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**REPORT
BY THE FULL BENCH OF THE
INDUSTRIAL CONCILIATION AND ARBITRATION
COMMISSION OF QUEENSLAND
ON ITS
INQUIRY INTO PENALTY PAYMENTS
(Case No. B274 of 1979)**

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INQUIRY INTO PENALTY PAYMENTS

SECTION 1—HEARINGS AND PROCEDURAL MATTERS:

1.1 On 13th June, 1979, the Honourable the Minister for Labour Relations wrote to the Industrial Registrar as follows:—

“MINISTER FOR LABOUR RELATIONS

Comalco House,
Ann & George Streets,
Brisbane, 4000,
Queensland,
Australia.
13th June, 1979.

Dear Sir,

At a meeting of Cabinet held on Tuesday, 12th June 1979 the following decision was taken:—

‘That approval be given for the Industrial Conciliation and Arbitration Commission to be directed under Section 11 (1) (b) of the Industrial Conciliation and Arbitration Act to hold an inquiry into penalty rates with particular regard to—

- (i) the nature of penalty payments
- (ii) the extent of payments made to various sectors of the work force
- (iii) the relationship of penalty payments to traditional working hours
- (iv) the effect that changing work patterns might have on various penalty payments
- (v) whether there are factors emerging which require a review of penalty payments.’

In accordance with the terms of the Cabinet Decision and by authority under Section 11 of the Industrial Conciliation and Arbitration Act I direct that a Full Bench of the Industrial Conciliation and Arbitration Commission hold an inquiry into penalty rates in terms of Cabinet’s Decision as aforesaid.

The Commission should report the result of this inquiry to the Honourable the Minister for Labour Relations.

Yours Faithfully,

(Sgd.) Fred. A. Campbell
(Fred. A. Campbell)

Minister for Labour Relations”.

1.2 Section 11 (1) (b) of the Industrial Conciliation and Arbitration Act provides:—

“11. Jurisdiction of the Commission. Qd. s. 7. (1) The Commission shall hear and determine all questions, whether of law or fact, which may be brought before it or which it may deem it expedient to hear and determine for the purpose of regulating any calling or callings, and any question arising out of an industrial matter or involving the determination of the rights and duties of any person or industrial union in respect of an industrial matter, and any question which it may deem expedient to hear and determine in respect of an industrial matter, and any industrial dispute as to which a Commissioner had held a conference under this Act, and as to which no agreement has been reached, and which a Commissioner has thereupon referred to the Commission, and more particularly, but without limiting the generality of the above provisions, shall have full powers and jurisdiction—

- (a) ...;
- (b) on the application of any person interested or of its own motion, or by direction of the Minister, to hold an inquiry into or relating to any industrial matter and report the result of such inquiry to the Minister;”.

1.3 A Notice of Motion setting out the subject matter of the Inquiry and notifying that the Inquiry would be commenced at a public sitting on 19th July, 1979 was issued by the Industrial Registrar on 26th June, 1979 and forwarded to all registered unions of employees and employers, totalling 116, and to 62 other interested parties.

A public notice issued by advertisement, which appeared in metropolitan and provincial newspapers, is set out in Appendix “A” together with a list of newspapers in which it appeared and the date of publication.

Similar advertisements were also placed in newspapers in those cities in which hearings were held prior to the dates of hearings and further advertisements were placed in the metropolitan newspapers prior to the dates of the final hearing in Brisbane. Details of all such advertisements are also set out in Appendix “A”.

1.4 Sittings of the inquiry were held in Brisbane, Southport, Toowoomba, Townsville, Rockhampton, Heron Island, Hayman Island and Long Island. Details of sitting dates and other relevant information are shown in Appendix “C”.

1.5 The transcript record of this Inquiry was produced in two sections—oral submissions on white paper and written submissions on green paper.

Each party appearing before the Commission was supplied with a copy of the transcript free of cost.

Appendix “B” sets out a Schedule of Submissions received and Appendix “C” lists those persons who presented oral submissions.

SECTION 2—BACKGROUND TO THE INQUIRY:

2.1 The background to this Inquiry is referred to in a press statement made by the then Minister for Labour Relations (Hon. F. A. Campbell, M.L.A.) in announcing the Inquiry on 12th June, 1979.

Extracts from this press statement are:—

“Mr Campbell said he had received many representations about the effect of penalty rates on the cost of labour in various industries.

Towards the end of last year representatives of the tourist industry discussed with Departmental officers conditions of employment on island resorts off the Queensland coast.

They submitted—

- Queensland island resorts were having difficulty in competing with resorts outside Australia;
- Working conditions on the coastal islands of Queensland should be different from conditions applicable to the mainland;
- Weekend penalty rates should be abolished, the spread of working hours should be increased and board and lodging charges should be up-lifted;
- Discussions had been held with the Australian Workers’ Union but little progress had been made.

Mr Campbell said that since the Federal Industrial Relations Minister (Mr Street) had advocated the end of penalty rates there had been considerable debate on the subject around Australia.

Reports indicated that the Commonwealth Government was investigating the matter through various Committees and the National Labour Consultative Council. A possible test case on some penalty payments in New South Wales involving clubs had not proceeded far because of jurisdiction arguments.

Mr Campbell said penalty rates were an extremely complex issue. Many of the decisions in Queensland had been arbitrated upon by the Industrial Conciliation and Arbitration Commission.

Unfortunately those persons and organisations arguing loudest for the abolition of penalty rates had not defined the penalties to which they refer or to how the penalties would be abolished.

Mr Campbell said penalty rates affected the whole spectrum of the work force and were inextricably entwined in the concept of a five-day week worked in day light hours.

....

If the nature and the quantum of penalty rates are to be discussed, a detailed understanding of the problem was essential.

The last comprehensive review of penalty rates was in the New South Wales Shift Workers case in 1972 although a smaller review occurred recently in South Australia concerning Prison Officers, Mr Campbell said.

Mr Campbell said the inquiry would permit input from all interested parties and would provide him with much valuable information.

There was also the possibility of a test case developing before the Australian Industrial Commission early next year, and the inquiry report would be invaluable towards formulating the Government’s submissions.”.

2.2 This statement was further elaborated by the representative of the Minister at the preliminary sitting of the Inquiry on 19th July, 1979, when he said:—

“2. The decision to conduct this inquiry arose out of representations received over a lengthy period of time by the Minister for Labour Relations and the Department of Labour Relations from a variety of interests including the Tourist Industry.

Indeed, since the speech by the then Federal Minister for Employment and Industrial Relations to the Liberal Party Council of Victoria on 19 November 1978 there have been many public statements made throughout Australia on the effects of penalty payments on industry. Calls for abolition of penalty rates have not been unsubstantial.

3. Points made in regard to these claims have included the following:—

- penalty rates are not hard won benefits but are consent awards reached between employers and unions;

- they are a disincentive to providing jobs;
- there is a growing volume of opinion in Australia that penalty rates now are serving no sensible purpose;
- there is no question that people must be paid for working overtime. The question is whether they should be paid at an increased hourly rate;
- some industries have reached the absurd position where employees are chasing penalties by seeking to work at nights or at weekends or beyond normal working hours;
- where employers cannot pay the penalty rates the public must pay or businesses close during the high pay periods;
- it will be necessary for the public to recognise that Saturday and Sunday are not necessarily days that should be set apart from the rest of a five day working week;
- in some industries for example, Tourism, hotels, restaurants, theatres and picture houses, Saturdays are the busiest days of the week. Why should businesses have to pay penalty rates at a time when the public is most demanding their services;
- changing demand patterns require new attitudes by employers, unions and Governments.

4. Predictably and quite understandably, there have been almost an equal number of comments coming mainly from the trade union movement, urging the retention of penalty rates for a variety of reasons; not the least of which include the statement that penalty rates compensate people who have to work odd times which other workers have off as a right.

6. Whatever be their values, for some considerable time penalty rates have been a component in the package of conditions which go to make up a contract of employment for workers in this State and in this country. What is considered to be important for this preliminary hearing, is that they take on many different shapes in many different industries and this is a matter which it is felt will have to be considered to enable the parties to direct their attention to specific and relevant penalty payments."

SECTION 3—SCOPE OF THE INQUIRY:

3.1 At the preliminary sitting on 19th July, 1979, the representative of the Minister made the following submission:—

"19. Having regard to the foregoing, it is submitted that the following range of payments might be regarded as being penalty payments for the purposes of this inquiry:—

- 'All-in' wage rates e.g. Building Trades Hidden allowances within an actual award rate e.g. 'follow-the-job';
- Afternoon and night shift workers' allowances percentage and flat sum;
- Weekend penalties for shift workers;
- Weekend penalties for other than shift workers;
- Paid crib breaks for shift workers;
- On-call or stand-by allowances;
- Late work penalties e.g. Restaurants and Motels;
- Early start allowances e.g. Bakers;
- Daily allowances for working an ordinary day over an extended spread of hours;
- Board and lodging charges for employees living-in;
- Loadings in casual rates of pay within ordinary hours;
- Overtime rates for weekly and casual employees working outside the prescribed ordinary hours, other than on Public Holidays;
- Overtime rates for weekly and casual employees on public holidays, within and outside the prescribed ordinary hours;
- Additional annual holiday granted shift workers and workers in a seven day week industry.

Unless the Commission so desires, it is felt that the parties to these proceedings might be required not to go into further detail as regards the following payments:—

- Camping allowance;
- Zone allowances;
- Meal allowances associated with overtime;
- Special on-the-job disability allowances e.g. dirty work, working in cold and hot places, wet work, height money, confined spaces etc.

It is felt that the examination of payments made under the list of penalty payments proposed to be examined will provide sufficient basis for examination

of the various terms of reference; and will in fact permit discussion of such aspects as traditional working hours for day workers, shift workers, continuous shift workers and seven day week workers. They are also considered to provide sufficient base for examining changing work patterns within the particular industries and to consider whether there are factors emerging which might require a review of penalty payments."

3.2 At the sitting on 31st July, 1979, advocates for both Unions and Employer Organisations expressed a variety of views on what they considered should be the scope of the Inquiry. Their submissions were the subject of an interim statement issued by the Inquiry on 20th August, 1979 (102 Q.G.I.G. 25-6), extracts of which are:—

"During the hearing a variety of views were expressed including:—

A proposition that none of the payments listed by the Minister's representative could properly be described as penalty payments but were compensations for requirements imposed on employees rather than being effective deterrents on Employers against imposing such requirements;

A suggestion that 'penalty rates' for the purpose of this inquiry shall mean any aspect of any scheme designed to recompense a weekly, casual, or part-time employee for work done within the standard hours (including standing by, remaining on call, travelling or passive duty)—

- outside the recognised hours for day work in the industry concerned on Monday to Friday (inclusive) except where the duty is part of a recognised two or three-shift system; or
- on a Saturday, Sunday or Statutory Holiday where the level of such compensation derives from or is affected by the day of the week or the time of the day or night when the duty is carried out, or a combination of those factors.

Restricting the inquiry to such matters as overtime rates, weekend penalties, night work rates, shift allowances, payment for work on statutory holidays, and meal break penalties.

The Commission considers that the Inquiry should be concerned with payments which are currently identified by and accepted by the industrial community as penalty payments, rather than semantic type constructions which may be placed on the term 'Penalty Payments'. The Commission has noted and examined the references already made to past Court and Tribunal decisions and finds them of limited assistance in authoritatively defining whether or not particular payments considered as penalty payments in contemporary industrial practices, should or should not be within the scope of the Inquiry.

5. In our opinion there are certain payments which warrant priority in examining penalty payments. Payments which are relevant to the consideration implied in placita (iii) and (iv) of the Minister's direction include payments in respect to:—

- Work during standard hours—
 - Weekend—Saturday and Sunday—work;
 - Work on public and statutory holidays;
 - Work requiring early start;
 - Night work;
 - Work over extended spread of hours;
 - Shift work.
- Work outside standard hours—
 - Overtime;
 - Work during recognized meal break;
 - On-call, Standby, Availability Payments;
 - Payments relating to travel outside standard hours.
- Work other than full-time work—
 - Part-time work;
 - Casual work.

