

From: Alexandra Terrill [mailto:axt@fcbgroup.com.au]
Sent: Wednesday, 16 September 2015 3:58 PM
To: AMOD
Cc: Nick Tindley
Subject: AM2014/305 - 4 yearly review of modern awards - penalty rates

Dear Sir/ Madam,

We act on behalf of the Australian Retailers' Association, the National Retail Association and the Master Grocers Association.

In accordance with directions issued on 7 August 2015, please find **attached** for filing with the Commission the following reply evidence from employer expert, Dr Sean Sands:

1. Statement of Dr Sands, dated 15 September 2015, in response to reports of Ms Helen Bartley and Mr Kevin Kirchner filed on behalf of the SDA on 4 September 2015; and
2. Statement of Dr Sands, dated 16 September 2015, in response to report of Ms Serena Yu filed on behalf of the SDA on 4 September 2015.

Please contact Nick Tindley or myself on 03 9098 9400 if you have any questions at all.

Kind regards,

ALEXANDRA TERRILL
SOLICITOR

LEVEL 18, 607 BOURKE STREET, MELBOURNE VIC 3000
T +61 3 9098 9400 F +61 3 9098 9499 M 0435 653 095
E AXT@FCBGROUP.COM.AU W WWW.FCBGROUP.COM.AU



Warning: This Communication is private, confidential and may contain legally privileged information. By the use of email over the Internet, Fisher Cartwright Berriman Pty Limited is not waiving either confidentiality and/or legal privilege of the email content and of any attachment(s) thereto. If you have received this message in error please notify the sender by reply email and then delete the message from your computer. Any unauthorised form of reproduction, disclosure or dissemination of this message or any attachment is strictly prohibited. Fisher Cartwright Berriman Pty Limited does not make any warranty as to the confidentiality, reliability or speed of email communications or any attached documents and disclaims all liability for the proper and complete transmission of any information and /or any delay in receipt. Before opening any attachment, please check them for viruses and defects. Although reasonable precautions are taken, Fisher Cartwright Berriman Pty Limited does not warrant this transmission or attachments are free from viruses or similar malicious code and does not accept liability for any consequences to the recipient consequent upon opening or using this e-mail. Thank you.

FAIR WORK COMMISSION

FWC MATTER NO: AM2014/305

Modern Awards Review 2014

Award: General Retail Industry Award 2010

Award Code: MA000004

STATEMENT OF SEAN SANDS

On 15 September 2015, I, Sean Sands, Research Director, of 26 Sir John Monash Drive, Caulfield East in the State of Victoria say:

1. This statement has been prepared for the purpose of responding to the following expert reports filed with the Fair Work Commission on 4 September 2015 on behalf of the Shop, Distributed and Allied Employees' Association:
 - (a) *Four Yearly Review of Modern Awards – Penalty Rates AM2014/305 2015, Expert Opinion, Report to Fair Work Commission* authored by Ms Helen Bartley of Bartley Consulting Pty Ltd (**Bartley Report**); and
 - (b) *A Critique of the Report entitled "Retail Award Research", being a Report prepared for the Fair Work Commission by ACRS, Monash Business School, Monash University* authored by Mr Kevin Kirchner of Fulcrum Economics Australia (**Kirchner Report**).
2. I refer to my statement dated 29 June 2015 and filed with the Fair Work Commission on 29 June 2015 and rely on that statement for the purposes of my qualifications.

Response to Bartley Report

3. In relation to paragraph 12 of the Bartley Report, the phrase "seeking a reduction in the Sunday penalty rate" was used to describe the purpose for which FCB Group, on behalf of the Australian Retailers Association, the National Retailers Association and Master Grocers Association, commissioned the report. This was not the purpose of the research in the report and was not mentioned to research participants.
4. In relation to paragraph 13 of the Bartley Report, the term "shopfloor employee" is a widely used term within the retail industry and is well understood by those who work

within the retail industry, and those who work at a store level within the retail industry. Further, this term is used in numerous published research papers and reports with this cohort in the sector.

5. In relation to paragraphs 14 and 15 of the Bartley Report, the respondents were asked a two-tiered question to determine whether they would qualify. First, respondents were asked to identify the industry they worked in from a broad set of industries, and only if they answered “retail” were allowed to proceed to the second question. The second question asked which area in retail the respondent worked in. If the respondent worked in a “retail store” they were qualified as a “shopfloor employee”, or as a retail employee that works in some capacity within a retail store. I consider that these questions are sufficient (and reflect standard survey research practice) in identifying shopfloor employees for the purpose of the survey.
6. In relation to paragraph 16 of the Bartley Report, the method used for selecting a sample was not random. Truly random samples are seldom used in consumer or social research settings because researchers rarely have access to the whole sample population from which to identify the required sample frame. A more common method of survey sampling is “purposive sampling”, which was employed in this research. The objective of purposive sampling is to identify a sample that is representative of a broader population. In this instance, shopfloor employees.
7. In relation to paragraph 17 of the Bartley Report, I refer to my response in point 6 of this statement.
8. In relation to paragraph 18 of the Bartley Report, the survey response qualifying rate was 15%.
9. The term “statistically significant” is employed, which by definition means the likelihood that a result or relationship is caused by something other than mere random chance. The threshold values of statistical significance (called the significance level of the test) are traditionally 5 ($p=0.05$) or 1 ($p=0.001$) percent. Significance at the 5 percent level was employed in testing and reporting statistical significance.
10. In relation to paragraph 20 of the Bartley Report, where sample sizes are small (i.e. <20 responses) statistically significant differences were not tested for. This is stated on page 48.

