National Foundation for Australian Women

REAL WOMEN. VISIONARY LEADERSHIP

Submission to the Fair Work Commission
Hospitality and Retail Penalty Rate Review
March 2016

Overview

The National Foundation for Australian Women (NFAW) is a non-politically aligned feminist organisation committed to examining the potentially differential impact of policies and their outcomes for men and women and whether the consequences of policies, intended or unintended, adversely affect women.

NFAW is pleased to have this opportunity to make a submission to the Commission's review of penalty rates in selected hospitality and retail awards. We are making the submission because women are disproportionately represented in the retail and hospitality industries (FWC 2015a, table 5.1; FWC 2015b, table 5.1) ; more likely to receive minimum award wages (FWC 2015a, table 7.2; FWC 2015b, table 7.7) ; and more likely to rely on penalty rates to meet household payments (Daly, table 10) .

NFAW notes that a number of employer associations are attempting to rely in their submissions on views expressed in the recently released Productivity Commission report on the Workplace Relations Framework. NFAW recommended in its submission to the PC's inquiry that it should conduct a thorough gender impact analysis of any evidence it received on the national minimum wage, minimum award rates and penalty rates from other stakeholders (Recommendation 5[1]). The Draft and Final Reports contain no such analysis in relation to the impact of the Commission's proposal to cut Sunday penalty rates in female-dominated 'selected consumer services', so we can only assume this has not been undertaken.

We submit that:

- There are no grounds for changing existing penalty rates.
- Submissions relying on the recent Productivity Commission (PC) Report on Workplace Relation as providing such grounds do not make a case that is convincing of itself, or that adequately addresses key considerations for the Commission in reaching its decision (s. 134 of the FWA), including the principle of equal remuneration.
- The Commission should retain existing penalty rates in the retail and hospitality industry awards under review.

The PC proposals

NFAW notes that while a number of employer associations are attempting to rely in their submissions on the recent PC report on the Workplace Relations Framework, those views have been formulated by an organisation that is not bound to take into account the full range of considerations set out in the modern awards objective in s.134 of the Fair Work Act, and that has not done so in reaching its recommendations.

We argue that in particular the PC's report either ignores, or provides a very partial and perfunctory view, of the impact of its proposals on the following matters identified as considerations for the Commission in s.134 of the Fair Work Act:

[1] http://www.pc.gov.au/__data/assets/pdf_file/0011/188174/sub0154-workplace-relations.pdf

(1)(a) relative living standards and the needs of the low paid; and

(1)(c) the need to promote social inclusion through increased workforce participation; and

(1)(da) the need to provide additional remuneration for:

(ii) employees working unsocial, irregular or unpredictable hours; or

(iii) employees working on weekends or public holidays; ... and

(1)(e) the principle of equal remuneration for work of equal or comparable value.

Indeed, the PC argues at Recommendation 8.3 of its Report that these matters should be omitted from future consideration in modern award reviews altogether.

Having briefly referred to the full range of industries in which employees work on Sundays, the PC recommends that Sunday penalty rates that are not part of overtime or shift work should be set at Saturday rates for the hospitality, entertainment, retail, restaurants and cafe industries (Recommendation 15.1).

- In effect, this introduces a two tier penalty rate system with differential rates for male-dominated (e.g. mining) and female-dominated industries. We know that there is 'no statistical difference between the degree of work-life interference experienced by retail employees in respect to the relative degree of work-life interference of working Sundays and/or Saturdays when compared to all employees' (Charlesworth and Macdonald, p. 7). The PC does not base its recommendation for differential pay rates on considerations of skill, effort, responsibility and the conditions under which work is performed, but on 'consumer amenity'. It neither raises nor adresses equal remuneration considerations associated with its penalty rates proposal.

- The report argues that men and women would suffer equally from the direct impact of its proposal, but does not address the fact that women would be disproportionately affected, in terms both of their numbers in the industries specifically targeted by the PC and of their reliance on Sunday penalty rates. Data from the Australian Work and Life Index (AWALI) shows that while there are no differences between men and women in the *receipt* of penalty rates (across all industries), a greater proportion of women report *rely* on those payments for household expenses (Daly, p. 14). Given the female-dominated industries targeted by the PC for cuts to penalty rates, this effect would be greatly enhanced.[2] Consequently, any reduction in penalty rates for those covered by retail and hospitality awards would disproportionately increase financial pressures on women and on family/household well-being.

  If, as the PC acknowledges (vol 1, p. 89), small increases in wages can have a significant impact on lifetime earnings, then surely a cut in wages through reducing penalty rates–cuts of between

[2] This is supported by research from the Centre for Work + Life at the University of South Australia (Daly 2014), Table 10, which shows that women workers with lower household incomes, and employees in rural or regional locations, may be at greater financial risk if policy changes are made to the payment of penalty rates.