6. Other payments listed by the Minister's representative may not in our opinion require the same attention during the inquiry because their history is well documented and further inquiry may not result in adding anything to the knowledge currently available.

The Commission is of the opinion that parties may find it difficult to align the following payments with modern day understanding of the term 'penalty payments':—

- All in wage rates, e.g. Building Trades;
- Hidden allowances within the actual Award rate, e.g. follow the job;
- Paid crib breaks for shift workers;
- Board and lodging charges for employees living in;
- Additional annual leave for continuous shift workers and workers in seven day week industry.

However, this opinion does not preclude any party who is so advised submitting relevant information on these payments.

7. Payments which were suggested should be inquired into include certain allowances which are clearly recognized as compensation for specific disabilities to which employees are exposed during ordinary working hours, e.g. working in rain, dirty work and the like. Such payments are in our opinion, not within the scope of this inquiry nor are payments such as allowances for qualifications, e.g. first-aid men; payments for extra responsibilities, e.g. leading hands; mixed function payments and loadings on annual leave payments.

8. Several parties urged the exclusion of 'shift allowances' from consideration. It goes without saying that these allowances (and indeed others listed in para. 5) have resulted from or been adjusted by decisions of Industrial Tribunals over many decades. Notwithstanding, we see them as being of the category of other payments which relate to the times at which work is performed."

SECTION 4—SUMMARY OF SUBMISSIONS:

4.1 Government—

4.1.1 Department of Labour Relations (Submission No. 13 Exhibit 13)—

In its principal submission the Department presented a detailed and comprehensive outline of the history of the development of penalty payments, and the nature and range of such payments in selected Awards and Industrial Agreements where the incidence of penalty payments is significant. The areas covered by this outline include:—

- Boarding Houses, Private Hotels, Serviced Rooms etc.
- Hotel and Liquor Industry
- Restaurants and Catering
- Motel Industry
- Exempted Shops
- Sporting
- Theatrical
- Musical
- Petrol Service Stations
- Engine Drivers
- Bakers and Pastry Cooks
- Casual Employees
- Overtime
- Shift Work.

The detailed information (pages 74 to 121 of transcript) was not commented upon to any extent by any of the other parties during the remainder of the inquiry and we do not propose to discuss it further. However, we note that it provides a useful reference point for those interested in a further understanding of the information outlined.

The submission went on to detail current Award provisions relating to casual employees, overtime and shift work and posed a number of questions related to these areas of penalty payments which likewise did not elicit specific response from other parties. We will, however, be referring to some aspects of the questions raised in this section of the submission later in this report. Again the material presented (pages 125 to 157 of transcript) provides a useful reference point for those interested.

The submission concluded as follows:—

- 16.1. Penalty payments serve a dual function in that they are a deterrent to employers who wish to have their employees working in times and conditions that are not 'standard' and a recompense to those workers who are judged to be at a disability from working under such arrangements. Such a broad definition obviously encompasses a multitude of situations which could have little in common. From this comes the maxim that in reaching any opinion of penalty payments there is a great need to judge each case on its merits.
- 16.2. Conceptually, penalties are very much a reflection of what the community considers to be normal work patterns; for example the vast majority of people have seen a normal pattern as a five day week of not more than eight hours a day worked from Monday to Friday.
- 16.3. It must be admitted that this is a traditional view which has and probably will continue to slow down given developments such as the nine day fortnight and flexi-time. However, the process of change will be slow and the Australian concept of the sacrosanct week-end would appear likely to retain its status for many years.

16.4. In such circumstances it is obvious that many members of the workforce feel that there is a penalty involved in week-end or night work because of the social dislocation involved.

16.5. Week-end work has particular disadvantage to those who wish to participate in or be spectators at popular organised sports.

16.6. Sunday has a particular significance to many who treat it as a family day or a day to be used for religious observance. The special nature of Sunday has long been recognised by Industrial Commissions.

16.7. There would be many workers who prefer to work on week-ends, for example single persons and older married; however, apart from the monetary gain, it is obviously going to be unattractive to working married couples where one partner works Monday to Friday or for a worker who wants to spend time with school age children.

16.8. Given that many in the workforce will see week-end and night work as something that carries an additional burden. The supply of labour to many sectors may be reduced if the penalties were removed. Would a change in penalty rates remove the incentive to attract sufficient workers into those particular segments of the labour market?

16.9. The paradox is of course that the industries which have to pay the penalties are providing a range of services demanded by a public which seeks its relaxation during those times which certain public see as undesirable for the public to work.

16.10. Employers' positions vary greatly also in their capacity to pass the cost of penalties on to customers—for example a monopoly situation against an enterprise in a highly competitive field.

16.11. Claims have been made that all forms of penalty rates are a contributing factor to unemployment. These claims need examination since such an analysis can be simplistic and often ignores the other components of the unemployment problem; cyclical, demographic, lack of demand etc.

16.12. Issues involved in penalty payments are complex not only because of the variety of situations that are covered by types of payments but also because of the variety within the industries that attract a particular penalty.

16.13. This submission is presented to assist the Commission in its mammoth task and to allow comment and/or enlargement by other parties on the extent of penalty payments within the various sectors of the workforce.

16.14. Before concluding I would take the opportunity to refute reported allegations that the State Government's representatives had made it plainly obvious at the outset of the inquiry that they would seek the abolition of penalty rates in Queensland.

The Commission would note that this is not so. Both submissions have been presented on a factual basis, with the Department to be seen as neither favouring nor arguing against the existing penalties."

4.1.2 Public Service Board (Submission No. 14 Exhibit 14)—

This submission told us that "The Government of Queensland is one of the largest employers in this State"—we have always considered it to be the largest. Employees of the Crown (other than the Railway Department) and of the various Public Hospital Boards are covered by some 85 Awards and Industrial Agreements and penalty payments are made to a substantial number of these employees under the provisions of those Awards and Industrial Agreements, under regulations made under various Acts such as the Public Service Act and under approved administrative arrangements.

An appendix to the submission (Exhibit 15) covering 103 pages set out the number of employees covered, hours of duty, and types of penalty payments made to employees under each Award or Industrial Agreement—another very useful reference point.

The submission detailed the various penalty payments applying in selected areas, but records did not allow the provision of information on the extent of penalty payments made except for those applying in the Prisons Service and in certain Public Hospitals. This information showed that, expressed as a percentage of total salaries penalty payments in the year 1978-79 were as follows:—

Prisons Service—

Overtime—9.45 per cent;

Weekend work, work requiring early start and shift work—10.04 per cent.

Public Hospitals—

Nursing Staff—Overtime ranging from 8.84 per cent to 10.30 per cent;

Domestic and Laundry Staff—Overtime ranging from 8.24 per cent to 10.24 per cent.

The submission concluded as follows:—

"26. (a) That the Crown adopts and applies the penalties determined by the Industrial Commission for overtime and shift work.

(b) That this is supported by the fact that the Crown in a number of areas operates under the general Awards of the Industrial Commission.

(c) That as the Crown is charged with the responsibility of maintaining services for the community, the nature and extent of penalties becomes an important issue from the aspect of ensuring that sufficient funds are available.

(d) That the penalties determined by the Commission have been the subject of regular reviews and represent reasonable standards.

(e) That the Crown and Public Hospitals Boards should not be prejudiced as employers in relation to services they render by the imposition of unduly restrictive penalties upon their economic working arrangements."

4.1.3 Railway Department (Submission No. 15 Exhibit 18)—

This Department, employs approximately 25,000 employees, who are eligible to belong to any one of 21 Unions, and who are covered by three Awards, each of which provides penalty payments.

The submission did not analyse the penalty structure of these Awards, but set out the cost of penalty payments for the year ended 30th June, 1979, at \$37,949,219 representing 13.42 per cent of total salary wages and allowance costs of \$282,734,367.

4.1.4 Electricity Supply Industry (Submission No. 19 Exhibit 22)—

The Queensland Electricity Generating Board and seven other Electricity Boards are respondents to 13 Awards and employ 10,673 employees.

The submission was directed to six areas of penalty payments as follows:—

1. Overtime payments including minimum payments and call-outs.
2. Public holiday payments.
3. Afternoon and night shift allowances.
4. Weekend penalty rates.
5. Availability allowance.
6. Payment of double rates for working in the rain.

From the information furnished as to their cost and extent, it would appear that penalty payments expressed as a percentage of the total wages bill of the Queensland Electricity Generating Board for the period 1st January, 1979, to 30th June, 1979, was 8.26 per cent and for four of the other Boards ranged from 4.7 per cent to 7.57 per cent.

The highest incidence of penalty payments appears to be in the overtime area. The following information submitted on behalf of one Board indicates the pattern of overtime payments which could very well be typical in this Industry:—

"Overtime payments to distribution staff amount to 5½% of ordinary wages, or approximately 3½% of wages and salary paid to the total staff of the Board. It is not possible to extract from our records this type of information in regard to the staff actually being paid penalty rates on a regular basis, i.e. Electrical Mechanics On Call (18), Linesmen On Call (7) and On Call Trades Assistants (25). However this group of 50 employees constitutes about 15% of our workforce. Thus it would appear that overtime payments to this group constitute about 20–25% of their ordinary wages."

The submission concluded with the following references to the specific matters before this Inquiry:—

"Item (iii)—The relationship of penalty payments to traditional working hours.

The penalty payments made to employees of the Industry, such as Overtime, Shift Allowances, Weekend Penalty Rates, Public Holiday payments suggest that any duty performed outside of daylight hours (for want of a better description) Monday to Friday merit an additional loading. This is notwithstanding that the Electricity Supply Industry of Queensland has and will always be a seven day per week, 24 hour operation. Persons recruited to the Industry in areas where a continuous or on-call situation occurs are fully aware of their requirement to perform this duty.

Nevertheless, the Industry has always paid due regard to prevailing penalties and to the presumption that work outside of accepted hours Monday to Friday merits some additional payment.

Item (iv)—The effect that changing work patterns might have on various penalty payments.

Apart from the implementation of a flexible working hours scheme in the S.E.Q.E.B., there are no other discernible changes in work patterns.

The introduction of a flexitime scheme on 1st July 1978 for all employees in the S.E.Q.E.B. working under and pursuant to the Electricity Supply Industry (Salaried Employees) Award—State, subject to specified conditions, has made it possible for departments to tailor the normal hours of work to some extent to suit departmental needs and thereby curtail overtime.

The Bandwidth of the scheme is from 7.30 a.m. to 5.30 p.m. with a maximum day of eight hours allowed. However, the Bandwidth can be varied to suit divisional needs.

Overtime is paid for all authorised overtime in excess of eight hours during the bandwidth.

A number of Boards have introduced shift work for Computer Operators on a Monday to Friday basis but this variation could not be considered to be a 'changing work pattern'.

Item (v)—Whether there are factors emerging which require a review of penalty payments.

Other than a desire to contain wage costs and increases in penalty payments, the Industry has no submission to make on this item."

4.2 Unions—

All registered unions were advised by the Registrar as set out in paragraph 1.3 and at the initial hearing on 19th July, 1979, appearances were entered by 32 unions and by the Trades and Labour Council of Queensland.

At the hearing on 31st July, 1979, six union advocates contributed to the debate on the scope of the Inquiry. Union representatives have attended all hearings and final submissions were made at the hearing on 22nd July, 1981, by:—

- Mr K. Low for the Australian Workers' Union;
- Mr K. Kolmar for the Federated Miscellaneous Workers' Union;
- Mr D. Claffey for the Federated Liquor and Allied Industries Union.

The theme developed by union advocates during the debate on the scope of the Inquiry, throughout the submissions presented and during the final submissions embraced the following:—

- Penalty payments have existed for a long period of time, have been determined by Industrial Tribunals or have been agreed to by the parties to industrial instruments.
- Unions regard penalty payments as a basic, long standing and hard won conditions of employment and a fair and reasonable compensation for the disabilities and inconvenience associated with being required to work at times accepted by the community as traditional working hours.
- There have been no changed circumstances or factors to justify any disturbance of the well established and traditional methods of fixing penalty rates, either on a general basis or under individual awards and industrial agreements.

