



# BACKGROUND DOCUMENT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Penalty Rates**

(AM2014/305)

SYDNEY, 5 MAY 2017

MELBOURNE 26 MAY 2017

*Note: The purpose of this background document is to provide a summary of submissions received since the penalty rates decision was handed down and to facilitate the hearing listed for 9 May 2017. It does not represent the concluded view of the Commission on any matter or issue, nor does it purport to summarise all of the submissions made.*

*This paper only deals with the submissions in respect of the proposed transitional arrangements giving effect to the penalty rates decision and does not deal with any other matters arising from the decision.*

### **1. Introduction**

[1] Section 156 of the *Fair Work Act 2009* (the FW Act) provides that the Fair Work Commission (the Commission) must conduct a review of all modern awards every four years (the Review). As detailed in a statement issued on 6 February 2014,<sup>1</sup> the Review consists of an Initial stage (dealing with jurisdictional issues), a Common issues stage and an Award stage (which would review all modern awards in four groups).<sup>2</sup>

[2] As part of the Review, various employer bodies made application to vary penalty rate provisions in a number of modern awards. On 23 February 2017 the Full Bench issued a decision (the *penalty rates decision*) dealing with the penalty rates provisions in a number of awards in the hospitality and retail sectors. The modern awards subject to the *penalty rates decision* are as follows:

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<sup>1</sup> [\[2014\] FWCFB 916](#)

<sup>2</sup> [\[2014\] FWCFB 916](#)

| <b>Award title</b>                               | <b>Award code</b>        | <b>Matter No.</b>          |
|--|--------------------------|----------------------------|
| <i>Fast Food Industry Award 2010</i>             | <a href="#">MA000003</a> | <a href="#">AM2014/267</a> |
| <i>General Retail Industry Award 2010</i>        | <a href="#">MA000004</a> | <a href="#">AM2014/270</a> |
| <i>Hospitality Industry (General) Award 2010</i> | <a href="#">MA000009</a> | <a href="#">AM2014/272</a> |
| <i>Pharmacy Industry Award 2010</i>              | <a href="#">MA000012</a> | <a href="#">AM2014/209</a> |
| <i>Registered and Licensed Clubs Award 2010</i>  | <a href="#">MA000058</a> | <a href="#">AM2014/283</a> |
| <i>Restaurant Industry Award 2010</i>            | <a href="#">MA000119</a> | <a href="#">AM2014/284</a> |

[3] The penalty rates decision, among other things, determined that Sunday and Public Holiday penalty rates in the Hospitality, Fast Food, Retail and Pharmacy Awards would be reduced. The Full Bench also concluded that appropriate transitional arrangements are necessary in respect of the reductions in Sunday penalty rates proposed, in order to mitigate the hardship caused to employees who work on Sunday.

[4] A number of provisional views were expressed by the Full Bench in the penalty rates decision.<sup>3</sup> They are as follows:

- (i) Contrary to the views expressed by the Productivity Commission we do not think it appropriate to delay making any changes to Sunday penalty rates for 12 months, at which time the reductions apply in full. The Productivity Commission’s proposal imposes an unnecessary delay on the introduction of any reduction in Sunday penalty rates and would give rise to a sharp fall in earnings for some affected employees.

The Productivity Commission suggests that a 12 month delay would allow the affected employees to ‘review their circumstances’ so that they ‘can seek other jobs, increase their training and make other labour market adjustments’.

As we have mentioned, the employees affected by these changes are low paid and have limited financial resources. It is unlikely that they will be able to afford the costs associated with increasing their training.

Further, workers in the Accommodation and Food Services and Retail sectors have lower levels of educational attainment than the total workforce,<sup>4</sup> which is likely to limit their capacity to obtain other employment. As noted in the Peetz and Watson Report:

‘... while a majority of tertiary students who are employed work in either retail or hospitality (i.e. accommodation and food services) industries, this does not mean that most people who work in those industries are tertiary students. Nor does it indicate that they are not in need ...

Pay rates in retail therefore affect not only tertiary students but also a significant number of other people who are likely to be dependent on earnings from this industry as their principal or sole source of income.’<sup>5</sup>

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<sup>3</sup> [\[2017\] FWCFB 1001](#)

<sup>4</sup> See [Industry Profile – Accommodation and food services](#), pp. 31–32, Figure 5.2 and [Industry Profile – Retail trade](#), p. 43, Figure 5.2

<sup>5</sup> [Exhibit SDA 36](#) at p. 20

- (ii) If ‘take home pay orders’ are an available option then they may mitigate the effects of a reduction in Sunday penalty rates. But we do not favour any general ‘red circling’ term which would preserve the current Sunday penalty rates for all existing employees. A consequence of such a term would be that different employees of the one employer may be employed on different terms and conditions. Such an outcome would add to the regulatory burden on business (a relevant consideration under s.134(1)(f)).
- (iii) The reductions in Sunday penalty rates 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.
- (iv) As to the number of annual instalments, the 5 annual instalment process which accompanied the making of the modern awards is too long for present purposes. It will be recalled that the Award Modernisation Full Bench was dealing with an array of award provisions that were the subject of transitional arrangements including minimum wages, whereas we are only dealing with one provision, Sunday penalty rates. It is likely that at least 2 instalments will be required (but less than 5 instalments). The period of adjustment required will depend on the extent of the reduction in Sunday penalty rates, the availability of ‘take home pay orders’ and the circumstances applying to each modern award. The most significant reduction is for full-time and part-time employees covered by the *Retail Award* (from 200 per cent to 150 per cent), it follows that a longer period of adjustment may be required in this award, than for the other awards before us.

## **2. Submissions and Questions on Notice**

[5] The Full Bench sought submissions from interested parties in respect of the above provisional views. 32 submissions were received from interested parties and 17 submissions in reply were received. Submissions were received from the Federal and State Governments and respective oppositions, the principal parties in the matter and a number of other parties and individuals.

[6] In a Statement dated 5 April 2017<sup>6</sup> a series of Questions on Notice were posed to parties. The Full Bench asked parties to address these questions in conjunction with their submissions in reply. The questions on notice and the answers received to these questions are outlined at Attachment A to this document.

[7] The tables set out at Attachment B outline parties’ proposed transitional rates for each award. The submissions received in respect of proposed transitional arrangements are summarised below. We summarise the submissions received in respect of take home pay orders in section 3. Submissions in reply are summarised in section 4.

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<sup>6</sup> [\[2017\] FWCFB 1934](#)

## 2.1 Australian Industry Group

[8] The Australian Industry Group (Ai Group) proposes the following transitional arrangements for reductions to Sunday Penalty Rates in the Fast Food Award<sup>7</sup>:

| Date        | Employees                                | Loading                  |
|-------------|--|--------------------------|
| 1 July 2017 | Full-time and part-time level 1 employee | 37.5% loading in cl 25.5 |
|             | Casual level 1 employee                  | 62.5% loading in cl 25.5 |
| 1 July 2018 | Full-time and part-time level 1 employee | 25% loading in cl 25.5   |
|             | Casual level 1 employee                  | 50% loading in cl 25.5   |

[9] Ai Group submit that there should be two instalments to balance the needs of employees (to minimise the financial impact) and employers (to remove the burden of overcompensation associated with existing rates).<sup>8</sup> Ai group submit that two instalments will result in the introduction of the reduction in a fair and just manner;<sup>9</sup> will permit the achievement of the modern award objective of a fair and relevant award in a timely manner; and will permit the implementation of the merits in a timely manner.<sup>10</sup> Further, it will result in a simpler, easier to understand and more stable modern award system.<sup>11</sup>

[10] Ai Group submit that *Fast Food Award* should not include a term similar to cl 34.1A of the Restaurant Award as it is unnecessary.<sup>12</sup> [Clause 34.1A](#) of the Restaurant Award deals with a special condition regarding existing employees.

[11] Ai Group submit that under [clause 25.5\(b\)](#) (which deals with Saturday work) of the *Fast Food Award* there is ‘no alleged compounding effect in respect of the specification of the amount of the Saturday penalty rate and the casual loading’.<sup>13</sup> They also submit that the Commission should amend the clause to include the specification of the amount of the Saturday penalty rate for a casual employee.<sup>14</sup>

[12] Ai Group support the proposed deletion to the last sentence of [clause 26](#) relating to the specification of the overtime rate on a public holiday for a casual employee.<sup>15</sup>

[13] Ai Group oppose the ‘red circling’ approach to transitional arrangements.<sup>16</sup>

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<sup>7</sup> [Ai Group Submission](#), para 3

<sup>8</sup> [Ai Group Submission](#), para 51(a)

<sup>9</sup> [Ai Group Submission](#), para 51(a)

<sup>10</sup> [Ai Group Submission](#), para 51 (b) and (c)

<sup>11</sup> [Ai Group Submission](#), para 51(i)

<sup>12</sup> [Ai Group Submission](#), para 54

<sup>13</sup> [Ai Group Submission](#), para 3

<sup>14</sup> [Ai Group Submission](#), paras 56-59

<sup>15</sup> [Ai Group Submission](#), paras 60-62

<sup>16</sup> [Ai Group Submission](#), para 53

## 2.2 Pharmacy Guild of Australia

[14] In relation to variations for the *Pharmacy Industry Award 2010* (the Pharmacy Award), the Pharmacy Guild of Australia (the Guild) proposes the following Sunday penalty rate reductions:

| Date        | Employees               | Reduction         |
|-------------|-------------------------|-------------------|
| 1 July 2017 | Permanent and part-time | From 200% to 175% |
|             | Casual                  | From 225% to 200% |
| 1 July 2018 | Permanent and part-time | From 175% to 150% |
|             | Casual                  | From 200% to 175% |

[15] The Guild submits that if the reduction of Sunday penalty rates was to occur in more than two instalments or the reduction was delayed for 12 months that this would reduce the benefits associated with a reduction in rates.

[16] The Guild agrees with the provisional view of the Full Bench not to order general ‘red circling’ or ‘grandfathering’ to preserve rates for all existing employees. The Guild also submits that ‘grandfathering’ would impose a regulatory burden on employers.

## 2.3 Australian Hotels Association and the Accommodation Association of Australia (the Hospitality Employers)

[17] The Hospitality Employers submit that the change in Sunday penalty rates should be introduced in two instalments, each taking effect at the same time as adjustments to minimum hourly rates as a consequence of annual wage reviews.<sup>17</sup> In relation to the Hospitality Award, the Hospitality Employers submit the following should apply:

| Date        | Penalty |
|-------------|---------|
| 1 July 2017 | 160%    |
| 1 July 2018 | 150%    |

[18] They further submit that delaying the introduction of the rates or increasing the number of instalments will delay the benefits of the reduced rates.

[19] The Hospitality Employers agree with the provisional views against ‘grand fathering’ or ‘red circling’ existing employees. It would create a two tiered payroll system which would be an administrative burden and would create an unnecessary and unfair differential between employees performing the same work.

## 2.4 Australian Retail Association, National Retail Association and Master Grocers Australia

[20] The Australian Retail Association, National Retail Association and Master Grocers Australia (the Retail Associations) submit that red-circling of employees would be contrary to a number of matters that are required to be considered by the Commission in the review.<sup>18</sup>

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<sup>17</sup> [AHA & AAA Submission](#) at para 6

<sup>18</sup> [ARA Submission](#) at para 2

[21] The Retail Associations suggest the following transitional arrangements in relation to the Retail Award:

| <b>Date</b> | <b>Employee</b>      | <b>Penalty</b> |
|-------------|----------------------|----------------|
| 1 July 2017 | Permanent and casual | 175%           |
| 1 July 2018 | Permanent            | 150%           |

[22] It is submitted that the proposed transition period will mitigate the financial impact on employees, contending that the Commission cannot eliminate the hardship and is not required to ensure no employee is worse off as a result of the decision. They submit that extending the implementation period any longer would limit the positive impacts of the decision.

[23] The Retail Associations suggest that the Commission should consider the limited hardship demonstrated by the evidence. The Award already limits Sunday work and which will also minimise the impact of the reduced rates.

[24] The Retail Associations estimate that, in the most extreme scenario, a retail employee could lose \$21.22 per week after 1 July 2018 (depending on annual wage review increases) and that the evidence does not indicate that many employees would fall into this extreme category.

## **2.5 National Retail Association**

[25] The NRA submit that, in line with what the Retail Association submits, rates for permanent retail employees should be reduced to 175% as of 1 July 2017 and 150% as of 1 July 2018. For casuals the rates should be reduced to 175% as of 1 July 2017.

[26] The NRA further submit that the rates for permanent fast food employees should be reduced to 137.5% as of 1 July 2017 and 125% as of 1 July 2018. The rates for casuals should be reduced to 162.5% from 1 July 2017 and 150% from 1 July 2018.<sup>19</sup>

[27] The NRA contended that take-home pay orders are limited to the transition period between pre-modernised awards and modern awards and are not available in the current context. A take-home pay order is contrary to the objects of the review and therefore not appropriate to mitigate the impact of the reduction in Sunday penalty rates.

