



AM2014/305
PENALTY RATES CASE

Submission by the
**Chamber of Commerce and Industry of
Western Australia**

On transitional arrangements to apply to
the reduction in Sunday penalty rates.

24 March 2017

1. Pursuant to the decision handed down by the Full Bench on 23 February 2017 the Chamber of Commerce and Industry of Western Australia (**CCIWA**) provides the following written submission in relation to the transitional arrangements to implement the revised Sunday penalty rates.
2. CCIWA believes that the implementation of this decision should occur as quickly as possible to achieve the intended positive outcomes.
3. Given the view of the Full Bench that transitional implementation is appropriate we submit that this should occur over no more than two equal instalments with the first instalment commencing on 1 July 2017 and the final instalment taking effect on 1 July 2018.
4. CCIWA does not believe that the implementation of the decision should be delayed, nor should take home pay orders or other grandfathering provisions be established.

Recognising the positive outcomes of the decision

5. CCIWA recognises the decision of the Full Bench in relation to this matter and notes the views expressed in the decision that existing Sunday penalty rates have resulted in:
 - a. the limiting of trading hours;
 - b. lower staffing levels; and
 - c. restrictions on the type and range of services provided.
6. It is the position of CCIWA that the transitional arrangements for the Sunday penalty rate reduction should occur as quickly as possible to address these issues and facilitate better employment opportunities for workers in this sector.
7. We believe that a lengthy transitional period will reduce the overall effect of the decision.
8. As noted by the Full Bench in its decision, *“the current level of Sunday penalty rates have led employers to take measures to reduce the labour costs associated with trading on Sundays and that a lower Sunday penalty rate would increase service levels with a subsequent increase in employment”*.¹ It was also noted that *“in the context of minimum wage Professors Borland and Quiggin both conceded that there is a greater potential of an employment effect from a larger or more substantive increase”*.²
9. In the context of this decision we believe that the slower and more incremental the transition is, the more likely that employers will continue to maintain their existing trading practices which will limit improved employment opportunities. Were the changes to be implemented over a three, four or five-year period, the benefit derived from each incremental change would be small with limited incentive for businesses to reconsider their trading hours or staffing levels. Rather this will limit the overall benefit the decision is intended to have in promoting improved employment opportunities.

¹ *Four yearly review of modern awards – Penalty Rates [2017] FWCFB at 683*

² *Ibid at 685*

10. Conversely a quick implementation in which there are meaningful reductions to the Sunday penalty rates will allow businesses to implement changes to their staffing levels and trading patterns. Employers in the retail and hospitality industries recognise that by not opening on Sundays, or operating fewer hours with less staff, is damaging to their business. They are keen to address these concerns in a manner that, as identified by the Full Bench, will result in greater employment opportunities for workers in these sectors.

Impact on employees

11. CCIWA notes the concerns raised by the Full Bench regarding the potential impact that the decision may have on existing employees. However, we believe that the proportion of employees who are reliant upon existing Sunday penalty rates to meet household expenses is low. Whilst it is necessary to have consideration for this group, it is also appropriate to consider the impact of delaying this decision on those workers currently denied to opportunity to work on Sundays.
12. Furthermore, those employees who currently work on weekends are likely to also benefit from longer opening hours which creates the opportunity for an overall increase in weekly remuneration. For example, a part time fast food employee who normally works four hours on a Sunday and currently earns \$116.64 for the day would be better off if they gained one additional hour of work, thereby earning \$121.64 for the day.³
13. As highlighted in our submission of 8 February 2016, data from the HILDA surveys demonstrates the dominant role students have in the performance of weekend work, representing 92.5 per cent of all employees who work only on weekends in the accommodation and food services industry and 88.8 per cent of retail employees. Across all industries, students make up 76 per cent of employees who work on weekends only.⁴
14. The Australian Work and Life Index (AWALI) survey conducted by the University of South Australia shows that across all industries younger workers aged 18-24 were more likely to work on evenings or weekends (57.8 per cent) than any other age group, and that in terms of household composition single employees without children were more likely to work these hours (42.7 per cent).⁵
15. Furthermore, this study also identified that of those employees who receive penalty rates for working on weekends or evenings, 65.3 per cent do not rely on the additional rates for meeting household expenses. In the case of young workers (18-24 years) the proportion of employees who did not rely on penalty rates increased to 78.5 per cent.⁶

³ Based on Level 1 employee covered by the Fast Food Industry Award 2010.