Commencing during August, 1979, telegrams and letters were received by the Registrar from officials of branches of various unions in centres outside Brisbane and from groups of employees in various workshops and other establishments. A sample of a telegram, the text of the majority of letters and a list of persons or union branches and groups who signed them appears in Appendix "D".

A summary of submissions by unions follows.

4.2.1 Queensland Railway Station Officers Union (Submission No. 1 Exhibit 1)—

In a brief submission the Union "strongly opposed the abolition or reduction of penalty rates" and expressed the opinion that "the present penalty rates structure is necessary to compensate shift workers for the inconvenience they suffer in working shift work".

4.2.2 Railway Salaried Officers Union of Queensland (Submission No. 3 Exhibit 3)—

This submission stated that whilst all members of the Union have a potential to receive penalty payments only approximately 20 per cent are ever required to work in situations where they have application. It went on to say:—

"No penalty rates now in existence are seen by us as being unjustified or unworthy. They only partly compensate those required to work while others enjoy leisure in the company of friends, relations and community groups."

4.2.3 *Queensland State Service Union (Submission No. 16 Exhibit 19)*—

This submission outlined in considerable detail the various Public Service Areas in which penalty payments apply and compared the nature and quantum of such payments with those applying in the Public Service areas in other States and in private industry. The submission went on to say:—

“We believe that our submission has shown that officers and employees in the Public Sector, who so often are the whipping posts for the news media, suffer poorly by comparison with their counterparts in other States. We also believe that had we taken our exercise further, it would show that they suffer by comparison with certain areas in the Private Sector, and we refer particularly to overtime and Saturday and Sunday and Public Holiday duty where compensation is determined by the Public Service Board with the Union having no recourse to this Honourable Commission.

We also believe that in the Australian Government and Local Government areas, our members fare poorly by comparison, and also with certain sections of the Private Sector, in compensation for shift work.”

4.2.4 *Professional Officers Association (Submission No. 17 Exhibit 20)*—

The Association offered some general views on penalty payments and contended that:—

“... the nature or essential quality of penalty payments is to reimburse an employee for disability occasioned by the employee following a direction or requirement by the employer to work at times, at places or under conditions which are not accepted as suitable or appropriate for all employees in the community or for all sections of the work force.

The Association's view is that persons suffering disabilities not accepted by all members of the work force ought to be compensated for this disability.

As the work situation improves for most employees the disabilities suffered by those who cannot enjoy them because of the nature of their work occupation have greater emphasis and therefore the penalty payments they receive, whether they be by cash payment or additional leave, must be increased. To place lesser recognition in this day and age on disability suffered by a section of the work force would, in our view, be wrong, unjust and a backward step.”

The submission went on to discuss:—

“... the situation of officers who come under the *Public Service Act 1922-1978*, and the Regulations made under that Act. These officers are restricted because of the operation of the Act from the applicability of certain sections of the *Queensland Industrial Conciliation and Arbitration Act 1961-1978* and also to having access to the Industrial Commission on certain matters relating to hours of duty and payments for work carried out which is carried on outside normal working hours.”

and concluded as follows:—

“... the *Public Service Act* should be amended to provide the right of access to the Commission on matters where the unions believe that the decision by the Board or Government is not satisfactory.

... it is the opinion of the Public Service Unions that Public Servants should be treated at least as favourably as other employees covered by awards of the State Industrial Commission and should have direct access to the Commission unrestricted by the *Public Service Act*, where the Unions believe that the present arrangements are not suitable. We also believe that no grounds exist justifying a reduction in any way in penalty rates awarded by the Commission. We believe also that as time progresses justification will exist for improvements, not reductions, in penalty rates.”

4.2.5 *Federated Clerks' Union of Australia (Submission No. 36 Exhibit 54)*—

In a 38 page booklet, this Union presented a well prepared submission outlining its policies and views related to the subject of this Inquiry. Relevant aspects were reviewed under the following chapter headings:—

Penalty Rates—some Federal Council and ACTU decisions.

Standard Hours—some history of the relationship to penalty payments.

Management Prerogative—a comment.

Why the need for a Penalty—working outside standard hours.

Cost of Penalty Rates.

Employers Arguments over Penalty Rates—particular reference to Hospitality Industry.

Changing Work Patterns.

Appendix I to the submission detailed the various penalty payment areas affecting members of the Union. Appendix II was a table indexing accommodation and meals tariffs amongst other things in over 60 cities throughout the world.

4.2.6 *Metropolitan Fire Brigade Officers Association (Submission No. 39 Exhibit 58)*—

This submission said *inter alia*:—

“As members of an emergency service it is necessary that we man fire stations 24 hours a day every day of the year. People who work shift work forgo many social pleasures because of their employment.

Society is geared to regulated hours for work and pleasure based on basic 8 a.m.-5 p.m. jobs Monday to Friday.

Shift workers live in another world compared to day workers and when asked to participate in any social function we must answer ‘let me look at my shift roster to see if I am off duty’.”

4.2.7 *Australian Workers' Union (Submission No. 44 Exhibit 63)*—

Selected paragraphs from this submission are:—

“The Australian Workers' Union of Employees, Queensland is by far the biggest Union in Queensland and embraces numerous industries and callings and has obtained the majority of Awards and Industrial Agreements of the Commission. Its large membership would receive the benefit of penalty rates in varying degrees under the provisions of such awards and industrial agreements.

In the light of such circumstances the A.W.U. wishes to emphasise, by this submission, its attitude towards the Inquiry, and its belief that nothing has been placed before the Inquiry to justify any findings that there are changing work patterns which would have any deleterious effect on the various penalty payments prescribed under awards and industrial agreements, or that there are any factors emerging which require any independent review of penalty payments.

In September, 1979, the Union's Senior Industrial Officer, Mr K. Low, addressed the Annual Convention of the Queensland Industrial Relations Society on this very topic of penalty rates. . . . The Union adopts that address in its entirety and submits it to the Inquiry as expressing the views of the Union on the subject of penalty rates generally.”

The 17 page address with 2 appendices headed—*Arbital Authorities and Penalties and Survey of Australian and Overseas Hotel Prices*—reviewed penalty rates operating in overseas countries, relevant I.L.O. Conventions and recommendations and dealt specifically with penalty payments applying in the Tourist and Hospitality Industry.

4.2.8 *Queensland Trades and Labour Council (Submission No. 47 Exhibits 66, 67 and 68)*—

This submission made during the closing stages of the Inquiry referred to various aspects of the submissions made by other parties and went on to say:—

“The union movement regards the various ‘penalty rates’ as basic, long standing, and hard won conditions of employment. They are no more than a fair and reasonable means of recompense to employees for the various factors associated with work at times when the rest of the community is enjoying its leisure.

We do not believe that they are a disincentive to providing more jobs. Indeed we would say that the numbers of people involved from time to time who benefit in one way or another from ‘Penalty Rates’ is a small proportion of the workforce. This is best illustrated by the exhibit tendered by the Electricity Authorities which detailed the percentage of total Wages Bill 78/79 Financial Year for the various Electricity Boards. The Electricity Industry would, we submit, be a good example to take because of its vital services to the community.”

The submission was accompanied by an ACTU research paper on Penalty Rates (26 pages and 2 attachments).

4.2.9 *Queensland Shop Assistants' Union (Submission No. 48 Exhibit 69)*—

This brief submission supported the submissions of other Unions and attached a document comparing penalty rates applying to shop assistants in Queensland to those applying in other States.

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4.2.10 Miscellaneous Workers' Union (Exhibit 70)—

This exhibit is an analysis of selected penalty rates payable in the Hospitality Etc. Industries in 16 Overseas Countries based on responses to information sought from Organisations in 19 Overseas Countries known to have an established Tourist Industry.

4.3 Employer Organisations—

4.3.1 Master Painters, Decorators and Signwriters' Association (Submission No. 5 Exhibit 5)—

This submission referred to the effect of penalty payments on prices, the "pyramid" nature of penalty payments because of the basis of their application. To quote:—

"Time-and-half is one thing, but 'double time-and-a-half' is quite another. . . penalty for, say, four hours work on Saturday is understandable. To accelerate that penalty after only two hours from time-and-a-half to double time is considered inordinate."

The Association "does not oppose the principal of compensation for inconvenience suffered "but considers" that the penalty rates system is in need of review".

4.3.2 Master Plumbers Association of Queensland (Submission No. 6 Exhibit 6)—

This Association "does not reject the philosophy which puts a premium upon work done at considerable social inconvenience to the worker" and expressed concern at "the rate at which penalty payments escalate costs".

4.3.3 Queensland Confederation of Industry Limited (Submission No. 45 Exhibit 64)—

The Confederation is the major employer organisation in Queensland and in its submission has addressed itself to the five terms of reference set out in the Minister's Direction to the Commission.

The submission draws attention to:—

"The evidence given by a number of employers during the sittings in Rockhampton . . . of the undue burden being carried by them and the problems created by the inflexibility of current provisions laid down by awards which may have covered a situation as it existed years ago but hardly fit the bill in the present age of sophistication, increased demand and greater mobility."

and went on to discuss changes which had occurred in traditional working hours, work patterns, employment practices and in the social requirements of the community. The following extracts are relevant:—

"Some alleviation of the penalty rate burden would have several effects. It would enable greater usage of existing machinery and facilities which in turn would lead to greater employment, thus adding to the economy of the country, and would eliminate the surcharge that is often added to the normal cost to provide services outside of what hitherto has been regarded as traditional hours. People are now seeking services at previously unheard of hours. Movie theatres are screening in the middle of the night and on Sundays. People are frequenting restaurants in many cases for longer periods of time and are enjoying quite often some sort of floor show. These sorts of activities lead to a growth in ancillary services, such as transport, to cater for not only the customers but also the staff. It is a strange sort of a situation when restaurants have to be closed on week-ends or public holidays—a period when one would expect the demand to be maximum—because of the cost involved in employing labour under the penalty rates applicable.

. . . the question of penalty rates is of an ongoing nature and it is the Confederation's belief that, because of changes . . . the time is right for a review of the so-called traditional hours of work and the question of penalty rates. The demand for services has changed and the desire or willingness of employees to work hours other than the 8 to 5 Monday to Friday routine is becoming evident."

Continuing in this vein the submission goes on to say:—

"It is the Confederation's belief that the time has come for a re-thinking on the question of penalty rates. The whole pattern of life has changed, not only in relation to working hours, but also in the areas of recreation, demand for better and more extended leisure facilities. Costs have increased, not only due to wages, but also from capital outlay, and an increasing demand can only be met by a better use of existing facilities. This can be done by spreading the money available for business over a greater number of people without any increase in the hours of work.

It is believed that now is the time for consideration to be given to a new approach to the question of the working week and the working days. It is suggested that consideration be given to a working of any five days out of seven. It is appreciated that the days of

demand may vary from industry to industry, but this factor could be taken into account in the structuring of the appropriate award. The choice of any five days would enable the award to be tailored to fit the industry, not the other way round as happens in so many cases.

It is also suggested that the 'hours' clauses would need some attention at the same time. To achieve a result that would be of benefit to industry and the labour force involved, there would necessarily have to be a change of heart in relation to number of hours worked per day as well as the days on which the hours would be worked.

There is no doubt that this suggestion will raise the ire of the union movement, but there is some precedent for it as some awards already do not specify the spread of hours or that the hours must be worked Monday to Friday. All the proposed plan does is to enable new consideration to be given to the exigencies of the particular industry and to formulate awards that fit the developing situation caused by changes in demand for services and the new life-style being adopted by the community in general."

4.3.4 United Graziers' Association (Submission No. 37 Exhibit 56)—

This submission pointed out that employers in Pastoral Industry are principally concerned with penalty payments prescribed in the Shearing Industry Award—State and the Station Hands' Award—State.

The submission discussed the various types of penalty payments and said:—

" . . . that on many pastoral properties total labour costs exceed 50% of all cash costs incurred by the property in any financial year; and that overtime pay and holiday pay often account for up to one-quarter of total labour costs on stations."

