



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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INTRODUCTION

1. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 215, 000 members. The majority of these members are women and young people. Approximately 60% of SDA members are female, equating to approximately 131,000 women. The SDA has membership in retail, fast food, warehousing, hairdressing, pharmacy and modelling.
2. The SDA has a long history of advocating for improved economic outcomes for women, not only through improvements negotiated in enterprise bargaining and ensuring Awards and the NES provide a relevant safety net for working women but also through the numerous submissions we have made to previous Senate Inquiries, and other important reviews such as those conducted by the Australian Human Rights Commission. (AHRC).
3. The SDA would like to make particular reference to submissions which we have made recently which are relevant to this Inquiry:
 - SDA submission to the Senate Standing Committee on Economics regarding the Economic Security for Women in Retirement, 2015.
 - SDA submission to the Senate Education and Employment Standing Committee on the Fair Work Amendment (Gender Pay Gap) Bill 2015
 - Submission to the Workplace Gender Reporting Public Consultation 2014
 - SDA submission to the AHRC Pregnancy and Return to Work National Review 2014.
4. The SDA welcomes the opportunity to make a submission to the Finance and Public Administration References Committee inquiry into Gender segregation in the workplace and its impact on women's economic equality.
5. The SDA understands the extent and impact of gender segregation in male dominated occupations and industries and the importance of improving not only women's participation in male dominated occupations and industries but also the economic outcomes for women working in those industries and occupations. The SDA is aware that many organisations and individuals will be making submissions regarding the issue of gender segregation in male dominated industries. However, the focus of our submission will be on gender segregation in largely female-

dominated industries such as retail and hairdressing and beauty. We will address the causes and potential remedies in relation to occupational segregation within these industries and the impact of industry segregation on the gender pay gap and the undervaluing of female-dominated occupations and industries.

6. The SDA supports the submission of the ACTU.

OVERVIEW

7. The SDA believes that every individual and family has a fundamental human right to live decently and with dignity and this right should be afforded to everyone regardless of gender.
8. Unfortunately, in Australia over the past 20 years there has been little improvement in the gender pay gap, which is an important indicator of gender inequality. The most recent data released by the Workplace Gender Equality Agency (WGEA) shows a base salary gender pay gap of 17.7% and a total remuneration gender pay gap of 23.1%.¹
9. Recently, the World Economic Forum estimated that at current rates, it would take another 170 years to close the global pay gap between men and women.² Australia is ranked 46 in the *World Economic Forum's Global Gender Gap Index, 2016*. The report states that '[Australia](#) (46) is affected by the updated estimated earned income scale, highlighting the continued existence of a gender gap in income for Australia'³. Australia's relative position in this index has continued to deteriorate from 15 in 2006 to its current position of 46.
10. This dramatic decline is disturbing and represents a bleak outcome for working women in Australia. The government must adopt proactive measures to combat the factors driving the persistent and prevailing gender pay gap.
11. Significantly, the gender pay gap also results in poor economic outcomes for women in retirement. Average superannuation balances at the time of retirement

¹ Workplace Gender Equality Agency, *Australia's gender equality scorecard: Key findings from the WGEA's 2015-16 reporting data*, November 2016, p 5.

² World Economic Forum 2016, *Global Gender Gap Index 2016*.

³ *ibid*

in 2011-2012 were \$197,000 for men and \$105,000 for women representing a 46.6% gap in superannuation at retirement⁴.

12. Current research shows that 90% of women will retire with inadequate retirement savings and that in 2010 one in five women yet to retire had no superannuation at all⁵.
13. Gender segregation in the workplace not only has an immediate impact on the women's workforce participation across occupations and industries, and income inequality, but it also has direct consequences for the retirement savings women are able to accumulate over their lifetime. As a result, many women who have spent their life in both paid employment and in vital unpaid caring roles will live in poverty or will be unable to live comfortably throughout their retirement.
14. In October last year, KPMG released a report *She's Price(d)less: The economics of the gender pay gap*, prepared for the Diversity Council of Australia (DCA) and the WGEA. The report found that 'Despite significant advances in lifting women's participation in the labour force and women's pay across industries, and an increased recognition of the value of diversity in the workplace, the gender pay gap continues to persist.'⁶
15. There are many factors driving the persistent gender pay gap in Australia. While human capital and skills endowment, educational attainment, training and accreditation, work experience and tenure continue to play a role, differences in pay between men and women, where these factors are not present, continue as a result of discrimination.
16. The KPMG report showed that sex discrimination not only continues to be the single largest factor contributing to the gender pay gap but it is worsening with systemic discrimination remaining a persistent feature of the workforce. The proportion of the gender pay gap that is attributable to gender discrimination increased from 35% in 2007 to 38% in 2014.⁷

⁴ Association of Superannuation Funds of Australia Resource and Research Centre, *An update on the level and distribution of retirement savings*, March 2014, p 3

⁵ ANZ, *ANZ Women's Report: Barriers to Achieving Financial Gender Equity*, July 2015, p 64.

⁶ KPMG, *She's Price(d)less: The economics of the Gender Pay Gap*, October 2016, p 2

⁷ *Ibid*, p 13

17. We will talk about the impact of sex discrimination further in this submission and the impact it has on vertical segregation, that is the barriers to career progression for women in the industries our members work in.
18. The report also found that career and work interruptions are responsible for 21% of the proportion of the gender pay gap which is the largest changing factor increasing from 9% in 2007.⁸
19. The next most significant contributing factor in the gender pay gap is industrial and occupational segregation, collectively representing 30% of the gap.⁹ The report found that the representation of men in particular industries and in occupations continues to have an effect on wages, with earnings in occupations and industries with a larger share of males being higher than wages for female dominated industries and occupations.¹⁰
20. While the report suggests that occupational segregation has decreased slightly, industrial segregation has increased. One reason given for the increase in the gender pay gap resulting from industrial segregation, is the increase in the proportion of males working in traditional male dominated industries which attract higher rates of pay and the simultaneous increase in the proportion of women working in female dominated industries such as health care and social assistance which traditionally attract lower pay.
21. For women working in the industries the SDA represents, it is a combination of sex discrimination and the subsequent barriers to secure employment, more substantial hours and career progression, and the undervaluation of the work that is traditionally done by women that contributes most significantly to occupational and industrial segregation and the impact this has on the gender pay gap.
22. Governments need to recognise and introduce measures to remedy the factors driving the gender pay gap and broader economic inequality in Australia. This includes the factors causing gender segregation in occupations and industries and the elimination and prevention of sex discrimination which is systemic and increasing.

⁸ ibid

⁹ ibid

¹⁰ Ibid, p 13.

23. The current Award system is not achieving the outcomes necessary to address the unacceptable and persistent issue of gender inequity in the workforce, including the gender pay gap. Pay equity needs to be an objective of the Fair Work Act and at the forefront when wages are set.
24. A broad review of the current Award wage setting system and its impact on the gender pay gap, is necessary to correct the undervaluation of work in female-dominated industries. The occupations and industries which have traditionally attracted women were relatively low paid when classifications in Awards were established.
25. There needs to be a review of the historical gender-based undervaluation which persists in Awards.
26. Much has changed in female-dominated occupations and industries including the introduction of educational and training requirements which are not reflected in the wages set in Awards. The failure to recognise accredited training and skills development in wage setting in feminised industries results in a persistent gap in the wages in female-dominated industries and occupations compared to male-dominated occupations and industries where wages are set at higher rates.
27. The mechanisms which are currently provided in the Fair Work Act 2009 (FWA) to remedy pay inequity are not working to close the gender pay gap. Significant changes to the FWA are required to achieve positive equal remuneration outcomes.
28. A range of measures also need to be introduced to strengthen the regulation of gender pay equity in Australia, including strengthening the powers of the WGEA.

