



Fair Work Commission: 4 Yearly Review of Modern Awards

PROPOSED FINDINGS

**COMMON ISSUE- PENALTY RATES
(AM2014/305)**

4 SEPTEMBER 2015

**AUSTRALIAN BUSINESS INDUSTRIAL
- and -
THE NSW BUSINESS CHAMBER LTD**

1. BACKGROUND

1.1 This document is filed by Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relates to the Four Yearly Review AM2014/305 Common Issue- Penalty Rates (**Proceedings**).

1.2 On 7 August 2015 the Full Bench issued *Statement and Revised Directions* [2015] FWCFB 5357 in the Proceedings. At [5](v) of the *Statement and Revised Directions*, the Full Bench required that:

By 4.00 pm Friday 4 September 2015 all parties are to file the specific findings they submit the Commission should make based on the statement of each particular expert upon which they rely and the proposed findings they seek based on any common material or survey evidence they have filed.

1.3 This document relates to the following expert reports and witness statement:

- (a) **Professor Phil Lewis**, University of Canberra, *Penalty rates and the retail, café and restaurant; and hairdressing and beauty industries*, Part A on Page 3;
- (b) **Professor John Rose**, University of SA, *Value of time and value of work time during public holidays*, Part B on Page 11;
- (c) **Dr Sean Sands**, Monash University, *Retail Award Research*, Part C on Page 13;
- (d) **Ms Lynne Pezzullo**, Deloitte Access Economics, *The Modern Face of Weekend Work Research*, Part D on Page 16;
- (e) **Ms Emily Baxter**, Australian Business Lawyers, *Witness Statement*, Part E on Page 20.

1.4 We categorise the specific findings we submit that the Commission should make on the basis of the above materials under 10 headings:

- (i) characteristics of the Australian economy, society and workforce;
- (ii) common characteristics of the retail, restaurant and hair and beauty industries;
- (iii) characteristics of the retail industry;
- (iv) characteristics of the restaurant industry;
- (v) characteristics of the hair and beauty industry;
- (vi) employee preferences and value of time;
- (vii) employee knowledge of public holidays;
- (viii) general economic theory;
- (ix) penalty rates and their effect;
- (x) effect of a reduction in penalty rates.

PART A

FINDINGS TO BE MADE BASED ON THE EXPERT REPORT OF PROFESSOR PHIL LEWIS

2. CHARACTERISTICS OF THE AUSTRALIAN ECONOMY, SOCIETY AND WORKFORCE

- 2.1 The Australian economy today is dominated by the service sector.
- 2.2 Consumer confidence and uncertainty, as evidenced by increased household savings and reduced consumption, relative to household income, is low in 2015 in Australia.
- 2.3 The Australian economy has undergone significant structural change over the past four decades, the pace of which accelerated in the late 1980s and 1990s following the implementation of broad-ranging microeconomic reform policies.
- 2.4 A combination of structural and technological change has significantly changed the demand for labour with respect to part-time employment, gender and skills with more generic and general skills rather than firm-specific skills are required.
- 2.5 The growth in participation in education in Australia has seen growth in the supply of part-time and casual labour.
- 2.6 There has been a growth of employment of professionals and associate professionals and community and personal service workers.
- 2.7 The demand for manual labour has decreased over the period 1978-2014 as a result of the relative growth of services and relative decline in manufacturing, together with technological change.
- 2.8 A 'typical' Australian worker today is a 'white collar' employee in the service sector.
- 2.9 Structural change within the Australian economy between 1975-2015 has occurred with different trajectories over different industries. Over this period:
 - (a) Services employment has increased from approximately 50% of employees to 70%;
 - (b) Manufacturing employment has decreased from approximately 20% of employees to 8%;
 - (c) Employment in Utilities, Construction, Transport and Communications has decreased slightly as a percentage of total employees;
 - (d) Employment in Agriculture and Mining has remained relatively constant as a % of employees.
- 2.10 Between 1996 and 2011:
 - (a) employment of those with manual skills, such as tradespersons and labourers has declined;
 - (b) occupations requiring high levels of education and 'interactive skills' such as professionals and associate professionals and community and personal service workers have grown.
- 2.11 In the Australian labour market the demand for full-time workers has declined. A full-time job for anyone 15-20 years old is now an exception rather than the rule and employment prospects are poor for many displaced older males.

- 2.12 Demand for labour in the service sector differs according to the time of the day or day of the week, particularly in retail, banking, fast food, restaurants and hairdressing.
- 2.13 Over the period 1978-2014:
- (a) The percentage of Australian employees who were full-time male employees decreased from over 60% to less than 50%;
 - (b) The percentage of Australian employees who were full-time female employees has increased;
 - (c) The percentage of Australian employees who were part-time employees has increased for both males and female
- 2.14 Over the period 1985-2014, casual employment in the Australian labour market has grown from slightly over 15% of employees to approximately 25%.
- 2.15 There has been no noticeable increase in casualisation since 2000.
- 2.16 Job tenure is not necessarily short in casual jobs with a quarter of all casuals having worked in the same job for 10 years or more.
- 2.17 Part-time and casual work is now a key feature of the Australian labour market..
- 2.18 Part-time and casual employment is not necessarily insecure employment.
- 2.19 Part-time and casual employment allows flexibility for employers and employees.
- 2.20 The increased participation of women (particularly women with children) and students in the workforce has greatly facilitated the increased demand for part-time workers and those with interactive skills.
- 2.21 From 1978 to 2014:
- (a) the labour-force participation rate for men fell from approximately 80% in 1978 almost continuously up until the boom of the early to mid 2000s before falling again post-GFC to currently stand at 70%.
 - (b) the labour-force participation rate for women has steadily risen from below 45% in 1978 to approximately 60% in 2014.
 - (c) male labour-force participation rates have been falling for younger ages (under 35 years) but rising markedly for older males (over 54 years).
 - (d) labour-force participation rates have risen for prime-age (24-54 years) and for older (over 54 years) females.
 - (e) opportunities for part-time and casual work have increased, particularly in the service sector.
- 2.22 Penalty rates have their origins in a labour market quite different to that of much of the 2015 Australian labour market. Historically:
- (a) the Australian economy has been characterised by mostly males working full-time in industrial jobs with little part-time or casual work;
 - (b) working married women and jobs with flexible hours have been rare in Australia;