## **2.6 Australian Business Industrial and NSW Business Chamber (ABI & NSWBC)**

[28] ABI and the NSWBC submit that it is appropriate for the Sunday penalty rates to be phased in pursuant to a transitional arrangement<sup>20</sup> and that the Commission is not empowered to make take home pay orders in order to mitigate the impact of the Decision.<sup>21</sup>

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<sup>19</sup> [National Retail Association submission](#) p.2

<sup>20</sup> [ABI & NSWBC Submission](#) at para 1.3

<sup>21</sup> [ABI & NSWBC Submission](#) at para 1.3

[29] ABI and the NSWBC submit that Sunday penalty rate reductions should be phased in as follows in the Retail Award:

| <b>Date</b> | <b>Employee</b> | <b>Penalty</b>    |
|-------------|-----------------|-------------------|
| 1 July 2017 | Casual          | From 200% to 175% |
|             | Permanent       | From 200% to 175% |
| 1 July 2018 | Permanent       | From 175% to 150% |

[30] ABI and NSWBC accept that there is merit in ensuring that any reduction in wages payable on a Sunday is phased in so that affected employees can adapt their personal circumstances to accommodate the reduction and mitigate effects of the Decision.<sup>22</sup> This is consistent with the Commission’s obligations to consider the “needs of the low paid” when making modern award variations.<sup>23</sup>

[31] ABI and the NSWBC also submit that the Commission must also consider the regulatory burden imposed by maintaining existing rates – particularly in relation to the retail sector who have lower profit margins and lower business survival rates than other industries.<sup>24</sup> They further submit that the Commission must also consider that the more promptly penalty rates are revised, the more promptly positive employment effects will be seen.<sup>25</sup> It is contended that these considerations justify the Commission moving towards the new penalty rates as soon as reasonably practicable.<sup>26</sup>

[32] The ABI & NSWBC submit that their proposal for phasing in reductions of penalty rates ensures that:

- (a) A minimum of 4 months’ notice is given in relation to penalty rate reductions of 25%;
- (b) any reduction in penalty rates will be partially offset by any annual wage increase determined by the Fair Work Commission;
- (c) the more substantive penalty rate reduction of 50% is phased in over a 16 month period, which in turn enables:
  - (i) two annual wage increases to provide a level of offset the full 50% reduction in penalty rates; and
  - (ii) employees to make adjustments to the new rates of pay payable over an extended period; and
- (d) changes to the minimum safety net are made at the same time as other award rate of pay changes. This ensures that employers can vary their payment processes in one efficient step, as opposed to being required to vary pay entitlements on multiple occasions.<sup>27</sup>

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<sup>22</sup> [ABI & NSWBC Submission](#) at para 3.2-3.3

<sup>23</sup> [ABI & NSWBC Submission](#) at para 3.4

<sup>24</sup> [ABI & NSWBC Submission](#) at para 4.2

<sup>25</sup> [ABI & NSWBC Submission](#) at para 4.3

<sup>26</sup> [ABI & NSWBC Submission](#) at para 4.4

<sup>27</sup> [ABI & NSWBC Submission](#) at para 4.8

## **2.7 Australian Chamber of Commerce and Industry (ACCI)**

[33] ACCI submit that the Commission should confirm and apply their provisional views and ‘eschew any course of action that would delay the commencements of reductions in Sunday penalty rates in the awards for which reductions are to be made, and that would have the effect of unduly delaying the full implementation of the reductions in penalty rates that have been awarded.’<sup>28</sup> ACCI submit that delaying the reductions will delay the benefits that will flow from the reductions including increased trading hours, reduction in hours worked by owner/operators, and increased overall hours worked.<sup>29</sup> They argue the Commission should reject any application for delayed commencement of the reductions in penalty rates beyond 1 July 2017.<sup>30</sup>

[34] ACCI also submit that delaying the changes to penalty rates the Commission has awarded would not be consistent with the requirements for modern awards, as it has been found they are not meeting the modern awards objectives.<sup>31</sup>

[35] ACCI submit that an effective transition to the full application of the Decision should see the first tranche/stage of any phased introduction commence on 1 July 2017 concurrent with changes to public holiday penalty rates and the revised date for changes to late night/early morning penalty rates in the fast food and restaurant awards.

[36] ACCI submit that any attempt to ‘grandfather’ current rates of pay for existing employees would impose an additional regulatory burden on business (contrary to s.134(1)(f) of the Act) and impose additional employment on-costs arising from the administration of such added payroll complexity.<sup>32</sup>

## **2.8 Business SA**

[37] Business SA, through the Australian Chamber of Commerce and Industry, supports the submissions of the applicant employer organisations and the proposals for the phasing in of the reductions in Sunday penalty rates in specific modern awards.<sup>33</sup>

[38] Business SA does not support the implementation of grandfathering clauses as this would significantly delay and reduce the benefits of the penalty rates decision as well as add additional complexity to an already complex Award system.

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<sup>28</sup> [ACCI submission](#), 22 March 2017 at para 5

<sup>29</sup> [ACCI submission](#), 22 March 2017 at para 8

<sup>30</sup> [ACCI submission](#), 22 March 2017 at para 14

<sup>31</sup> [ACCI submission](#), 22 March 2017 at para 10

<sup>32</sup> [ACCI submission](#), 22 March 2017 at paras 24-25

<sup>33</sup> [Business SA submission](#), 24 March 2017

## 2.9 Chamber of Commerce and Industry Queensland (CCIQ)

[39] The table below outlines the proposals of the CCIQ:

| Date        | Award                   | Employees            | Reduction    |
|-------------|-------------------------|----------------------|--------------|
| 1 July 2017 | Retail & Pharmacy       | Casual and permanent | 200% to 175% |
|             | Fast Food & Hospitality | Casual and permanent | 175% to 150% |
|             | Fast Food               | Permanent            | 150% to 125% |
| 1 July 2018 | Retail & Pharmacy       | Permanent            | 175% to 150% |

[40] CCIQ agrees with the submissions of ACCI and submits that the penalty rates decision take effect from 1 July 2017 and be transitioned over a period of (no longer than) 16 months. Their submission points to March 2017 outlook report on commercial risks by SV partners' analysis that 6.7% of businesses in the food and accommodation sector are at risk of imminent failure.<sup>34</sup>

## 2.10 Chamber of Commerce and Industry of Western Australia (CCIWA)

[41] The CCIWA proposes a 2 year transition with 2 equal instalments. It submits the first instalment should commence on 1 July 2017 and the final instalment should take effect on 1 July 2018.<sup>35</sup> CCIWA submit implementation of the decision should not be delayed, and grandfathering provisions should not be established.<sup>36</sup>

## 2.11 Australian Federation of Employers and Industries

[42] The AFEI submit that any delay (whether 12 months or other) in making the changes to penalty rates would not be appropriate; and 1 July 2017 is a fair and reasonable date for implementing the changes in full for the Hospitality Industry (General) Award, Fast Food Industry Award 2010 and the General Retail Industry Award.<sup>37</sup>

[43] AFEI submit that the decision found that the existing Sunday penalty rates are neither fair nor relevant, and the reduction is justified in order to meet the modern awards objective. Delaying the reduction means that the awards will remain in a state that is neither fair nor relevant.

[44] AFEI submit that if the change is implemented in full on 1 July 2017 that will be four months since the Commission's finding that change is necessary. It is submitted that four months is a fair and a reasonable period to those affected by the change. Implementation on 1 July 2017 will mean the positive benefits of the decision are realised sooner (for example, longer trading hours).

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<sup>34</sup> [Chamber of Commerce and Industry Queensland submission](#), 24 March 2017

<sup>35</sup> [Chamber of Commerce and Industry Western Australia submission](#), 24 March 2017 at para 3

<sup>36</sup> [Chamber of Commerce and Industry Western Australia submission](#), 24 March 2017 at para 4

<sup>37</sup> [AFEI Submission](#), 24 March 2017, para 2

## **2.12 Australian Small Business and Family Enterprise Ombudsman**

[45] The Australian Small Business and Family Enterprise Ombudsman agree with the provisional view of the Commission that reductions in penalty rates should take place in a series of adjustments to coincide with any annual increases in modern award minimum wages.<sup>38</sup>

[46] They recommend adjustments that will allow base pay rates to increase to a point where there is no substantial decrease in take home pay when the penalty rate reduction takes effect. It is submitted that a reasonable transition would be approximately 24-36 months or two to three adjustments in the minimum wage.

[47] They also submit that at the end of transition period, the Commission should consider granting take-home pay orders to mitigate effects of any gap that remains between the amounts of their earnings with and without application of the Sunday penalty rate.

## **2.13 Retail and Fast Food Workers Union (RAFFWU)**

[48] The RAFFWU urges the Commission to set aside the Penalty Rates Decision and not implement penalty rate cuts.<sup>39</sup> In their submission they note previous Full Bench decisions of *Moyle v MSS Security Pty Ltd* [2016] FWCFB 372 and *4 Yearly Review of Modern Awards* [2015] FWCFB 6656 that commented on the impact of the reduction of award minimum rates on low paid employees.

## **2.14 Australian Council of Social Service (ACOSS)**

[49] ACOSS state that the Commission must ensure the decision does not result in existing or future low-paid employees being worse off. ACOSS submit that any existing or future employees subject to reduced penalty rates should be paid 'loaded hourly rates' to compensate for potential losses of pay.<sup>40</sup> They further submit that any future review of penalty rates should be based on the principle of consistent, appropriately-graduated compensation for the disutility of working unhealthy or unsocial hours.

[50] ACOSS submit that the decision cuts hourly wages substantially for many people working on Sundays without any increase to regular hourly rates of pay. Reductions in hourly rates of pay for low-paid workers to boost employment cannot be justified.

[51] ACOSS is concerned that the first major review of weekend penalty rates applies to industries whose employees are overwhelmingly low-paid, and resulted in a set of penalty rates that seem to lack a consistent basis and logic.

## **2.15 United Voice**

[52] United Voice submit that the penalty rate cuts should not be implemented and the Commission must consider the needs of the low paid as part of the 4 Yearly Review (not just when setting the minimum wage).<sup>41</sup> In the alternative to the cuts not being implemented

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<sup>38</sup> [Australian Small Business and Family Enterprise Ombudsman Submission](#), 24 March 2017

<sup>39</sup> [Retail and Fast Food Workers Union submission](#), 24 March 2017

<sup>40</sup> [ACOSS Submission](#), 24 March 2017

<sup>41</sup> [United Voice submission](#), 24 March 2017, paras 4-10

United Voice agrees with the submission of the Productivity Commission and submits that the rate cuts should be subject to a notice period.<sup>42</sup> They further submit that cuts to the public holiday penalty rates should also be phased over an identical period. The table below outlines United Voice’s proposed transitional period for the Hospitality and Restaurant Awards.

**Proposed transitional period Hospitality and Restaurant awards**

| <b>Year</b> | <b>Reduction (Hospitality Award) – Sundays</b> | <b>Reduction (Hospitality and permanent employees under Restaurant Award) – Public Holiday</b> |
|-------------|--|--|
| 1 July 2017 | 0  | 0  |
| 1 July 2018 | 0  | 0  |
| 1 July 2019 | 8%   | 8%   |
| 1 July 2020 | 8%   | 8%   |
| 1 July 2021 | 9%   | 9%   |

[53] United Voice submits that Australia is in a period of exceptionally low wages growth and reserves the right to make applications immediately prior to orders being made to ensure current economic conditions are taken into account.<sup>43</sup>

**2.16 Shop Distributive and Allied Employees’ Association (SDA)**

[54] The SDA submit that the Commission has failed to properly interpret the requirement of s. 134(1)(a) – the needs of the low paid. The SDA’s primary position is for the Commission to set aside the penalty rates decision.<sup>44</sup>

[55] The SDA’s alternate position is that the reduction should be phased in over 5 years so that employees can make arrangements to mitigate the adverse effects of the reduced rates.<sup>45</sup> They submit the commencement of the phased reduction should be deferred until 1 July 2019 to allow adequate opportunity to apply for increases in minimum rates of pay.<sup>46</sup>

[56] The SDA note that following the award modernisation process employers were given five years to transition to higher penalty rates, it is therefore fair and equal to afford the same transition period to employees.<sup>47</sup>

[57] The SDA submit that existing employees will face a reduction in their established pay. This can be assisted by the proposed transitional arrangements. Future employees will not experience the disruption of reduced Sunday rates. This can be addressed by establishing different transitional arrangements for existing and future employees.<sup>48</sup>

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<sup>42</sup> [United Voice submission](#), 24 March 2017, para 15

<sup>43</sup> [United Voice submission](#), 24 March 2017, para 20

<sup>44</sup> [SDA submission](#), 24 March 2017, paras 1-8.

<sup>45</sup> [SDA submission](#), 24 March 2017, para 10(a)

<sup>46</sup> [SDA submission](#), 24 March 2017, para 10(b)

<sup>47</sup> [SDA submission](#), 24 March 2017, para 10(c)

<sup>48</sup> [SDA submission](#), 24 March 2017, para 12

[58] Existing employees should have their rates preserved until the minimum wage achieves parity with that rate. Simultaneously, employers should not be allowed to dismiss an employee or otherwise avoid that obligation.<sup>49</sup>

[59] The reduced rates of pay for future employees should be phased in through 6 instalments for the retail and pharmacy awards and 3 instalments for the fast food award commencing on 1 July 2019.<sup>50</sup>

**Retail and Pharmacy Awards**

| Date        | Sunday rate Permanent | Sunday rate Casual |
|-------------|-----------------------|--------------------|
| 1 July 2019 | 192%                  | 200%               |
| 1 July 2020 | 184%                  | 195%               |
| 1 July 2021 | 176%                  | 190%               |
| 1 July 2022 | 168%                  | 185%               |
| 1 July 2023 | 159%                  | 180%               |
| 1 July 2024 | 150%                  | 175%               |

**Fast Food Award**

| Date        | Sunday rate Permanent | Sunday rate Casual |
|-------------|-----------------------|--------------------|
| 1 July 2019 | 142%                  | 167%               |
| 1 July 2020 | 134%                  | 159%               |
| 1 July 2021 | 125%                  | 150%               |

[60] The SDA submits that the reductions in public holiday rates of pay will have a similar adverse effect as the reductions in Sunday penalty rates and should be phased over a similar period.<sup>51</sup>

[61] As per the Sunday rates, the SDA proposes to preserve the public holiday rates for existing employees until the minimum wage reaches parity with the public holiday rate.<sup>52</sup>

[62] The reduced rates of pay for future employees should be phased in over three years commencing on 1 July 2019 for all three awards:<sup>53</sup>

**Future employees – Retail, Pharmacy and Fast Food**

| Date        | Public Holiday Loading Permanent | Public Holiday Loading Casual |
|-------------|----------------------------------|-------------------------------|
| 1 July 2019 | 142%                             | 167%                          |
| 1 July 2020 | 134%                             | 159%                          |
| 1 July 2021 | 125%                             | 150%                          |

<sup>49</sup> [SDA submission](#), 24 March 2017, para 14

<sup>50</sup> [SDA submission](#), 24 March 2017, paras 19-20

<sup>51</sup> [SDA submission](#), 24 March 2017, paras 21.24

<sup>52</sup> [SDA submission](#), 24 March 2017, para 25

<sup>53</sup> [SDA submission](#), 24 March 2017, paras 26-26

## **2.17 Australian Council of Trade Unions (ACTU)**

[63] The ACTU support the submissions of UV, SDA, APESMA and the AWU.<sup>54</sup>

[64] The ACTU submit that implementing the Penalty Rates Decision would be inconsistent with the objects of the Act and that the Commission should not make orders to implement the proposed reductions in Sunday penalty rates.<sup>55</sup>

[65] In the alternative, the ACTU submits that the Commission:

- delay implementation for at least 2 years,
- phase in penalty rate reductions over at least three instalments made at the time of the annual wage increase, for example, in instalments of 8%, 8% and 9% from 1 July 2019 onwards.