THE GENDER PAY GAP WITHIN THE RETAIL INDUSTRY

29. According to recent data produced by the Workplace Gender Equality Agency (WGEA) female employees make up 58.4% of the retail trade industry. Women make up 45.8% of the full-time workforce, 66.5% of the part-time workforce and 62.3% of the casual retail workforce.¹¹
30. Females make up 63.5% of the sales workforce but only 11.8% of CEO positions, 27.1% of key management personnel, 31% of other executives, 40.6% of senior managers and 50.2% of other managers.¹²
31. This demonstrates that although retail is a female-dominated industry women are significantly under-represented in management positions.
32. The gender pay gap data for the retail trade industry provides interesting results. The base salary gender pay gap is 0.6% and 0.1% for part-time employees and casual employees respectively. Meanwhile the gender pay gap for full-time sales employees is 10.1%.¹³ The SDA believes that the main reasons for this difference in the gender pay gap for part-time and casual employees is that wage setting for employees in retail is largely reliant of Awards or Enterprise Agreements.
33. The gender pay gap that exists for full-time employees is likely to be a result of over-award or over-agreement payments which are sometimes provided by employers and are more likely to be given to full-time employees. Full-time employees are also more likely to have access to sales positions which attract a commission for sales and they have greater capacity to earn more commission. As we have seen from the above data, male employees in the retail trade are far more likely to be in full-time employment than part-time and casual employment and are therefore more likely to earn over-award payments and sales commissions which would result in a difference in the rate of pay between men and women in this industry.
34. The SDA sees many examples of women being discriminated against when they return to work following an absence due to parental leave or other caring

¹¹ Workplace Gender Equality Agency, *WGEA Data Explorer: Retail Trade 2015-16 reporting period*, www.wgea.gov.au/industries/76, extracted 19 January 2017.

¹² *ibid*

¹³ *ibid*

responsibilities. Women are penalised because they are not able to return to work on a full-time basis by being forced to accept a demotion or change in position which results in a severe reduction in pay and creates an impossible barrier for future career progression.

35. The result is that men typically fair better in relation to access to promotional opportunities and other positions which may attract higher wages or other payments, such as sales commission.
36. The data also shows that there is currently an 11.8% gap in base salary and a 16.2% gap in total remuneration for all full-time employees (i.e. including managerial employees) in the retail trade industry.¹⁴
37. This gap is more pronounced for full-time management positions in retail with the following gender pay gaps; 23.1% for key management personnel, 11.6% for other executives and general managers, 25.3% for senior managers and 20.2% for other managers.
38. One reason for the increase in the gender pay gap for managers is that management positions in retail are often paid outside of Awards and enterprise agreements and therefore are not regulated and are subject to employer discretion. Research indicates that where like for like positions are compared and a gender pay gap exists it is likely that the significant reason for the gap is discrimination.

Discrimination

39. The experience of our members indicates that the representation of women in management positions in retail compared with the proportion of women in sales roles is significantly lower, and the increased gender pay gap in management positions is a consequence of sex discrimination in the retail sector particularly for women who are pregnant, have had a break in employment due to parental leave and need to return to work on flexible working arrangements.
40. Discrimination during pregnancy, parental leave and return to work from parental leave has a significant detrimental effect on the career and employment

¹⁴ ibid

opportunities of women which impacts on earnings capacity in the short and long term.

41. Research shows that any interruption to paid employment when women have a child has a significant impact on the gender pay gap and on women's lifetime earnings. 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'.¹⁵ Women who have a break to have a baby incur a 'wage penalty' whether they return to work part-time or full-time in the form of lower wage growth.¹⁶
42. A key element behind the gender pay gap, and consequently the retirement pay gap, is the fact that women still experience widespread discrimination in their working lives. One key example of the discrimination experienced by women is in the area of pregnancy and returning to work after the birth of a child. In 2014 the Australian Human Rights Commission conducted a national inquiry into the nature and prevalence of pregnancy and return to work discrimination. 'Overall, the Survey's findings demonstrate that discrimination towards pregnant employees and working parents remains a widespread and systemic issue which inhibits the full and equal participation of working parents, and in particular, women, in the labour force'¹⁷.
43. 'Despite longstanding prohibitions against pregnancy/return to work discrimination, the National Review found that it is pervasive. One in two (49%) mothers reported experiencing discrimination in the workplace at some point'¹⁸.
44. Women experienced different types of discrimination in the workplace ranging from 'negative attitudes and comments from colleagues and managers, through to loss

¹⁵ ANZ, *ANZ Women's Report: Barriers to Achieving Financial Gender Equity*, July 2015, p 42

¹⁶ *Ibid* p 54

¹⁷ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 8.

¹⁸ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 8.

of opportunities for further training and career advancement, reduction in pay and conditions, as well as redundancy and job loss¹⁹.

45. The discrimination was found to have had 'significant short-term and long-term negative impacts on individuals and their families, including effects on their mental and physical health and long-term career advancement and earning capacity. Some groups of individuals, such as sole parents and young mothers, may face particular vulnerabilities and more acute consequences'²⁰.

46. The National Review also found that:

*'discrimination has a tangible impact on women's workforce participation as the experiences of discrimination in the workplace during pregnancy influence whether women return to work following the birth of their child – 32% of all mothers who were discriminated against at some point went to look for another job or resigned. Further, almost one in five (18%) mothers indicated that they were made redundant or that their jobs were restructured, that they were dismissed or that their contract was not renewed during their pregnancy, when they requested or took parental leave, or when they returned to work. Such discrimination, particularly where it results in job loss or the withdrawal from the workforce, can have significant long-term effects'*²¹.

47. The SDA made a substantial submission to the AHRC National Review on behalf of our members who too frequently experience discrimination during pregnancy and when returning to work from parental leave. For our members the discrimination results in many being unable to negotiate suitable flexible return to work options which incorporate their caring responsibilities often forcing them to accept less hours than they would like to work or are able to live on financially.

48. Many of our members are also forced by their employer to change their employment status from permanent to casual in order to continue their employment. This was particularly prevalent for members who worked in management positions who were not allowed to return to their management role

¹⁹ Ibid, p 8

²⁰ Ibid, p 8

²¹ Ibid, p 8

on reduced hours therefore having the combined effect of a reduction in their hourly rate, a reduction in hours and being forced into insecure employment.

49. The Australian Human Rights Commission (AHRC), *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, found that 'women who reported being demoted or denied promotions, pay rises or access to training, effectively had their career opportunities abruptly halted by their employers or managers. Many working parents' said their careers took a step backwards or stalled following their experience of discrimination related to pregnancy or on return to work'²².
50. In our submission to the AHRC National Review, the SDA presented many case studies of our members' experiences of discrimination.
51. The need to work less and more flexible hours in order to manage caring responsibilities results in the majority of women needing to work on a part-time or casual basis. The impact of this is often not being able to work in the position held prior to parental leave and therefore accepting a position which attracts a lower rate of pay.
52. This is what leads to the vertical segregation which occurs in the retail industry, as demonstrated by the figures provided above. Retail companies will not permit women to maintain management positions on anything less than a full-time basis, forcing them out of these positions and into long-term employment in lower paid sales positions.
53. It must also be noted that women do not always get a genuine choice about working part time or casual. Women are forced to accept casual employment or reduced hours of work when returning from parental leave rather than being employed with security in the manner they would prefer.
54. Companies simply claim that the hours the employee is available does not suit the operational requirements but in many cases the company has failed to genuinely try to accommodate the employees' needs.

²² The Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 79

55. The SDA's submission²³ to the AHRC National Review included 197 examples of member's experiences while pregnant, on parental leave and returning to work. The following provides some examples of members forced to accept unsatisfactory changes to their employment due to discrimination:

- **Reducing pregnant employees' hours rather than accommodate pregnancy related health issues**

A full time employee at a large national supermarket was 24 weeks pregnant and worked most of her hours at the registers. Her baby was sitting on a nerve which was causing some discomfort. Her manager said that the only solution was for her to request to reduce her hours and put the request in writing in a letter. At no time was she told of her options, for example, transfer to safe job, which is provided for in the Enterprise Agreement. The issue was not the number of hours she worked but the problem of not being able to move around on the larger registers.