- (c) most retail outlets in Australia shut at midday on Saturday and reopened on Monday;
 - (d) for Australians, weekends were for many the only time available for socialising, recreation, participating in sport and worship.
- 2.23 Sunday used to be, but is no longer, a day of religious observance for the majority of Australians.
- 2.24 The number of Australians attending church fell from 44% in 1950 to 17% in 2007.
- 2.25 Of those Australians who are regular church attendees, about 30% are retired.
- 2.26 Australian 15-19 year olds make up less than 6% of church attendees in Australia.
- 2.27 Australian 20-29 year olds make up 9% of church attendees in Australia.
- 2.28 Weekend work is more common in Australia today than ever before and has increased over the last twenty years.
- 2.29 In 2012, 68% of males and 53.5% of females worked in jobs usually requiring work attendance between Monday and Friday and these percentages were similar to those for 1995.
- 2.30 Those employees undertaking weekend work in 1995 was less than 16% for males and 14% for females while in 2012 there were 33% of male employees and 28% of female employees reporting working some weekends or every weekend.
- 2.31 In light of findings 2.29 and 2.30, the amount of weekday work available has remained static, whilst weekend work opportunity has increased.
- 2.32 The time spent on sport and outdoor activity by Australians, even on weekends, is not large and is minimal in comparison with other activities.
- 2.33 A large number of the activities engaged in on weekends (ie. audio/visual media, reading, general free time) can be engaged in on any day of the week and are not dependent on weekend availability.

3. COMMON CHARACTERISTICS OF THE RETAIL, RESTAURANT AND HAIR AND BEAUTY INDUSTRIES

- 3.1 The retail, restaurant and hair and beauty industries together generate \$400 billion in revenue and employ over 1.25 million people which is over 13% of total employment for the Australian economy as a whole and almost 19% of employment in the services sector. The services sector is the biggest generator of GDP and employment and the only sector with a growing share of the economy.
- 3.2 The future financial health of the retail, restaurant and hair and beauty industries is uncertain as a result of the uncertain prospects for the Australian economy and current levels of low consumer and business confidence.
- 3.3 The retail, restaurant and hair and beauty industries have important flow on effects to industries which are major suppliers and complementary industries such as tourism and banking and finance.
- 3.4 The retail, restaurant and hair and beauty industries are major employers of women and young people, particularly students.

- 3.5 Part-time employment is particularly important in the retail, restaurant and hair and beauty industries, particularly for women.
- 3.6 In the retail, restaurant and hair and beauty industries, females make up proportionately more of the workforce than males.
- 3.7 The availability of part-time employment in the retail, restaurant and hair and beauty industries allows students and people with families to balance work, education and family commitments.
- 3.8 The retail, restaurant and hair and beauty industries are vital in facilitating investment in human capital and workforce participation in families with children; and, hence, productivity.
- 3.9 In the retail, restaurant and hair and beauty industries, wages make up a large percentage of value added and, therefore, labour costs (wages) are crucial to the profitability of businesses in these industries.
- 3.10 Demand for the goods and services in the retail, restaurant and hair and beauty industries is highly responsive to price and therefore changes in labour costs significantly affect output and employment.
- 3.11 Given that demand in the retail, restaurant and hair and beauty industries differs according to the time of the day or day of the week, flexibility in hours worked is required to meet peaks in demand which is greatly facilitated by part-time employees.
- 3.12 Many of the jobs in the retail, restaurant and hair and beauty industries are part-time providing the flexibility required in demand for labour in these service sector industries.
- 3.13 Household disposable income plus consumer and business confidence are very important to demand for outputs in the retail, restaurant and hair and beauty industries.
- 3.14 Demand in the retail, restaurant and hair and beauty industries is very responsive to changes in price, since consumption can be delayed or done without as opposed to 'necessities' for which consumption cannot be easily be done without.
- 3.15 The aftermath to the GFC has considerably increased risk for businesses in the retail, restaurant and hair and beauty industries.
- 3.16 Over 80% of all students employed in the retail, restaurant and hair and beauty industries are studying full-time.

4. CHARACTERISTICS OF THE RETAIL INDUSTRY

- 4.1 The major drivers of demand within the retail industry are household disposable income and consumer confidence.
- 4.2 In 2013-14 there were 135,000 businesses in the Australian retail industry, the number declining from 144,000 in 2010-11.
- 4.3 The Australian retail industry generates over \$380 billion per year in revenue.
- 4.4 The Australian retail industry employs almost 1.3 million people, about 11 % of Australian total employment and 15% of all service sector employment.
- 4.5 The Australian retail industry generates over \$40 billion in wages and 5% of Gross Domestic Product value added.

- 4.6 The majority (73%) of the total expenses in the Australian retail industry is made up of purchases of goods.
- 4.7 The majority (58%) of the value added by the Australian retail industry is made up of wages.
- 4.8 The average profit margin in the Australian retail industry is 4.8%.
- 4.9 In the Australian retail industry 36% of the workforce is under 25 years of age, half of which are teenagers.
- 4.10 Most teenagers employed in the Australian retail industry are students.
- 4.11 In the Australian retail industry just over a half of workers are employed part-time with 33% of males employed in retail part-time and 58% of women in the retail industry working part-time.
- 4.12 Students made up over 45% of those employed in the Australian retail industry.
- 4.13 Part-time student employees in the in the Australian retail industry are likely to studying courses unrelated to their current job.