The submission listed five factors "justifying a review of penalty payments in the Pastoral Industry" as:—

- (a) the need to counter unemployment generally, and rural unemployment in particular;
- (b) the need to stabilize/reverse the 'urban drift' and conversely, to encourage decentralization;
- (c) to encourage the engagement or replacement employees to fill vacancies created by natural wastage on stations;
- (d) the need to reconsider the merit and equity of penalizing an employer for hours spent in an isolated work camp by employees without opportunity to make alternative use of free time;
- (e) recent changes to the hours of work and overtime provisions applicable to pastoral workers in other States and Territories of the Commonwealth."

In relation to factor (d), the submission said:—

"The working environment and needs of pastoral employers and employees differ in certain material respects from the bulk of industry.

In particular, the pastoral (and other agricultural) industry requires greater flexibility in work hours than manufacturing and service industries etc.

This flexibility needs to be provided for all pastoral workers. The flexibility needs to be provided as follows:—

- (i) in relation to the number of ordinary hours of work per day (for station hands and shearing employees);
- (ii) in relation to the days upon which ordinary hours can be worked without penalty, i.e. Monday to Sunday inclusive (for station hands and shearing employees);
- (iii) in relation to moveable starting and ceasing times to take account of the weather and available light, e.g.—early start in summer, later start in winter (for shearing employees)."

The submission concluded:—

"In essence the Association seeks more flexible, less costly award prescriptions in the belief that such will benefit both employers and employees; it is also believed that such 'softened' prescriptions will definitely assist create employment opportunities in our industry."

4.3.5 Australian Hotels Association (Submission No. 38 Exhibit 57)—

This submission emphasised the incidence of penalty payments in the hotel industry and listed seven reasons why the industry did not believe it possible for penalty rates to be abolished at the present time.

The submission concluded as follows:—

"The Hotel Industry being a 24-hour-day/7-day-week industry obviously has suffered more than most as a result of the penalty rate impact, but being realistic we cannot foresee any significant change being made in the near future.

We will however be seeking through the proper avenues ways and means of alleviating our problems by proposals for changes in work patterns and a greater flexibility in working hours.

We envisage a departure from the rigid 8-hour/5-day week where it is to the mutual benefit of both employer and employee."

4.3.6 Queensland Motel Association (Submission No. 40 Exhibit 59)—

This industry's submission made a call for more flexible working hours and went to the point that the rigidity of an eight hour day failed to acknowledge that on a known slack day that time would be less than gainfully used. Their suggestion was that permanent employees should be able to have their full weekly working hours arranged on a daily basis which permitted perhaps no less than six and no more than ten hours per day to be designed according to known working requirements.

In the light of their requirements to service the public over a wide range of hours, they concluded that if any reduction in normal weekly working hours were to occur under current circumstances there would be further increases in aggregate costs related to penalty rates. They saw it as essential to seek long term arrangements beneficial to both employer and employees which at the same time were able to satisfy the needs of their clientele.

In clear terms the Association did not set out to advocate the abolition of penalty rates. Rather the submissions sought an alternative to the present structure of penalty payments in an industry which was claimed to be traditionally a seven day week industry with the so called "week-end" attracting the bulk of business in that seven day period. The submission recognised that there would continue to be claims for additional payments for work performed outside what are generally considered to be "normal working hours" but urged a more flexible approach to the concept of "normal working hours" in the context of the Motel Industry. They identified week-end penalties as the biggest problem faced by the industry, adding—

"... it is a fact that many motels and restaurants would testify to closing on weekends and public holidays due to the high penalties which are involved, making the industry non-viable on those occasions."

The submission proposed that in any reconsideration of penalty payments a flat monetary amount of penalty deserved consideration as an alternative to the percentage basis which it was claimed had a compounding effect. The Association also failed to see that whatever payment ought to be made for the "inconvenience" of working on a week-end day should produce totally different monetary results as between different categories of employees. In their view a flat rate penalty would overcome the inequality.

4.3.7 Retailers' Association of Queensland (Submission No. 42 Exhibit 61)—

Extracts from this submission are:—

"Many groups tend today to view Penalties in the context in that they were formulated in the first Awards ever made. In the opinion of the Association the taking of such a stand makes no allowances for the changes in lifestyle, Social changes, Technological changes and the needs and requirements of Queenslanders which have taken place in the many years since the making of that first Award.

The Association also has to recognise that Penalties in many instances were formulated on the basis of Agreements between Employers and Unions through the aid of their respective organisations.

To reduce or remove existing penalties and/or prevent the growth of penalties we believe it is a matter for discussion or negotiation between the parties directly involved representing a particular Industry or section of that Industry.

... there are a number of matters which can be construed as Penalties do appear as Section(s) of the Industrial Conciliation and Arbitration Act and it may well be that the State Parliament has as a first step in this Penalty area to decide whether such provisions are maintained or removed thus leaving the matter for consideration and determination by the parties directly involved or the State Industrial Commission."

4.3.8 Australian Sugar Producers' Association (Submission No. 43 Exhibit 62)—

Extracts from this submission are:—

"The penalty payments prescribed by the Awards applying to the sugar industry are matters that have traditionally been the subject of arbitration, from time to time, by this Commission. Further, these penalty payments generally conform to the general standards fixed by this Commission or by the Arbitration Act.

... the sugar industry at this stage does not in the light of prevailing circumstances, to alter *status quo* in respect of penalty payments employees working in the sugar industry. However if there is any change to the Commission's general standards, the industry would expect in the normal course of events that any such change would be reflected in the Awards applying to the sugar industry.

4.4. Tourist Industry Organisations—

4.4.1 Capricorn Tourist Organisation (Submissions No. 4 and 27 Exhibits 4 and 34)—

The Capricorn Tourist Organisation is a subsidiary organisation representing the interests of some 300 business establishments through the area generally known as Central Queensland.

The following extract introduced this submission:—

"It is the opinion of our Organisation that Penalty Rates as presently imposed, are doing irreparable harm to the development of Tourism and will continue to do so until there is modification of Awards, Penalty Rates etc., to provide service continually at competitive costs with other countries.

Prevailing conditions require that operators close facilities on holidays and weekends because of Penalty Rates, with the result that opportunities for work are restricted, Tourists are not provided for and valuable plant and equipment is not being used to its full capacity with resultant unemployment.

It is unrealistic that the conditions of labour should be such that operators are not able to provide employment and facilities on days when their facilities should be in greater demand and the need for service more acute.

In our opinion, it is vitally necessary that rate of pay be on a flat rate basis without loading so that the industry can give continuous and better service and employ sufficient staff to adequately service its requirements."

4.4.2 North-West Queensland Tourist Promotion and Development Association (Submission No. 9 Exhibit 9)—

The Association covers the Local Authority areas of Burke, Cloncurry, Boulia and Winton and the City of Mount Isa.

This nine page submission outlines the tourist potential of North-West Queensland and echoes the views so frequently expressed by tourist interests during this Inquiry about the effect of penalty payments on the availability of facilities to tourists on a seven day per week basis.

4.4.3 Australian Travel Industry Association (Submission No. 20A and 46 Exhibit 65)—

This Association is widely representative of the tourist industry in Queensland and includes in its membership representatives from the Queensland Hotels Association, the Queensland Motel Association, Caravan Parks Association, Restaurant and Caterers Association, Regional Tourist Associations as well as Airline and Bus Carriers.

Referring to the detrimental effect of penalty payments on the Tourist Industry the submission said:—

"There is a limit to which the higher costs involved in penalty rates can be re-couped from the customer and the industry has therefore found it necessary in order to contain its costs, to retrench staff and to terminate or curtail some services. Apart from reducing the services available to the tourist, this has implications for Government revenue in so far as a reduction of revenue from income tax is involved as a consequence."

"Solutions to the problem" were suggested as follows:—

"(a) *More flexible working hours:* Alternatives to the present working hours provisions may be possible by adoption of the following—

- an 80 hour fortnight worked on any five days weekly;
- an increased daily span of hours;
- increased daily hours worked on less than five consecutive days with a resumption of working after 2 days off.

(b) *Flat payments for Penalty work:* Substitution of flat payments for the present percentage compounding of each award increase in respect of work on weekends and public holidays.

(c) *Time off in Lieu:* In lieu of payment, the allowance of time-off for hours worked on days that are currently subject to penalty rate payments.

(d) *The 5/7 Working Week:* Under this system, any five days in seven successive days would be paid for at the same daily rate."

The submission concluded:—

"Due to initiatives taken by the Federal Government in providing incentives to invest in tourist accommodation, there has been a dramatic increase in investment in this sector of the tourist industry.

It will need to be serviced by well-trained and competent staff who see the industry as a career.

The incidence of penalty rates will provide no encouragement to management to move away from the employment of casual staff.

In the long run this will be to the detriment of standards in the industry and will militate against building career opportunities for staff employed."

4.4.4 Toowoomba Tourist and Development Board (Submission No. 22 Exhibit 30)—

The submission is along similar lines to that made by the Australian Travel Industry Association.

4.4.5 Sunshine Coast Tourist Development Board Limited (Submission No. 23 Exhibit 30A)—

This submission merely supported the submission of the Toowoomba Tourist and Development Board.

4.5 Other Organisations—

4.5.1 Nerang and Hinterland Chamber of Commerce and Industry (Submission No. 8 Exhibit 8)—

This submission offered comments under the following headings:—

- (1) Development & Expansion of Service Industries.
- (2) Penalty Rates as They Apply to Traditional Working Hours.
- (3) Reduction of the Number of Persons Unemployed.
- (4) Changing Work Patterns.
- (5) Increasing the Incomes of Sections of the Community."

and recommended that "penalty rates" should be abolished.

4.5.2 Australian Federation of Business and Professional Women's Clubs (Submissions No. 11, 35 and 41 Exhibits 11, 42 and 60)—

Two of the submissions tendered referred to the Hotel/Motel Accommodation Industry and summarised as follows:—

"Restructuring wage rates to meet present day conditions would:—

- (a) Enable employers to offer more jobs.
- (b) Provide employment for workers who want a part time job or a job outside hours regarded as 'standard'.
- (c) Attract more customers because service would be better and charges could be lower. Some organisations cannot afford to hold a conference during weekend periods."

The third submission suggested 'time off' in lieu of weekend penalty payments.

4.5.3 Brisbane Chamber of Commerce (Submission No. 18 Exhibit 21)—

This submission titled "Some Aspects of Penalty Rates" said *inter alia*:—

"Despite the fact that penalty rates may largely be the result of a different and superseded employment situation, it must be realised that penalty rates are already very much integrated with our wage structure generally. As a result, it is difficult to countenance any agreement involving removal of benefits already available to employees, irrespective of the justification for same, and regardless of the economic circumstances in which they accrued. In considering possible changes in this penalty rate situation, greater regard should therefore be had for what might be negotiated and can happen, than what we would like to happen, no matter how desirable.

The basic principle of penalty rates for temporary conditions, shift work, casual work, night work, work on statutory holidays, overtime, physical and domestic disruption, etc., remains tenable and additional recompense will continue to be required but the future should see a degree of limitation imposed upon any increases.

A substantial contribution in dealing with this problem would appear to lie in acceptance of a 'standard hours for an industry/business' concept, with the adoption of a new but flexible attitude towards work hours.

The approach via a more liberal view of standard weekly hours for an industry concept with flexible hours and no removal of existing benefits is one that ought to open the way for long overdue and much needed negotiation."

4.5.4 Voluntary Care Associations (Submission No. 20 Exhibit 27)—

The Voluntary Care Association (Qld) is a body which brings together organisations from the religious and charitable field who are involved in the care of the aged and disabled in Queensland.

Members of this Association employ nursing, paramedical, clerical and domestic staff who are covered by Awards of the Commission. The submission offered the following proposal:—

"In the field of care of the aged and disabled it is recognised that the work involves a staff on a 24-hour-a-day seven-days-a-week basis. This caring cannot stop on public holidays or at any other time. Employees entering into this work are well aware that the possibility of working at night or at week-ends or public holidays is part of their employment . . .

The Voluntary Care Association acknowledges that some inconvenience is caused to staff who work other than the 'normal' span of work hours, i.e. day shifts from Monday to Friday.