- Reducing the wages of female managers due to their pregnancy, demoting them, threatening them with **being "performance managed out" if they don't agree to a transfer and demotion, making them casual employees with no guaranteed hours,**

"I was working for a large national supermarket and I was the Customer Service Department Manager. I had been in this role for the previous 2 years and took pride in my position and was always given positive feedback. Early in my pregnancy I suffered a lot of morning sickness and took quite a lengthy amount of time off work. I did all the right things as in utilising my personal leave and providing the appropriate medical certificates. I had a meeting with my boss and asked if it was at all possible to temporarily step down in my position just until I regained my health. The outcome was not positive. If I decided the need to step down, that would result in permanent demotion. After a few stressful days I decided it was better for me to demote myself....I had also requested to reduce my full time hours temporarily as I endured a lot of pain and swelling of my feet/legs standing for 8hr shifts, but my boss said that was not possible. I had to either do my 40hr weeks or reduce my hours permanently."

- Reducing wages, demoting, and making female managers returning to work casual employees

"The only way I got my role back was to put my daughter in day care 5 days...I found it very un-family friendly. If I wanted to keep my role I had to put (the Company) first and the family 2nd."

- Refusing to allow employees to return to their previous position, or to return to all their previously rostered hours, even if they had not requested any change in their hours or days of work

²³ Shop, Distributive and Allied Employees' Association, *Submission to AHRC Supporting Working Parents: Pregnancy and Returning to Work National Review*, February 2014

Job role I left when going on maternity leave was no longer available, when I was told I would have my job back when I returned. HR manager did not know anything about my previous work history and was going to place me in a relief team moving store to store, not suitable to my childcare needs at all. I returned to a part time position with a minimum 20 hours and was given some weeks as low as 8 hours in a part time capacity.

- For employees requesting to return on less hours than they had previously been rostered, refusing to allow employees to return to their previous job.

“I returned to work doing casual hours in my previous position in the photo lab when my baby was 6 months old. I then requested to go back on to part-time on 9 hours per week. The store manager advised that I may not go back into photo lab on a part-time contract. Weeks passed and still I hadn't gone part time. I was finally given a roster but it was on checkouts even though the hours I could have done in photos were being done by a casual. Changing my position also resulted in a drop in my hourly rate because I was on a higher grade as a trained photo lab assistant....

- For employees requesting to return on less hours or different days than they had previously been rostered.

- Forcing a reduction in total rostered hours,

The store I worked for didn't have a place for me and the store I transferred to couldn't give me enough hours. Only now 3 months later am I getting the hours I need, despite being over qualified for the position. I was given a 15- hour contract after asking for 20 hours minimum after working 40 hours a week for 5 years.

- Forcing the employee to become casual,

Our member was a permanent part- time employee at a large national department store, working 15 hours per week. “When I asked to come back to work, I asked if I could change to 10 hours per week permanent part time. I was told no, you cannot. So, I had to go to casual and getmaybe one (shift) a fortnight.”

- Offering rosters to employees returning to work which were outside their availability or they knew the employee would not be able to do,

“Sorry all we have is night hours. Don't suppose that is going to suit you is it!”

- Providing rosters with no set hours to employees knowing their children were in child care, which meant they were paying for child care when it was not needed

“I was then given unpredictable shifts that changed all the time (different days/starting times) that made it extremely difficult with a

small child in day care. I then had to write a letter to my boss saying that I had worked hard for the company for a few years and really wanted to continue working there but I was finding it difficult with a child in day care as you had to book in for set days. After this I was given set days I would work which was a lot better.”

56. The AHRC National Review found one in ten (11%) of the others who did not return to the workplace could not find work or negotiate return to work arrangements and one in six (16%) of those mothers who did not plan to return to the same employer did not want to return because they were replaced, fired, made redundant or their job wasn't kept open for them²⁴.
57. One of the common themes of the AHRC National Review was the impact discrimination has on the participation of women in the workforce, that is, their decision to return to the workforce after parental leave and the capacity at which they are able to return.
58. It is widely accepted that increasing women's participation in the workforce is vital to improving the national economy. It has been estimated that increasing women's workforce participation in Australia by 6% could increase the national GDP by \$25 billion.²⁵
59. At the 2014 'G20 meeting in Brisbane, Australia committed along with other G20 members to reduce the gap in participation rates by 25 per cent by 2025. But Treasury projections published in the Intergenerational Report last week show Australia is not on track to meet this target even in 40 years. The current gap of 12.4 percentage points is projected to narrow to 11.3 percentage points by 2055, a reduction of less than 10 per cent'.²⁶
60. The intergenerational report says 'policies to improve the availability of childcare, to encourage flexible working arrangements and to outlaw discrimination can remove barriers to greater female participation in the workforce'. In response to the

²⁴ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 47

²⁵ Grattan Institute, *Game-changers: Economic reform priorities for Australia* (2012), p 39

²⁶ The Sydney Morning Herald, *Australia won't meet female workforce participation target, Intergenerational Report shows*, 10 March 2015

report Treasurer Joe Hockey said "That's why we need to do everything we can to be as flexible and accommodating of the needs of a diverse workforce as possible" he said. "We are determined to do what we have to do to lift participation rates."²⁷

61. Despite this, the Government has largely ignored the recommendations of the AHRC arising from the Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014. The only recommendation the government has acted on was to create educational material for employer and employees regarding their rights and responsibilities.
62. In order to effectively eliminate workplace discrimination during pregnancy, parental leave and on return to work, legislation needs to be strengthened to better protect women from discrimination in the workplace including rights to flexible working arrangements and the requirement for employers to accommodate caring responsibilities.
63. If the Government is serious about increasing the participation of women in the workforce and taking action to reduce the gender pay gap they must make the legislative changes necessary to protect women from discrimination in the workplace.
64. Gender equality in the workplace is a critical part of achieving gender equality overall. It provides women with an equal opportunity to work and pay. Preventing discrimination against women in the workforce will not only improve participation rates but will also assist to remove the barriers to achieving equal pay.
65. The SDA recommends the following amendments to strengthen the Sex Discrimination Act 1984 (Cth)(SDA) in order to address discrimination:

RECOMMENDATION 1

Extend the discrimination ground of 'family responsibilities' under the Sex Discrimination Act 1984 (Cth) (SDA) to include indirect discrimination.

RECOMMENDATION 2

²⁷ ibid

Amend the Sex Discrimination Act 1984 (Cth) (SDA) to include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.

RECOMMENDATION 3

The *Sex Discrimination Act 1984 (Cth)* be amended consistent with the definition of **'family and caring responsibilities'** in the *Victorian Equal Opportunity Act 2010* and provides that an employer must not, in relation to the work arrangements of an employee or a person offered employment, unreasonably refuse to accommodate the responsibilities that the person has as a parent or carer.

RECOMMENDATION 4

The *Sex Discrimination Act 1984 (Cth)* be amended to **introduce a positive objective to achieve substantive equality** (that is, recognising that women and men may need to be treated differently, for equality of results to occur) with an obligation on employers to take all reasonable and appropriate measures to provide a workplace free of discrimination.

RECOMMENDATION 5

The *Sex Discrimination Act 1984 (Cth)* be amended to ensure that the complaints process in anti-discrimination cases is more accessible, less costly and provides greater remedies and more just outcomes for claimants.

RECOMMENDATION 6

The *Sex Discrimination Act 1984 (Cth)* be amended improve the level of punitive damages in discrimination cases.

RECOMMENDATION 7

Legislation be amended to enable the Australian Human Rights Commission and other representative organisations to initiate investigations and claims of systemic discrimination on behalf of complainants.

66. As we have described in this submission a significant issue for our members is the inability to successfully negotiate appropriate return to work arrangements following a period of parental leave.

67. Section 84 and Section 65 of the Fair Work Act do not provide adequate rights for employees returning to work. A right to request a change to working arrangements does not provide an employee with a right it simply enables them to ask the question. An explicit right for employees to return to work to their former position on a part-time basis, or on reduced hours if already part-time, is required to genuinely change the current workforce participation and wage outcomes for women.