5. CHARACTERISTICS OF THE RESTAURANT INDUSTRY

- 5.1 The restaurant industry consists of businesses mainly engaged in providing food and beverage serving services for consumption on the premises.
- 5.2 In 2014-15 the Australian restaurant industry:
 - (a) comprised over 15,000 separate businesses;
 - (b) employed almost 155,000 people;
 - (c) generated over \$16 billion in revenue.
- 5.3 The Australian restaurant industry is very labour intensive with wages accounting for 28% of total expenses and 69% of value added in 2014-15.
- 5.4 In 2014-15, the average profit margin the Australian restaurant industry was 8.6%.
- 5.5 The Australian restaurant industry is comprised mainly of small businesses, with the majority employing fewer than 20 people.
- 5.6 The Australian restaurant industry is highly competitive.
- 5.7 The Australian restaurant industry is very responsive to price and income as it offers luxury goods.
- 5.8 In the Australian restaurant industry, a majority (approximately 57%) of employees are employed part-time with 65% of females employed part-time and 40% of males employed part-time.
- 5.9 In the Australian restaurant industry over 40% of workers are under 25 years of age, half of whom are teenagers.
- 5.10 Students make up 60% of those employed in the Australian restaurant industry and those students are likely to be studying courses unrelated to their current job.

6. CHARACTERISTICS OF THE HAIR AND BEAUTY INDUSTRY

- 6.1 The hair and beauty industry consists of businesses mainly engaged in providing hairdressing services or in providing beauty services such as nail care services, facials or applying make-up.
- 6.2 In 2014-15, the hair and beauty industry in Australia:
- (a) was comprised of an estimated 22 thousand businesses;
 - (b) employed over 81 thousand people;
 - (c) generated almost \$3.9 billion in revenue.
- 6.3 The hair and beauty industry in Australia is extremely labour intensive with wages making up over 72% of total expenses and over 82% of total value added.
- 6.4 The average profit margin of the hair and beauty industry in Australia in 2014-15 was 11%.
- 6.5 The hair and beauty industry in Australia is very responsive to price and income as it offers luxury goods. As incomes increase, or businesses become more price competitive, demand will increase.
- 6.6 The hair and beauty industry has a relatively young workforce with 11% of employees being teenagers.
- 6.7 Many of the teenagers in the hair and beauty industry workforce are serving apprenticeships and studying at TAFE colleges in courses related to their area of study.
- 6.8 In the hair and beauty industry a small majority (54%) of workers are employed full-time with 70% males employed full-time and approximately 50% of females employed full-time.
- 6.9 The hair and beauty industry contains a high proportion of students (approximately 40%).

7. EMPLOYEE PREFERENCES AND VALUE OF TIME

- 7.1 There are a variety of wage rates for which people are willing to work.
- 7.2 The times and rates at which employees in Australia are willing to work varies by industry, age, social circumstances and by individual preference.
- 7.3 Some students have a preference to work on weekends as weekend work does not clash with study.
- 7.4 Some persons responsible for the care of children prefer not to work on weekends, on the basis that weekend work compromises family responsibilities. Alternatively, some persons responsible for the care of children prefer to work on weekends, given that weekend work can more easily be facilitate the avoidance of childcare costs where a partner works during the week.
- 7.5 While, generally, most employees would require a premium to work on Sundays and public holidays, particularly if the two days coincide, the current penalty rates are higher than those required to attract employees to work on these days.
- 7.6 For most people, working on weekends would not significantly impose on their time spent on sport and outdoor activities.

8. ECONOMIC PRINCIPLES

- 8.1 Employment in any industry and the wage paid to employees is determined by the demand and supply of labour subject to legally binding minimum wages and employment conditions (including penalty rates).
- 8.2 The demand for labour depends on the costs of employing labour which typically includes many other costs apart from the wage.
- 8.3 A business' decisions about how much output to produce and how much labour to hire are made *simultaneously*.
- 8.4 Firms hire extra labour when the value of the extra output produced is greater than the wage.
- 8.5 Firms will only increase output if activities which were not previously profitable are made profitable.
- 8.6 Businesses will employ more people (or increase hours of employment) as long as the extra revenue generated exceeds the extra cost of employing them.
- 8.7 Extra output and extra employment requires a fall in labour costs and conversely a rise in labour costs will make otherwise profitable activities no longer profitable so firms hire less people and produce less.
- 8.8 Wage rises cause a fall in demand for hired labour.

9. PENALTY RATES AND THEIR EFFECT

- 9.1 The imposition of penalty rates has a negative influence on the employment of employees.
- 9.2 For the retail, restaurant and hair and beauty industries, the negative effects on employment of penalty rates are much greater for public holidays than for Sundays.
- 9.3 The employment effects of penalty rates in the restaurant industry are significantly less than for the retail and hair and beauty industries as a result of the penalty rates being less.
- 9.4 The negative effects on employment are somewhat less for casuals than for permanent employees because the penalty rates are somewhat lower for casuals.
- 9.5 Penalty rates reduce the demand for labour and accordingly, in all cases, employment of permanent employees is less with penalty rates than would be the case if standard rates of pay were to be paid.
- 9.6 Penalty rates reduce employment levels in the retail, restaurant and hair and beauty industries.
- 9.7 Businesses subject to penalty rates may redirect production to those periods when overtime or penalty rates are not paid in order to reduce labour costs.
- 9.8 Some businesses required to pay penalty rates will choose to employ no hired labour on public holidays. This means that some businesses required to pay penalty rates:
 - (a) will close on days attracting penalty rates;
 - (b) will make greater use of owner and family labour on those days, and/or