The Hospital Nurses' Award—State provides for a shift penalty for staff working evenings and night shifts from Monday to Friday. We believe that this penalty at this present rate provides reasonable compensation for staff rostered to work at these times. It is our contention that payment for work on week-ends and public holidays should be based on this shift penalty rather than a loading on the normal hourly rate.

We suggest therefore that payment for work outside normal working hours for staff employed in our sphere should be as follows:—

1. Evening and night shifts during week days—Single shift penalty;
2. Day shifts on week-ends—Single shift penalty;
3. Evening and night shifts on week-ends—Double shift penalty;
4. Day shifts on public holidays—Double shift penalty;
5. Evening and night shifts on public holidays—Triple shift penalty."

4.6 Personal—

Three individual submissions were received from:—

4.6.1 Mr H. A. Cossey, Nerang, who also appeared at the Southport hearing on 20th November, 1979, outlined a radical change expressed as follows:—

"Let every day be an equal working day, if necessary simply numbered from one to 365 or 366, and the doing away with public holidays.

The work force can then do three days work and three days rest, with possibly five weeks holiday a year. The extra week to compensate for the loss of Easter and Christmas etc.

In this way all shops, public utilities, post offices, banks, schools, council offices etc. can be open every day. It means a two shift of employees working the equivalent of a thirty-five hour week."

4.6.2 Mr A. J. Willis, Coorparoo, in his five page submission made it clear that:—

"The comments contained in this document are entirely personal ones and are not intended to represent the views of my company nor the views of any of the employer or other business organisations with whom I am associated."

He made seven recommendations. Two of these are:—

"A new system should be created in respect to what in the past has been termed 'Overtime penalties' and a new approach taken in defining 'working hours'.

This demands two basic changes:—

- (a) The elimination of Saturday and Sunday as days which differ from the other days of the week.
- (b) A much wider spread of permitted working hours than exist in present awards.

To provide appropriate leisure periods there would still remain a need to define in awards the normal working days. However, there should be a high degree of flexibility appropriate to the particular industry. For example, the tourist, catering and entertainment industries should have alternative days which are regarded as the leisure days for the purpose of calculating working days and hours.

It should also be possible to incorporate more than one type of alternative leisure days within a particular industry or award where it forms a significant part of the operation.

The spread of working hours should also allow employees within the same premises to start and finish at different times but still be within 'normal working hours'.

It should be an accepted principle that in certain circumstances what is now termed overtime can be adjusted by paid time off. For example where the need for overtime has been previously notified this could be adjusted by alternative time off provided the employee has the right to accumulate time so that it does not have to be taken, unless he wishes, in amounts of less than one whole working day or could be added to holidays."

4.6.3 *Mr C. F. Wall*, Townsville, made the following point:—

"... penalty rates should be done away with and a system instituted whereby basically a person could work the minimum number of hours per week on whatever days of the week are agreed between that person and his employer, regardless of whether two of those days are a Saturday or a Sunday, and regardless also of whether the working hours are outside the present normal range of say 9 a.m. to 5 p.m.

"... penalty rates are the cause of higher costs and prices in many areas. The Hotel and Tourism Industries are particularly affected. Further, it is my opinion that if penalty rates were done away with, additional avenues of employment would be open. I know that a number of businesses, including hotels, do not open on Sundays because of penalty rates and consequent higher wages."

In Townsville on 27th May, 1980, oral submissions were made by:—

4.6.4 *Mrs Battle* of the Norgate Cafeteria who operates a cafe associated with a 24 hour Service Station, told the inquiry that:—

"... particularly on public holidays, Saturdays and Sundays, it is not profitable to us to operate that cafe. I acknowledge and realise that there has to be some type of penalty rate."

4.6.5 *Mr F. L. Buckman*, District Secretary, Australian Workers' Union, who expressed similar views to those contained in Submission No. 44, summarised earlier in this Report.

4.6.6 *Mr F. L. Lewis* of F. & C. Lewis Holdings, Electrical Engineers, of Innisfail, who traversed the incidence of penalty payments in the cost of maintenance and repair of electrical equipment with particular reference to emergency breakdowns services which involve call-out of employees outside ordinary working hours.

In Rockhampton submissions were made by:—

4.6.7 *Mr N. M. Craig* for Godwins Associated Companies relating to the Hotel and Motel Divisions of that Company (Submission No. 26 Exhibit 33).

The submission dealt in some detail with costs arising from penalty payments, their effect on tariff charges, and the change from permanent to casual employment, which has occurred. The submission suggests:—

"An initial move towards making penalties a flat monetary rate instead of a percentage rate would be an advantage.

Greater flexibility in the spread of hours in recognition of current industry demands is overdue.

The present *part-time employee* conditions of employment are too restrictive to both the motel and hotel awards. Changes in this area would be an acceptable improvement."

4.6.8 *Mr D. Sinclair*, Tourist Promotion Officer of the Capricorn Tourist Organisation.

4.6.9 *Mrs P. J. Young*, who operates Bus Services to Yeppoon, Emu Park and Mount Morgan (Submission No. 28 Exhibit 35) considered that a wider spread of ordinary working hours was desirable before penalty rates applied. She also felt the penalties for Saturday and Sunday substantially added to trip costs for services provided on those days. She added:—

"Another factor arises in 'Special Hiring'. If a casual driver is used and the employment is for less than four hours he is paid for four hours, but if longer he is paid for eight hours. This increases the cost of chartering a bus considerably if a trip is say five hours, which in turn increases the possibility of a bus not being used because of a disproportionately higher charge. Our recommendation is for a minimum of four hours pay with half hour rests for additional time worked."

and concluded—

"Our plea is for flexibility in working patterns to permit the provision of services when required by the community at acceptable charges. Every day of the week's seven days should be treated equally so far

as pay and working conditions are concerned. Casual rates at 19% on ordinary rates are soundly based when measured against ordinary rates plus provision for holidays and the like."

4.6.10 *Mr R. MacFarlane*, General Manager, James Stewart and Co. Pty. Ltd. outlined in some detail the incidence of penalty payments in the retailing industry and particularly referred to additional payments prescribed for work on late shopping nights and Saturday mornings. He stressed the cost effects on employment opportunity for junior employees.

4.6.11 *Mr D. Knight* of Chevron Dry Cleaners and Rockhampton Steam Laundry—the only commercial laundries in Rockhampton—detailed the costs of penalty payments—overtime, weekend and public holidays—in the laundry industry and submitted two recommendations as follows:—

"If the daily spread of hours were varied to between 6 a.m. and 8 p.m. it would enable us to stagger the starting and finishing times of staff, in keeping with work flow and customer demands.

Ideally, being the service industry that we are, oriented towards those community facilities which operate seven days a week, removal entirely of penalty impositions for work performed during weekends would undoubtedly lower costs and contain prices, improve profitability and create opportunity for further employment—in effect, to work any five days out of seven on a 40-hour basis, not exceeding eight in any one day."

4.6.12 *Mr L. G. Duthie*, Managing Director, Duthies Leichardt Hotel, employing in excess of 100 staff, emphasised the cost factors involved in the 50 per cent loading to casual staff. He recommended amongst other things—a reduction in the casual loading and a spread of hours to encompass holiday and weekend periods.

4.6.13 *Mrs S. M. Ford* of the Wagon Wheel Restaurant, Gladstone Road, which trades from 7 a.m. to 9 p.m. seven days per week. Mrs Ford pointed out the effects of penalty rates on restricted service to the public on weekends and on public holidays.

In appearing before the Inquiry, she advised that—

"Our wages are also a 50 per cent penalty rate. We pay \$5.78, close to \$6 an hour, to our casual girls. We have 15 casual girls working in the restaurant who are mostly married ones relying on their wages to keep their house going. Unlike the hotel industry, we have to employ the girls on a minimum of four hours a shift. This is very inconvenient and very costly to us, mainly because at peak hours, which is from 6 o'clock at night, say, till 8 o'clock, we need more staff. We find that we can't have more staff because I have got to pay the girls from 6 o'clock till 10 o'clock. If we could have a minimum of two hours in which the girls would work for a minimum of two hours quite happily, we find that we could give better service, and if we didn't have the 50 per cent penalty rates from Monday to Saturday, 100 per cent on Sunday and 150 per cent on public holidays, we would be able to employ more staff and give cheaper meals."

Her written submission concluded as follows:—

"The public expect and are encouraged to expect, full service on every day of the week—they regard every day as the same. Why can't we employers be permitted to treat every day as the same in staffing. I recommend every day of the week be treated the same with no penalties for any day—to work five days out of seven with two consecutive days off, an extra day off when a statutory holiday is worked, a forty-hour week with no more than eight hours in any one day except by the payment of overtime, and a casual loading of 19%.

All facilities would be used more productively, more trade would be generated by lower prices and better service at all hours, and so more employment—and above all, the small business operator would get some reasonable leisure because more staff could be employed, which in turn would encourage the small business person to carry on and to expand; and remove the temptation for him/her to become an employee rather than an employer."

Three submissions, referring mainly to increased costs related to extended retail trading hours—late night shopping—were made by:—

4.6.14 *Mr R. Millroy*, of James Millroy Pty. Ltd.;

Mr V. N. Sisley, Managing Director, Sisley & Sons, Stationers;

Mr G. V. Stevens, Manager, Finches Hardware Pty. Ltd.

4.7 Barrier Reef Islands—

At the request of Mr Coneybeer, the Commission visited three Barrier Reef Island resorts between 1st July, 1980 and 4th July, 1980.

The Commission was accompanied throughout the visit by—

Mr F. C. Bermingham, for the Minister for Labour Relations;

Mr J. P. Coneybeer, with him Mr Foyle for the Barrier Reef Islands;

Mr L. Behm, for the Queensland Confederation of Industry Limited, Union of Employers;

Mr R. White, for the Federated Miscellaneous Workers' Union and the Federated Liquor and Allied Industries Union,

and at Heron Island by Mr R. Slater for The Australian Workers' Union and at Hayman and Long Islands by Mr F. L. Buckman for The Australian Workers' Union.

Inspections were made of the various resort facilities, informal discussions were held with numerous employees and sworn evidence was given at formal hearings by:—

At Heron Island—

Mr T. O. Stratten, Island Manager,

Mr A. J. Stringfellow, Director, Heron Island Pty. Ltd. who is also responsible for Management of P. & O. Island resort operations including Heron and Lindeman Islands.

At Hayman Island—

Mr A. A. Maestracci, Manager of Hayman Island.

At Long Island—

Mr J. H. Mounthey, Resort Manager, Happy Bay.

The transcript records of these hearings covers 140 pages and is a detailed and comprehensive account of all the aspects of employment at these island resorts relevant to the terms of reference of this Inquiry.

The evidence was subject to considerable cross-examination by both the other parties and members of the Commission. It would be difficult to attempt to summarise the volume of this evidence in any clear and complete manner and it is not proposed to do so.

However, it is pertinent to repeat in this report some extracts from the opening submissions of Mr Coneybeer which set a reasonably adequate picture of life and employment on an Island Tourist Resort.

Mr Coneybeer described the "Island" industry in these terms:—

"It is an industry removed from the daily life of most Queenslanders and, indeed, most Australians. It is an industry where life and work, including relaxation are intermingled and happily so from everybody's standpoint.

- an industry where only a few employees are following their normal occupation and where they are, such is more likely to be by accident rather than design, or something which has come about after the person has taken up employment on an island.
- an industry which is quite extraordinary and that even in days of widespread, extreme labour shortages, it is constantly overwhelmed with people seeking employment.
- an industry which is in some ways comparable with hotel and motel industries, which is part of the hospitality industry, yet in all its facets it is totally different. It has little, or no passing trade.
- an industry much different which to remain viable requires an extraordinary high occupancy rate, whereas an occupancy rate of a mainland hotel of say 75 per cent would present utter joy to the management, it would mean disaster to an island. Our ratings must be in the order of 100 per cent, or at least in the 90 per cents.
- an industry which by lack of educational facilities is extremely restrictive to the employment of married people.
- an industry which has no access to casual labour, the backbone, I would suggest, for staffing the mainland hotels.
- an industry where every day is just but another day. The Saturdays, Sundays and statutory holidays are no different from the guests' point of view, from the employees' point of view.
- an industry where you have the peculiar circumstances of employees often expressing a preference to be off duty on a week day with no displeasure for working at weekends.