17 and 37.5 per cent, as estimated by the PC in its draft report (at p. 516[3])–would have a significant negative impact on lifetime earnings for workers in already low-paying sectors. It is widely accepted, and supported by evidence, that significant socio-economic disparity remains between men and women, evidenced by the pay gap between men and women which sits at 18.8 per cent for full-time employees and the gap in superannuation at retirement, which is 46.6 per cent.[4] A cut in Sunday penalty rates as recommended by the PC in specified service industries would only further widen the gender pay gap, given that this is where low paid women, lacking in bargaining power, are more likely to work, and to work only on weekends (Daly, 12).

- The PC relies heavily on an argument that the negative impact of working on Sundays is no different from the negative impact of working on Saturdays. This argument is wrong and cannot be used as a basis for reducing the income of those in its specifically targeted industries who undertake Sunday work. Skinner and Pocock, for example, examined AWALI data to establish whether any particular day of the weekend worked (i.e. either Saturday or Sunday) was associated with worse work-life interference. They found (p. 29) that:

  > Regular (often/almost always) working Sundays is clearly associated with higher work-life interference, whether employees work regular Sundays (but not regular Saturdays) (index score of 51.4) or regular Sundays and regular Saturdays (index score of 52.5). Work-life interference is significantly lower for employees who work regular Saturdays but not regular Sundays (43.8), with the lowest work-life interference for employees who do not work regular Saturdays or Sundays (38.9).

  Similarly, the Expert Report to the Commission from Professor Sara Charlesworth and Dr Fiona Macdonald notes (p. 4) that 'in the 2014 AWALI survey we observe that sometimes, often, almost always working Sundays alone or in combination with working Saturdays is associated with worse work-life interference for employees than sometimes, often, almost always working Saturdays and not Sundays. After controlling for working hours, the difference in average AWALI scores between those working Sundays alone or in combination with Saturdays and those working on Saturdays alone is statistically highly significant'.

  The Commission will be aware of the full range of studies bearing on this debate, and indeed has in 2014 in a majority Full Bench judgement, rejected claims from an employer association that the level of 'disability' or disamenity for working on Sundays is no higher than that experienced when working on Saturdays.

[3] The final report adjusts the estimates to apply to level 3 casual employees at vol 1 p. 477.

[4] Terms of reference, Senate Economics Committee, Inquiry into Economic Security for Women in Employment <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Terms_of_Reference>

Impact on employees

While accepting (vol 1, p. 477) the likelihood that 'wage rates would still fall significantly' if its recommendations were adopted, the PC does not raise the negative impact on the disposable income of employees of its proposed wage cuts in the hospitality and retail industries. Instead it argues that some factors might mitigate the impact on employees:

- It argues, for example, that some employees may not be affected by the cut to award-based penalty rates because their employer may pay over award rates (vol 1, p. 485). In effect, this means that the PC is arguing that its recommendation should be accepted because it will affect those people, mainly women, who are on the lowest applicable award rates of pay.

- The PC also argues that the loss of earnings from Sunday penalty rates can be mitigated because employees will work longer hours to make up for the earnings they have lost. This argument:
    - employs a perverse notion of mitigation;
    - undermines any proposal that increased working hours generated by the proposal would benefit the unemployed, especially as the PC also 'considers that it is improbable that, as a group, existing workers' hours on Sundays would rise sufficiently to offset the income effects of penalty rate reductions' (vol 1, p. 481);
    - ignores the PC's own published research on the sensitivity of female employment to earnings. Work undertaken for the PC by Cai showed that married women's participation in the labour force is relatively elastic and that both their working hours and rates of labour force participation are likely to fall with lower wages, especially for low income earners. Cai found that ' the proportion of women who are not employed decreases with wages, while the proportion working either part-time or full-time increases with wages' (p. 27):

        > The MME estimates show that a $10 increase in a woman's mean (hourly) wage raises the probability of her being employed by 6.5 percentage points, and raises her expected working week by 3.8 hours. (p. 38)

- Finally, the PC argues that the Government may at its discretion decide to compensate, or partly compensate, the loss to employees most at risk through the tax transfer system. What the Government may or may not decide to do in any given Budget to make up the loss of Sunday penalty rates to the low paid in the hospitality and retail industries cannot constitute evidence to this Inquiry.

Endorsement

This submission has been endorsed by the Board of NFAW and also by the Women's Electoral Lobby (WEL).

Marie Coleman AO PSM
Chair, NFAW Social Policy Committee

References

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