RECOMMENDATION 8

Amend Section 84 of the National Employment Standards (NES) in the Fair Work Act 2009 to include a right for a full-time employee to return to work from parental leave on a part-time basis or the right for a part-time employee to return on reduced hours, with a right to return to the pre-parental leave hours until the child is school age.

RECOMMENDATION 9

Strengthen the 'right to request' provisions under s65 of the Fair Work Act 2009 (Cth) (FWA) by:

- Removing the qualification requirements in section 65(2)(a) of the FWA (i.e. the requirement for 12 months' service)
- Introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
- Establish an appeals process through the Fair Work Commission for decisions related to s65 of the FWA, the right to request flexible working arrangements. This appeals process should not only address procedure, but should include the ability for employees to appeal an employer's decision to refuse the request.

68. As mentioned in this submission the AHRC Pregnancy and return to work national review found that '(16%) of those mothers who did not plan to return to the same employer did not want to return because they were replaced, fired, made redundant or their job wasn't kept open for them'²⁸.
69. It is often difficult for women who are made redundant during pregnancy, parental leave or on return to work to successfully prove that the redundancy was not genuine. In order to prevent redundancies occurring during this period in women's employment, as a result of discrimination, legislation should be strengthened so that this period of increased risk of redundancy is called out and greater obligations on the employer are required.

RECOMMENDATION 10

Insert a special redundancy provision in the Fair Work Act 2009 which requires an employer to demonstrate that a redundancy is bona fide, and reasonable accommodations cannot be made, where the redundancy is for an employee returning to work after a period of parental leave.

70. Not only does the government need to enact changes to legislation to prevent discrimination but other important policy measures such as improved access to childcare is needed to assist women to participate in the workforce.
71. One of the barriers identified by the AHRC in its national inquiry into pregnancy and return to work discrimination in regard to the participation of women in the workforce is the inadequacy of access to quality, affordable childcare with one in seven (14%) women claiming the reason they did not return to work was because they could not find childcare or thought that childcare was too expensive.²⁹
72. For our members in retail working in an industry that operates into the night and across the weekend access to childcare is often non-existent when they need it.

²⁸ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 47

²⁹ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry 2014*, p 64

73. A further issue for our members who predominately work part-time is that rather than working full day shifts they are generally rostered to work shifts of between 3 and 6 hours in duration.
74. The way in which childcare is structured our members are then forced to pay for a full day of child care when they only require a half day of care. For a low income worker this often means that they are only marginally better off financially by working.
75. Access to occasional care which is generally shorter is just that, occasional so there is no guarantee that access to occasional care is guaranteed or will be continuous.
76. In order to increase the participation of women in the workforce the SDA strongly recommends that the government provide adequate quality, affordable and varied childcare arrangements which suit a range of occupations and industries such as taking into account workers who may not work full day shifts and are unable to pay for a full day of care on the limited wage they receive.

RECOMMENDATION 11

Provide adequate funding to ensure universal access to quality, affordable and varied childcare arrangements which suit a range of occupations and industries taking into account workers who may not work full day shifts and are unable to pay for a full day of care on the limited wage they receive.

77. The AHRC National Review also 'found that serious consideration should be given to recognising unpaid parental leave (and any paid parental leave) as active service, for the purposes of accruing entitlements related to annual salary increments, superannuation, personal/carers leave and long service leave'³⁰.
78. Recognising periods of unpaid and paid parental leave as service for the purpose of accruing entitlements would also assist women to gain access to annual salary increments rather than returning on the rate they receive at the time of taking leave.

³⁰Ibid, p 163

Avoiding the issue of missing out on annual salary increments would assist in reducing the gender pay gap by ensuring that women's incomes are keeping pace with men performing the same job who haven't had to take a break in their employment to care for their new born baby.

79. Women who take a break in employment should have the same opportunity to be paid at the same rate as others performing the same job. Where salaries have increased during a period of parental leave women should return to work on the rate applicable for that job when they return, not the rate they were on when they commenced the period of parental leave.

RECOMMENDATION 12

Periods of unpaid parental leave (and any paid parental leave) should be recognised as active service.

80. There are a range of other necessary measures which should be introduced in order to encourage women's participation in the workforce and ensure women's economic security, particularly when balancing work and caring responsibilities.

81. The SDA makes the following recommendations of other measures which should be introduced or improved:

RECOMMENDATION 13

Extend the provisions under the NES of the FWA to provide pre-natal leave to employees in addition to personal leave entitlements.

RECOMMENDATION 14

Amend the NES to allow employee paid breaks from work for the purposes of breastfeeding or expressing.

RECOMMENDATION 15

Ensure a genuine safety net of terms and conditions of employment which particularly impacts on women who are more award and minimum wage reliant.

RECOMMENDATION 16

Extend the Government Paid Parental Leave Scheme to provide universal access to a minimum of 26 weeks paid parental leave plus superannuation.

Pay Equity in the industrial relations system

82. Nearly half of all women employed in Australia work in only three sectors: healthcare, retail and education.³¹ Historically, female dominated industries and occupations have attracted lower wages than male-dominated industries and occupations.
83. One of the reasons for the gender pay gap identified in Equal Remuneration under the Fair Work Act: A report for the Pay Equity Unit of the Fair Work Commission is 'the ongoing undervaluation of feminised work and skills, including; differences in pay for males and females doing similar or comparable jobs; different job titles (and pay) for the same or similar occupations; undervaluation of the skills, competencies and responsibilities associated with 'female' jobs; and gender biases in job evaluation methods, job classification systems, and job remuneration systems'³².
84. Wage setting mechanisms in the current industrial relations system in Australia fail to effectively provide a mechanism to improve pay equity and reduce the persistent gender pay gap. A genuine review of the regulatory systems in place which determine wages in Australia needs to be undertaken to ensure that pay equity is an objective of the relevant legislation and provides the appropriate mechanism to remedy unequal remuneration.
85. The first time the concept of equal pay was adopted in federal legislation was in 1969, limited to unequal pay for equal work. Over the past 4 decades in both state and federal jurisdictions the concept of equal pay has been broadened to equal pay for work of equal or comparable value. While early measures resulted in significant improvements in the gender pay gap in the 70's and 80's, limitations in the relevant legislation regarding equal remuneration has impacted on the

³¹ ANZ p 25

³² The University of South Australia, *Equal Remuneration under the Fair Work Act 2009: A report for the Pay Equity Unit of the Fair Work Commission*, 2013, Commonwealth of Australia 2013, page 103

effectiveness of federal jurisdictions, in particular, to provide an effective mechanism to remedy gender-based undervaluation and close the gender pay gap.

86. In 2008/9 the House of Representatives Standing Committee on Employment and Workplace Relations conducted an inquiry into pay equity and associated issues related to increasing female participation in the workforce. The 'Making it Fair Report' published following the Inquiry found that 'At the heart of the gender pay gap is the failure to truly value traditional women's work – paid or unpaid.'³³
87. The report inquiry examined the Fair Work Act 2009, which was new legislation being introduced at the time of the review, for adequacy in dealing with pay equity. While the inquiry found that there had been some improvements in the new legislation to remedy equal remuneration it argued that '*to effectively institutionalise pay equity into the mainstream of the federal industrial relations system, the recognition of pay equity in the Fair Work Act 2009 need to be strengthened*'³⁴.
88. The report made several recommendations to strengthen the recognition of pay equity and the mechanisms needed to achieve it. Although there has been at least one review of the Fair Work Act 2009 since this inquiry, aside from the establishment of the Pay Equity Unit in the Fair Work Commission, which largely arose following the Social and Community Services (SACS) equal remuneration case, none of the recommendations have been adopted in legislation.
89. While the SACS equal remuneration case was largely successful, the decision did provide some questions as to the effectiveness of the Act to remedy gender-based undervaluation. Since that decision United Voice has made an application to the Fair Work Commission to remedy gender-based undervaluation in the early childhood sector. A decision arising from that application rejected some of the elements central to the success of the SACS case which creates uncertainty about how equal remuneration cases will be determined under the legislation.
90. Adopting the recommendations of the Making it Fair report would make pay equity a central object of the industrial relations system which would enable it to more effectively remedy the persistent gender pay gap. It would make pay equity central

³³ House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce*, Commonwealth of Australia 2009, p xiv.