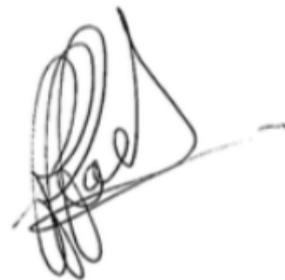
11. In relation to paragraph 21 of the Bartley Report, this was an error which occurred when the document was converted from word to PDF.

Response to Kirchner Report

12. In relation Section 2.1 of the Kirchner Report:
- (a) Mr Kirchner is correct to state that the ABS data series does include online and offline sales of Australian resident retailers, albeit online sales represents a small proportion of overall retail sales in Australia.
 - (b) ABS data on real price and current prices are analysed, presented and commented on to show raw and adjusted patterns in sales over the period. Given the clear divergent pattern identified (June 2013), commentary on both real and current prices is warranted.
 - (c) Analysis of ABS data included in our report has a particular focus on commentary for the period 2012 to current.
 - (d) I agree with Kirchner's comment that there has been slower growth in retail sales over recent years.
13. In relation to Section 2.2.1 of the Kirchner Report:
- (a) The statement "...retail business operating profits have fallen below All Industries except for the June 2009 and December 2012 quarters" refers to data sourced from ABS article 5676.0, which provides the definition of business gross operating profit as "the sum of unincorporated gross operating profit and company gross operating profit". The statement could more explicitly reflect "total retail industry profits", but nonetheless this issue does not change the patterns in the data. Nor does this section of the report include any reference to individual firm profitability.
 - (b) The focus on this part of the report is on "more recent years" and it is noted that retail operating profit growth has slowed over recent years, in line with Mr Kirchner's comment.
 - (c) Rather than Mr Kirchner's suggestion about being selective in interpretation, the commentary draws attention to the most obvious patterns in the data.

(d) I acknowledge (Sands Report, Section 1.1.7), as does Mr Kirchner, that profitability has grown over the long term compared to the short term.

14. In relation to Section 2.2.2 of the Kirchner Report, the report focuses on more recent years and is reflected in my commentary from 2012. Mr Kirchner shows this decline (from 2013) in Figure 8 of his additional data and analysis.
15. In relation to Section 2.3 of the Kirchner Report, the fact that the total wages bill in retail is growing at a higher rate than all industries is the main intended interpretation, reflected by the data series label (total industry wages).
16. In relation to Section 2.4.2, Figure 9 of Sands Report shows “despite a nominal gross sales increase, actual retail profit margins are decreasing”. This interpretation is based on analysis of ABS data for Business Gross Operating Profit, which shows this pattern in the data for recent years.
17. In relation to Section 2.6, data in the table, footnote and reference list is referred to as “Entries and Exits”; ABS (8165.0); Counts of Australian Businesses, including Entries and Exits, Jun 2010 to Jun 2014. The fact is that business exits (referred to as closures in text) have significantly outstripped exits in all other industries. There is no suggestion that this indicates business ‘failure’.
18. Based on the entire Sands Report, the retail industry is not strong or at a very healthy level, but in fact has struggled. This is particularly the case in recent times (i.e., since 2012), as a result of a slowdown in retail prices, decline in operating profitability, increased rate of closures (exits), and lower aggregate retail hours worked.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Signature

FAIR WORK COMMISSION

FWC MATTER NO: AM2014/305

Modern Awards Review 2014

Award: General Retail Industry Award 2010

Award Code: MA000004

STATEMENT OF SEAN SANDS

On 16 September 2015, I, Sean Sands, Research Director, of 26 Sir John Monash Drive, Caulfield East in the State of Victoria say:

1. This statement has been prepared for the purpose of responding to the expert report of Ms Serena Yu titled *Evaluating the Impact of Sunday Penalty Rates in the NSW Retail Industry* and filed with the Fair Work Commission on 4 September 2015 on behalf of the Shop, Distributed and Allied Employees' Association.
2. I refer to my statement dated 29 June 2015 and filed with the Fair Work Commission on 29 June 2015 and rely on that statement for the purposes of my qualifications.
3. Ms Yu notes that in 2010 there was a 4.7% drop in number of employees in NSW, and it appears from Figure 7 of the Yu Report that there was similarly a reduction in aggregate hours in that period. It also appears that this reduction was more significant in NSW than it was in Victoria. The Sands Report, at Figure 7, shows that retail sales growth during that period was relatively similar between NSW and VIC for the period. When combining this evidence with that of interviews with retailers it is likely that the change in penalty rates had some impact on the resulting change in employment levels in NSW.
4. Ms Yu notes that youth employment levels grew by 12.9% in NSW (compared to 8.5% in VIC). The Sands Report found, through interviews with retailers and shopfloor employees, that retailers were employing and rostering younger employees to work Sundays due to the Sunday penalty rate. Again, when Ms Yu's findings in relation to growth of youth employment is combined with findings from interviews with retailers and shopfloor employees, a reasonable assumption is that this change is a result of retailers seeking to manipulate an overall cheaper labour bill through employing youth.

5. Ms Yu also notes that aggregate hours worked in retail in NSW grew by 3.7% compared to 4.1% in Victoria between May 2010 and February 2015. The Sands Report notes that between July 2012 and January 2015 NSW had retail sales growth of 13.5% compared with Victoria which for the same period had retail sales growth of 8.7%. It is reasonable to assume that increased sales growth would lead to an increase in aggregate hours worked. However, this has not been the case and therefore it is reasonable to assume that the change in Sunday penalty rates had an impact on the level of increase in aggregate hours worked.
6. The data provided by Ms Yu does not report on the entire picture as state based operating profits are not compared. And indeed, from ABS data it is not possible to understand/ measure state based operating profits. While turnover figures show increases for NSW, there is no ability to match those increases to operating profit.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Signature