[66] The ACTU note that a 5 year implementation, including a period of delay, is consistent with the award modernisation process and the *Award Modernisation Decision* to delay commencement of changes.

[67] The ACTU opposes the suggestion that the proposed timeline for introduction of penalty rate reductions should be shorter than for award modernisation process. They note that the Commission finding that penalty rate reductions are less complex than the award modernisation process places greater weight on the impact of business and fails to consider the needs of the low paid.

[68] The ACTU propose that the Commission delay the implementation and phasing out of penalty rates over as long a timeframe as possible and provide an interim period of delay for employees to rearrange their affairs and mitigate impact of decision.<sup>56</sup>

[69] The ACTU submit that the detrimental effects of the reduction of penalty rates on the employee are known with some certainty whereas the possible benefits are largely speculative. As such, they submit that this supports a transitional period that favours those whose needs are known to be disaffected rather than businesses whose benefits are not known with such certainty.<sup>57</sup>

[70] The ACTU submits that the limited financial resources of affected employees means that employees should be given more time to seek training and attempt to make alternative arrangements prior to implementation.<sup>58</sup>

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

[71] APESMA made a submission in relation to the *Pharmacy Industry Award 2010* and outlined their support for the submissions of the SDA and United Voice.

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<sup>54</sup> [ACTU Submission](#), 24 March 2017, para 2

<sup>55</sup> [ACTU Submission](#), 24 March 2017, para 7

<sup>56</sup> [ACTU Submission](#), 24 March 2017, para 10

<sup>57</sup> [ACTU Submission](#), 24 March 2017, para 11

<sup>58</sup> [ACTU Submission](#), 24 March 2017, para 12

[72] APESMA submit that they are particularly concerned that there will not be a right to refuse to work on Sundays and submit the decision should not be implemented.<sup>59</sup>

[73] In the alternative APESMA submit that implementation of the decision should be delayed for four years.<sup>60</sup> This will give employees time to rearrange their finances and for the Annual Wage Review Decisions to provide some compensation. They submit the delay will allow for the Victorian Government's review, the Bills before parliament and the union campaigns to be completed. If other avenues are successful in disallowing the decision it would subsequently require a reversal of the rates being implemented.

[74] APESMA supports the SDA and United Voice's proposals, subject to a delayed implementation.

## **2.19 Australian Government**

[75] The Australian Government states, 'FWC made it clear it did not support the Productivity Commission's approach' (to delayed introduction).<sup>61</sup>

[76] The Australian Government submit that in considering whether 'red-circling' is appropriate, the Commission must consider a number of implementation issues<sup>62</sup> and 'carefully weigh up the costs and benefits and potential impact of such an approach'.<sup>63</sup>

[77] The Australian Government confirms that the Commission is empowered by s.156 of the FW Act to vary modern awards by phasing in reductions over a period of time.<sup>64</sup> Phased variations can be considered consistent with the modern awards objective and the general objects of the Act.<sup>65</sup>

[78] The Commission should implement transitional arrangements which ensure the positive employment benefits flow to businesses and the economy in a timely fashion, while at the same time taking into consideration the potential economic impact and effects on employees.<sup>66</sup>

[79] Transitional arrangements should be as simple as possible so they can be implemented in a way that is easy to understand and execute for both business and employees.<sup>67</sup>

[80] The appropriate form of the transitional arrangements is a matter for the independent Commission after consideration of all the evidence before it.<sup>68</sup>

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<sup>59</sup> [APESMA submission](#), at paras 5-12

<sup>60</sup> [APESMA submission](#), at paras 18-21

<sup>61</sup> [Australian Government Submission](#) at para 3.4

<sup>62</sup> [Australian Government Submission](#) at para 3.7

<sup>63</sup> [Australian Government Submission](#) at para 3.8

<sup>64</sup> [Australian Government Submission](#) at para 3.12

<sup>65</sup> [Australian Government Submission](#) at para 3.13

<sup>66</sup> [Australian Government Submission](#) at para 4.8

<sup>67</sup> [Australian Government Submission](#) at para 4.9

<sup>68</sup> [Australian Government Submission](#) at para 4.10

## 2.20 Federal Opposition

[81] It is the Federal Opposition's submission that the decision of the Commission to cut penalty rates, and therefore the take-home pay of workers in the Retail, Hospitality, Pharmacy and Fast Food modern awards should be set aside.<sup>69</sup>

[82] The Opposition submit that any transitional arrangements will result in a reduction of take-home pay and that would have a 'real and devastating impact on low-paid workers'.<sup>70</sup>

[83] The Opposition submit that that modelling using the General Retail Award by the Centre for Future Work (CFW) indicates it will take 17 years until the base rate increases enough to bring Sunday rates back to their current level.<sup>71</sup> Another transitional model considered by the CFW was to increase the minimum rates in the affected industries. This model required an immediate increase of 33% to the base rate and would increase the weighted-average labour costs by 25%.<sup>72</sup> The third proposition by CFW involved a combination of a 5 year transitional period and a boost to the minimum wage. The Opposition submits this option would leave both employers and employees worse off.<sup>73</sup>

## 2.21 An Individual – David Wedgwood – HR & Management Consultant

[84] Mr Wedgwood submits that any transitional arrangements should be 'fair to employers and employees, consistent, simple to administer, easily understandable, and contribute to the Australian economy in a positive way consistent with the Object of the FW Act'<sup>74</sup> and advances the following proposal: a variation once annually of one-fifth of the change, commencing on July 2017 which would result in the full implementation of the transition in 4 years. Each variation would be 5% or 10% as applicable.<sup>75</sup> Each downward change would correspond with increase arising from Annual Wage Review each year from 2017-2021.<sup>76</sup> Alternatively, the annual variation would be one-fifth of the change for the first three instances in 2017, 2018 and 2019, but with a final variation of two-fifths of the change in 2020 – a 3 year transition of 4 instalments.<sup>77</sup>

[85] There would be no 'take-home pay orders' or 'red-circling', consistent with the Commission's provisional view at [2040] (of the Decision).<sup>78</sup>

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<sup>69</sup> [Federal Opposition Submission](#), para 1.1.1

<sup>70</sup> [Federal Opposition Submission](#), paras 4.1.1-4.1.4

<sup>71</sup> [Federal Opposition Submission](#), para 4.1.11

<sup>72</sup> [Federal Opposition Submission](#), para 4.1.12

<sup>73</sup> [Federal Opposition Submission](#), para 4.1.13

<sup>74</sup> [Wedgwood submission](#) at para 7

<sup>75</sup> [Wedgwood submission](#) at para 9

<sup>76</sup> [Wedgwood submission](#) at para 10

<sup>77</sup> [Wedgwood submission](#) at para 16

<sup>78</sup> [Wedgwood submission](#) at para 11

## **2.22 Fair Work Ombudsman**

[86] FWO agrees with the provisional view of the Full Bench that changes to Sunday penalty rates should be given a universal start date.<sup>79</sup>

[87] FWO submits that any changes to Sunday penalty rates should be implemented to coincide with adjustments to modern award minimum wages that take effect on 1 July of each year.

[88] FWO agrees with the Full Bench's provisional view against any 'red circling' which would preserve current Sunday penalty rates for existing employees.

[89] FWO submits that the more complex the transition or phasing arrangements of the Penalty Rates decision, the longer the time that FWO will need to update and provide any public resources.

## **2.23 ACT Government**

[90] The ACT Government maintains their opposition to reductions in penalty rates<sup>80</sup> and submit that the decision be set aside. They submit that the Commission should not proceed with the development of possible transitional arrangements for the reduction of Sunday penalty rates.

## **2.24 NSW Opposition**

[91] The NSW opposition maintains their opposition to any reductions in penalty rates<sup>81</sup> and submits that the Commission should not be considering any transitional arrangements. They submit that the Commission should not implement its decision.

## **2.25 Northern Territory Government**

[92] The NT Government submit that they oppose any proposals to reduce penalty rates. Any reduction in penalty rates will also reduce the pay and living conditions for the Territorians who rely on them to make ends meet.<sup>82</sup> The NT Government submits that the erosion of award conditions will negatively affect workers, and undermine faith in the Modern Award safety net.

## **2.26 Queensland Government**

[93] The Queensland Government maintain their opposition to reductions in penalty rates.<sup>83</sup> They urge the Federal Government to intervene and legislate to prevent the cuts, 'noting that this is a matter beyond the scope of the Fair Work Commission'.

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<sup>79</sup> [Fair Work Ombudsman Submission](#)

<sup>80</sup> [ACT Government submission](#), 24 March 2016

<sup>81</sup> [NSW Opposition submission](#), 24 March 2017

<sup>82</sup> [NT Government submission](#), 24 March 2017

<sup>83</sup> [QLD Government submission](#), 24 March 2017

## **2.27 South Australian Government**

[94] The South Australian Government maintain their opposition to reductions in penalty rates<sup>84</sup> and submit that the Commission should not be considering any transitional arrangements and it should reconsider its decision.

## **2.28 Tasmanian Opposition**

[95] The Tasmanian Government maintain their opposition to any reductions in penalty rates<sup>85</sup> and urge the Commission to set aside the decision.

## **2.29 Victorian Government**

[96] The Victorian Government maintain their opposition to any reductions in penalty rates<sup>86</sup> and do not make any submissions in relation to possible transitional arrangements for the reduction of Sunday penalty rates.

## **2.30 Western Australian Government**

[97] The WA Government opposes the decision to reduce penalty rates.<sup>87</sup> They submit hospitality and weekend workers are some of the lowest paid workers in Western Australia. They submit the reduction in rates will reduce spending and harm the WA economy. The WA Government doubts if there will be any positive impact on employment and submit that historical evidence suggests penalty rates have very little impact on employment for existing or new employees.

## **2.31 Climate Justice Movement**

[98] The Climate Justice Movement submit they are concerned that the Commission's cut to Award-reliant workers' wages will intensify already alarming levels of inequality and insecurity within our community. They submit in future Award reviews, the Commission should take into account the impact its decision may have on the community's ability to take action to prevent climate change and, where necessary, adapt to climate change's impacts.

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<sup>84</sup> [SA Government submission](#), 24 March 2017

<sup>85</sup> [Tasmanian Opposition submission](#), 24 March 2017

<sup>86</sup> [Victorian Government submission](#), 24 March 2017

<sup>87</sup> [Western Australian Government submission](#), 24 March 2017

## 2.32 Equity Economics

[99] Equity economics submit that a fair and smooth transition is vital to mitigate against the wide ranging implications for the affected workers and the economy more broadly.<sup>88</sup> They submit full time employees working 40 hours a week, including an 8 hour Sunday shift, would have a reduction in real wages of between 4.3 per cent and 8.1 per cent. Part time and casual employees face potentially higher percentage reductions in real wages.<sup>89</sup>

[100] Equity Economics provides a number of scenarios highlighting a workers reduction in their wage as a result of the Decision.<sup>90</sup> There is a concern that the impact of the Commission decision will flow through to enterprise agreements which use the affected awards as the basis for applying the better off over all test. Equity Economics provide a case study highlighting the impact of the decision on workers under existing enterprise agreements.<sup>91</sup> They also provide two scenarios that illustrate that losses for employees currently covered by enterprise agreements may exceed those of employees currently covered by awards.<sup>92</sup>

[101] They submit an alternative pathway would be to simultaneously phase in the reduction in penalty rates and increase the base award rates over a five year period. Equity Economics has provided a scenario as an example of a five year transition period.<sup>93</sup>

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<sup>88</sup> [Equity Economics Submission](#) p 1

<sup>89</sup> [Equity Economics Submission](#) at p 2

<sup>90</sup> [Equity Economics Submission](#) at pp 3 & 4

<sup>91</sup> [Equity Economics Submission](#) at p 5

<sup>92</sup> [Equity Economics Submission](#) at p 6

<sup>93</sup> [Equity Economics Submission](#) at p 7

### 3. Take-home pay orders

[102] The Australian Government made a submission to assist in providing clarity in respect of whether take-home pay orders are available to mitigate impact of proposed reduction in Sunday penalty rates.<sup>94</sup> The Government submits that take home pay orders are not available under the Transitional Act in this case<sup>95</sup> and that take home pay orders are not available under the standard clause in modern awards,<sup>96</sup> in this case.<sup>97</sup>

[103] The Federal Opposition's position is that even if take-home pay orders were legislatively available there are three issues with them:

- they would create two classes of employees being paid different rates;
- the length of time employees in these industries is less than other industries so the operational period is limited; and
- the burden of having to apply for an order is likely to be prohibitive.

