

FOUR YEARLY REVIEW OF
MODERN AWARDS: PENALTY RATES

SUBMISSIONS OF THE SDA ON STATISTICAL REPORTS

1. These submissions are provided in response to an email from the Commission to the parties dated 20 January 2017 inviting submissions in respect of the following updated reports published by the Commission:
 - (a) “Changing Work Patterns” dated January 2017;
 - (b) “Industry Profile – Retail Trade” dated January 2017; and
 - (c) “Industry Profile – Accommodation and Food Services” dated January 2017.

Changing Work Patterns

Table 3.23: Proportion of employees that usually worked weekends by industry, 2006 to 2015

2. In its submissions dated 14 October 2016,¹ the SDA highlighted that Table 3.23 of the Changing Work Patterns Report showed that there had been no material change between 2006 and 2014 in the proportion of employees in the retail industry who usually worked weekends. According to the HILDA data set out in Table 3.23 of that Report, over the above period the proportion of employees in the retail industry who usually worked weekends increased only marginally from 61.4% to 62%.
3. The SDA also noted in its submissions dated 14 October 2016 that this data was consistent with the evidence given by Professor Peetz and Dr Watson that 62% of the total retail workforce usually worked on weekends.² Their unchallenged evidence established that whilst 62% of the total retail workforce usually worked weekends, only

¹ Paragraphs 7-8.

² Paragraph 8.



between 31-35% usually worked on a Sunday.³ The SDA refers to and repeats its submissions about the characteristics of the workforce in the national retail industry at paragraphs 31 to 36 and 324 to 325 of its submissions dated 21 March 2016.

4. The updated Changing Work Patterns Report now includes data on those employees who usually worked weekends for 2015. It records that in 2015 the proportion of employees in the retail industry who usually worked weekends in fact *decreased* to 60.4% as compared to the previous year (2014, 62%) and as compared to 2006 (61.4%).
5. Overall, this data supports a finding that the proportion of retail workers who work on weekends has remained broadly unchanged since 2006.

Employees who worked on weekends: Section 3.5

6. The updated Changing Work Patterns report also includes a new Section 3.5 which presents data drawn from the ABS Labour Force survey on the proportion of employees who worked weekends by industry from 2002-2016. This data is extracted in Table 3.24 and is discussed at page 26 of the report.
7. On its face the data shows only a small increase in the proportion of employees in the retail trade industry who worked weekends as between the period 2002-2008 and the period 2009-2016: from 44.4% to 47.6%. These results undercut any suggestion that there has been a significant or material change in the above periods in the proportion of retail workers who work on weekends.

Industry Profile – Retail Trade

Wage rates and low pay: Section 6.4

8. The updated version of this report contains a new Section 6.4 entitled “Comparison of wage rates in selected awards with two thirds median earnings” which was not contained in the previous version of the report. This new section contains Figure 6.8 and Figure 6.9.

³ Exhibit SDA-36, pg 21, lines 33-35.



9. The data presented in this section of the report compares the minimum weekly wages of each classification in the *General Retail Industry Award 2010 (GRIA)* with two measures of ‘low pay’ or two-thirds of full-time median earnings. The same comparison is undertaken with respect to the *Pharmacy Industry Award 2010 (PIA)*.
10. The two measures of low pay referred to in this section of the report include data on median earnings from:
 - (a) the ABS survey of Employee Earnings and Hours - May 2016 (**EEH measure**);
and
 - (b) the Characteristics of Employment survey - August 2015 (**CoE measure**).
11. In relation to the retail industry, the data presented in Figure 6.8 shows that:
 - (a) the full-time weekly wage for each classification in the GRIA was below the EEH measure of low pay; and
 - (b) the full-time weekly wage in each classification in the GRIA, except for that of Retail Employee Level 7 and that of Retail Employee Level 8, was below the CoE measure of low pay.
12. These results are consistent with that presented to the Commission by Dr Ian Watson in his report entitled “Employee Earnings in the National Retail Industry” dated 30 April 2015 and his uncontested evidence that employees in the retail industry are amongst the lowest paid workers in the nation.⁴ The SDA refers to and repeats the submissions it made with respect to Dr Watson’s evidence about the low paid nature of the retail industry at paragraphs 322 and 323 of its submissions dated 21 March 2016.
13. These submissions are unaffected by the results noted above that, based on the CoE measure of low pay, the full-time weekly wage for Retail Employee Level 7 and Retail Employee Level 8 is not below that measure of low pay.
14. The above classification levels are the two highest classification levels in the GRIA. At Retail Employee Level 8 an employee is required to have a Diploma qualification or to be a Store Manager of a large store (such as Myer, Coles or Big W). Clerical employees

⁴ Exhibit SDA-35, p 29, lines 22-28.



at this level are highly skilled and responsible for payroll and executive salary packaging at a company wide level. The Retail Employee Level 7 classification covers visual merchandisers with a Diploma qualification and clerical employees undertaking secretarial support, reconciliation of accounts and complete payroll.