- an industry where many employees are useful people out to see the world, to save money, and 'to get away from it all', to get away from the rigidity of regulated city life, a situation where many see it as quite satisfactory and indeed to their own benefit to work early in the morning, to be off duty for many hours during the week-days, having fun following their own pursuits, and on duty again on the evening.
- an industry where broken shifts are seen as advantageous and as a total absence of the abhorrence one finds amongst city people towards carrying out one's days work in several periods, or broken shifts."

At each of the islands at which evidence was taken questions were directed to endeavour to establish the effects of penalty rates on total labour costs and on the tariff scale.

Summarised, the position as to Heron Island based on figures taken out in 1977 was said to be that "... something like 15 per cent of our total labour costs are accounted for by those week-end penalty rates and those bar penalties". When related to (occupied) bed nights as a unit of measure that element of cost represented something in the order of \$2 per unit.

At Hayman Island total labour costs were expressed as 30 per cent of each revenue \$1, and in an overall sense penalty rates represented 15.04 per cent of the wages bill. That element of cost had not been reduced to a bed night basis.

At Happy Bay penalty rates were assessed at 15.66 per cent of gross wages. It was calculated that these costs again represented approximately \$2 per day when related to the resort's client capacity.

Questionnaire—Leisure Industry Services—

In July, 1980, a Survey was conducted conjointly by Island Management among employees of various Queensland island resorts.

The resorts covered were:—

- Heron Island,
- Lindeman Island,
- Dunk Island,
- Great Keppel Island,
- Brampton Island,
- South Molle Island,
- Brampton Island.

The objectives of the survey were stated to be:—

"... to assess the attitudes of employees to working hours and leisure hours that operate on the varying island resorts, so as to give island managements broader insights into policy areas of working hours, recreation, and leave to the mainland—but especially so in the context of the enquiry of the State Industrial Commission into penalty rates payable to employees of island resorts."

The Survey was made by questionnaires distributed to employees at the named resorts which contain 11 principal questions—question 3 of which contained 8 separate questions.

At the final hearing of the Inquiry Mr Coneybeer called evidence from Mr P. J. Lynch, Corporate Planning and Development Manager for P. & O. Australia Ltd, who prepared a detailed written report on the survey (Exhibit 71). Mr Lynch's evidence went to explaining interpretations which could be applied to the tabulated result.

The questionnaires were tabulated by computer and an analysis is contained in Exhibit 55. Of the 11 questions included in the questionnaire only three appear to be directly relevant to the penalty payments included in the scope of this Inquiry, namely:—

- Weekend—Saturday and Sunday work;
- Work over an extended spread of hours.

The questions asked, the nature of the response requested and the recorded responses by the 343 employees who completed the questionnaires are:—

"(f) Living on an island, one day of the week is much the same as any other day of the week:

	1	2	3	4	5		
	Agree Strongly	Agree		Disagree	Disagree Strongly		
	Response					Number	Percentage
Agree strongly	95	27.7
Agree	181	52.8
						11	3.2
Disagree	38	11.1
Disagree strongly	17	5.0
No answer	1	0.3
Total	343	100.0

(h) Working part of the day around breakfast time and part in the evening is good because it allows me to spend my free time in the sunshine:

	1	2	3	4	5
Agree Strongly		Agree		Disagree	Disagree Strongly
	Response				Percentage
Agree strongly	..	..	..	33	9.6
Agree	..	..	..	116	33.8
				70	20.4
Disagree	..	..	..	52	15.2
Disagree strongly	..	..	..	19	5.5
No answer	..	..	..	53	15.5
Total	..	..	..	343	100.0

(a) When you get time off work (two days per week for most people) what is your usual preference for the two days you take off?

(specify two particular days here or circle number 2 or 3)

	1	2	3	Number	Percentage
No answer	49	14.3
Don't care	86	25.1
It varies	93	27.1
Saturday and Sunday	23	6.7
Saturday and any weekday	11	3.2
Sunday and any weekday	10	2.9
Any two week days	63	18.4
				8	2.3
Total	343	100.0

In his final submission to the Inquiry, Mr Coneybeer reviewed the evidence given during the visit to the three islands resorts. As well, he referred the Inquiry to a 1975 Report on Tourist Accommodation by the Industries Assistance Commission, an extract from which reads:—

"The Committee, whilst recognising that wages and conditions are determined within the framework of an established industrial system which includes the Arbitration Commission, concludes that—

(a) The present wages conditions in the tourist industry provide a positive competitive disadvantage to the Australian tourist industry, *vis-a-vis* other countries and

(b) The present penalty rates structure prejudices employment opportunities in the industry"

He also referred the Inquiry to the Final Report of the House of Representatives Select Committee on Tourism of October, 1978 (Exhibit 73), an extract from which reads:—

" . . . The Committee believes that it is now appropriate to re-consider the whole question of penalty rates, working conditions, whether there are unsocial hours of work and if so, whether unsocial hours deserve penalty payments The Committee while acknowledging that neither it nor the Parliament has a role in the determination of wages, considers that the present arrangement regarding penalty rates is of crucial importance to the tourist industry. It was suggested to the Committee that labour costs in Australian accommodation resorts are 15 per cent higher than those in U.S.A. and significantly higher than those in the Pacific region"

Mr Coneybeer went on to say:—

"The island tourist resort industry is, to repeat words I said earlier (at p. 298), a unique industry, physically removed from the social considerations which inescapably dominate and shape the lives and habits of most Australians, which considerations society properly and fairly says must be preserved for all who live in its midst and for whom there has been developed a vast network of special industrial regulation to achieve just that.

The nation has devised a system of penalty rates which sets out to discourage an employer from working broken shifts, working into the night, working on weekends and from working on public holidays. It has done this because to so work interferes with the established custom and habit of people living in our mainland society. On an island resort these established habits do not generally obtain. There is thus not the sanction to try to prohibit or deter such work. From an employee point of view there is not the same compensatory justification."

and

"We are firm in our view that objectivity can lead only to the Commission reporting to the Minister that within the Barrier Reef Island resort industry there

are factors emerging which require a review of penalty rates. One does not have to emphasise, having had the benefit of inspections, that time on an island has not the same significance as it has elsewhere. The evidence disclosed that people working on an island accept and indeed reach out for things which are abhorrent and quite unacceptable on the mainland. I have made the point of employees themselves receiving significantly different pay cheques in the same week because of the occurrence of a statutory holiday or the days upon which work was performed. You have evidence that it is seen as unreal by employees and is a cause of dissatisfaction.

I have made the point that 'review' does not implicitly involve a reduction in pay—it means to us a change in the scheme of things so that it becomes one more fitting to the circumstances. I have not put any proposals as to the precise terms of what should be done, for the Tribunal sits in this matter as an inquiry and not as an arbitral authority. I said that we are concerned in the main with Saturday and Sunday rates to some extent with work on statutory holidays and the penalty rates which arise by the spread of hours limitations. We are concerned with anomalous situations in the bar *vis-a-vis* other employees, particularly the differing Sunday rates. We have raised no question in regard to conventional overtime rates.

... it would be my respectful submission that this inquiry would find it difficult to reach the unqualified view that a tourist resort on an isolated island should necessarily have applied to it the same purposeful code as has been designed to reward employees for certain disadvantages or to deter work being carried on at times generally seen as undesirable by reason of the accepted social habits of a complex but orderly mainland society."

and

"What the island resort industry wants is a serious exercise with the unions, where an element of free thinking applies.

... One would want a level of realism on the part of the unions which involves their acknowledging that given the distinguished style of business, our different pattern of life and work, they can with sense and safety distinguish the Barrier Reef Islands. Once we can get that far, we will have made a step towards a confidence in the industry and one must say greater security in employment. Policy attitudes however now stand in the way and, dependent to some large extent on the Commission's report in this matter, rest the questions of whether the island managements and the unions will be persuaded to join in a realistic exercise to try to solve the frustrations our current industrial relations code brings about."

SECTION 5—PART TIME AND CASUAL WORK:

Little or no reference has been made to part time work during this Inquiry. Provision is made in some Awards for part time work e.g. Shop Assistants (General) Award—Southern Division defines part time employee as—

"an employee who is engaged as such and who is employed for not less than twenty (20) hours per week and not more than thirty-two (32) hours per week."

and prescribes payment at the minimum hourly rate and a *pro rata* entitlement to holiday pay, sick leave and long service leave and payment for public holidays. No penalty payment is involved.

The same Award defines casual employee as—

"an employee who is engaged as such and who is employed for not more than twenty-four (24) hours in any one week."

and prescribes payment calculated at one-fortieth (1/40) of the appropriate weekly wage plus a loading of 25 per cent. Such loadings are not in the nature of a penalty payment providing a deterrent to an employer but as compensation to the employee in lieu of benefits usually available to full-time employees e.g. holiday leave, sick leave etc.

Definitions of casual employee and the method of loading vary between Awards e.g. percentage loading on the hourly rate, fixed hourly rate or additional payment per hour.

As with part time employees, the employment of casual employees suits the particular requirements or convenience of many employers particularly in the hospitality industry and service industries such as retailing.

However, the loading for casual employees varies from the standard 19 per cent fixed by a general ruling of this Commission and which applies in the majority of its Awards to as high as 50 per cent in Awards covering boarding houses, hotels, cafes and restaurants.

Some of these loadings have their origin in agreements often in an era when the incidence of casual work was far less

Submission No. 13 from the Department of Labour Relations deals extensively with casual loading. Extracts from this submission illustrate the effect:—

"13.7. Growing concern has been expressed as regards casual rates for ordinary hours worked on a Statutory Holiday and this concern may well seem to be justified when one considers the three more common loadings applicable on Statutory Holidays are 150%, 197½% and 275% over and above the ordinary hourly rate for a weekly worker.

13.8. However, these loadings are further fluctuated for overtime worked on an ordinary day and on a Statutory Holiday. On an ordinary day, generally overtime by a casual is paid for at time and a-half on the casual rate for the first 3 hours and then at double the casual rate. Likewise, on a Statutory Holiday a casual is paid overtime for work in excess of 8 hours or outside the ordinary working hours at double the rate usually paid for overtime on an ordinary day. Taking the casual who normally has a 50% loading as an example, he would receive the equivalent of the ordinary hourly rate for a weekly employee multiplied by 4½ for the first 3 hours overtime and then multiplied by 6.

13.10. Accepting that casual employees are entitled to a loading as compensation for lack of regular employment, can it be said that they are entitled to expand this loading by application of overtime rate principles on ordinary days and on Statutory Holidays?"

and pose a question which is similar to that discussed during the Rockhampton hearing:—

"13.11. Why should the casual rate for a woman cutting up tomatoes for a few hours on a Statutory Holiday be two and a-half times the rate for performing the same work on an ordinary day Monday to Sunday inclusive?"

SECTION 6—CONCLUSION:

6.1 *The Nature of Penalty Payments—*

It is difficult to define the nature of penalty payments. The meaning of "penalty" in the Concise Oxford Dictionary is "punishment, (payment of) sum of money for breach of law, rule or contract".

The modern understanding and application of award provisions that prescribe additional payments in specified circumstances would not suggest a breach unless the award provision was ignored.

The Inquiry has been told that the term "penalty payments" is "no more than a common industrial colloquialism—coined decades ago". Information before the Inquiry suggests that penalty payments have two basic factors—compensation to employees for disability or inconvenience arising from the time of day or day of week on which they are required to work—and a deterrent to employers who require employees to work at times or on days regarded as being outside the prescribed times of ordinary working hours or beyond what are regarded as ordinary working days.

In examining the penalty payments listed in paragraph 5 of our Interim Statement—Scope of Inquiry (102 Q.G.I.G. 25-6) it is reasonable to conclude that having regard to the additional cost involved, employers require employees to work in the first ten of the stated situations because such work is essential to the particular operation concerned—e.g. railway operations on Saturday and Sunday. In all these situations the penalty payment is principally compensatory.