- (c) may choose to hire the absolute minimum amount of hired labour if they think it important to remain open as part of their business strategy or contractual obligation.
- 9.9 In the event that businesses close during periods in which customer demand is high, it is highly likely that the inconvenience imposed on customers of not being able to purchase goods and services at times they prefer does impose costs and would reduce demand.
- 9.10 Businesses will attempt to pass on the increased costs of penalty rates to buyers of their products.
- 9.11 Increases in wages, particularly for young employees, will lead to a decreases in employment.
- 10. EFFECT OF A REDUCTION IN PENALTY RATES**
- 10.1 A reduction in penalty rates would benefit owners of businesses in the retail, restaurant and hair and beauty industries but not necessarily greatly given the competitiveness of the industries would result in cost savings being passed to consumers.
- 10.2 A reduction in penalty rates in the retail, restaurant and hair and beauty industries would benefit suppliers (and their employees) to relevant industries businesses, such as wholesalers, farmers, commercial property renters etc, as output of the industry rises increasing the demand for inputs into the industry.
- 10.3 A reduction in penalty rates in the retail, restaurant and hair and beauty industries would benefit complementary industries to relevant industries, such as those in tourism, for example, would benefit from customers having a greater range of choice and lower prices.
- 10.4 A reduction in penalty rates in the retail, restaurant and hair and beauty industries would result in more employment in those industries as turnover increased.
- 10.5 A reduction in penalty rates in the retail, restaurant and hair and beauty industries would result in a greater choice of shifts in those industries.
- 10.6 A reduction in penalty rates in the retail, restaurant and hair and beauty industries would result in more employment opportunities for the unemployed with the potential for providing a stepping stone in those industries.
- 10.7 Increased employment opportunities and flexibility arising from a reduction in penalty rates in the retail, restaurant and hair and beauty industries would allow students and parents to better balance work and other commitments.
- 10.8 While a reduction in penalty rates in the retail, restaurant and hair and beauty industries would result in a reduced wage rate for some employees, some employees may even receive higher *total earnings* without penalty rates since the potential to work a greater number of hours will increase.
- 10.9 A reduction in penalty rates in the retail, restaurant and hair and beauty industries will benefit consumers in that they would pay lower prices, have more opportunities for shopping, eating out and grooming and at times which better suit their lifestyle.

- 10.10 The reduction of penalty rates in the retail, restaurant and hair and beauty industries would make the economy more efficient and productive as distortions in the allocation of resources would be reduced.

PART B

FINDINGS TO BE MADE BASED ON THE EXPERT REPORT OF PROFESSOR JOHN ROSE

11. EMPLOYEE PREFERENCES AND VALUE OF TIME

Value of time on Saturday - Retail Award

- 11.1 Employees under the Retail Award do not value time differently for working on a Saturday relative to how they value time on other weekdays.

Value of time on Sunday - Retail Award

- 11.2 Employees covered by the Retail Award desire a premium to work on Sundays. That premium is:

- (a) a rate of pay approximately 40% greater than the rate of pay desired by employees for weekday work (in a normal working week); and
- (b) a rate of pay approximately 56.7% greater than the rate of pay desired by employees for weekday work (in a week where there is one public holiday).

Value of time on Public Holidays - Retail Award

- 11.3 Employees covered by the Retail Award desire a premium to work on public holidays. That premium is:

- (a) for a weekday public holiday - a rate of pay approximately 46.7% greater than the rate of pay desired by employees for weekday work;
- (b) for a Saturday public holiday - a rate of pay approximately 47.9% greater than the rate of pay desired by employees for weekday work; and
- (c) for a Sunday public holiday - a rate of pay approximately 100% greater than the rate of pay desired by employees for weekday work.

Value of time on Public Holidays - Restaurant Award

- 11.4 Employees covered by the Restaurant Award desire a premium to work on public holidays. That premium is:

- (a) for a weekday public holiday - a rate of pay approximately 26.9% greater than the rate of pay desired by employees for weekday work;
- (b) for a Saturday public holiday - a rate of pay approximately 53.5% greater than the rate of pay desired by employees for weekday work; and
- (c) for a Sunday public holiday - a rate of pay approximately 58.8% greater than the rate of pay desired by employees for weekday work.

General Value of Time

- 11.5 Overall, older workers value their time less than the younger workers, and hence report being more flexible in terms of their ability to reschedule their activities during the week.

- 11.6 Sunday is not necessarily the least desirable day to work, particularly amongst certain segments of society who may prefer to socialise on weekdays or weeknights.
- 11.7 While, generally, most employees would require a premium to work on Sundays and public holidays, particularly if the two days coincide, the current penalty rates are higher than those required to attract employees to work on these days.

12. EMPLOYEE KNOWLEDGE OF PUBLIC HOLIDAYS

Recognition of public holidays

12.1 Employees recognise and recall different public holidays to varying extents.

12.2 Some public holidays receive widespread recognition. These include:

- (a) Christmas Day (66.5% of Respondents identified this day);
- (b) ANZAC Day (61.63% of Respondents identified this day);
- (c) Australia Day (54.40% of Respondents identified this day); and
- (d) Queen's birthday (53.95% of Respondents identified this day).

Importance of public holidays

12.3 Employees place different levels of importance for different public holidays.

12.4 One category of public holidays receives wide levels of importance placed on it by employees in the restaurant and retail industries. This category of public holidays includes:

- (a) Christmas Day;
- (b) ANZAC Day;
- (c) New Year's Day;
- (d) Boxing Day;
- (e) Australia Day; and
- (f) Good Friday.