[104] United Voice submit that take-home pay orders are not available to reduce the impact of the cuts to penalty rates as the penalty rates decision is neither the making of a modern award; nor a residual issue arising from the award modernisation process.<sup>98</sup>

[105] The SDA submit that for the reasons outlined in the submissions of United Voice, take-home pay orders are not available to ameliorate the impact of the proposed cuts in penalty rates. It submits that the decision will affect hundreds of thousands of workers so, even if there was capacity to make such orders, they would not be a practical way to ameliorate the harsh effect of the reductions in penalty rates.<sup>99</sup>

[106] The ACTU agree with the UV submission that take home pay orders are not available under the FW Act. APESMA also agree that take home pay orders are not an option available under the Act.

[107] Ai Group submit that the Commission does not possess power to make take-home pay orders in respect of the reductions to the existing Sunday penalty rates.<sup>100</sup> They submit that there is no relevant express or implied conferral of power that allows the Commission to make a take-home pay order in respect of reductions to Sunday penalty rates.

[108] Ai Group submit that a take-home pay order under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* is unable to be made as these orders are only for award modernisation-related reductions in take-home pay.<sup>101</sup>

[109] The take-home pay orders made under the s.768BS of the FW Act relate to copied state awards and are not relevant to the Fast Food Award.<sup>102</sup>

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<sup>94</sup> [Australian Government Submission](#) at Para [1.18]-[1.19]

<sup>95</sup> [Australian Government Submission](#) at Para [2.7]

<sup>96</sup> [Australian Government Submission](#) at Para [2.12]

<sup>97</sup> [Australian Government Submission](#) at Para [2.20]

<sup>98</sup> [United Voice submission](#), 24 March 2017, paras 21-26

<sup>99</sup> [SDA submission](#), 24 March 2017, para 10(d)

<sup>100</sup> [Ai Group Submission](#), paras 7-10

<sup>101</sup> [Ai Group Submission](#), para 13

<sup>102</sup> [Ai Group Submission](#), paras 15-18

[110] Ai Group submit that take-home pay orders conferred by modern award are not applicable as they only relate to the commencement of a clause not the variation of a clause.<sup>103</sup>

[111] Ai Group submit that the Commission's power to include a term that is incidental to a permitted term would not allow the Commission to make a term permitting take-home pay orders relating to penalty rates.<sup>104</sup>

[112] Ai Group submit that there is no implied conferral of power to make a take-home pay order as the FW Act requires a modern award to only contain terms that are permitted or required by a specified provision (see s.136) .<sup>105</sup>

[113] ACCI submit that the two statutory purposes for which THP orders have been used in recent years (transition to modern awards and transfer of business from a state public sector employer) are unavailable and not relevant to the implementation of the penalty rates decision.<sup>106</sup> The CCIWA agrees with ACCI that take-home pay orders are not available in relation to this matter.<sup>107</sup>

[114] The Guild submit the Commission cannot include a take home pay order in a modern award as these orders only relate to remedying 'modernisation related' reductions.

[115] The Guild submit that if take home pay orders are available, any order should:

- be limited to employees whose take home pay has been reduced as a consequence of the change in the Sunday penalty rate only (and not due to any other reason) where that reduction is not minor or insignificant;
- be confined to employees who were employed and regularly worked a Sunday over the 12 months from 1 July 2016 to 30 June 2017;
- define regularly worked Sundays as 34 Sundays<sup>11</sup> in the 12 months from 1 July 2016 to 30 June 2017; and
- be limited to employees who have not been adequately compensated in other ways for the reduction.

[116] The Retail Associations submit that take home pay orders are not available in these circumstances. Any reduction caused by the reduction of the Sunday penalty rate cannot be said to be residual to the award modernisation process.

[117] The Hospitality Employers do not believe the Fair Work Commission can make take-home pay orders about changes to Sunday penalty rates. If the Commission does make them, the Associations recommend that they be limited to employees who have worked regularly on Sundays over the last year.

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<sup>103</sup> [Ai Group Submission](#), paras 19-25

<sup>104</sup> [Ai Group Submission](#), paras 26-29

<sup>105</sup> [Ai Group Submission](#), paras 30-34

<sup>106</sup> [ACCI submission](#) 22 March 2017 at paras 15-23

<sup>107</sup> [Chamber of Commerce and Industry Western Australia submission](#), 24 March 2017 at para 24

## 4. Submissions in reply

### 4.1 Ai Group

[118] Ai Group oppose the setting aside of the Penalty Rates Decision and submit interested parties have not demonstrated there exists

- a misapprehension of the law;
- misapprehension of the facts;
- lack of natural justice afforded to a party; or
- an opportunity to be heard on an issue.

Ai Group also submit parties have failed to discharge the heavy burden required to set aside a decision and they are seeking to aside the penalty rates decision so that they may re-put earlier submissions against the reduction in Sunday penalty rates.

[119] Ai Group submit non-implementation of the penalty rates decision should not occur because some parties are dissatisfied or disagree with the outcome and they further submit that the reduction in the take home pay of employees following a four yearly review is within the confines of the relevant legislation and the relevant extrinsic material.

[120] Ai Group reiterated they are opposed to red circling transitional arrangements and noted all employer groups submitted that the Commission cannot make a take-home pay order to address the reduction in Sunday pay rates.

[121] Ai Group questioned the reliability of modelling provided by some parties in their submissions because the training, qualification, skills and experience of those providers are unknown and the unsubstantiated content included factual errors and biases.

### 4.2 ACCI

[122] ACCI responds to the ACTU, unions and parliamentary Labour leaders 'core proposals' that:

- the decision should be set aside;
- failing this there should be a 24 month delay in phasing in reductions;
- the phasing in should then be across 5 or 6 years; and
- that commencement should be delayed to allow unions to pursue inflated claims in the annual wage review process.

[123] ACCI submit that the burden of proof in this matter should lie with any party wishing to depart from the Commission's provisional view, and that the burden has not been met.<sup>108</sup>

[124] In relation to the submission that the decision should be set aside, ACCI submit there is no basis for reversing or setting aside the decision and the appropriate basis is to pursue a review in the Federal Court. ACCI submit that the argument advanced by the ACTU and others that the decision is in error because of its impact on the fairness and relevance of the safety net and impact on the low paid is incorrect and the Commission did consider these matters at length.<sup>109</sup>

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<sup>108</sup> [ACCI submission in reply](#) at para 6-8

<sup>109</sup> [ACCI submission in reply](#) at paras 9-17

[125] ACCI argue that the unions have failed to explain the basis for their proposed 24 month delay in commencing phasing in and that the Commission should reject this submission.<sup>110</sup> In response to the unions submission that the changes should then be transitioned over an extended period ACCI submit that delaying or slowing the penalty rate changes would:

- Delay increased jobs, hours and services that led the Commission to change the Sunday penalty rates;
- Prolong a situation in which awards fail to meet the modern award objective
- Prolong a situation in which awards fail to provide a fair and relevant safety net
- Prolong a situation in which penalty rates are based on considerations that have expressly been found to no longer be relevant
- Prolong a situation in which penalty rates reflect levels of disutility that no longer apply and
- Prolong inconsistencies between PR settings in retail and hospitality

[126] In response to the SDA submission that the commencement of the decision should be deferred to allow opportunity to pursue compensatory award wage rises, ACCI submit that this course of action is ‘unrealistic and unsubstantiated’ and ‘not relevant to the consideration at hand’ and the Commission should have no regard to it.<sup>111</sup>

[127] ACCI submits that the unions are asking to the Commission to ‘deliberately implement its penalty rates decision so slowly that the next federal election will intervene prior to PR changes taking effect, allowing incoming labour government (if elected) to step in, override the decision and preserve existing penalty rates.

[128] ACCI submits that much of what has been put before the Commission is reaction to and comment on the decision and is not relevant to the Commission’s consideration of how it is to be implemented.

### **4.3 Hospitality Employers**

[129] The Hospitality Employers reject all submissions that the penalty rates changes should not be introduced at all.<sup>112</sup> They reject United Voice’s proposal that the Sunday penalty rate change be delayed until 2018 and then be introduced in a number of instalments.<sup>113</sup>

### **4.4 ABI & NSWBC**

[130] Submissions focus on the *General Retail Industry Award 2010*(GRIA), although broader cross-award submissions are addressed where relevant to ABI and NSWBC’s claim.<sup>114</sup>

[131] ABI and NSWBC submit it is inappropriate for the Commission to re-open, or for the parties to re-litigate, the matters that have been determined in the Decision. Should the

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<sup>110</sup> [ACCI submission in reply](#) at paras 36-37

<sup>111</sup> [ACCI submission in reply](#) at paras 43-50

<sup>112</sup> [Hospitality Employers Submission in reply](#) at para 2

<sup>113</sup> [Hospitality Employers Submission in reply](#) at para 3

<sup>114</sup> [ABI and NSWBC submission in reply](#) at para 1.6

Commission determine to re-open its findings in the absence of any material new development, it is likely that it would cause prejudice to the employer organisations.<sup>115</sup>

[132] They submit the Commission is not empowered to vary or revoke its Decision pursuant to s 603(3) FW Act<sup>116</sup> and if parties believe the Commission has improperly exercised its functions in issuing the decision or that the decision is affected by some error, then parties should seek judicial review of the decision in the Federal Court.<sup>117</sup>

[133] ABI and NSWBC submit there is no reason why the penalty reductions cannot be introduced from 1 July 2017. Should the Commission fail to implement the Sunday penalty rate reductions in the GRIA for two years, as proposed by the Shop Distributive and Allied Employees' Association (SDA) and the ACTU, the Commission would be maintaining the deleterious effects of penalty rates on employment for a prolonged period.<sup>118</sup>

[134] They submit the level of impact of a Sunday penalty rate reduction on an employee's take home pay will be affected by the spread of the employee's usual weekly hours. The more hours that the employee works on days other than Sunday, the more likely that the Sunday penalty rate reduction will be wholly or substantially offset by increases in the minimum wage over time.<sup>119</sup>

#### **4.5 Pharmacy Guild of Australia**

[135] The Guild make submissions in relation to the *Pharmacy Industry Award 2010* only.<sup>120</sup> They submit the Commission should disregard all submissions that the penalty rates reductions should not be introduced at all.<sup>121</sup>

[136] They submit the Commission should reject the Shop Distributive and Allied Employees Association's (SDA) alternative proposal that the penalty rates changes in the Pharmacy Award be over six instalments, commencing July 2019.<sup>122</sup>

[137] They submit the Commission should reject the SDA's proposal that the public holiday penalty rate change should be subject to transitional arrangements.<sup>123</sup>

#### **4.6 The Retail Associations**

[138] The Retail Associations respond to the submissions of the SDA and to submissions filed by other interested parties. The Retail Associations submit that the Commission should reject the SDA's submission that the Commission should not make any order implementing the Sunday penalty rate reduction as they are not permitted to do so under s.603(3) of the FW Act.<sup>124</sup> The Retail Associations also submit that there is no basis for the SDA assertion that

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<sup>115</sup> [ABI and NSWBC submission in reply](#) at paras 2.6 – 2.7

<sup>116</sup> [ABI and NSWBC submission in reply](#) at paras 2.8 – 2.11

<sup>117</sup> [ABI and NSWBC submission in reply](#) at para 2.12

<sup>118</sup> [ABI and NSWBC submission in reply](#) at paras 3.4 – 3.6

<sup>119</sup> [ABI and NSWBC submission in reply](#) at paras 4.2 – 4.9

<sup>120</sup> [Pharmacy Guild submission in reply](#) at para 1

<sup>121</sup> [Pharmacy Guild submission in reply](#) at para 2

<sup>122</sup> [Pharmacy Guild submission in reply](#) at para 3

<sup>123</sup> [Pharmacy Guild submission in reply](#) at para 4

<sup>124</sup> [Retail Associations submission in reply](#) at para 5

‘the legislative framework establishing the award safety net is not one which permits a cut to take home pay for low paid workers.’<sup>125</sup> They submit that if the SDA is aggrieved by the decision it is open to them to seek judicial review.<sup>126</sup>

[139] The Retail Association respond to the SDA’s submission that the rate reductions should transition over a seven year period. The SDA relies on four matters as the basis for the seven year transition period (opportunity to make arrangements, application for award minimum rates of pay, modern award transitional arrangements and absence of take home pay orders). The Retail Associations respond to these four matters and reject the position of the SDA.<sup>127</sup>

[140] They also submit that the preservation of the Sunday penalty rate for existing employees under the Retail Award (as submitted by the SDA) would have the effect of adding complexity and regulatory burden to retail employers.<sup>128</sup>

[141] The Retail Associations submit the Commission should reject the submissions of the various State and Territory Governments, political parties and organisations that ask the Commission not to implement the decision as it is not permitted to do so under s.603(3) of the FW Act.<sup>129</sup>

[142] The Retail Associations submit that the submission of Equity Economics should be rejected due to it containing significant inaccuracies in its assessment of the impact of the Sunday penalty rate reductions on retail employees, the model is not reflective of any of the evidence before the Commission in the Penalty Rates case and that they make assertions about the impact of the decision without identifying any basis for the decisions.<sup>130</sup>

#### **4.7 AFEI**

[143] AFEI submitted there is no case for reconsidering the Decision or for setting aside that Decision. It stated the existing Sunday penalty rate overcompensates the disutility of Sunday work; the new Sunday rate (the new rate) is neither fair nor relevant; and, the new rate is justified. AFEI propose 1 July 2017 for the full implementation of the new rate.

[144] AFEI submit some submissions have conflated the purpose of penalty rates with minimum wage rates or have understated the merit of the new rate. AFEI note the new rate is compensatory for the disability of Sunday work; the new rate will correct the overcompensation of Sunday work which is a consequence of the existing rate; the new rate will not change the rate of pay payable to the employee for ordinary hours of work (base rate of pay); and, the new rate will not change the minimum wages rates.