6.2 *The Extent of Penalty Payments Made to Various Sectors of the Work Force—*

Penalty payments extend over and have application to all employees covered by the awards of this Commission. Section 14 (1) of the Industrial Conciliation and Arbitration Act provides that every award shall be deemed to contain provisions relating to Overtime Section 14 (1) (c) and work on Public and Statutory Holidays Section 14 (3).

Provisions relating to each of the eight other areas listed in paragraph 5 of our Interim Statement—Scope of Inquiry, are contained in the majority of Awards of this Commission. The range of coverage of these areas varies according to the nature of the industry and/or callings to which the Award applies.

Some specific information, expressed as a percentage of total wage and salary costs, of the cost of penalty payments was contained in submissions No. 14—Public Service Board, No. 15—Railway Department, No. 19—Electricity Supply Industry and No. 37—United Graziers' Association. Estimates between 15 per cent and 18 per cent on ordinary wages made by parties representing the tourist and hospitality industry were also given (page 484 of transcript).

Submission No. 45—Confederation of Industry—provided some figures of penalty payments due based on a hypothetical working situation, to employees covered by the Clerks' and Switchboard Attendants' Award—State.

However, the information before the Inquiry is not sufficient to allow a considered conclusion as to the extent of payments made to other sectors of the workforce.

6.3 *The Relationship of Penalty Payments to Traditional Working Hours—*

Traditional working hours have been defined for us as eight hours each day from Monday to Friday—ordinary working hours between specified or recognised starting and ceasing times.

The following penalty payments as listed in our Interim Statement—Scope of Inquiry directly relate to these traditional working hours:—

"Work during standard hours—

Weekend—Saturday and Sunday—work;
Work on public and statutory holidays;
Work requiring early start;
Night work;
Work over extended spread of hours;
Shift work;

Work outside standard hours—

Overtime;
Work during recognised meal break."

During this Inquiry argument has been put that:—

- Traditional working hours are changing because of changed public requirements for services and that "the time is right for a review of the so called traditional hours of work";
- The eight hour day Monday to Friday is no longer appropriate to the public requirements of certain industries—e.g. hospitality and tourist—particularly Barrier Reef Islands.

However, a number of service industries e.g. railway, electricity supply operate 24 hours each day and 7 days each week and it is accepted that work outside the Monday to Friday spread which attracts penalty payments is essential and will continue to be so, in the public interest.

6.4 *The effect that Changing Work Patterns might have on Various Penalty Payments—*

Submissions made indicate that with the advent of shorter working hours—the 9 day fortnight, introduction of flexi-time practices and the growth in part-time and casual employment in some industries, certain changes are occurring in work patterns. However, in our view, the traditional Monday to Friday working week and the traditional Saturday and Sunday weekends remains the normal pattern of the majority of employees.

Such changes as are occurring or which may occur in the near future are not likely to have any significant effect on various penalty payments except as to the prospect of shorter working hours. Maintenance of existing services in the face of a reduction in ordinary working hours in any industry will result in penalty payments being applied to an increasing proportion of the aggregate working/service hours.

6.5 *Whether there are Factors Emerging which Require a Review of Penalty Payments—*

As to factors emerging which require a review of penalty rates, a number of submissions by employer organisations have already been summarised in this Report and it is not proposed to repeat them.

The main thrust of their argument has been in relation to the hospitality and tourist industry which have not sought the abolition of penalty rates. Rather they urge greater flexibility as to working hours in general including the spread of hours both over days of the week and on each day with variability as to the duration of ordinary hours each day. Additionally flat rate monetary loadings were seen by those interests as equitable as between the recipient employees and a valid alternative to percentage loadings which it was claimed had a compounding effect.

In discussing whether penalty payments require to be reviewed, consideration must be given to how they would be reviewed.

Penalty payments have been established by:—

- (a) consent agreement between parties to Awards and Industrial Agreements;
- (b) determinations by industrial tribunals; and
- (c) industrial legislation.

Given that the views expressed by union representatives at this Inquiry maintain, there appears little prospect of parties reaching agreement on changes to existing penalty payments, unless alternative proposals are attractive enough to encourage acceptance.

It is of course open to any party to apply to the Commission to vary award provisions but action of the Barrier Reef Island employers in withdrawing their two applications may not encourage further essays through this channel. As in a number of instances common provisions exist as between Federal and State Awards, employers and their organisations generally may not consider it prudent to pursue re-consideration of existing policies in isolation in one State.

Nothing that has been put before us by any party at this Inquiry suggests that at this stage legislative changes are needed in relation to penalty payments.

As to the Barrier Reef Islands sector of the tourist industry, the position is quite different both in respect to work patterns and factors emerging. By contrast with the mainland, each of the islands visited is a relatively isolated community where the work patterns of employees are dictated by the peculiar local needs of providing services to a distinctive group—tourists. Although we were physically present on the island during traditional week days i.e. between Monday and Friday the inescapable impression based on what we saw and heard, is that insofar as the available events and activities are concerned (and the alternatives to those for non-participants) each day of the week is basically the same—the only significant difference is that work on a Saturday, Sunday or public holiday attracts higher earnings.

Evidence during the visit to the Barrier Reef Islands indicated that weekend penalty rates were the major penalty payments with which they were concerned.

During his final address to the Inquiry Mr Coneybeer referred to proceedings in this Commission in 1968 relating to an application on behalf of employers in the Barrier Reef Islands Group for a separate Award covering the various island resorts. This application was later withdrawn by the employers.

An application to vary the Hotel and Liquor Industry Award—State (Excluding South East Queensland) made by employers in the Barrier Reef Islands group was the subject of an Interim Decision of this Commission on 10th September, 1976 (93 Q.G.I.G. 95-100).

This decision relates proposals for an alternative method of payment in substitution for weekend penalty rates. The application was withdrawn by employers in February, 1977.

It would appear therefore that employers in this area have, for their own reasons, twice chosen not to proceed with applications apparently designed to overcome what they consider are difficulties with weekend penalty rates.

The Island Resorts saw themselves as distinctly different from the circumstances prevailing on the mainland and without doubt the traditional week-end leisure and organised sporting activities of the mainland are not available at Island Resorts. The call to have week-end penalty rates reconsidered is understandable from the viewpoint of those resorts which are more distant from and with limited access to the mainland. These are of course examples of island resorts in close proximity to the mainland and undoubtedly in competition with mainland resorts catering also for tourists.

Nevertheless we believe there is merit in the parties to the Barrier Reef Island Resorts conferring in an effort to negotiate an acceptable alternative to the existing penalty rates structure.

6.6 General—

As will be seen from the record of appearances and submissions, interest in the Inquiry, whilst reasonably high at the commencement of the proceedings waned appreciably.

Little interest came from provincial centres, hearings were arranged at Southport (1 submission), Toowoomba (1 submission), Townsville (3 submissions) and Rockhampton (11 submissions).

The Inquiry was, in its early stages, mistakenly considered by many Union groups and some Union representatives as directed to the variation of or abolition of existing penalty payments (see Appendix "D"). In its Interim Statement—Scope of Inquiry the Commission said:—

"Though it should be unnecessary to do so, we repeat that the Commission is not considering claims for Award variations. It is required to report upon penalty payments and the submissions and viewpoints expressed at the inquiry will we expect provide a balance which can be reflected in our report."

Viewed generally the Inquiry has achieved little other than creating a record of views of various parties on some aspects relating to the subject of the Inquiry. Some of this record may be useful to people in the industrial arena for reference purposes.

To meet the requests of interested parties that evidence be taken at the various locations specified in Exhibit "C", it became necessary to arrange travel and ancillary arrangements which required the full co-operation of all parties.

We express our appreciation for the valued assistance in that regard. As well we record our thanks for the capable efforts of officers of the Court Reporting Bureau in the compilation of the transcript of proceedings.

Dated at Brisbane, this fifth day of October, 1981.

A. GIBSON.
D. R. BIRCH.
L. N. LEDLIE.

APPENDIX "A"

INDUSTRIAL CONCILIATION AND ARBITRATION COMMISSION OF QUEENSLAND

No. B274 of 1979

Inquiry into penalty rates with particular regard to—

- (i) the nature of penalty payments;
- (ii) the extent of payments made to various sectors of the work force;
- (iii) the relationship of penalty payments to traditional working hours;
- (iv) the effect that changing work patterns might have on various penalty payments;
- (v) whether there are factors emerging which require a review of penalty payments.

NOTICE is hereby given that a Full Bench of the Industrial Conciliation and Arbitration Commission of Queensland will hold an inquiry into the above matter commencing with a preliminary hearing at a public Sitting of the Commission at 4th Floor, 202 Adelaide Street, Brisbane, on Thursday, 19th July, 1979, at 10 o'clock in the forenoon for the purpose of taking appearances, and thereafter at Brisbane and such other places as may be determined.

Persons or organisations wishing to seek leave to be represented are requested to notify the Registrar as soon as possible.

Only those persons or organisations wishing to be represented need attend on 19th July, 1979.

Interested persons or organisations are invited to make full written submissions and to indicate to the Registrar whether it is desired that such person or organisation be given the opportunity of appearing before the Commission at some subsequent date. Those who wish to be heard in furtherance of a written submission will be notified in due course of the date and place on which they will be heard.

The date, place and time of the commencement of hearing of submissions will be notified at the preliminary hearing.

All communications and written submissions should be addressed to the Registrar, Industrial Conciliation and Arbitration Commission of Queensland, G.P.O. Box 373, Brisbane, 4001 (4th Floor, State Government Building, 202 Adelaide Street, Brisbane, 4000). Telephone 229 3558.

The above public notice was advertised in the following newspapers on the dates shown:—

Sunday Mail	8th July, 1979.
Sunday Sun	8th July, 1979.
Courier-Mail	5th July, 1979.
Brisbane Telegraph	5th July, 1979.
Townsville Bulletin	6th July, 1979.
Toowoomba Chronicle	6th July, 1979.
Cairns Post	6th July, 1979.
Rockhampton Bulletin	6th July, 1979.
North West Star Mount Isa	6th July, 1979.
Mackay Mercury	6th July, 1979.
Bundaberg News Mail	6th July, 1979.
Maryborough Chronicle	6th July, 1979.
Gold Coast Bulletin	6th July, 1979.

Similar public notices were also advertised in the following newspapers on the dates shown:—

Gold Coast Bulletin	27th October, 1979.
Toowoomba Chronicle	27th October, 1979.
Townsville Bulletin	19th April, 1980.
Rockhampton Bulletin	19th April, 1980.
Telegraph	16th January, 1981.
Courier Mail	17th January, 1981.