12.5 A second category of public holidays receives low levels of importance placed on it by employees in the restaurant and retail industries. This category of public holidays includes:

- (a) State based public holidays (Adelaide Cup, Melbourne Cup, Canberra Day, etc.);
- (b) Easter Monday;
- (c) Labour Day; and
- (d) Queens Birthday.

12.6 Christmas Day is considered to be the most important public holiday by workers in the retail and restaurant industries.

12.7 New Year's Day is considered to be the second most important public holiday by workers in the retail and restaurant industries.

- 12.8 The Queen’s birthday holiday is considered to be the least important public holiday by workers in the retail and restaurant industries.

PART C

FINDINGS TO BE MADE BASED ON THE EXPERT REPORT OF DR SEAN SANDS

13. CHARACTERISTICS OF THE AUSTRALIAN ECONOMY, SOCIETY AND WORKFORCE

- 13.1 From a consumer perspective, a range of factors, including the need to balance competing work-life pressures and a desire to connect with family members by spending time together shopping, drives demand for Sunday trading.
- 13.2 Sunday trading also offers consumers a convenient and flexible time to shop.
- 13.3 Sunday trading has become the shopping day of choice for many consumers, accounting for between 10% and 25% of retailers’ weekly trade.

14. CHARACTERISTICS OF THE RETAIL INDUSTRY

- 14.1 Online retail sales have been steadily increasing in Australia and represent 7% of retail sales, with domestic retailers accounting for 75.5% of online sales.
- 14.2 All states recorded positive growth in retail sales in the period July 2012 to January 2015, with NSW (13.5%) performing best and followed by VIC (8.7%)
- 14.3 Retail firm operating profitability has declined by 1.1% compared to 2012 levels.
- 14.4 Shopping centre foot traffic has recorded a significant increase on Sundays compared to other trading days.
- 14.5 Between 2010 and 2014, the percentage change in the number of retail operating enterprises is -6.5% (compared to -1.15% in All Industries), which outstrips operating business closures in all other industries.
- 14.6 The total number of retail employees has increased over the past 20 years at a higher rate than all other industries.
- 14.7 Compared to 2012, the number of retail employees and the number of hours worked per employee are slightly higher in 2015, with 52.1% of employees working weekends and approximately 50% employed on a part-time basis.
- 14.8 Overall, retail consumers were purchasing slightly more in 2014 compared to 2012, but they were also paying much more for purchases.
- 14.9 Over the period from 2010 to 2014, closures of retail businesses have significantly outstripped other industries.
- 14.10 Over half of retail employees are employed on a part-time basis and working on weekends to support a significant increase in Sunday shopping centre foot traffic.
- 14.11 The slowdown in retail sales in real prices, decline in retail firm operating profitability, increase in retail business closures and aggregate retail hours worked not recovering to 2007 peak, indicates that despite some improvement since 2012, the retail industry continues to struggle.
- 14.12 Many retailers feel forced to remain open on Sundays either due to leasing agreements or to remain competitive.

- 14.13 Retailers are striving to maintain a minimum number of Sunday hours to account for increasing trade and traffic.
- 14.14 44% of shopfloor employees are employed according to the Retail Award and 31% according to an Enterprise Agreement, with those remaining unsure of their industrial instrument.
- 14.15 86% of shopfloor employees surveyed work weekdays, 72% work weekends, 37% work evenings/ nights, and 50% work Sundays.
- 14.16 The majority of all shopfloor employees work weekdays (86%), almost three-quarters work weekends (72%) and over one third (37%) work evenings/ nights. The majority of shopfloor employees working weekdays are aged 35-54 years (92.5%), while the vast majority working weekends are aged 24 years or under (81%).
- 14.17 Employees agree that customer expectations of the level and nature of service delivered in retail stores has heightened substantially, particularly among younger customers (e.g. Millennials). These ever-increasing expectations have caused higher stress levels among shopfloor employees in serving customers accordingly.
- 14.18 Retailers with stores located within shopping centres are often forced to open on Sundays as part of their lease agreements.
- 14.19 The majority of retailers see Sunday as a high traffic and trading day and prefer not to close stores as this strategy may lead to a loss of business and competitive presence.
- 14.20 Most retailers have experienced an increase in Sunday trade performance (particularly in WA, where Sunday trading was recently introduced).
- 14.21 Retailers believe that customers see Sunday as 'just another day' and expect retailers to be open.
- 14.22 Sunday trade accounts for between 10% and 35% on average for weekly sales among retailers.
- 14.23 Many retailers are reluctant to trade on Sundays given that sales may not offset the higher employee wages.
- 14.24 By giving employees the option to work Sundays, there is a greater propensity to retain qualified staff that are more adept in servicing the needs of customers during demanding Sunday trade.

15. EMPLOYEE PREFERENCES AND VALUE OF TIME

- 15.1 Students are among those more willing to work on weekends, however employees with family circumstances also have a preference for weekend shifts.
- 15.2 Shopfloor employee motivations for working in retail include lifestyle flexibility and convenience to integrate other life commitments, particularly family and study.
- 15.3 Shopfloor employees are generally satisfied with working in the Australian retail industry and with their employer.
- 15.4 The majority of shopfloor employees who work weekends (Saturdays and Sundays) are aged 24 years and under.