³⁴ *Ibid*, p 117.

to the setting of minimum wages, the modern award safety net and enterprise agreements. Until pay equity is a legislative obligation in the setting of wages, whether that be minimum award wages or above award wages there will be little improvement in the gender pay gap.

91. Currently, pay equity is only recognised indirectly as an objective of the Fair Work Act 2009 (Act). The 'Fair Work Act does not require the Fair Work Commission to ensure equal remuneration under awards and enterprise agreements. Nor is the *goal of pay equity made an object of the Act as a whole*³⁵. It is not included in the principle objects which are prescribed in Section 3 of the Act. Given that the system of wage setting in Australia is central to the issues of pay equity, equal remuneration should be an explicit object of the Act.
92. Equal remuneration is an explicit object in the Industrial Relations Acts in both Queensland and NSW and they have both adopted broad 'equal remuneration principles' which has resulted in securing pay equity in a range of female-dominated occupations and industries in those states.
93. In the Industrial Relations Act 1999 (QLD) the principle object of the Act 'is to provide a framework for industrial relations that supports economic prosperity and social justice by— (d) ensuring equal remuneration for men and women employees *for work of equal or comparable value*,³⁶
94. The Industrial Relations Act 1996 (NSW) 'The objects of this Act are as follows: (f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing *work of equal or comparable value*'.
95. While Section 3 of the Act includes some elements which may impact on the achievement of equal remuneration, such as the promotion of social inclusion, a requirement to take into account international obligations, to protect against discrimination and the achievement of work and family balance through flexible working arrangements, none provide equal remuneration as an explicit objective of the Act.

³⁵ *Equal Remuneration under the Fair Work Act 2009: A report for the Pay Equity Unit of the Fair Work Commission, op cit, p 52*

³⁶ Section 3, Industrial Relations Act 1999 (QLD)

96. Part 2-7 of the Act does provide for the making of equal remuneration orders, however, there has only been two applications made and only one final decision issued. While the application for an order was successful the decision highlighted that the power provided to the FWC under Section 302 of the Act is a discretionary one and they can decide not to make an order even where gender-based undervaluation is demonstrated.
97. In the Report for the Pay Equity Unit of the Fair Work Commission the authors provided an assessment of the Full Bench decision in the Social and Community Services(SACS) equal remuneration case. The report concluded that '*In New South Wales and Queensland, as mentioned earlier, the State tribunals are required to ensure equal remuneration in awards and enterprise agreements. Under the Fair Work Act, by contrast, there is no such imperative. Section 302(1) states that the Commission may, not must, make an equal remuneration order³⁷. The report then went on to state that 'Accordingly, the objective of equal remuneration in the Fair Work Act is merely one of a number of factors to which the Commission must have regard in setting and adjusting minimum rates of pay. It could accept that work was undervalued in a particular industry or occupation, yet choose to do nothing about it³⁸.*
98. This demonstrates that in order that the Fair Work Commission must ensure equal remuneration it must be an explicit object of the Act, therefore requiring an amendment to Section 3 of the Fair Work Act 2009.
99. Section 302 of the Fair Work Act 2009 should also be amended so that the FWC must, not may, make any order to ensure that there will be equal remuneration for work of equal or comparable value.

RECOMMENDATION 17

That Section 3 of the Fair Work Act 2009 be amended to make 'equal remuneration for men and women employees for work of equal or comparable value' an explicit object of the Act.

³⁷ *Equal Remuneration under the Fair Work Act 2009: A report for the Pay Equity Unit of the Fair Work Commission, op cit p 57*

³⁸ *ibid*

RECOMMENDATION 18

That Section 302 of the Fair Work Act 2009, which gives the FWC the power to make an equal remuneration order, be amended to delete the words 'The FWC may make any order' and replace them with 'The FWC must make any order'.

100. Modern Awards are a key element of wage setting in Australia. The current Award system contributes to the gender pay gap because there has been little change to the classifications and rates contained in Awards over the past 40 years. As a result, historical gender-based undervaluation of occupations in Awards in female dominated industries are now entrenched.
101. Award modernisation retained the historical gender-based undervaluation present in the pre-reform awards. The Act required the AIRC to promote the principle of equal remuneration in the award modernisation process. *'However, assessments of this process suggest that there was little time for the AIRC to meet all its requirements or to review rate relativities.[130] There is no evidence that attention was paid to equal remuneration, either in the award modernisation process or subsequently, nor that this process, was informed by the Pay Equity Inquiry The new modern awards have been established without a comparable work value assessment, considered to be essential for equal remuneration[131].'*³⁹
102. The SDA submits that the Fair Work Act 2009 be amended to obligate the Fair Work Commission to conduct a review of modern awards explicitly for the purpose of remedying any demonstrated gender-based undervaluation.
103. The review should be broader than 'pay equity' in terms of rates and classifications of occupations within Awards. The review must also assess other terms and conditions contained in Awards which impact on the rates of pay employees receive. Other terms and conditions such as minimum hours, the

39 Macdonald, Fiona and Charlesworth, Sara "Equal Pay under the Fair Work Act 2009 (Cth): Mainstreamed or Marginalised?" [2013] University of NSW Law Journal 21; (2013) 36(2) University of New South Wales Law Journal 563, p 583

span of ordinary hours and overtime contribute to the overall rate of pay and can be significantly different when comparing awards in male dominated industries and awards in female dominated industries. This also contributes to the gender pay gap.

104. Given that Section 303(2) of the Fair Work Act 2009 provides that 'An equal remuneration order must not provide for a reduction in an employee's rate of *remuneration*' a review of gender-based undervaluation would only be conducted in order to improve the rates for Awards in female-dominated industries and not as a means of valuing down the occupations in male-dominated industries.

RECOMMENDATION 19

That the Fair Work Act 2009 be amended to require the Fair Work Commission to conduct a review of modern awards explicitly for the purpose of remedying any demonstrated gender-based undervaluation. The review should be broader than 'pay equity' in terms of rates and classifications of occupations within Awards. The review must also assess other terms and conditions contained in Awards which impact on the rates of pay employees receive.

105. To ensure that the FWC is not constrained in its powers to conduct a review of this nature the modern awards objectives should be amended to include equal remuneration as an explicit objective.
106. Under Section 134 of the Act the FWC is required to ensure that modern awards, with the NES, provide a fair and relevant safety net of terms and conditions of employment'. One of the factors they must take into account is the 'principle of equal remuneration for work of equal or comparable value'. This is one factor of many and does not require the FWC to ensure an award provides for equal remuneration.
107. The Industrial Relations Act 1999 (Qld) has a much 'clearer statutory duty to guarantee pay equity in the award process than under the federal law'⁴⁰. Section 126(e) of the Act requires that the Queensland Industrial Relations Commission

⁴⁰ *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce*, op cit, p 149

'must ensure an award provides for equal remuneration for men and women employees for work of equal or comparable value'.

108. The SDA submits that the Fair Work Act 2009 should be amended to guarantee pay equity in the award process in the same manner as the Queensland Act.

RECOMMENDATION 20

That Section 134 of the Fair Work Act 2009 be amended to require that the FWC must ensure an award provides for equal remuneration for men and women employees for work of equal or comparable value.