[145] AFEI submitted the operational restrictions imposed by businesses (as a result of the negative consequences of the existing rate) support the need for variation.

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<sup>125</sup> [Retail Associations submission in reply](#) at para 5-6

<sup>126</sup> [Retail Associations submission in reply](#) at para 7-8

<sup>127</sup> [Retail Associations submission in reply](#) at paras 10-21

<sup>128</sup> [Retail Associations submission in reply](#) at para 22

<sup>129</sup> [Retail Associations submission in reply](#) at para 26

<sup>130</sup> [Retail Associations submission in reply](#) at paras 27-31

[146] It submitted the Commission should not be tolerant of the continuation of a Sunday rate which is neither fair nor relevant.

[147] AFEI highlighted if the new rate is implemented on 1 July 2017 approximately 4 months is a reasonable period between Decision and implementation.

#### **4.8 Retail and Fast Food Workers Union**

[148] The Retail and Fast Food Workers Union (RAFFWU) submit the Commission should rely on a comprehensive study done by the Australian Bureau of Statistics (ABS) to establish the number of workers who will be affected and are only covered by relevant modern awards (awards).

[149] The RAFFWU suggest the Commission should conduct a study on extant agreements in order to determine if the penalty rate decision will directly affect certain employees (such as labour hire employees) that may be entitled to wages paid under agreements which refer to modern awards (the awards).

[150] The RAFFWU indicate many of these workers are entitled to wages paid under agreements which exclude the awards and as such these employees aren't guaranteed a safety net of enforceable, fair, minimum terms and conditions incorporated in an award.

[151] The decision would result in a wage reduction for certain Retail and Fast Food industry employees. The wages would not be at the current level but the wages would be more than under a successful s.225 application to terminate an agreement after the nominal expiry date has passed.

[152] RAFFWU submit that should the *Fair Work Amendment (Pay Protection) Bill 2017* (the Bill) be passed, the Bill would directly affect an estimated hundreds of thousands workers.

[153] It recommends that prior to the Full Bench determining any implementation program, the Full Bench should analyse and if necessary compel relevant large employers to provide related information of the potential detrimental impact of the penalty rates decision on those workers taking into account those worker's workplace rights of under the Bill and s.225 of the *Fair Work Act 2009*.

[154] RAFFWU submit the penalty rate decision would lead to increased unemployment because workers would want to offset any lost wages with additional hours.

[155] RAFFWU contend the Full Bench loaded rates proposal would remove Retail and Fast Food Industry workers of the wages they would earn as seen in the recent penalty rate decision. It submitted the penalty rate decision should be set aside.

[156] In relation to the red-circling issue, RAFFWU concurred with the United Voice submissions in reply dated 20 April 2017 and the United Voice's intention to apply for judicial review of the penalty rates decision.

[157] It identified that should the Full Bench implement different transitional arrangements for existing employees and future employees (red-circling) the implementation of red-circling

should be equally applied to workers covered by awards and agreements and employers within relevant sectors and irrespective of breaks in employment.

#### **4.9 Shop Distributive and Allied Employees' Association**

[158] In response to the Employer Organisations' submissions, the SDA submit that the employer organisations have ignored the previous Full Bench findings on the approach to be adopted in the fixing of appropriate transitional arrangements. They reiterate the need for the Full Bench to treat the object of mitigating the adverse impacts and hardship on employees as a centrally important matter and weight in fixing transitional arrangements.

[159] In response to the Retail Associations' submissions, the SDA acknowledge it will not be possible to eliminate hardship by the setting of transitional arrangements. Nor is there a transitional period that could eliminate the hardship that low paid workers will experience.

[160] The SDA note the Commission should reject the Retail Associations submissions of tempering the level of mitigation where there is a likelihood that the arrangements would limit the positive employment impacts.

[161] It noted the Commission should also reject the Retail Associations attempt to diminish the extent of the hardship that will flow from the decision because of erroneous assumptions in their calculation of the range of retail industry employees impacted and the misguided submissions that the absolute upper end of the potential detriment brought about by the Sunday penalty rate reduction.

[162] It further noted the Retail Association's submissions have mischaracterised the nature of the employee witness lay evidence. In addition, there are differences in the Retail Associations, Australian Retail Association and the Master Grocers Australia calculation of increase in the wage rates.

[163] The SDA commented that the Retail Associations submissions that quicker reduce labour costs are implemented the quicker the additional labour hours will be offered is untenable because the Commission has not concluded additional labour hours will be offered.

[164] It elaborated that even if the reductions in Sunday penalty rates do generate more Sunday hours of work being available, there is no necessity that those hours be provided to employees working on a Sunday.

[165] The SDA commented that in relation to fair notice employees have only been on notice of the proposed cuts since the penalty rates decision was issued on 23 February 2017.

[166] In response to the NRA's submission of a shorter implementation period for the penalty rate reduction, the SDA stated the NRA misunderstands the primary purpose of the transitional arrangements and NRA also mischaracterised the findings made by the Commission about the positive employment effects.

[167] In contrast to the Pharmacy Guild of Australia's submissions, the SDA stated the adverse impacts of the reduction on employees covered by the Pharmacy Award will not be offset by the opportunity to work additional hours. It submitted the Commission should not be satisfied that the adverse impacts will be offset and the little weight should be placed on the Guild's submissions in setting the appropriate transitional arrangements.

[168] In response to Ai Group's submissions, the SDA concurred that the Commission has power to make transitional arrangements. It submitted that even if in some workplaces additional hours were offered, this would do little to mitigate the adverse impacts on employees.

[169] In contrast to Ai Group's submissions on red circling proposal, the SDA submitted Ai Group's opposition to the introduction of red circling because such arrangements would increase the regulatory burden should be rejected. It stated the red circling of current rates for existing employees will not materially affect whether the Fast Food Award is simple and easy to understand.

[170] The SDA noted the Ai Group's opposition to the red circling arrangements to preserve Sunday penalty rates to be neither fair nor relevant has been addressed in its own red circling proposal. It clarified its red circling proposal called for the temporary retention of existing rates to mitigate the impacts on employees.

[171] The SDA oppose Ai Group's submissions that clause 34.1A of the Restaurant Award should not be introduced. They state the clause would educate employees and employers about the right of employees to not experience discrimination nor be disadvantaged as a result of the decision. It stated the Full Bench determined the clause was an appropriate term to be included in a modern award. It also submitted the inclusion of the clause in FFIA enables the award to achieve the modern awards objective. Alternatively, it stated this clause should be introduced under s.142(a) of the FW Act which permits the inclusion of "incidental terms." These terms would introduce differential penalty rates between classifications making the new terms operate in an appropriate and fair manner.

[172] In response to ABI and NSW BC's submissions, the SDA state that the ABI and NSWBC misunderstood the primary purpose of transitional arrangements when suggesting the Commission must balance employer/employee needs in implementing the decision. SDA noted that the particular weight that should be placed on profit margin and business survival rate evidence is misguided.

[173] The SDA state, in response to ACCI's submissions, that ACCI's claim of an increased overall hours benefit mischaracterises the Commission's findings. It relied on its replies to AI Group, ABI and NSWBC and Employer Associations submissions on the red circling proposal and the primary purpose of the transitional arrangements.

[174] The SDA filed a further submission on 4 May 2017 notifying the Commission and relevant parties of its intention to seek judicial review of any determinations the Commission may make giving effect to the penalty rates decision, on the basis that the decision is affected by jurisdictional error. They submit their application for judicial review will allege jurisdictional error by the Commission in at least the following respects:

- (a) in relation to the its approach to and consideration of s.134(1)(a) of the Act;
- (b) in its interpretation of s 156 of the Act, by failing to require that the Commission, in order to enliven its discretion to vary a modem award, first be satisfied that, since the making of the modem award, there has been a material change in circumstances.

[175] The SDA submit they will seek a stay of any determinations which may be made by the Commission giving effect to the decision which are proposed to commence operation on a date prior to when the judicial review application will likely be heard and determined.

#### 4.10 United Voice

[176] United Voice advised it intends to seek judicial review of the Full Bench Decision due to jurisdictional error. The application for judicial review will allege the Commission failed to properly exercise its jurisdiction by failing to properly take into account the relative living standards and the needs of lower paid workers. In addition, it will allege the Commission made a jurisdictional error in the interpretation of s.156 of the *Fair Work Act 2009* (the FW Act).

[177] United Voice request that should the Commission decide to make orders to give effect to the decision that any orders be made subject to a stay on them for a period of 30 days in order to allow them time to file an application with the Federal Court.

[178] United Voice opposed AHA's submission that cut to Sunday penalty rates for permanent employees be phased in over 2 years. It submitted that the 24 month notice period and subsequent phasing in of cuts will meet the needs of the relevant employees.

[179] It stated a two year notice period is essential to allow low paid hospitality workers (workers) to take steps to mitigate the effects of the decision. These workers would require training to mitigate the effects in order to find work in other industries. If pay cuts are quickly introduced, they would not be able to take these measures.

[180] The two year notice period would enable employees to address non-work related matters (e.g., arrange for childcare, require time to find work to accommodate their study schedule) due to their reduced income and possible increased working hours. The notice period would enable employers to understand their obligations and any changes to their obligations. In addition, the notice period would permit possible consideration to compensate for reduction in penalty rates.

[181] United Voice noted no other party (except for ACCI's limited submission regarding the transitional arrangements) made submissions regarding the transitional arrangements under the awards which it is interested in.

#### 4.11 ACTU

[182] The ACTU supports and relies on the submissions in reply and responses to the questions on notice made by United Voice and the Shop, Distributive and Allied Employees Association.<sup>131</sup> The ACTU's proposal is for the Commission to refrain from beginning implementation of the cuts from any earlier than 1 July 2019 and in not less than three approximately equal instalments (for example of 8%, 8% and 9%).<sup>132</sup>

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<sup>131</sup> [ACTU submission in reply](#) at para 1

<sup>132</sup> [ACTU submission in reply](#) at para 4

## Attachment A—Questions on notice

**Note: We acknowledge some of the positions advanced by parties below are put as alternative submissions to a parties primary submission.**

**Original questions posed by the Full Bench are highlighted in red text.**

### ***1. Impact of the Penalty Rates decision***

#### **1.1 Questions for all parties:**

**[1] It appears to be common ground that the Commission should take steps to mitigate the impact of the Decision on the affected employees.**

*Does any interested party take a different view?*

Ai Group concurs that the Commission should take steps to mitigate the impact of the penalty rates decision on the affected employees.

ACCI outline that the appropriate approach to mitigation has already been identified by the Commission through its provisional intention to phase in reductions.

The Guild submit that mitigation should be achieved by phasing in the Decision, and implemented as per their 24 March 2017 submission.

RCI do not agree to mitigating the impact of the decision and is of the view that any unnecessary delay in the implementation of the decision should be avoided, given the three years that it has taken to conduct the review. RCI recommends that the implementation of the decision be no later than 1 July 2017.<sup>133</sup>

The SDA agree that the Commission should take steps to mitigate the impact of the penalty rate decision (the decision) on the affected employees.<sup>134</sup>

*Each party is asked to provide an estimate of the number of employees affected by the penalty rate reductions determined in the Decision ([2017] FWCFB 1001), by award, and the basis of that assessment.*

The Australian Government estimate approximately 300,000 to 450,000 employees or 3-4 per cent<sup>135</sup> are affected by the Full Bench Decision. The affected employees may be an over-estimated figure because it does not exclude casual workers employed in Hospitality and Retail industries or employees covered by certain awards which are not affected by the Decision.

Ai Group noted, excluding employees covered by an enterprise agreement and level 2 or level 3 employees, it is likely an estimated 63,186 of 214, 265 employees in the fast food industry are affected by the reduction in Sunday penalty rates decision.

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<sup>133</sup> [RCI submission in reply](#) at paras 2-3

<sup>134</sup> SDA submission in reply

<sup>135</sup> [Australian Government Submission](#) at Attachment A

ABI submit that the total number of employees engaged under the Retail Award and who may be affected by the Decision is estimated to be between 71 692 and 164 002.<sup>136</sup>

The Guild submit the decision potentially affects approximately 15,000 employees.<sup>137</sup>

The SDA submit there are two classes of employees who will be affected by the decision: employees whose terms and conditions of employment are prescribed by any of the awards (award employees) and those employees whose terms and conditions of employment are prescribed by enterprise agreements (enterprise-agreement employees).

The SDA submit enterprise agreement employees will only be protected from the adverse effects of the decision if their employment conditions are assumed to continue to be prescribed by an enterprise agreement. The SDA noted this is unsound assumption in the medium/long term.

The SDA note that ANZSIC industry classification “retail trade” employees in the general retail, fast food and pharmacy industries are likely to have shorter employment duration with a particular employer than employees across all industries.

The SDA submit enterprise-agreement employees will at some point in the future be affected by the decision.

The SDA estimate as at 2016 there were approximately 412,171 workers employed in the retail trade sector (defined as per the ANZSIC industry classification) who are affected by the penalty rate reductions determined by the decision, irrespective of whether or not they presently perform any hours of work on a Sunday. The most directly affected employees perform work on a Sunday. It noted the evidence does not enable an estimate of the number of employees in this group.

The SDA submit three key features of employment in the Retail trade industry are:

- under each of the GRIA, the FFIA and the PIA, workers can be required to work to work on Sundays.
- there are limited restrictions on employers to roster employees on Sunday.
- about half of award-reliant enterprise in the Retail trade sector operates seven days a week and almost four in ten operate on weekdays and Saturdays.

The SDA submitted award employees work in an industry which weekend and Sunday trade is extensive. It commented every award-reliant employee is affected by the Sunday penalty rate cuts because there is little if any impediment to employees required to work on Sunday for less remuneration than the current entitlements.

RCI refers to the 2015 ABS data below, which was previously submitted by RCI, which encapsulates the total number of employees in the affected industries.