- 15.5 Sunday employees either work every weekend or once a fortnight, report no real change in availability of Sunday hours over the past 5 years, and describe their workload as similar to other days.
- 15.6 Shopfloor employees aged 24 years and under working Sundays are significantly less concerned about the impact on ability to spend time with family/friends than other workers working Sundays.
- 15.7 Sunday employees do not consider that working on Sundays has an adverse impact on their own health or the health/development of their children.
- 15.8 If Sunday shifts were not available in retail, retail employees may consider alternative employment in administrative and support services, arts and recreational services and health care and social assistance.
- 15.9 Many shopfloor employees who do not work Sundays state that nothing would change their mind about working Sundays, while others indicate that they would work Sundays if they were given the opportunity.
- 15.10 Contractual agreements are the key factor contributing to shopfloor employees not working Sundays (31%), followed by the store being closed (25%) and prioritising weekend social life (23%).
- 15.11 Shopfloor employee willingness to work Sundays increases substantially from no penalty to a 50% penalty rate. However, employee willingness to work Sundays increases incrementally from a 50% to 100% penalty rate.
- 15.12 Shopfloor employee satisfaction with working Sundays increases substantially from no penalty to a 50% penalty rate. However, employee satisfaction with working Sundays increases incrementally from a 50% to 100% penalty rate.

16. PENALTY RATES AND THEIR EFFECT

- 16.1 In order to decrease the cost of opening on a Sunday, retailers are reducing operating hours, rostering junior/casual staff, rostering staff on shared shifts (i.e., rather than having someone extra to cover breaks), closing stores not located in shopping centres, and diverting operational (e.g. administration, store environment or stock replenishment) activities on Sundays. Some small business owners are forced to work themselves on a Sunday to avoid paying employees penalty rates.
- 16.2 The paying of double time penalty rates to employees working on Sundays increases overall Sunday labour costs significantly.
- 16.3 Although all retailers reported an increase in Sunday trade performance (making Sunday a busy day across most categories), heightened labour costs are putting significant pressure on the viability of Sunday trading.
- 16.4 Penalty rates were introduced as a means of compensating employees for working outside 'normal hours' and in a social/ religious context where Sunday was viewed as a day of rest. However, in today's '24/7 economy' and a society in which many employees are demanding greater flexibility in working hours in order to balance other life commitments, this justification is somewhat antiquated.
- 16.5 The disadvantage associated with working on a Sunday compared to any other day of the week does not appear to warrant the premium pay currently afforded by penalty rates.

16.6 Higher penalty rates have a detrimental effect on retail business operators (often resulting in a neutral gain) and overall industry trade performance.

17. EFFECT OF A REDUCTION IN PENALTY RATES

17.1 The majority of retailers see a decrease in penalty rates as allowing for an increase in opening hours, as well as an increase in the number of employees rostered to work on Sundays, which will ultimately contribute to higher levels of customer service.

17.2 If a reduction in penalty rates eventuated, retail shopfloor employees will continue to be willing to work on Sundays as the employee profile of Sunday workers is generally that of individuals with weekday commitments who require weekend work.

PART D

FINDINGS TO BE MADE BASED ON THE EXPERT REPORT OF MS LYNNE PEZZULLO

18. COMMON CHARACTERISTICS

18.1 Employers tailor staff levels and shift lengths in response to demand and wages.

18.2 There is evidence that employers who are able to adjust weekend staffing, employ lower staff ratios on weekends.

18.3 Employer opening hours are shorter on weekends especially on Sundays.

18.4 Staffing levels on weekends are lower.

18.5 Weekend shifts are, on average, shorter than those on weekdays, particularly shift lengths for casual workers.

18.6 There is some evidence to suggest that where employers experience additional demand on weekends, they employ too few additional staff to balance the additional workload because of labour costs, leading to more stressful conditions for workers.

19. CHARACTERISTICS OF THE RETAIL INDUSTRY

19.1 The retail industry is an important source of employment to older people as well as younger people, particularly those in the casual workforce.

19.2 The retail industry can be seen as a valuable source of employment for those who may otherwise be excluded from the labour force.

20. EMPLOYEE PREFERENCES AND VALUE OF TIME

20.1 In general workers prefer more choice over their work 'rosters'.

20.2 Casual and part-time workers have a stronger preference for working Sundays than other employees.

20.3 Part-time workers on average would like to work more hours while full-time workers, on average, would prefer to work less hours.

20.4 Workers, especially female workers, have a strong desire to work hours that suit family or personal routines.

20.5 Financial benefits are not relevant for some workers and some employees were willing to work on the weekends even without penalty rates being paid.

- 20.6 Some workers, particularly students, prefer to work on weekends rather than during standard hours as it does not interfere with other commitments, particularly in a context where participation in “traditional weekend activities” such as religious observance and sporting activities has declined.
- 20.7 Weekend workers are demographically different from the population as a whole and often ‘opt in’ to weekend work as a result of demands in other areas of life such as study or childcare.
- 20.8 Weekend work practices and preferences vary considerably between individuals.
- 20.9 Most weekend workers have no major objection to working weekends.
- 20.10 A majority of workers who work Saturday had no, or only minor problems with working Saturday.
- 20.11 A majority of workers who work Sunday had no, or only minor problems with working Sunday.
- 20.12 Part-time and casual workers are less likely than full-time workers to be not significantly troubled by working weekends with a majority of these workers having no, or only minor problems with working weekends.
- 20.13 Casual weekend workers, a group which excludes salaried professionals and so is more likely to receive penalty rates, are more likely to be able to shift socialising and shopping to weekdays.
- 20.14 Weekend workers are increasingly very young, supported by their parents, and report that weekend earnings are more for disposable income than to make ends meet.
- 20.15 Weekend workers don't typically work all weekend or every weekend and typically work shorter hours on weekends.
- 20.16 As with any work, additional hours worked on the weekend displace other weekend activities. There does not appear to be evidence to suggest that weekend work is qualitatively different in the way it displaces other activities from weekday work, and much of the evidence to the contrary captures differences in worker characteristics, not differences caused by working on the weekend.
- 20.17 Weekend work does not appear to significantly disrupt the lives of most workers.
- 20.18 Different motivations between employees lead them to choose jobs with characteristics that included weekend hours.
- 20.19 “*Non-standard hours*” contributed directly to the motivation and choice of the job, either because of the specific attraction of non-standard hours or because of the demands of non-work activity.
- 20.20 The people best placed to benefit from working weekends - students, parents with childcare responsibilities, people whose friends also work weekends- seem to gravitate towards it.
- 20.21 Weekend work is particular convenient for 15-18 year olds since many study during the week and such workers are generally not required to support themselves through their wages.