109. To assist the Fair Work Commission in a review of gender-based undervaluation in modern awards the FWC should establish 'Equal Remuneration Principles' (ERP). The principles could be based on the Queensland ERP mode. The 'Principles' should also set out how the principles would be applied and that they would apply to all industrial instruments i.e. awards, agreements and to minimum wage fixing.
110. The ERP can be used to guide decisions of the FWC not only in relation to the specific pay equity review but in setting minimum wages, approving enterprise agreements, varying modern awards and in equal remuneration cases.
111. In a report published by the University of Adelaide for the Pay Equity Unit of the Fair Work Commission it argued that *'an ERP could occupy the ground between uncertainty and prescription, guide both the Commission and potential parties, as well as emphasise the importance of the concept of equal remuneration'*⁴¹.

RECOMMENDATION 21

That the FWC establish 'Equal Remuneration Principles'(ERP) similar to the Queensland ERP model.

112. Section 156 of the Act currently requires the FWC to undertake a 4-yearly review of awards. This prescribed process is in urgent need of legislative

⁴¹ *Equal Remuneration under the Fair Work Act 2009: A report for the Pay Equity Unit of the Fair Work Commission, op cit, p 9.*

review. Having said this, the current reality is the 4 yearly reviews must be undertaken by the FWC. Section 156 sets out how the review is to be conducted. As part of the 4-yearly review the FWC can make a determination varying modern award minimum wages only if it is justified by work value reasons.

113. Section 156(4) provides that:

Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done

114. In order for the FWC to remedy historical gender-based undervaluation in the existing 4 yearly review of modern awards the work value reasons should be extended to include *'evidence that the work, skill and responsibility required or conditions under which the work is done have been historically undervalued on a gender basis'*. This was also a recommendation in the 'Making it Fair' report and given that many working women are award reliant it is a necessary amendment.

115. Should the mandatory 4 yearly review of modern awards be removed from the Act by parliament a one off review of awards should be conducted to include a review of historical gender-based undervaluation and the assessment of work value should be extended to include *'evidence that the work, skill and responsibility required or conditions under which the work is done have been historically undervalued on a gender basis'*.

RECOMMENDATION 22

That Section 156(4) of the Fair Work Act 2009 be amended to include '*evidence* that the work, skill and responsibility required or conditions under which the work is done have been historically undervalued on a *gender basis*'.

116. Enterprise Agreements now cover the terms and conditions of employment of a large and significant proportion of the workforce. Enterprise bargaining was introduced and encouraged by federal legislation as the ideal model for setting wages and conditions. However, the Fair Work Act contains no requirement relating to equal remuneration in enterprise bargaining.
117. In practice this means that an application for an equal pay order would only be available to low-paid award reliant women and not those working in occupations where above award payments are more prevalent. We know from the data that the gender pay gap tends to be higher for more skilled workers and higher level positions. Creating a system which can only remedy minimum wages and awards removes the right to equal pay for work of equal value for many women.
118. Following a Pay Equity Inquiry, the Queensland industrial relations Act was amended in 2001 so that 'the Commission is obliged under the Industrial Relations Act 1999 not just to ensure that awards provide for equal remuneration for work of equal or comparable value (s 126(e)), but to refuse to certify workplace agreements if they do not conform to that principle or disclose that steps are being taken to implement the principle (ss 156(1)(l),(m), 193(b), 203(7))⁴².
119. The SDA submits that greater obligation needs to be placed on parties negotiating enterprise agreements to ensure they are bargaining to achieve equal remuneration and that the Fair Work Commission should be prevented from approving Agreements that do not achieve equal remuneration.

⁴² Ibid, p 51

RECOMMENDATION 23

The SDA submits that the Fair Work Act 2009 should be amended in a manner similar to that proposed in Recommendation 15 of the Senate Inquiry report Making it Fair⁴³:

- to impose a legal obligation on the parties in a negotiation of a single or multi enterprise agreement that the negotiation and the agreement must include bargaining to achieve pay equity as defined by the Act; and
- to require that the Fair Work Commission must not approve an enterprise agreement unless the agreement is necessary to achieve pay equity or implements pay equity.

120. Ensuring equal remuneration in setting the national minimum wage as part of the annual wage review is not currently an explicit obligation under the Fair Work Act 2009.

121. The minimum wages objective outlined in Section 284 of the Fair Work Act 2009 requires the FWC to 'establish and maintain a safety net of fair minimum wages' taking into account a number of factors including the principle of equal remuneration for work of equal value (S284(d)). Although it is a factor the FWC must consider, *'To date, the issue of equal remuneration has not featured significantly in the annual wage rulings handed down by the Commission's Minimum Wage Panel, or indeed in submissions to the Panel by major stakeholders (Macdonald & Charlesworth 2013: 581–3). The Panel has placed only limited emphasis on the significance of minimum wage adjustments as a tool for promoting gender pay equity'*⁴⁴.

⁴³ *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce*, op cit, p 165

⁴⁴ *Equal Remuneration under the Fair Work Act 2009: A report for the Pay Equity Unit of the Fair Work Commission*, op cit, p 54

122. This indicates that unless equal remuneration is an explicit objective it is not given the appropriate consideration by the FWC when setting the minimum wage. In its 2011-2012 Annual Wage Review⁴⁵ decision the FWC stated:
- [231] Given women are disproportionately represented amongst the low paid, an increase in minimum wages is likely to promote pay equity, although moderate changes in award rates of pay would be expected to have only a small effect on the overall differences in earnings between males and females.
123. This statement has been consistent in Annual Wage decisions, indicating that while the FWC acknowledges that women are more likely to be impacted because of the proportion of women who are award reliant this is not a significant consideration in setting the minimum wage nor do they see it as an appropriate mechanism to reduce the differential in earnings between men and women.
124. To ensure that equal remuneration is an objective of minimum wage fixing Section 284 of the Fair Work Act 2009 should be amended so that equal remuneration is no longer a factor to be considered but an explicit obligation.

RECOMMENDATION 24

Amend Section 284 of the Fair Work Act 2009 to make equal remuneration an explicit obligation on the FWC in wage fixing in the annual minimum wage case.

125. The minimum wage is not the only element of the NES and Award system which creates an appropriate safety net for Award reliant employees. Other factors such as penalty rates, overtime and rostering provisions also impact on the wage that employees receive.
126. The government should actively ensure there are no cuts to the minimum wage and award entitlements, such as penalty rates, as these have a severe impact on low paid employees, who are predominately women. Any reduction in wages and other entitlements not only impacts on a woman's immediate income but also on their lifetime earnings and superannuation savings.

⁴⁵ Annual Wage Review 2011-2012 (2012) 222 IR 369

RECOMMENDATION 25

Ensure a genuine safety net of terms and conditions of employment which particularly impacts on women who are more award and minimum wage reliant.

Recognition of skills and training

127. As discussed earlier in this submission, award modernisation retained the historical gender-based undervaluation present in the pre-reform awards. There have been significant changes to the education system which have not necessarily been considered in all industries for the purpose of setting minimum award wages, particularly the expansion of certificate and trade qualifications.
128. Any review of gender-based under valuation should include an assessment of the skills used to perform the job and the qualifications needed to undertake the work. The wage set should reflect the skills and also recognise the training and educational attainment required. This assessment should also ensure that the rates set are comparable to skills and training recognised in the rates set in awards in male-dominated industries.

RECOMMENDATION 26

Ensure that the equal remuneration review conducted by the FWC, as proposed in recommendation 19, include an assessment of the recognition of skills, training and education.

Equal remuneration and the Workplace Gender Equality Act

129. The SDA strongly supports the Workplace Gender Equality Act (WGEA) 2012 and the continued obligation on companies to provide public reports in accordance with the legislative requirements.

