

FAIR WORK COMMISSION

**4 Yearly Review of Modern Awards**

**Matter No.: AM2014/305**

*4 yearly review of modern awards – Penalty rates*

**SUBMISSIONS REGARDING  
TRANSITIONAL ARRANGEMENTS AND FURTHER MATTERS**



**Association of Professional Engineers, Scientists and Managers, Australia  
(APESMA)**

**DATE: 24 March 2017**

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1. These submissions are filed by the Association of Professional Engineers, Scientists and Managers Australia (**APESMA**) in accordance with the Directions issued by the Full Bench of the Fair Work Commission (**Commission**) on 23 February 2017, in its decision in *Four Yearly Review of Modern Awards – Penalty Rates* [2017] FWCFB 1001 (**Penalty Rates Decision**)
2. They are filed in relation to the Pharmacy Industry Award 2010 (**the Award**). APESMA is an interested party to the Award.
3. In these submissions APESMA will respond to the Commission’s request to file submissions regarding the transitional arrangements to apply for the reduction to Sunday penalty rate for employees covered by this Award.
4. We have had the opportunity to read the submissions of the SDA and United Voice and we support those submissions.

## **THE DECISION**

5. APESMA is disappointed with this Decision and does not agree with it and continues to rely on our final submissions of 21 March 2016<sup>1</sup> and the submissions of the SDA of 21 March 2016<sup>2</sup>. APESMA reserves our rights in respect of the Commission’s Decision to reduce penalties for employees covered by the Award, particularly the decision to reduce Sunday penalties.
6. We believe that it is bad enough that low wage workers will have their take-home pay cut, but it is particularly concerning that the Commission has rejected their right to choose not to work on Sunday if there are lower penalties<sup>3</sup>. APESMA requests that the Commission revisits this issue and that we be provided with the opportunity to provide further submissions on this matter.
7. APESMA believes that it is unconscionable to force workers to work at these reduced rates on Sundays. Workers should have a choice on whether they work at these lower

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<sup>1</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014305-sub-apesma-210316.pdf>

<sup>2</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014305-sub-sda-21032016.pdf>

<sup>3</sup> *Penalty Rates Decision*, [1997]

rates or not. Those who advocate for the cuts should be willing to face the so called markets reaction.

8. We note that the Commission has referred to Clause 25.4 – Rostering of the Award and indicated that this provision ‘*operates to minimise the incidence and impact of weekend work.*’<sup>4</sup> APESMA argues that this provision was introduced into the Award to ensure safe practises within the workplace, particularly to ensure that employee pharmacists and other pharmacy employees obtain sufficient rest to ensure they meet their legal obligations to ensure the safe storage and provision of medicines. This provision in the Award does not provide employees with any opportunity to refuse to work on Sundays.
9. APESMA does not believe that the Full Bench has properly taken into account or given proper weight to the provisions of s134 of the Fair Work Act 2009 (*the Act*) particularly in relation to the requirements of s134 (1) (a) which requires that in considering provisions in modern awards the Commission must take into account the “*relative living standards and the needs of the low paid*” when ensuring that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.
10. APESMA believes that the submissions provided to the Commission on this matter, particularly submissions and evidence provided by the SDA, some state governments and submissions provided by individual employees, shows that this Decision, if implemented, will have a significant impact on low paid workers. Much of the submissions provided by individual employees indicated that these people rely on their penalty rates to pay their bills and to put food on the tables for their families. Without penalties paid at the same levels they will be significantly affected.
11. For the reasons outlined above we do not agree that a reduction in these rates provides a fair and relevant safety net of terms and conditions of employment as is required by s134 (1) of the Act and as a result we do not agree that this Decision should be implemented.
12. APESMA reserves our rights.

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<sup>4</sup> *Penalty Rates Decision, [1848]*

## TRANSITIONAL ARRANGEMENTS

13. In the alternative to our submission that the cuts should not be implemented APESMA makes the following submission concerning transitional arrangements.
14. The Full Bench has determined to cut Sunday penalty rates for permanent employees covered by the Pharmacy Industry Award 2010 from 200% to 150% and casual workers from 225 % to 175%.
15. In its Decision, the Commission stated that there was “*plainly a need for appropriate transitional arrangements*” to “*mitigate the hardship caused to employees who work on Sundays.*”<sup>5</sup>
16. The Full Bench went on to say that “*a substantial proportion of the employees*” covered by the relevant awards are “*‘low paid’ within the meaning of s 134(1) (a)*”<sup>6</sup>. The also indicated that they are conscious of the adverse impact that the cuts to penalty rates will have on those employees especially where unexpected expenses “*produce considerable financial distress.*”<sup>7</sup>
17. In its Decision, the Full Bench proposed the following transition options:
  - (a) The reductions should take place in a series of annual adjustments on 1 July each year, commencing 1 July 2017, to coincide with any increases in modern award minimum wages arising from *Annual Wage Review* decisions.
  - (b) At least two instalments will be required, but the Commission’s preference is for less than five instalments.
  - (c) The availability of take-home pay orders may shorten the period required for transitional arrangements.<sup>8</sup>

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<sup>5</sup> Penalty Rates Decision, [2000], [2021].

<sup>6</sup> Penalty Rates Decision, [1998].

<sup>7</sup> Penalty Rates Decision, [1999].

<sup>8</sup> *Penalty Rates Decision*, [2021].

18. APESMA notes that the Productivity Commission proposed that employees be provided with 12 months' notice of any reduction in rates, after which the full rate cut is passed on. The Commission rejected this proposal on the basis that the 12 month notice period imposed an "*unnecessary delay on the introduction of any reduction*", and the purpose for the notice period, which was to give employees time to seek alternative employment or undertake additional training, was not made out on the evidence.<sup>9</sup>
19. APESMA agrees with the submission of the Productivity Commission that there should be a delay in commencing transition. But we do not agree with the time for commencement proposed by the Productivity Commission.
20. We believe implementation of this Decision should be delayed for four years. This will provide employees who will suffer significant hardship because of this Decision to rearrange their finances; for Annual Wage Review Decisions to provide some compensation and for those employees to be provided with sufficient time to enter into bargaining with their employers and to reach suitable bargaining agreements.
21. Such a delay will also provide an opportunity for the Victorian Government's review to be completed and the current Bills within the Federal Parliament to run their course.
22. The ACTU and its affiliates are also campaigning around this Decision and we believe that implementation prior to completion of this campaign may ultimately end up in legislation varying the Act and a subsequent requirement to revert to the existing penalties. Such a requirement to return to the current penalties, if they are implemented in the near future, will be extremely disruptive to everyone – employers and employees alike. Therefore, we believe it would be inappropriate to implement the Decision until these processes have run their course.
23. APESMA agrees that either the SDA or United Voice proposals for transitioning to the new arrangements would be an appropriate way to transition to the lower penalties. However, as indicated earlier, we believe implementation should be delayed to allow the political and campaigning processes to have run their course.

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<sup>9</sup> *Penalty Rates Decision*, [2021].

## Take Home Pay Orders

24. We agree with the submissions of the unions that Take Home Pay Orders are not an option available under the Act. We say this because the current Decision to reduce penalties is neither '*making of a modern award*', or a '*residual issue*' arising from the award modernisation process as is currently required by the Act for Take Home Pay Orders to be available. Consequently, we do not believe that Take Home Pay Orders are an option in this circumstance,

**Jacki Baulch**

Senior Industrial Officer

**APESMA**

24 March 2017