- 20.22 Workers who consistently work all weekend are relatively uncommon (less than ¼ of respondents).
- 20.23 Given that weekend shifts are, on average, shorter than those on weekdays and that relatively few weekend workers work all weekend, the effect of weekend work in interfering with other weekend activities may be overstated.
- 20.24 Weekend workers have, on average, become younger between 2004 and 2012.
- 20.25 Weekend workers use their time differently to non-weekend workers and shift some activities to weekdays.
- 20.26 Weekend and non-weekend workers have different demographics, preferences and priorities and it is not the simply case that weekend work necessarily disrupts time use on weekends.
- 20.27 Casual weekend workers show an increased commitment of time to education both during the week and on weekends.
- 20.28 Weekend work alters, but does not necessarily disrupt, patterns of social interaction.
- 20.29 Customers, particularly weekend workers, shop and socialise on weekends.
- 20.30 Weekend workers are able to combine weekend work with access to weekend services, during their non-work hours on weekends.
- 20.31 Since weekend workers are more likely to use services on Sunday than non-weekend workers, weekend workers themselves are the key beneficiaries of Sunday opening hours both in respect of their working obligations, and use of services.
- 20.32 Employees who have greater control over their work schedule, including those willing to work Sundays, display more positive attitudes toward the days they were scheduled to work.
- 20.33 The social and familial impact of weekend employment is likely to have been overstated by some previous studies, since they typically do not hold constant total hours worked and may simply be identifying pre-existing differences between the kinds of people who work in industries where weekend work predominates and those who do not.
- 20.34 People prefer to work “*non-standard*” hours for a range of reasons, including that the hours “suit family or personal routine”.
- 20.35 A relatively small percentage (25.8% for Saturday and 27.1% for Sunday) of workers identify higher hourly pay on weekends as a reason for weekend work.
- 20.36 Most weekend workers do not choose to work weekends primarily on the basis of penalty rates.
- 20.37 Casual workers are less concerned about penalty rates than other weekend workers.
- 20.38 Weekend earnings are more likely to be important for weekend workers to provide additional disposable income than for covering ongoing expenses.

21. ECONOMIC PRINCIPLES

- 21.1 Employers adjust their staffing levels on weekends in response to wage costs and consumer demand.

- 21.2 Weekend labour demand is not a fixed function of employer size.
- 21.3 A statutory wage set above a minimum market rate will lead to lower employment because of lower demand for labour by employers. The magnitude of the employment loss is determined by the magnitude of the wage rise and the elasticity of labour demand and supply.

22. PENALTY RATES AND THEIR EFFECT

- 22.1 Weekend penalty rates at current levels are not necessary or appropriate, given workers' and consumers' increasing expectation of flexible working hours and flexible access to services.
- 22.2 Weekend penalty rates are not warranted on the basis of labour supply during weekend/public holiday hours, given that a sufficient proportion of employees prefer to work such hours.
- 22.3 Hours worked on a Sundays are not necessarily "unsocial, irregular or unpredictable hours" in 2015, particularly in relation to certain industries including the retail and restaurant industries.
- 22.4 The laws of supply and demand apply to changes in labour prices caused by penalty rates just as they do to almost every other market.
- 22.5 The imposition of penalty rates causes changes in workforce composition, potentially reducing the number of full time employees.
- 22.6 Penalty rates appear to reduce aggregate staffing and opening hours on weekends in the retail industry.

23. EFFECT OF A REDUCTION IN PENALTY RATES

- 23.1 Since, with penalty rates, weekend opening hours are shorter and workers work harder on weekends in general, then it follows that removing or reducing penalty rates may provide a real opportunity for additional weekend employment and expansion of service, assuming staff would work at the reduced rate to meet demand.
- 23.2 If penalty rates were lowered, some employers would be likely to employ more staff and/or open longer hours and/or increase staffing ratios.
- 23.3 Since there is a pool of unemployed and underemployed workers who wish to work these additional hours, lower penalty rates would be likely to boost both economic efficiency and overall welfare.
- 23.4 Reductions in penalty rates in competitive industries like retail and restaurants will tend, in the medium term, to reduce both employers' cost base and also prices charged to consumers, both during the week and on weekends.
- 23.5 Consumers would be expected to respond to any price reductions as a result of the reduction in penalty rates by increasing demand for weekend services, thereby increasing employment in those businesses which are able to tailor staffing to expected demand.

PART E

FINDINGS TO BE MADE BASED ON THE WITNESS STATEMENT OF EMILY BAXTER

24. CHARACTERISTICS OF THE RETAIL INDUSTRY

- 24.1 In the Australian retail industry, businesses are far more likely to remained closed on Sunday than any other day of the week.
- 24.2 In the Australian retail industry, a substantial majority of retailers employ shorter opening hours on Sundays than other days of the week.
- 24.3 In the Australian retail industry, a substantial majority of retailers employ shorter opening hours on public holidays than on non-public holidays.
- 24.4 Retailers employ shorter opening hours on public holidays to varying extents for each public holiday.
- 24.5 In the Australian retail industry, the majority of retailers roster fewer people on Sundays than on weekdays.
- 24.6 In the Australian retail industry, the majority of retailers roster fewer people on a public holiday than on a non-public holiday.
- 24.7 The majority of retail businesses (76.6%) will remain open on some public holidays.