- 190,413 (85.7%) restaurant employees
- 31,852 (14.3%) catering employees

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<sup>136</sup> [ABI and NSWBC Submission in reply](#) at para 5.1

<sup>137</sup> [Pharmacy Guild Submission in reply](#) at paras 6-7

RCI outline the results of the award-reliance survey conducted by the Commission in the proceedings, showing the percentage of employees in the respective industries who are award reliant. It is noted that these employees are likely to be impacted by the decision, compared to employees employed under agreements, who would not be affected by the decision.

- Hospitality Industry (General) Award 2010 = 64.2%
- Restaurant Industry Award 2010 = 17.8%
- Fast Food Industry Award 2010 = 8.1%

The Retail Associations submit that between 79,833 and 108,831 employees will be affected by the penalty rate reductions under the Retail Award.<sup>138</sup> Their submission provides detailed calculations as to how this is determined.

**[2]** A number of parties submit that the Commission should reconsider the Decision to reduce penalty rates in the *Hospitality and Retail Awards* and set aside that Decision. Further, United Voice submit (at [61]) that the Commission should not invite or permit RCI or CAI ‘to re-litigate their failed claims for variation of weekend penalty rates’.

*Other interested parties are invited to reply to these submissions.*

The Government states the Commission is unable to set aside a Part 2-3 decision due to restrictions in s.603 *Fair Work Act 2009*.

ABI and the NSWBC submit that the Commission should not reconsider or set aside the Decision in so far as it relates to the Retail Award.<sup>139</sup>

RCI reject the submission of United Voice and submit the Commission is empowered to inquire further into the merits of RCI’s claim pursuant to s590 of the FW Act.<sup>140</sup>

The Victorian Government submit the Commission should not permit RCI or CAI to re-run their cases.<sup>141</sup>

## **1.2 Question for the Retail Associations:**

**[3]** The Retail Associations submit that for existing employees the employment benefits of reduced penalty rates ‘have the potential to directly minimise the hardship which is to be mitigated’.

*How does this submission sit with the observation in the Penalty Rates Decision at [1657]– [1659]?*

‘As stated in the PC Final Report, a reduction in Sunday penalty rates will have an adverse impact on the earnings of those hospitality industry employees who usually work on a Sunday. It is likely to reduce the earnings of those employees, who are already low paid, and to have a negative effect on their relative living standards and on their capacity to meet their needs.

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<sup>138</sup> [Retail Associations submission in reply](#) at para 42

<sup>139</sup> [ABI and NSWBC Submission in reply](#) at para 5.1

<sup>140</sup> [RCI submission in reply](#) at para 6

<sup>141</sup> [Victorian Government submission](#) p.1

The evidence of the SDA lay witnesses provides an individual perspective on the impact of the proposed changes. For example, witness SDA Retail 1 said that if Sunday penalty rates were reduced to 150 per cent he would be \$74.06 worse off each week – a reduction of 7.88 per cent in his current weekly earnings.

The extent to which lower wages induce a greater demand for labour on Sundays (and hence more hours for low-paid employees) will somewhat ameliorate the reduction in income, albeit by working more hours. We note the Productivity Commission’s conclusion that, in general, most existing employees would probably face reduced earnings as it is improbable that, as a group, existing workers’ hours on Sundays would rise sufficiently to offset the income effects of the penalty rate reduction.<sup>142</sup> (references omitted)

The Retail Associations’ submit their assertion that the impact of the Sunday penalty rate reduction had the potential to be minimised for existing employees by the allocation of additional hours of work is consistent with the observation of the Commission at paragraph [1659] that a greater demand for labour “will somewhat ameliorate the reduction in income”.

They note that the Productivity Commission’s conclusions, as set out in paragraph [1659], are based on the assumption that the move to the reduced Sunday penalty rate would occur without any transition. They submit they are unable to assume what the Productivity Commission’s conclusions would be under a two stage transition to the reduced penalty rate.

The Retail Associations’ submit that not every existing retail employee who works on Sundays will, following the implementation of the Sunday penalty rate reduction, be rostered to work sufficient additional hours such that the reduction in income will be eliminated. Rather, they submit that the employment benefits will offset the reductions to some extent. They submit this position is supported by the evidence of the retail employer lay witnesses (see paragraphs [1513], [1524]-[1525], [1540]-[1541], [1548] and [1555]-[1556] of the Penalty Rates Decision).

### **1.3 Question for ACOSS:**

[4] ACOSS propose an option for mitigating the impact of the Decision on affected employees: ‘to ensure that any existing or future employees subject to reductions in penalty rates in the affected Awards are paid “loaded hourly rates” to compensate for potential losses of pay’.

*How would such a proposal work in practice?*

### **1.4 Question for all parties:**

*All parties are asked to comment on the ACOSS proposal.*

Ai Group highlighted it does not understand the option put forward by ACOSS of paying a loaded hourly rate to compensate for losses of pay associated with the reduction in Sunday penalty rates nor does it understand the amount of the loss of pay assumed by ACOSS. It noted it may provide further submissions addressing how the loaded hourly rate proposal will work in practice once it has reviewed ACOSS’ response.

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<sup>142</sup> [2017] FWCFB 1001 at [1657]-[1659]

ACCI submit that loaded rates may offer a useful accompaniment to the implementation of the changes awarded to penalty rates, and may in time offer simpler and clearer rates obligations in some circumstances (essentially reiterating the approach the Commission has taken to date in this matter). They submit consideration of loaded rates can be progressed after changes to penalty rates have been phased in and the Commission should not compel or call on any consideration of loaded rate arrangements on its own motion. They submit that the Commission should reiterate that consideration of loaded rates schedules may be instigated by unions or employers, by application and indicate that there is liberty to apply regarding loaded rates and that the Commission stands ready to consider any such proposals that come before it.<sup>143</sup>

The Hospitality Employers submit it is not appropriate that loaded rates be included in the Hospitality Award. Annualised salary arrangements and individual flexibility arrangements can achieve the same result as a loaded rate.<sup>144</sup>

The Guild submit that loaded rates may offer in time simpler obligation rates for variable hours of work; it would not be appropriate to delay the penalty rates commencement for the development of possible loaded rate schedules for the Pharmacy Award; loaded rates can be progressed after the penalty rates transitional arrangements decision; and any applications that are made should be made and considered under s.157 of the Fair Work Act 2009 rather than as part of the four yearly review.<sup>145</sup>

ABI and the NSWBC are yet to form a view on the merit of implementing loaded rates. They assume that the application of a loaded rates schedule would be at the employer's discretion. The implementation of loaded rates in this manner would not mitigate the impact of a reduction in penalty rates.<sup>146</sup>

The Retail Associations submit that the ACOSS proposal is both unworkable and contrary to the matters the Commission is required to have regard to. They submit that while it is unclear how the proposal might operate, it appears there are two possible models. The first is that loaded rates are paid for all Sunday workers, regardless of the number of hours they work on Sundays. The other is that loaded rates are paid just to compensate for the reduced income, and therefore act as a quasi-take home pay order. The Retail Associations submit that neither of these options should be considered. Loaded rates applying to all Sunday workers would have the effect of over compensating some workers and under compensating others for the reduction in pay occurring as a result of the Sunday penalty rate reduction. Further, they submit the loaded rates would effectively constitute a continuation of the existing Sunday penalty rates under the Retail Award, and would therefore amount to a continuation of a provision of the Retail Award which has been determined to be neither fair nor relevant.<sup>147</sup>

RCI submit that the practical implications of the proposal by ACOSS may look like a provision similar to the rolling-up provision currently in the Restaurant Award at clause 28. RCI does not disagree with the adoption of this provision, in so far as it will assist businesses from an administrative point of view, in line with section 134(f).<sup>148</sup>

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<sup>143</sup> [ACCI submission in reply](#) at para 64

<sup>144</sup> [Hospitality Employers Submission in reply](#) at paras 12 – 13

<sup>145</sup> [Pharmacy Guild Submission in reply](#) at para 8 – 9

<sup>146</sup> [ABI and NSWBC Submission in reply](#) at para 5.1

<sup>147</sup> [Retail Associations submission in reply](#) at paras 47- 48

<sup>148</sup> [RCI submission in reply](#) at para 24-25

The SDA support the assumed ACOSS proposal of “loaded hourly rates” that is to increase the ordinary hourly rates of pay to offset the penalty rate reductions, while preserving an entitlement to be paid penalty rates for work at certain times as prescribed by the awards.

United Voice support ACOSS’ submission that it is necessary for the Full Bench to consider the needs of the low paid when making decision about transitional arrangements for cuts to penalty rates.

## **1.5 Questions for CCIWA**

[5] CCIWA submits that ‘we believe that the proportion of employees who are reliant upon existing Sunday penalty rates to meet household expenses is low’.

*What is the factual basis for this submission? (Note: expand on the material referred to at [13]–[20] of CCIWA’s [submission](#))*

CCIWA provide a detailed response to question 1.5 as to the factual basis of their view that the proportion of employees who are reliant on Sunday penalty rates is low. CCIWA refer to studies and reports that assist in developing a picture of the demographics of those workers engaged in weekend work, including data from the following sources:

- Household, Income and Labour Dynamics in Australia (HILDA) surveys, cited by the Productivity Commission in its Workplace Relations Framework inquiry report, which demonstrates the dominant role students have in the performance of weekend work as
- Australian Work and Life Index (AWALI) survey conducted by the University of South Australia.
- ABS’s Household and Family Projections, Australia, 2011 to 2036 which examines living arrangements by age group.

## **2. Take home pay orders**

### **2.1 Question for all parties:**

[6] It seems to be common ground that the take home pay order provisions of the TPCA Act are *not* an available option to mitigate the impact of the reductions in penalty rates set out in the Decision.

*Does any interested party take a different view?*

Ai Group concur with the view that the Commission cannot make a take home pay order to mitigate the impacts of the reduction in Sunday penalty rates.

ACCI reiterate its previous submission that THP orders are not available for the implementation of changes to penalty rates.<sup>149</sup>

The Hospitality Employers agree that the take home pay order provisions of the TPCA Act are not an available option to mitigate the impact of the reductions in penalty rates.<sup>150</sup>

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<sup>149</sup> [ACCI submission in reply](#), at para 65

<sup>150</sup> [Hospitality Employers Submission in reply](#) at para 14

ABI and the NSWBC agree that the take home pay order provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)* are not an available option to mitigate the impact of the reductions in penalty rates.<sup>151</sup>

The Guild submits Take Home Pay Orders are not available.<sup>152</sup>

The SDA submit that take home pay orders are not an available option to ameliorate the impact of the proposed reductions on employees.

United Voice confirm that take home pay orders are not an available option to mitigate the impact of the reductions in penalty rates.

RCI agree with the general interpretation that take home pay orders under the Transitional Act are not an option that can be exercised in implementing the decision.<sup>153</sup>

## **2.2 Question for the Australian Government:**

*Is there any present intention to amend the Fair Work Act 2009 (Cth) (the FW Act) to provide the Commission with a discretion to make take home pay orders that may mitigate the impact upon effected employees of a variation to a modern award?*

The Government submits the Commission should continue to follow the established Courts and Tribunal's principle and practice of determining matters based on the existing legislation.

We have taken it from the Government's response that there is no present intention to amend the FW Act to provide the Commission with the discretion to make take home pay orders. If this assumption is incorrect the Government is to inform the Commission at the hearing on Tuesday 9 May 2017.

## **2.3 Question for the Small Business and Family Enterprise Ombudsman:**

[7] The Ombudsman recommends that 'at the end of the transition period, the Fair Work Commission should consider granting take home pay orders for individuals to mitigate the effects of any gap that remains between the amounts of their earnings with and without application of the Sunday penalty rate'.

*What is the source of the Commission's power to make the take home pay orders proposed?*

No response was received.

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<sup>151</sup> [ABI and NSWBC Submission in reply](#) at para 5.1

<sup>152</sup> [Pharmacy Guild Submission in reply](#) at para 10

<sup>153</sup> [RCI Submission in reply](#) at paras 26 – 27

### 3. 'Phasing in'

#### 3.1 Questions for all parties

[8] It appears to be common ground that the Commission has power to make transitional arrangements relating to the staggered introduction of the reduction to existing Sunday penalty rates.

*Does any interested party take a different view?*

Ai Group concur that the Commission has the power to make transitional arrangements related to the staggered introduction of the reduction in Sunday penalty rates.

ACCI considers the Commission do have the power to apply a phasing in arrangement and specific proposals will come from members of the Australian Chamber network.<sup>154</sup>

The Hospitality Employers submit the Commission has power to stagger the reduction to the Sunday penalty rates. However, staggered introduction prolongs a Sunday penalty rate that is not fair and relevant.<sup>155</sup>

The Guild submit the Commission does have the ability to apply transitional arrangements for the penalty decision.<sup>156</sup>

ABI and NSWBC agree the Commission has power to make transitional arrangements relating to the staggered introduction of the reduction to existing Sunday penalty rates, in so far as it relates to the transitional arrangements proposed by ABI and NSWBC and the Retail Employers.<sup>157</sup>

The Retail Associations accept the proposition of Ai Group in relation to the obligations of the Commission when making transitional arrangements. They further submit that the limitations as to the incidence of Sunday work provided for in the Retail Award are relevant to the Commission's consideration of appropriate transitional provisions.<sup>158</sup>

RCI disagree with any proposals to stagger the introduction of the reduced Sunday penalty rates.<sup>159</sup>

The SDA submit that the Commission has the power to make transitional arrangements related to the staggered introduction of any reduction to existing Sunday penalty rates.

United Voice agreed the Commission has power to make transitional arrangements relating to staggered introduction of the reduction to existing Sunday penalty rates.