⁴ Productivity Commission (2015) *Workplace Relations Framework (Vol 1)* p430.

⁵ Daly, T. 2014, [Evenings, nights and weekends: Working unsocial hours and penalty rates](#), Centre for Work + Life, University of South Australia, p9.

⁶ Daly, T. 2014, *Evenings, nights and weekends: Working unsocial hours and penalty rates*, Centre for Work + Life, University of South Australia, p14.

16. This is reflective of the proportion of younger workers who live with their parents. The 2011 Census shows that 88 per cent of 15-19 year olds and 51 per cent of 20-24 year olds lived as a child in a one parent or couple family.⁷ Consequently they are less likely to be solely reliant on the income generated through their employment to support their household expenses.
17. The AWALI survey supports this conclusion with 47 per cent of people working often or nearly always on weekends in the retail and hospitality industry living in households earning more than \$90,000 per annum.⁸
18. The concentration of workers aged between 15 and 24 years is greater in the accommodation and food services industry (44.2 per cent) and retail trade industry (32.3 per cent) compared to the 'all industry' average of 15.0 per cent. They also represent the largest age group for each of these sectors.⁹
19. The above statistics indicate that those persons working in the retail and hospitality industry on weekends and public holidays are likely to be:
 - a. aged between 15 and 24 years;
 - b. single with no children;
 - c. a student; and
 - d. living with their parents.
20. Consequently, the impact of this decision on existing employees is considerably reduced.
21. However, persons aged between 15-24 years are most disadvantaged with respect to employment opportunities, with the 13 per cent youth unemployment rate (as at February 2017) being over twice that of the national unemployment rate of 5.8 per cent.¹⁰
22. We believe that given the demographics of those most likely to work on weekends in the retail and hospitality industry, there are greater benefits to be derived from the swift implementation of this decision in providing greater employment opportunities for young people.

Problems of take home pay orders and grandfathering provisions

23. CCIWA does not support the establishment of take-home pay orders or other approaches aimed at preserving current arrangements for existing staff. We believe that such approaches will be difficult to implement and may negatively impact both employees and employers.
24. We agreed with the submission of the Australian Chamber of Commerce and Industry that take home pay orders are not an available option in relation to this matter.

⁷ Australian Bureau of Statistics (2015) [Household and Family Projections, Australia, 2011 to 2036](#). Cat # 3236.0.

⁸ Productivity Commission (2015) *Workplace Relations Framework (Vol 1)* p486.

⁹ Fair Work Commission, (2017) *Industry Profile – Retail trade*, Table 5.2,p42 and Fair Work Commission (2017) *Industry Profile – Accommodation and food services*, Table 5.2, p27.

¹⁰ Australian Bureau of Statistics (2017) [Labour Force – February 2017](#). Cat # 6202.0.

25. We would also add that provisions aimed at preserving the level of remuneration received by existing employees would be difficult for businesses to administer, particularly small businesses which have limited capacity to establish arrangements that remunerate two employees performing the same function differently.
26. As identified by the Full Bench, 57.9 per cent of hospitality workers and 32.3 per cent of retail employees are casually employed.¹¹ The large number of casual employees within these industries would make the practical application of take home pay orders difficult. Both industries are subject to fluctuating demand which creates significant variation in working hours. The high proportion of students working in these industries also creates variations in the supply of labour as employees vary their availability of work to accommodate study and other commitments.
27. Given the high potential for casual working hours, and thus remuneration, to vary there is no basis for establishing a baseline for these employees to determining whether a reduction in take home pay has occurred. This raises a number of practical issues that would make take home pay provisions impractical to apply.
28. Reliance on take home pay orders would also result in new businesses entering the retail and hospitality industry having a competitive advantage over existing enterprises. New entrants to the industry would be better positioned to operate for longer and have higher staffing levels than existing businesses forced to maintain wages for existing staff.
29. In accordance with s134(1)(f) and (g) of the *Fair Work Act 2009 (Cth)*, CCIWA believes that the implementation of this decision should be simple to understand and minimise the regulatory burden on employers. Take home pay provisions would not be capable of meeting these considerations and as such we believe should not be considered. Rather a quick implementation that allows the full benefit of the decision to take effect to the overall benefit of both employers and employees is preferred.

¹¹ *Four yearly review of modern awards – Penalty Rates [2017] FWCFB at 721 and 1440*