25. PENALTY RATES AND THEIR EFFECT

- 25.1 Costs, wages and or penalty rates are the primary reason (49.71%) why retailers employ shorter Sunday trading hours.
- 25.2 Lack of trade and low customer traffic (26.72%) and trading restrictions through legislation or contractual or leasing arrangements (16.68%) are the two most popular secondary reasons as to why retailers employ shorter Sunday trading hours.
- 25.3 Costs, wages and or penalty rates are the primary reason (58.44%) why retailers employ shorter public holiday trading hours.
- 25.4 Lack of trade and low customer traffic (17.21%) and trading restrictions through legislation or contractual or leasing arrangements (12.66%) are the two most popular secondary reasons as to why retailers employ shorter Sunday trading hours.
- 25.5 Costs, wages and or penalty rates are the primary reason retail businesses choose to remain close public holidays.
- 25.6 Costs, wages and or penalty rates are the primary reason retailer Sunday rostering differs from the remainder of the week.
- 25.7 Costs, wages and or penalty rates are the primary reason retailer public holiday rostering differs from weekday or weekend rostering.
- 25.8 The majority of retailers surveyed who reported opening on public holidays in the last 12 months reported that they did not make a profit on those days.
- 25.9 Survey evidence suggests that the likelihood of a retailer making a profit on a public holiday is approximately the same, regardless of the public holiday, with the exception of Boxing Day and Melbourne Cup/Show Day where proportionally more retailers stated that they made a profit on those days.

25.10 Survey evidence suggests that the likelihood of a retailer making a loss on a public holiday is approximately the same, regardless of the public holiday.

Differences between individual public holidays

25.11 The likelihood of a retailer remaining open on a public holiday varies between the different public holidays.

25.12 Employers make decisions to open or not open their businesses based on the nature of the public holiday in question.

25.13 The most likely day for retailers to remain open were:¹

- (a) Easter Monday (87.76%);
- (b) Queen's Birthday (87.5%);
- (c) Labour Day (86.2%);
- (d) Australia Day (83.33%).

25.14 The less likely day for retailers to remain open were:²

- (a) ANZAC Day (75%)
- (b) Boxing Day (71.61%);
- (c) New Year's Day (61.46%);
- (d) Good Friday (30.73%); and
- (e) Christmas Day (10.68%).

25.15 Wage costs were an overwhelming factor for businesses closing in one category of public holidays. These public holidays were:

- (a) Melbourne Cup/Show Days (58.85% of retailers cited wage costs);
- (b) Queens' Birthday (55.24% cited wage costs);
- (c) Labour Day (54.9% of retailers cited wage costs);
- (d) Easter Monday (53.27% of retailers cited wage costs); and
- (e) Australia Day (49.18% of retailers cited wage costs).

25.16 Wage costs were less influential factors motivating the closure of businesses in a second category of public holidays. These public holidays were:

- (a) New Years Day (40.89% of retailers cited wage costs);
- (b) Easter Sunday (33.1% of retailers cited wage costs);
- (c) Good Friday (25.93% of retailers cited wage costs);
- (d) Boxing Day (39.38% of employers cited wage costs);
- (e) ANZAC Day (34.62% of retailers cited wage costs); and
- (f) Christmas Day (28.53% of retailers cited wage costs).

¹ State based public holidays (including Melbourne Cup Day/Show Day and Easter Sunday) excluded from this list.

² State based public holidays (including Melbourne Cup Day/Show Day and Easter Sunday) excluded from this list.

- 25.17 Based on the findings at paragraphs 12.4 and 12.5 and 25.13 to 25.16, the public holidays which employees find most important are the same public holidays on which employers are less likely to open and on which employers are less likely to be influenced by wage costs in determining whether to open. These public holidays are:³
- (a) ANZAC Day;
 - (b) Boxing Day;
 - (c) New Year's Day;
 - (d) Good Friday; and
 - (e) Christmas Day.
- 25.18 On the other hand, the public holidays which employees find less important are the same public holidays on which employers are more likely to open and on which employers are more likely to be influenced by wage costs in determining whether to open. These public holidays are:
- (a) State based public holidays, such as Melbourne Cup/Show Days;
 - (b) Queens' Birthday;
 - (c) Labour Day; and
 - (d) Easter Monday.
- 25.19 Australia Day sits between the two categories of public holidays referenced at paragraphs 25.17 and 25.18 above, but is more closely aligned with the public holidays referenced at paragraph 25.18, given a high proportion (83.3%) of retailers indicated that they opened on Australia Day and a substantial proportion of retailers (49.18%) indicated that wage costs were the reason for the retailers closing on Australia Day.
- 25.20 Costs, wages and or penalty rates appear to be particularly influential in retailers' decisions to close on less recognised public holidays such as the Queen's Birthday, Labour Day or Melbourne Cup/Show Day.

26. EFFECT OF A REDUCTION IN PENALTY RATES

- 26.1 A majority of retailers would allocate more hours to employees on Sundays if the Sunday penalty rate in the Retail Award was reduced from an additional 100% to an additional 50%.
- 26.2 A reduction the Sunday penalty rate in the Retail Award from an additional 100% to an additional 50% would have no effect for the majority of retailers in respect of the number of hours allocated to employees on other days of the week.

³ Easter Sunday is excluded on the basis that it is not a public holiday in all States