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<sup>154</sup> [ACCI submission in reply](#), at para 66

<sup>155</sup> [Hospitality Employers Submission in reply](#) at para 15

<sup>156</sup> [Pharmacy Guild Submission in reply](#) at para 11

<sup>157</sup> [ABI and NSWBC Submission in reply](#) at para 5.1

<sup>158</sup> [Retail Associations Submission](#) at 52

<sup>159</sup> [RCI Submission in reply](#) at para 31

[9] At paragraph [43] of its submission, Ai Group submits that in determining the transitional arrangements for the Sunday penalty rate, the Full Bench must act consistently with:

- (a) its statutory charter, including the exercise its powers under the FW Act in a manner that is fair and just (see section 577(a) of the FW Act);
- (b) its principle that fairness is assessed from the perspective of both employer and employee (and not simply from the perspective of the employee) (see Penalty Rates Decision at [37], [117], [118], [151], [885], [1701], [1877], [1948]);
- (c) the objects of the relevant Part (see section 578(a) of the FW Act);
- (d) the merits of the matter (see section 578(b) of the FW Act);
- (e) its findings and conclusions in the Penalty Rates Decision;
- (f) the evidence in the proceedings;
- (g) the extent of the reductions in the existing Sunday penalty rates; and
- (h) the approach adopted by other Full Benches to the staggered introduction of reductions in penalty rates.<sup>160</sup>

*Does any interested party hold a contrary view?*

Ai Group concurred with the factors it identified relevant to the exercise of the power to make transitional arrangements.

AHA and the AAA agree with the proposition advanced by Ai Group and do not hold a contrary view.<sup>161</sup>

ABI and NSWBC agree with the submissions outlined in paragraph [43] of the Ai Group submissions. However, they submit the Commission’s obligation to ensure that the terms of modern awards meet the modern awards objective must also be considered in the setting of the transitional rates. In the Retail Award, there are award clauses which otherwise limit the number of ordinary hours that can be worked on a Sunday. Therefore, such clauses should be taken into account when determining the impact of the implementation of the Decision and the appropriate transitional arrangements to be applied.<sup>162</sup>

The SDA accept that in fixing the transitional arrangements, the Full Bench must act consistently with the 8 matters identified in Ai Group’s submissions. It does not agree that the Full Bench must (or should) act consistently with the matters described in subparagraphs (b) and/or (h).

The SDA submit in response to subparagraph (b) the context of the “fairness” principle referred to in AI Group’s submission is different from the present context.

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<sup>160</sup> [Ai Group submission](#), 24 March 2017 at para 43

<sup>161</sup> [Hospitality Employers Submission in reply](#) at para 16

<sup>162</sup> [ABI and NSWBC Submission in reply](#) at para 5.1 at pages 10 – 11

The SDA state the nature of transitional arrangements means that the question of “fairness” falls to be assessed from the perspective of the employees alone. The SDA highlight that the Full Bench decision makes it apparent that the Full Bench determined not to maintain a clear separation between the merits of its decision and the approach to be adopted to determining the transitional arrangements.

The SDA submit, in response to subparagraph (h), that it does not accept that the Full Bench in this proceeding “must act” consistently with previous Full Benches approaches to the staggered introduction of penalty rate reductions. The SDA note any previous approaches merely reflected the facts and circumstances of that proceeding.

United Voice agreed with the matters of (a) to (g) in Ai Group’s submissions. It; however, disagreed with sub-paragraph (h) that the Full Bench is required to act consistently with other Full Benches to the staggered introduction of reductions in penalty rates. It stated there is nothing in the Act or relevant jurisdictional decisions that require the Full Bench to follow the approach taken by previous Full Benches regarding transitional arrangements.

*Is it also relevant that the terms of a particular modern award may limit the incidence of Sunday work (as proposed by the Retail Associations at paragraph [14] of its submission)?*

In response to Question 3.1(c), Ai Group submitted limitations on the spread of ordinary hours are not applicable to the Fast Food Award as all Sunday hours attract the Sunday penalty rates.

The SDA highlight that little weight should be given to the existence of award terms which may limit the incidence of Sunday work as a relevant consideration for 4 reasons:

- it states only the Retail Associations have raised this issue and only in respect of the Retail Award.
- the Retail Associations refer to only two specific provision related to Sunday work.
- the two specific clauses will likewise do nothing to limit the incidence of Sunday work.
- it is only clause 28.13 which may have some effect in limiting the incidence of Sunday work.
- these award provisions do nothing to mitigate the loss of take home pay to employees when they are rostered to work on Sundays.

United Voice submitted neither the Hospitality Award nor the Restaurants Award have terms that may limit the incidence of Sunday work.

[10] In its submission ABI and NSWBC contend that an appropriate transitional arrangement needs to balance the needs of the low paid and the regulatory burden and disemployment factors referred to at paragraphs 4.2 and 4.3 of their submission. ABI and NSWBC submit that an appropriate way in which to achieve this balance is for the Commission to ask the following question:

*‘Which transitional proposal will provide a substantive opportunity to employees to mitigate any adverse effects of the Decision whilst not significantly prejudicing the employment and regulatory benefits associated with the Decision?’<sup>163</sup>*

*All parties are invited to comment on the question posed by ABI and NSWBC and whether it is the appropriate question for the Commission to direct itself to in these proceedings.*

AHA and the AAA submit that the Commission must consider whether a transitional arrangement is necessary, and if so, that it goes no further than necessary. They submit the Commission does not need to consider whether a transitional arrangement would “balance” the needs of the low paid against other matters. The requirement on the FWC is to take into account a number of matters listed in section 134(1) of FW Act.<sup>164</sup>

The Guild submits the question proposed by ABI and NSWBC is not an appropriate question for the Commission to direct itself in these proceedings.<sup>165</sup>

The SDA submit that the correct question for the Full Bench to direct itself is to determine appropriate transitional arrangements. It noted the Full Bench must treat the object of mitigating the adverse impacts and hardship on employees of the penalty rate cuts as a matter of central importance and weight in the fixing of transitional arrangements.

United Voice disagreed with ABI and NSWBC simplifying the multifactorial balancing approach the Full Bench is required to undertake when considering the appropriate transitional arrangement.

### **3.2 Question for the Australian Government:**

[11] The Government notes that the reductions in certain Sunday penalty rates that occurred during the award modernisation process were phased in in equal instalments over a 5 year period – from 2010 to 2015 – and that the *Restaurant Industry Award 2010 Appeal* decision reduced penalty rates and no phasing in occurred.

*Does the Government have a view on the merits of phasing in the penalty rate reductions we have determined and, if so, what phasing method is appropriate in each award?*

The Government submits the FWC should determine phasing in the penalty rate reductions following 4 principles:

- ensure the affected industries would generate positive employment effects and increase in the level and range of services offered.

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<sup>163</sup> [ABI and NSWBC submission](#), 24 March 2017 at para 4.6

<sup>164</sup> [Hospitality Employers Submission in reply](#) at para 17 – 19

<sup>165</sup> [Pharmacy Guild submission in reply](#) at para 12

- uphold the findings of the 2 year examination of the presented evidence.
- ensure the positive employment effects flow to businesses and the Australian economy in a timely fashion while balancing any potential economic impacts on employees.
- ensure any transitional arrangements are simple, easy to understand and easy to execute for employees and businesses.

### 3.3 Questions for the NRA:

[12] The NRA submits that lengthy phasing in provisions would impede collective bargaining.<sup>166</sup>

*If the transitional arrangements are determined why would the length of phasing in have any adverse impact on collective bargaining?*

*The award modernisation penalty rate reductions were phased in over 5 years, what impact, if any, did that have on collective bargaining?*

The NRA withdraw their submission in relation to the impact of transitional arrangements on collective bargaining.<sup>167</sup>

### 3.4 Questions for United Voice

[13] At paragraph [15] of its submission, United Voice supports the Productivity Commission's proposed 12 month delay in implementing the reduction to Sunday penalty rates and at paragraph [19] proposes a two-year delay to the implementation of the reduction in Sunday penalty rates for permanent employees under the *Hospitality Award* and the public holiday rate for employees under the *Hospitality Award* and for permanent employees under the *Restaurant Award*.

*Does United Voice agree the submission advanced differs significantly from the Productivity Commission proposal?*

*If not, in what way does United Voice's proposal reflect the Productivity Commission's?*

United Voice proposed that cuts to penalty rates be delayed for a period of 24 months and then phased in over three years. It relied on the underlying principles in the Productivity Commission's submissions to delay the implementation of cuts.

### 3.5 Question for the ACTU and the SDA

[14] The ACTU and the SDA also propose a 2 year delay to the implementation of the penalty rate reductions.

*What justification is advanced in support of the 2 year delay?*

The SDA submit, in response to Question 3.5, that the 2 year deferral in implementing the proposed reductions in penalty rates are justified because the initial deferral is consistent to the Full Bench treating the object of mitigating the adverse impacts and hardship on

<sup>166</sup> NRA submission, 24 March 2017, at paras 24-26

<sup>167</sup> [Retail Associations submission in reply](#) at para 53

employees as a centrally important matter and weighed in the fixing of transitional arrangements. The deferral will also assist the SDA in preparing and making a similar application in the 2017/2018 Annual Wage Review while the 2016/2017 Annual Wage Review is being dealt with.

The SDA notes the unavailability of take home pay orders to ameliorate the impact on employees favour the deferral of the reductions in penalty rates. It further highlights that the retail workers will face particular hardship when penalty rates are reduced and as employees covered by the award (in relation to the GRIA) will suffer the largest penalty rate reduction a longer period of adjustment for the reductions may be justified, both points which it noted were accepted by the Commission.

#### **4. 'Red Circling'**

**[15]** At paragraph [14] of its submission, the SDA submits that the Commission should preserve the current Sunday penalty rates for all existing employees by issuing the following variation determinations:

- (a) Following proper and full determination in proceedings of the annual wage review employers must continue to pay employees the rate of pay prescribed by the relevant Award as at that time for Sunday work ("the preserved rate") until such time that the rate of pay for Sunday work under the Award equals or exceeds the preserved rate.
- (b) Employers will not dismiss, injure in their employment or alter to their prejudice the position of any employee entitled to be paid the preserved rate (including by a reduction in shifts or changes in rosters) by reason of, or for reasons which include, that entitlement.<sup>168</sup>

#### **4.1 Questions for all parties:**

*What is the source of the Commission's power to preserve the current Sunday penalty rates for existing employees as advanced by the SDA?*

Ai Group submits there is neither an express power nor an implied power for the Commission to preserve the Sunday penalty rates for existing employees as advanced by the SDA.

ABI and NSWBC submit the power to insert the transitional term into the modern awards is derived from Subdivision B of Part 2-3 of the Act (sections 139 – 142).<sup>169</sup> There is no power to include the SDA's proposed transitional clause into modern awards.<sup>170</sup> ABI and NSWBC submit that the SDA proposal would have the effect of delaying the implementation of the Decision in relation to Sunday rates in the Retail Award for over a decade. This is an unacceptable outcome in circumstances where the Decision has found that the existing Retail Award provisions do not provide a fair or relevant minimum safety net. It also means that the terms of the Retail Award would not satisfy the modern awards objective for more than 10 years.<sup>171</sup>

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<sup>168</sup> [SDA submission](#) 24 March 2017 at [14]

<sup>169</sup> [ABI and NSWBC Submission in reply](#) at para 5.1 at (f) – (p)

<sup>170</sup> [ABI and NSWBC Submission in reply](#) at para 5.1 at (q) – (s)

<sup>171</sup> [ABI and NSWBC Submission in reply](#) at para 5.1 at (a) – (e)

The Guild submit that the Commission cannot ‘red circle’ arrangements for existing employees because it would preserve penalty rates that are not fair and are not relevant. They do not advance a red circling proposal.<sup>172</sup>

The SDA submits the Commission has power under s.165(1) of the FW Act to make transitional arrangements which would include provisions preserving Sunday penalty rates for existing employees. It notes there is neither a limitation on the Commission’s power on a determination prescribing a succession of terms to the above effect continuing over time such that it could reflect the phased reductions in penalty rates. Nor is the Commission’s power limited to exclude the operation of the terms in s.165(1) to particular classes of employees.

United Voice disagreed and did not advance with any ‘red circling’ provisions in the transitional arrangements because there is the potential to create a two-tier workforce. It stated there is a risk that such ‘red circled’ employees will be rostered to work less hours than newer employees (who may be less expensive.)

RCI submit that s.156 of the FW Act imposes an obligation on the Commission to review all modern awards and each modern award must be reviewed in its own right. They submit the proposal by the SDA has no relevance to the Hospitality Award or Restaurant Award.<sup>173</sup>

*If the Commission is vested with such a power, what do the other parties say about the merits of the proposal advanced by the SDA?*

Ai Group submit that the Commission should not proceed on SDA’s proposal because SDA’s proposal would introduce red-circling which Ai Group opposed; entail neither a fair nor relevant clause for Sunday penalty rates in the Fast Food Award; the proposal of the SDA only considers the perspective of the employee and ignores the perspective of the employer; and lastly, introduces an unnecessary term to the Restaurants Award.

RCI reject the recommendation by SDA to preserve the position of existing employees affected by the Decision in the manner proposed.<sup>174</sup>

*Other than the SDA’s proposal in relation to the Retail, Fast Food and Pharmacy Awards, are there any other ‘red circling’ proposals being advanced by any other party?*

Ai Group noted it is not proposing any red circling. It opposed red circling and it noted there are a variety of other parties opposed to red circling.

