A further 3% of organisation leaders said they would punish employees if they shared pay information⁷.
17. Michelle Brown, Professor, Human Resource Management, University of Melbourne cites three ways pay secrecy contributes to the gender pay gap: organisations are able to pay employees what they think without having to justify the pay to employees allowing conscious or unconscious bias and stereotyping to affect pay decisions without women having the information to challenge this; pay over and above base pay is typically based on employee performance and women are less likely to get a high performance rating relative to their male counterparts; money goes to those who negotiate better because pay secrecy requires individual employees to play a greater role in the pay determination process, for example negotiating their performance rating or the amount of performance payments.⁸
18. The gender pay gap has been increasing despite mandatory reporting on gender equality. Australia is not the only country tackling this issue. Both the US and the UK have recognised that more needs to be done than mandatory reporting to change the attitudes, culture and practices to reduce the gender pay gap. Both countries

⁷ Brown, M, *To Close the Gender Pay Gap We Need to End Pay Secrecy*, 16 September 2014, The Conversation (online) Available at <https://theconversation.com/to-close-the-gender-pay-gap-we-need-to-end-pay-secrecy-31626> [Accessed 10 February 2015].

⁸ *ibid*

have identified that removing the restrictions on employees' ability to share information on pay and earnings is a necessary measure.

19. Professor Michelle Brown cited the following recent changes in the US and the UK to allow employees to share salary information without fear of reprisal:

In the US in April, President Obama issued an executive order designed to reduce the gender pay gap. Obama ordered federal contractors to let their employees share salary information with one another and to disclose more details about what their employees earn. The Lilly Ledbetter Fair Pay Act was passed by Congress in 2009, meaning in the US employees subject to pay secrecy policies are allowed to seek compensation for the full duration of discrimination. This is because women may be subject to pay discrimination for many years before finding out and taking action. In the UK, the Equality Act 2010 makes pay secrecy provisions unenforceable against employees who make or solicit a "relevant pay disclosure". Women cannot be treated unfairly when they attempt to establish whether there is a difference between their pay and that of a colleague, based on any discriminatory grounds⁹.

20. A recent report released by the ILO, *Pay Equity: A Key Driver of Gender Equality* reported that 'Achieving pay equity at work requires greater pay transparency. According to the Workplace Gender Equality Agency (Australia), the pay gap is almost non-existent when pay is set transparently as compared to 20.6 per cent when pay information is withheld.¹⁰

21. The report quoted Deborah Gilles, Catalyst President and CEO who says that 'Transparency is so important because if you know what your salary is and what your colleagues are making that gives women the information they need to negotiate and to ask and be paid fairly and equally to men¹¹.

⁹ *ibid*

¹⁰ International Labour Office, Gender, Equality and Diversity Branch (GED) – Conditions of Work and Equality Department, *Pay Equity: A Key Driver of Gender Equality*, p 6.

¹¹ *Ibid*, p 6

22. The SDA believes that women should not be prohibited from disclosing or discussing information regarding their pay or earnings, including payments over and above a base wage. Research shows that the inability of women to share information regarding their income and earnings has a detrimental impact on the gender pay gap.
23. Greater transparency is needed in order to reduce the gender pay gap and women should not be prevented from discussing their own pay.
24. The SDA supports the introduction of the Fair Work Amendment (Gender Pay Gap) Bill 2015 as a measure to reduce the gender pay gap.