SCHEDULE OF SUBMISSIONS RECEIVED

Submission Number	Name	Address	Date Received	Exhibit Number	Transcript Reference (Green)
1	Queensland Railway Station Officers Union of Employees ..	Brisbane	6-7-79	1	25
2	Cossey, H. A.	Nerang	10-7-79	2	26
3	Railway Salaried Officers' Union of Employees, Queensland ..	Brisbane	16-7-79	3	27
4	Capricorn Tourist Organisation	Rockhampton	19-7-79	4	30
5	Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	Brisbane	24-7-79	5	34
6	Master Plumbers Association of Queensland (Union of Employers)	Brisbane	24-7-79	6	35
7	Willis, A. J.	Brisbane	6-8-79	7	36
8	Nerang and Hinterland Chamber of Commerce and Industry	Nerang	22-8-79	8	42
9	North West Tourist Promotion Development Association ..	Mount Isa	27-8-79	9	47
10	Combined Union Delegate Committee, Pleystowe Sugar Mill	Mackay	13-9-79	10	57
11	Business and Professional Womens Club of Mackay	Mackay	21-9-79	11	58
12	Summary of Letters and Telegrams received by Industrial Registrar	.. .. .	.. .. .	12	61
13	Department of Labour Relations	Brisbane	15-10-79	13	71
14	Public Service Board	Brisbane	16-10-79	14	162
15	Railway Department	Brisbane	16-10-79	18	176
16	The Queensland State Service Union of Employees	Brisbane	16-10-79	19	180
17	Queensland Professional Officers' Association, Union of Employees	Brisbane	16-10-79	20	189
18	Brisbane Chamber of Commerce	Brisbane	16-10-79	21	197
19	Electricity Supply Industry of Queensland	Brisbane	18-10-79	22	201
20	Voluntary Care Association (Qld.)	Brisbane	18-10-79	27	220
21	Summary of letters and telegrams received by the Industrial Registrar	Brisbane .. .. .	.. .. .	28	223
22	Toowoomba Tourism and Development Board	Toowoomba	4-12-79	30	234
23	Sunshine Coast Tourism Development Board Ltd.	Buderim	6-3-80	30A	239
24	Queensland Confederation of Industry Limited, Union of Employers	Brisbane	26-3-80	31	240
25	Wall, C. F.	Townsville	26-5-80	32	242
26	Godwins Associated Companies (Hotel and Motel Divisions)	North Rockhampton	26-5-80	33	243
27	Capricorn Tourist Organisation	Rockhampton	28-5-80	34	251
28	Young's Bus Service	Rockhampton	28-5-80	35	254
29	James Millroy Pty. Limited	Rockhampton	28-5-80	36	256
30	Chevron Laundry and Dry Cleaning Service and Rockhampton Steam Laundry	Rockhampton	28-5-80	37	258
31	Duthies Leichhardt Hotel Pty. Ltd.	Rockhampton	29-5-80	38	262
32	Wagon Wheel Restaurant	Rockhampton	29-5-80	39	266
33	Sisley & Sons	Rockhampton	29-5-80	40	269
34	Finch's Hardware Pty. Limited	Rockhampton	29-5-80	41	271
35	Business and Professional Women of Rockhampton	Rockhampton	29-5-80	42	274
36	Federated Clerks' Union of Australia (Central and Southern Queensland Branch) Union of Employees and Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees	Brisbane .. .. .	.. .. .	54	443 (White Transcript Page)
37	The United Graziers' Association of Queensland, Union of Employers	Brisbane	19-12-80	56	271
38	Australian Hotels Association (Queensland Branch)	Brisbane	23-2-81	57	282
39	Metropolitan Fire Brigade Officers' Association, Union of Employees, Brisbane	Brisbane	24-2-81	58	285
40	Queensland Motel Association	Brisbane	27-2-81	59	286
41	Business and Professional Women's Club of Mackay	Brisbane	27-2-81	60	289
42	Retailers' Association of Queensland Limited, Union of Employers	Brisbane	27-2-81	61	291
43	The Australian Sugar Producers' Association Limited, Union of Employers	Brisbane	27-2-81	62	295
44	The Australian Workers' Union of Employees, Queensland ..	Brisbane	2-3-81	63	297
45	Queensland Confederation of Industry Limited, Union of Employers	Brisbane	2-3-81	64	331
46 (and 20A)	Australian Travel Industry Association	Brisbane	18-10-79 & 10-3-81	65	341
47	Queensland Trades and Labour Council	Brisbane	16-3-81	66	342
48	Queensland Shop Assistants' Union of Employees and the Shop Distributive and Allied Employees Association (Queensland Branch)	Brisbane	16-3-81	69	390

ORAL SUBMISSIONS

Number	Date	Place	Name	Organisation Represented
1	19-7-79	Brisbane	Mr F. C. Bermingham	Department of Labour Relations
2	31-7-79	Brisbane	Mr R. White	The Federated Miscellaneous Workers' Union of Employees of Australia, Queensland Branch
3	31-7-79	Brisbane	Mr K. Low	The Australian Workers' Union of Employees, Queensland
4	31-7-79	Brisbane	Mr J. P. Coneybeer ..	Barrier Reef Islands (A Division of Ansett Transport Industries Pty. Ltd.) Hayman Island, Brampton Island Pty. Ltd., Great Barrier Reef Hotel Pty. Ltd. (Dunk Isle), Great Keppel Island Pty. Ltd., Happy Bay Pty. Ltd., Heron Island Pty. Ltd., Kennedys Pty. Ltd., trading as South Molle Island Resort, Lindeman Island Pty. Ltd.
5	31-7-79	Brisbane	Mr J. Thompson ..	Unions affiliated with the Queensland Trades and Labour Council
6	31-7-79	Brisbane	Mr K. Kingston ..	Australian Railways Union of Employees, Queensland Branch
7	31-7-79	Brisbane	Mr R. H. Steinitz ..	Royal Australian Nursing Federation Queensland Branch Union of Employees
8	31-7-79	Brisbane	Mr L. Behm	Queensland Confederation of Industry Limited, Union of Employers, the Bread Manufacturers of Queensland, Union of Employers, the Queensland Road Transport Association Limited, the Mackay Employers' Association, the Queensland Guild of Furniture Manufacturers and the Restaurant and Caterers Association of Queensland
9	31-7-79	Brisbane	Mr M. F. Vining ..	Queensland Motor Industry Association, Union of Employers
10	31-7-79	Brisbane	Mr N. C. Willey ..	Brisbane City Council
11	31-7-79	Brisbane	Mr G. M. Ashwood ..	Retailers' Association of Queensland Limited, Union of Employers
12	31-7-79	Brisbane	Mr A. White	Electricity Supply Industry of Queensland
13	31-7-79	Brisbane	Mr G. Segal	Local Government Association
14	31-7-79	Brisbane	Mr C. D. Gibbons ..	Queensland Tourist and Travel Corporation
15	31-7-79	Brisbane	Mr J. Leeman	The Australian Sugar Producers' Association Limited, Union of Employers
16	15-10-79	Brisbane	Mr F. C. Bermingham	Department of Labour Relations
17	16-10-79	Brisbane	Mr P. K. Hill	Public Service Board
18	16-10-79	Brisbane	Mr W. Smith	Commissioner for Railways
19	16-10-79	Brisbane	Mr J. A. Pease	The Queensland State Service Union of Employees
20	16-10-79	Brisbane	Mr W. Reedman	Queensland Professional Officers' Association, Union of Employees
21	18-10-79	Brisbane	Mr G. Muir	Electricity Supply Industry of Queensland
22	20-11-79	Southport	Mr H. A. Cossey ..	Nerang
23	4-12-79	Toowoomba	Mr J. E. Osborne ..	Toowoomba Tourism and Development Board
24	27-5-80	Townsville	Mrs Battle	Norgate
25	27-5-80	Townsville	Mr L. Buckman	The Australian Workers' Union of Employees, Queensland
26	27-5-80	Townsville	Mr F. L. Lewis	F. & C. Lewis Holdings
27	28-5-80	Rockhampton	Mr N. Craig	Godwins Associated Companies
28	28-5-80	Rockhampton	Mr D. Sinclair	Capricorn Tourist Organisation
29	28-5-80	Rockhampton	Mrs P. J. Young	Young's Bus Service
30	28-5-80	Rockhampton	Mr R. MacFarlane ..	James Stewart & Co. Pty. Ltd.
31	28-5-80	Rockhampton	Mr R. Millroy	James Millroy Pty. Limited
32	28-5-80	Rockhampton	Mr D. Knight	Chevron Laundry and Dry Cleaning Service and Rockhampton Steam Laundry
33	29-5-80	Rockhampton	Mr L. G. Duthie	Duthie's Leichhardt Hotel Pty. Ltd.
34	29-5-80	Rockhampton	Mrs S. M. Ford	Wagon Wheel Restaurant
35	29-5-80	Rockhampton	Mr V. N. Sisley	Sisley & Sons
36	1-7-80	Heron Island	Mr J. P. Coneybeer ..	Barrier Reef Islands, Etc.
37	3-7-80	Hayman Island	Mr J. P. Coneybeer ..	Barrier Reef Islands, Etc.

Number	Date	Place	Name	Organisation Represented
38	4-7-80	Long Island ..	Mr F. L. Buckman ..	The Australian Workers' Union of Employees, Queensland
39	22-4-81	Brisbane	Mr J. P. Coneybeer ..	Barrier Reef Islands, Etc.
40	22-4-81	Brisbane	Mr K. Kolmar ..	The Federated Miscellaneous Workers' Union of Employees of Australia, Queensland Branch
41	22-4-81	Brisbane	Mr D. Claffey ..	The Federated Liquor and Allied Industries Employees' Union of Australia, Queensland Branch, Union of Employees
42	22-4-81	Brisbane	Mr L. Behm	Queensland Confederation of Industry Limited, Union of Employers, etc.

APPENDIX "D"
TELEGRAMS AND LETTERS RECEIVED BY THE INDUSTRIAL REGISTRAR

Exhibit No.	From	Telegram/Letter
12	F.E.D.F.A.—4 Sub-branches A.M.W.S.U.—7 Workshop groups	Telegrams Letters—175 signatures Telegram
	Operators Combined Unions Committee—Gladstone Combined Unions—Mount Garnet Combined Operator's Unions—Collinsville	Telegram Telegram
	Operating Staff—Tennyson State and Brisbane North Area Control Centres E.T.U.—2 Workshop groups A.M.I.E.U.	Letter Telegrams Letters—2,103 signatures
28	A.F.U.L.E.—Divisional Council M.S.G.—16 Work groups	Telegram Letters—109 signatures
	A.M.I.E.U.	Letters—691 signatures
	R.A.N.F.—8 Hospitals	Letters—538 signatures
	Cairns Boiler House Staff Building Trades Group—Swanbank Power House Employees—Mackay City Council	Telegram Letter—4 signatures
	Employees—Duaringa Shire Council ..	Letter—4 signatures
	Employees—South-East Queensland Electricity Board	Letters—78 signatures
	Employees—Queensland Electricity Generating Board Queensland Building Trades Group ..	Letters—144 signatures Letters—763 signatures

SAMPLES OF TELEGRAMS AND LETTERS RECEIVED BY INDUSTRIAL REGISTRAR

"The Industrial Registrar,
Industrial Registrars Office,
G.P.O. Box 373, Brisbane.

Sir—The Mount Isa sub branch of the FEDFA condemns the holding of the enquiry into the penalty payment established as recompense for working under extreme disabilities our members are adamant that they will resist strongly any interference to these compensation payments by such an enquiry we seriously ask you sir to cancel the above inquiry
Sub Branch Secretary Ted Lovell."

"The Registrar of the State Conciliation and Arbitration Commission,

We the workers employed by B.C.C. Department of Water Supply and Sewerage express deep concern about the current enquiry being conducted by the Full Bench of the State Arbitration Commission into penalty rates payable under all State Awards and Agreements.

The achievement of those amounts which are in compensation for work done or work expected to be done by us which is beyond the normal set standard hours established in Queensland has been after long and bitter struggle and an extensive argument before the State Arbitration Commission.

There has already been an erosion in real wages paid to wage and salary earners in recent times and we see the current enquiry as intended by some as a further attack on those wages and allowances.

The following payments as listed are understood by us to be subject to the Enquiry.

- (a) Work During Standard Hours—
Weekend—Saturday and Sunday work
Work on public and statutory holidays
Work requiring early start
Night work
Work over extended spread of hours
Shift work.

- (b) Work Outside Standard Hours—
Overtime
Work during recognised meal breaks
On call, stand-by availability payments
Payments relating to travel outside standard hours.

- (c) Work Other Than Fulltime Work—
Part time work
Casual work.

This is an attempt to turn back the clock. We request that the enquiry be abandoned and that the current prescriptions in Awards and Agreements be maintained until otherwise varied in the normal process of Conciliation and Arbitration.

The withdrawal of labour has always been seen by workers as a last resort in industrial disputes and that attitude continues.

Should this enquiry continue and result in any deterioration of the payments in question, then the following position would develop:—

- (a) We would not be prepared to make ourselves available for work in areas currently attracting penalty payments by way of compensation. This would penalise the community heavily, particularly in the area of essential services and we view this possibility with great sadness but also with determination to protect our position as people who form the great majority of the community.

- (b) The possible use of the proposed Essential Services Act by the Government could then pit Queensland against Queenslanders bringing the State into disrepute and involving workers throughout Australia in an industrial and social upheaval with all of its attendant consequences.

The alternative to the development of dislocation of such magnitude is to allow the prescriptions contained in Awards and Agreements of the Commission to remain but be subject to the normal processes used for many years."