ACCI submit that the SDA submissions on implementation should not be accepted and they would be concerned at the emergence of any new, 11<sup>th</sup> hour proposals regarding ‘red circling’ to which employers would not have an opportunity to reply to. They reserve their rights to respond to any new substantive ideas for the implementation of the changes.<sup>175</sup>

The AHA reject grandfathering of penalty rates and does not advance a red-circling proposal.<sup>176</sup>

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<sup>172</sup> [Pharmacy Guild submission in reply](#) at para 14 – 15

<sup>173</sup> [RCI Submission in reply](#) at para 35

<sup>174</sup> [RCI Submission in reply](#) at paras 35 – 36

<sup>175</sup> [ACCI submission in reply](#) at paras 69-75

<sup>176</sup> [Hospitality Employers Submission in reply](#) at para 20 – 21

## 4.2 Question for the Australian Government:

[16] The Government submits that ‘Given the implementation issues that would arise from red circling, the FWC will need to carefully weigh up the costs and benefits and potential impact of such an approach’.

*The Government is asked to elaborate on the ‘costs and benefits and potential impact’ of the red circling approach including that proposed by the SDA in respect of the General Retail Industry Award 2010.*

The Government submits if the Commission wishes to adopt a red-circling approach then 4 issues would need to be addressed:

- clarify if there are any changes (i.e., shift patterns, job/position with the same employer etc) to a current employee’s does red-circling continue.
- Identify the implementation of the red-circling may make the transition to the new Sunday penalty rates more complex.
- identify if red-circling may encourage employers to replace ‘red circled’ employees with employees (such as casual employees) that are on the new pay arrangement system.
- identify the complexity and costs of running a dual pay arrangement for small business employers.

## 4.3 Question for the SDA

[17] The SDA submits (at [12]) that ‘[f]uture employees are, by definition, not subjected to [these] specific forms of disruption and detriment occasioned by the reductions in Sunday penalty rates’.

*If the SDA’s red circling proposal is adopted, why is it necessary to phase in the reduction at all?*

The SDA submits that if it’s red circling proposal is adopted it is necessary to phase in the penalty rate reductions because the detriment occasioned by those reductions is not limited to existing employees.

## 5. General Retail Industry Award 2010

[18] The Retail Associations submit that the decision to reduce the Sunday penalty rate applies equally to shiftworkers (see [53]–[55] of the Retail Associations [submission](#)).

### 5.1 Question for the SDA:

*Does the SDA oppose the submission advanced by the Retail Associations? If so, on what basis?*

The SDA opposes the Retail Associations submissions that the decision to reduce Sunday penalty rates should apply equally to shift workers. It notes the Retail Associations’ submission is an impermissible attempt to invite the Commission to introduce a further reduction to penalty rates. To accede the Retail Association’s submissions would mean a denial of procedural fairness.

## Attachment B

**Note: We acknowledge some of the positions advanced by parties below are put as alternative submissions to a party's primary submission.**

*Table 1: Hospitality Industry General Award 2010*

| Party  | Proposed transitional rates   |                               |                                      |
|--|---|-------------------------------|--------------------------------------|
| <a href="#">United Voice</a><br><br><a href="#">ACTU</a> supports a similar reduction            | <b>Year</b>   | <b>Reduction–<br/>Sundays</b> | <b>Reduction–<br/>Public Holiday</b> |
|  | 1 July 2017   | 0 (150%)                      | 0 (250%)                             |
|  | 1 July 2018   | 0 (150%)                      | 0 (250%)                             |
|  | 1 July 2019   | 8% (142%)                     | 8% (242%)                            |
|  | 1 July 2020   | 8% (134%)                     | 8% (234%)                            |
|  | 1 July 2021   | 9% (125%)                     | 9% (225%)                            |
| <a href="#">Australian Hotels Association and the<br/>Accommodation Association of Australia</a> | <b>Date</b>   |                               | <b>Penalty</b>                       |
|  | 1 July 2017   |                               | 160%                                 |
|  | 1 July 2018   |                               | 150%                                 |
| <a href="#">Chamber of Commerce and Industry<br/>Queensland</a>                                  | <b>Date</b>   |                               | <b>Employees</b>                     |
|  | 1 July 2017   |                               | Casual and permanent                 |
| <a href="#">AFEI</a>   | Seeks no transitional arrangements – changes to the rates to take immediate effect. |                               |                                      |

Table 2: Fast Food Industry Award 2010

| Party   | Proposed transitional rates   |  |                           |
|---|---|--|---------------------------|
| <a href="#">SDA</a>   | <b>For future employees only (propose existing employees remain on current rates)</b> |  |                           |
|   | <b>Sunday rates</b>   |  |                           |
|   | <b>Date</b>   | <b>Sunday rate Permanent</b>             | <b>Sunday rate Casual</b> |
|   | 1 July 2019   | 142%                                     | 167%                      |
|   | 1 July 2020   | 134%                                     | 159%                      |
|   | 1 July 2021   | 125%                                     | 150%                      |
|   | <b>Public holidays</b>  |  |                           |
|   | <b>Date</b>   | <b>Permanent</b>                         | <b>Casual</b>             |
|   | 1 July 2019   | 142%                                     | 167%                      |
|   | 1 July 2020   | 134%                                     | 159%                      |
|   | 1 July 2021   | 125%                                     | 150%                      |
| <a href="#">Ai Group</a>                                    | <b>Date</b>   | <b>Employees</b>                         | <b>Loading</b>            |
|   | 1 July 2017   | Full-time and part-time level 1 employee | 137.5%                    |
|   |   | Casual level 1 employee                  | 162.5%                    |
|   | 1 July 2018   | Full-time and part-time level 1 employee | 125%                      |
|   |   | Casual level 1 employee                  | 150%                      |
| <a href="#">National Retail Association</a>                 | Public holiday rates changes to commence in full from 1 July 2017                     |  |                           |
| <a href="#">Chamber of Commerce and Industry Queensland</a> | <b>Date</b>   | <b>Employees</b>                         | <b>Reduction</b>          |
|   | 1 July 2017   | Casual                                   | 150%                      |
|   | 1 July 2017   | Permanent                                | 125%                      |
| <a href="#">AFEI</a>  | Seeks no transitional arrangements – changes to the rates to take immediate effect.   |  |                           |

Table 3: General Retail Industry Award 2010

| Party   | Proposed transitional rates   |                                  |                               |
|---|---|----------------------------------|-------------------------------|
| <a href="#">SDA</a>   | <b>For future employees only (propose existing employees remain on current rates)</b> |                                  |                               |
|   | <b>Date</b>   | <b>Sunday rate<br/>Permanent</b> | <b>Sunday rate<br/>Casual</b> |
|   | 1 July 2019   | 192%                             | 200%                          |
|   | 1 July 2020   | 184%                             | 195%                          |
|   | 1 July 2021   | 176%                             | 190%                          |
|   | 1 July 2022   | 168%                             | 185%                          |
|   | 1 July 2023   | 159%                             | 180%                          |
|   | 1 July 2024   | 150%                             | 175%                          |
|   | <b>Public holidays</b>  |                                  |                               |
|   | <b>Date</b>   | <b>Permanent</b>                 | <b>Casual</b>                 |
|   | 1 July 2019   | 142%                             | 167%                          |
|   | 1 July 2020   | 134%                             | 159%                          |
|   | 1 July 2021   | 125%                             | 150%                          |
| <a href="#">ARA</a>   | <b>Date</b>   | <b>Employee</b>                  | <b>Penalty</b>                |
|   | 1 July 2017   | Permanent and casual             | 175%                          |
|   | 1 July 2018   | Permanent                        | 150%                          |
| <a href="#">NRA</a>   | <b>Date</b>   | <b>Employees</b>                 | <b>Rate</b>                   |
|   | 1 July 2017   | Casual and permanent             | 175%                          |
|   | 1 July 2018   | Permanent                        | 150%                          |
| <a href="#">ABI &amp; NSWBC</a>                             | <b>Date</b>   | <b>Employee</b>                  | <b>Penalty</b>                |
|   | 1 July 2017   | Casual and permanent             | 175%                          |
|   | 1 July 2018   | Permanent                        | 150%                          |
| <a href="#">Chamber of Commerce and Industry Queensland</a> | <b>Date</b>   | <b>Employees</b>                 | <b>Reduction</b>              |
|   | 1 July 2017   | Casual and permanent             | 175%                          |
|   | 1 July 2018   | Permanent                        | 150%                          |
| <a href="#">AFEI</a>  | Seeks no transitional arrangements – changes to the rates to take immediate effect.   |                                  |                               |

Table 4: Pharmacy Industry Award 2010

| Party   | Proposed transitional rates   |                       |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
|---|---|-----------------------|-----------|-----------|--------------------------|-------------------------|-------------|----------------------|------|-------------|-------------------------|------|-------------|------|------|-------------|------|------|-------------|------|------|-------------|------|------|------|-----------|--------|-------------|------|------|-------------|------|------|-------------|------|------|
| <a href="#">SDA</a>   | <p><b>For future employees only (propose existing employees remain on current rates)</b></p> <table border="1" data-bbox="571 376 1409 685"> <thead> <tr> <th data-bbox="571 376 818 454">Date</th> <th data-bbox="818 376 1123 454">Sunday rate<br/>Permanent</th> <th data-bbox="1123 376 1409 454">Sunday rate<br/>Casual</th> </tr> </thead> <tbody> <tr> <td data-bbox="571 454 818 495">1 July 2019</td> <td data-bbox="818 454 1123 495">192%</td> <td data-bbox="1123 454 1409 495">200%</td> </tr> <tr> <td data-bbox="571 495 818 535">1 July 2020</td> <td data-bbox="818 495 1123 535">184%</td> <td data-bbox="1123 495 1409 535">195%</td> </tr> <tr> <td data-bbox="571 535 818 575">1 July 2021</td> <td data-bbox="818 535 1123 575">176%</td> <td data-bbox="1123 535 1409 575">190%</td> </tr> <tr> <td data-bbox="571 575 818 616">1 July 2022</td> <td data-bbox="818 575 1123 616">168%</td> <td data-bbox="1123 575 1409 616">185%</td> </tr> <tr> <td data-bbox="571 616 818 656">1 July 2023</td> <td data-bbox="818 616 1123 656">159%</td> <td data-bbox="1123 616 1409 656">180%</td> </tr> <tr> <td data-bbox="571 656 818 685">1 July 2024</td> <td data-bbox="818 656 1123 685">150%</td> <td data-bbox="1123 656 1409 685">175%</td> </tr> </tbody> </table> <p><b>Public holidays</b></p> <table border="1" data-bbox="544 757 1382 909"> <thead> <tr> <th data-bbox="544 757 794 797">Date</th> <th data-bbox="794 757 1099 797">Permanent</th> <th data-bbox="1099 757 1382 797">Casual</th> </tr> </thead> <tbody> <tr> <td data-bbox="544 797 794 837">1 July 2019</td> <td data-bbox="794 797 1099 837">142%</td> <td data-bbox="1099 797 1382 837">167%</td> </tr> <tr> <td data-bbox="544 837 794 878">1 July 2020</td> <td data-bbox="794 837 1099 878">134%</td> <td data-bbox="1099 837 1382 878">159%</td> </tr> <tr> <td data-bbox="544 878 794 909">1 July 2021</td> <td data-bbox="794 878 1099 909">125%</td> <td data-bbox="1099 878 1382 909">150%</td> </tr> </tbody> </table> |                       |           | Date      | Sunday rate<br>Permanent | Sunday rate<br>Casual   | 1 July 2019 | 192%                 | 200% | 1 July 2020 | 184%                    | 195% | 1 July 2021 | 176% | 190% | 1 July 2022 | 168% | 185% | 1 July 2023 | 159% | 180% | 1 July 2024 | 150% | 175% | Date | Permanent | Casual | 1 July 2019 | 142% | 167% | 1 July 2020 | 134% | 159% | 1 July 2021 | 125% | 150% |
| Date  | Sunday rate<br>Permanent  | Sunday rate<br>Casual |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2019   | 192%  | 200%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2020   | 184%  | 195%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2021   | 176%  | 190%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2022   | 168%  | 185%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2023   | 159%  | 180%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2024   | 150%  | 175%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| Date  | Permanent   | Casual                |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2019   | 142%  | 167%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2020   | 134%  | 159%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2021   | 125%  | 150%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| <a href="#">APESMA</a>                                      | They support United Voice and SDA but seeks a delay of 4 years  |                       |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| <a href="#">Pharmacy Guild</a>                              | <table border="1" data-bbox="544 981 1431 1263"> <thead> <tr> <th data-bbox="544 981 778 1021">Date</th> <th data-bbox="778 981 1099 1021">Employees</th> <th data-bbox="1099 981 1431 1021">Reduction</th> </tr> </thead> <tbody> <tr> <td data-bbox="544 1021 778 1144" rowspan="2">1 July 2017</td> <td data-bbox="778 1021 1099 1099">Permanent and part-time</td> <td data-bbox="1099 1021 1431 1099">175%</td> </tr> <tr> <td data-bbox="778 1099 1099 1144">Casual</td> <td data-bbox="1099 1099 1431 1144">200%</td> </tr> <tr> <td data-bbox="544 1144 778 1263" rowspan="2">1 July 2018</td> <td data-bbox="778 1144 1099 1223">Permanent and part-time</td> <td data-bbox="1099 1144 1431 1223">150%</td> </tr> <tr> <td data-bbox="778 1223 1099 1263">Casual</td> <td data-bbox="1099 1223 1431 1263">175%</td> </tr> </tbody> </table>  | Date                  | Employees | Reduction | 1 July 2017              | Permanent and part-time | 175%        | Casual               | 200% | 1 July 2018 | Permanent and part-time | 150% | Casual      | 175% |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| Date  | Employees   | Reduction             |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2017   | Permanent and part-time   | 175%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
|   | Casual  | 200%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2018   | Permanent and part-time   | 150%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
|   | Casual  | 175%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
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| Date  | Employees   | Reduction             |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2017   | Casual and permanent  | 175%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |
| 1 July 2018   | Permanent   | 150%                  |           |           |                          |                         |             |                      |      |             |                         |      |             |      |      |             |      |      |             |      |      |             |      |      |      |           |        |             |      |      |             |      |      |             |      |      |