130. As discussed in our submission above one of the key factors contributing to the gender pay gap is discrimination. The findings of the AHRC Pregnancy and Parental Leave National Review highlight the fundamental need for a legislative requirement on employers to measure policies, procedures and outcomes in relation to gender composition, remuneration, and the availability and use of flexible working arrangements to ensure improvements in female workforce participation and improvements in the work participation of men and women with family responsibilities.
131. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Global Compact has developed the Women's Empowerment Principles for business. The Empowerment Principles offer guidance on how to empower women in the workplace, marketplace and community. One of the Principles is to 'Measure and publicly report on progress to achieve gender equality'. This involves making public the company policies and implementation plan for promoting gender equality, establishing benchmarks that quantify inclusion of women at all levels, measure and report on progress, both internally and externally, using data disaggregated by sex, and incorporating gender markers into ongoing reporting obligations.
132. The WGEA reporting obligations are the only legislative mechanism to ensure that Australian companies are measuring and reporting on progress to achieve gender equality. Given the lack of improvement in the gender pay gap in the last 20 years it is essential that this requirement is strengthened in order for us to meet the objectives of this empowerment principle.
133. There has been significant support from business for improving women's engagement and empowerment in the workplace and the impact that this has on productivity and growth.
134. In a 2014 Media Release from ACCI on its participation at the B20, Women's Empowerment Principles Workshop, Chief Executive, Kate Carnell stated that 'Gender diversity and empowerment cannot be ignored. The research is conclusive. More diverse organisations improve innovation and strategic thinking, and perform better...Innovative Australian businesses who act to engage and retain women will reap the advantages....We are also delighted to

be demonstrating our commitment to the cause by signing the Women's Empowerment Principal's CEO Statement of Support today⁴⁶

135. The implementation and measurement of effective EEO strategies provide significant benefits not only to employees but to employers. These benefits include increased productivity and efficiency, reduced absenteeism and turnover, retention of skilled employees, higher morale and job satisfaction, improved employee relations, reduction or elimination of discrimination complaints and good public relations.
136. Some businesses have suggested that the WGEA reporting requirements are unnecessary and burdensome. The SDA would argue that the benefits derived from the requirements far outweigh any perceived burden in collecting the information required. Given that the only businesses required to report to WGEA are those with over 100 employees it is most likely these organisations already have processes in place to collect the information.
137. The requirement to submit the gender equality report to WGEA should be viewed as a valuable tool for employers to review workforce policies, procedures and practices in line with the Gender Equality Indicators. This not only contributes to achieving gender equality, it also assists businesses to achieve a diverse, skilled and experienced workforce.
138. The strategies, plans, structures, policies and procedures employers have in place and their implementation have a fundamental impact on gender equity in the workplace. An employer's obligation to report on this is vital to ensuring organisations are continually reviewing and assessing what they are doing in relation to gender equality.
139. Gender equality in the workplace and a reduced gender pay gap is a critical part of achieving gender equality overall. It provides women with an equal opportunity to work and ensure lifetime economic security. Gender inequality hampers economic development and closing the gender gap in workforce participation is vital for our nation's economic growth.

⁴⁶ Australian Chamber of Commerce and Industry, Business Leaders Gather to Say: "Equality Really Does Mean Business", Media Release, July 16, 2014

140. Given the demonstrated economic benefits derived from increased participation of women in the workforce gender reporting provides immeasurable value for effort and the SDA submits that the reporting requirements and minimum standards should be strengthened.
141. In order to ensure the data is meaningful there should be penalties built into the Workplace Gender Equality Act 2012 for those organisations who are required to report under the Act but fail to do so.

RECOMMENDATION 27

Amend the Workplace Gender Equality Act 2012 to introduce penalties for companies who are required to report under the Act but fail to do so.

142. The focus of the reporting requirements should be outcome focused rather than reporting whether or not an organisation simply has a particular policy. It is essential that reporting requirements ensure the collection of meaningful data. The definition of Formal Policies in the WGEA Reference Guide states that a formal policy or formal strategy is a written policy or strategy that has been approved by HR and/or management, is widely communicated, available and accessible by staff. This definition, however, does not require that the policy is current with regard to legislative requirements or review of the policy with regard to achieving gender equity.
143. In our experience, under the current definition, many employers would be able to answer yes to having a formal policy or strategy even though it may have been developed years ago and no longer reflects what is required by legislation. This provides a misrepresentation of what an organisation is actually doing to achieve gender equality through its policies and strategies. As there is no auditing of the reports there is no way of determining this.
144. The use of a formal policy and strategy which has not been updated and does not contain current legislative provisions can lead to employee's inability to access their rights and entitlements as prescribed under relevant legislation. This has a direct impact on gender equality and women's participation in the workplace.

145. For an employer to be able to answer yes to this question the definition of Formal Policy and formal strategy should include that it be current and up to date, reflecting any changes in relevant legislation.
146. While it is important to collect information regarding policy and strategy, there is an assumption that if you have a policy or strategy on an issue such as training and development that you are doing something proactive to address gender equality. Having a policy or strategy does not automatically ensure it is being followed or is addressing gender equity. It is how an organisation behaves and acts in relation to the policy which ultimately demonstrates if they are proactively addressing gender equity.
147. It would be valuable if reporting went beyond policy and strategy and measured the outcomes of the policies. For example, where companies have policies on Sexual Harassment, how many complainants have continued in their employment after making a complaint?
148. The amendments made by the government in 2014 weakened the monitoring of outcomes. An example of this is the removal of the requirement to provide data on the number of requests made, and approvals granted, for extensions to parental leave.
149. We know from the findings of the AHRC National Review that this is an issue impacting women's ability to balance work and caring responsibilities and ultimately impacts on workforce participation and the gender pay gap. When extensions are needed and not granted women are forced to change employers which can have a detrimental impact on the level of earnings.
150. In the recent report released by KPMG, *She's Price(d)less*, one of the factors identified as contributing to the gender pay gap is tenure with current employer. The inability for women to negotiate an extension of parental leave has a direct impact on their ability to maintain tenure and therefore increases the gender pay gap.
151. The SDA submits that for the WGEA reporting to be meaningful and robust questions which demonstrate outcomes, such as the numbers of employees failing to return from parental leave, should be introduced.

RECOMMENDATION 28

The reporting requirements set out under the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 should be strengthened to include more measurable outcomes.

152. Reporting on remuneration at all levels is essential to closing the gender pay gap. This is data that every employer should already have and is not onerous to report on while providing essential information on the differences in remuneration of men and women.
153. The gender pay gap data demonstrates that the gap becomes more pronounced the further up the chain of responsibility an employee is and that it is even larger when comparing total remuneration. Given this, it is very disappointing that the government removed the requirement for organisations to report the base salary and remuneration data for CEO's and above.
154. If we are genuine about monitoring and closing the gender pay gap, data on wages and remuneration at all levels is vital. We submit that reporting wage and remuneration data for CEO's be re-introduced as a reporting requirement under the WGE Act.

RECOMMENDATION 29

Amend the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 to re-introduce the requirement for companies to report the base salary and total remuneration for all levels, including CEO's and above.

155. The SDA would also recommend the expansion of the standardised occupational categories of non-managers, and in particular, the professional category. The professional category encompasses a wide variety of occupational groups making it difficult to identify in which occupations women are employed, and if there are any differences in male and female participation in certain occupations.
156. This is also critical for organisations to identify gender inequality in positions which may traditionally feed into leadership roles and whether employment of women is prevalent in these positions. The ability of women to develop their

career and move into more senior roles is highly dependent on having access to the roles within their organisation which feed into leadership positions.

RECOMMENDATION 30

A broader set of occupational categories for the reporting requirements should be developed, as this will provide more meaningful data and will assist organisations to identify career progression and gender inequity in relation to this.

157. The SDA also supports the continuation of industry specific benchmark reports which will provide a substantial analysis of gender equity issues in a given workplace within a particular industry. There is strong support for benchmark reports. Of 2,522 employers surveyed by the WGEA in 2013, almost eight out of 10 said benchmark reports would be valuable or very valuable.⁴⁷
158. Industry benchmarks are vital for organisations to be able to assess how their performance compares to their peers in their industry sector. Ideally, reports would provide strategies for organisations to improve their performance and ability to achieve pay equity, increased female participation in the workplace including in leadership roles and improved family friendly work arrangements.
159. The Workplace Gender Equality (Minimum Standards) Instrument 2014 currently requires organisations with more than 500 employees to meet one or more minimum standards of four Gender Equality Indicators. We believe that the limitations set out in this instrument will lead to very slow progress in achieving gender inequality and closing the gender pay gap.
160. Organisations with more than 100 employees are required to report to WGEA. There is no reason these organisations should be excluded from the requirement to meet the minimum standards set under the Minimum Standards Instrument.
161. Given that the gender pay gap has been relatively stagnant over the past 20 years more needs to be done from a regulatory perspective to influence change.

⁴⁷ Australian Financial Review, Good intentions don't count without gender data, 13 March 2014

Organisations should have to meet all of the minimum standards to be compliant not just satisfy one or more.

RECOMMENDATION 31

The requirement to report on minimum standards should be extended to all reporting organisations, not limited reporting organisations with 500 or more employees.

RECOMMENDATION 32

The requirement to meet the minimum standards set out in the Workplace Gender Equality (Minimum Standards) Instrument 2014 should be extended to all Gender Equality Indicators.

SUMMARY OF SDA RECOMMENDATIONS

SEX DISCRIMINATION AND MEASURES TO SUPPORT WOMEN'S WORKFORCE PARTICIPATION AND ECONOMIC OUTCOMES

The SDA recommends that in order to address discrimination against women in the workforce and reduce the gender pay gap the Government as a priority needs to implement the following recommendations:

RECOMMENDATION 1

Extend the discrimination ground of 'family responsibilities' under the Sex Discrimination Act 1984 (Cth) (SDA) to include indirect discrimination.

RECOMMENDATION 2

Amend the Sex Discrimination Act 1984 (Cth) (SDA) to include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.

RECOMMENDATION 3

The *Sex Discrimination Act 1984 (Cth)* be amended consistent with the definition of '**family and caring responsibilities**' in the *Victorian Equal Opportunity Act 2010* and provides that an employer must not, in relation to the work arrangements of an employee or a person offered employment, unreasonably refuse to accommodate the responsibilities that the person has as a parent or carer.

RECOMMENDATION 4

The *Sex Discrimination Act 1984 (Cth)* be amended to **introduce a positive objective to achieve substantive equality** (that is, recognising that women and men may need to be treated differently, for equality of results to occur) with an obligation on employers to take all reasonable and appropriate measures to provide a workplace free of discrimination.

RECOMMENDATION 5

The *Sex Discrimination Act 1984 (Cth)* be amended to ensure that the complaints process in anti-discrimination cases is more accessible, less costly and provides greater remedies and more just outcomes for claimants.

RECOMMENDATION 6

The *Sex Discrimination Act 1984 (Cth)* be amended improve the level of punitive damages in discrimination cases.

RECOMMENDATION 7

Legislation be amended to enable the Australian Human Rights Commission and other representative organisations to initiate investigations and claims of systemic discrimination on behalf of complainants.

RECOMMENDATION 8

Amend the National Employment Standards (NES) in the Fair Work Act 2009 to include a right for a full-time employee to return to work from parental leave on a part-time basis or the right for a part-time employee to return on reduced hours, with a right until the child is school age to return to the pre-parental leave position and hours.

RECOMMENDATION 9

Strengthen the 'right to request' provisions under s65 of the Fair Work Act 2009 (Cth) (FWA) by:

- Removing the qualification requirements in section 65(2)(a) of the FWA (i.e. the requirement for 12 months' service)
- Introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
- Establish an appeals process through the Fair Work Commission for decisions related to s65 of the FWA, the right to request flexible working arrangements. This appeals process should not only address procedure, but should include the ability for employees to appeal an employer's decision to refuse the request.

RECOMMENDATION 10

Insert a special redundancy provision in the Fair Work Act 2009 which requires an employer to demonstrate that a redundancy is bona fide, and reasonable accommodations cannot be made, where the redundancy is for an employee returning to work after a period of parental leave.

RECOMMENDATION 11

Provide adequate funding to ensure universal access to quality, affordable and varied childcare arrangements which suit a range of occupations and industries taking into account workers who may not work full day shifts and are unable to pay for a full day of care on the limited wage they receive.

RECOMMENDATION 12

Periods of unpaid parental leave (and any paid parental leave) should be recognised as active service.

RECOMMENDATION 13

Extend the provisions under the NES of the FWA to provide pre-natal leave to employees in addition to personal leave entitlements.

RECOMMENDATION 14

Amend the NES to allow employee paid breaks from work for the purposes of breastfeeding or expressing.

RECOMMENDATION 15

Ensure a genuine safety net of terms and conditions of employment which particularly impacts on women who are more award and minimum wage reliant.

RECOMMENDATION 16

Extend the Government Paid Parental Leave Scheme to provide universal access to a minimum of 26 weeks paid parental leave plus superannuation.

EQUAL REMUNERATION AND THE FAIR WORK ACT

RECOMMENDATION 17

That Section 3 of the Fair Work Act 2009 be amended to make 'equal remuneration for men and women employees for work of equal or comparable value' an explicit object of the Act.

RECOMMENDATION 18

That Section 302 of the Fair Work Act 2009, which gives the FWC the power to make an equal remuneration order, be amended to delete the words '*The FWC may make any order*' and replace them with '*The FWC must make any order*'.

RECOMMENDATION 19

That the Fair Work Act 2009 be amended to require the Fair Work Commission to conduct a review of modern awards explicitly for the purpose of remedying any demonstrated gender-based undervaluation. The review should be broader than 'pay equity' in terms of rates and classifications of occupations within Awards. The review must also assess other terms and conditions contained in Awards which impact on the rates of pay employees receive.

RECOMMENDATION 20

That Section 134 of the Fair Work Act 2009 be amended to require that the FWC must ensure an award provides for equal remuneration for men and women employees for work of equal or comparable value.

RECOMMENDATION 21

That the FWC establish 'Equal Remuneration Principles'(ERP) similar to the Queensland ERP model.

RECOMMENDATION 22

That Section 156(4) of the Fair Work Act 2009 be amended to include '*evidence that the work, skill and responsibility required or conditions under which the work is done have been historically undervalued on a gender basis*'.

RECOMMENDATION 23

The SDA submits that the Fair Work Act 2009 should be amended in a manner similar to that proposed in Recommendation 15 of the Senate Inquiry report Making it Fair⁴⁸:

⁴⁸ *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce*, op cit, p 165

- to impose a legal obligation on the parties in a negotiation of a single or multi enterprise agreement that the negotiation and the agreement must include bargaining to achieve pay equity as defined by the Act; and
- to require that the Fair Work Commission must not approve an enterprise agreement unless the agreement is necessary to achieve pay equity or implements pay equity.

RECOMMENDATION 24

Amend Section 284 of the Fair Work Act 2009 to make equal remuneration an explicit obligation on the FWC in wage fixing in the annual minimum wage case.

RECOMMENDATION 25

Ensure a genuine safety net of terms and conditions of employment which particularly impacts on women who are more award and minimum wage reliant.

RECOGNITION OF SKILLS AND TRAINING

RECOMMENDATION 26

Ensure that the equal remuneration review conducted by the FWC, as proposed in recommendation 19, include an assessment of the recognition of skills, training and education.

EQUAL REMUNERATION AND THE WGEA

RECOMMENDATION 27

Amend the Workplace Gender Equality Act 2012 to introduce penalties for companies who are required to report under the Act but fail to do so.

RECOMMENDATION 28

The reporting requirements set out under the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 should be strengthened to include more measurable outcomes.

RECOMMENDATION 29

Amend the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 to re-introduce the requirement for companies to report the base salary and total remuneration for all levels, including CEO's and above.

RECOMMENDATION 30

A broader set of occupational categories for the reporting requirements should be developed, as this will provide more meaningful data and will assist organisations to identify career progression and gender inequity in relation to this.

RECOMMENDATION 31

The requirement to report on minimum standards should be extended to all reporting organisations, not limited to reporting organisations with 500 or more employees.

RECOMMENDATION 32

The requirement to meet the minimum standards set out in the Workplace Gender Equality (Minimum Standards) Instrument 2014 should be extended to all Gender Equality Indicators.