15. The number of employees in the retail industry who perform work of the type covered in the Retail Employee Level 7 and 8 classifications is vastly outweighed by those employed at Levels 1, 2 and 3 which cover shop assistants, stock-hands, drivers, forklift operators, senior sales persons and supervisors. The large majority of retail workers are at Level 1.
16. In relation to the pharmacy industry, the data presented in Figure 6.9 shows that the full-time weekly wage for most classifications in the PIA was below both the EEH measure of low pay and the CoE measure of low pay. Again, this is consistent with the abovementioned evidence given by Dr Watson that employees in the retail industry (including employees covered by the PIA) are amongst the lowest paid workers in the nation.⁵
17. Those PIA classifications that were not below the EEH or CoE measures of low pay (such as Pharmacist, Experienced Pharmacist, Pharmacist in charge, Pharmacist Manager and ‘Pharmacy Interns – second half of training’) are classifications covering professional staff with tertiary qualifications.

Industry Profile – Accommodation and Food Services

Wage rates and low pay: Section 6.4

18. There is an additional Section 6.4 in the further revised version of the Accommodation and Food Services report entitled, “Comparison of wage rates in selected awards with two thirds median earnings”. Relevantly, this new section incorporates Figure 6.8.
19. Like its equivalent in the updated Retail Trade report, this additional Section 6.4 compares the minimum weekly wages of each classification in the *Fast Food Industry Award 2010* with the EEH and CoE measures of low pay.

⁵ Ibid.

20. The data in Figure 6.8 shows that the full-time weekly wage for each classification in the *Fast Food Industry Award 2010* was below both the EEH and CoE measures of low pay.
21. This data supports that contained in the report of Dr Martin O'Brien dated 4 September 2015.⁶ His evidence was that significant proportions of employees in the fast food industry are low paid, or very low paid with the percentage of workers who are low paid being nearly 80% and the proportion of workers who are very low paid being at least 60%.⁷ The SDA refers to and repeats the submissions it made with respect to Dr O'Brien's evidence about the low paid nature of the fast food industry at paragraphs 697 to 698 and 701 of its submissions dated 21 March 2016.

3 February 2017

STEVEN MOORE QC

ANNA FORSYTH

⁶ Exhibit ACTU-3.

⁷ Ibid at [41].



Paragraph 3

Retail Workforce – Age and Weekend Work

31. Much of the evidence before the Commission on the characteristics of the retail workforce, and to which the paragraphs below refer, comes from the uncontested¹ evidence of Professor Ian Watson and Professor David Peetz in their co-authored report, *Characteristics of the Workforce in the National Retail Industry*.² This report, which is addressed in further detail in Section E of these submissions, brings the latest available unpublished data³ from HILDA and ABS sources to bear on a number of questions regarding the age, including student status, and weekend working patterns of the retail workforce in Australia.
32. Although a greater proportion of the retail workforce is aged 24 years or younger than in other industries, about two-thirds of the retail workforce is aged 25 years or older.⁴ The number of persons aged 15 to 19 years employed in the retail industry has continued to decline over recent years, even as the number of persons in other age groups employed in the retail industry has picked up;⁵ there has been no statistically significant change in the proportion of 15 to 18 year olds in the weekend workforce or in the weekend retail workforce over the last decade.⁶
33. Although up to 62%⁷ of retail employees perform some work on weekends, this proportion has not changed since the introduction of the Retail Award in 2010 – the percentage of employees who worked weekends in 2008 is broadly similar to that who worked weekends in 2014.⁸
34. It is also significant to note, that although up to 62% of retail employees perform some work on weekends, only about a third work on Sundays.⁹
35. The evidence also establishes that the weekend retail workforce is getting older rather than younger. Between 2004 and 2013, the point estimate of the average age of the weekend employee retail workforce increased from 27.3 years to 29.0 years.¹⁰

¹ PN-22173-PN-22174.

² Exhibit SDA-36.

³ Exhibit SDA-36, p 1, line 2.

⁴ IPR, p 38 (Table 5.2) estimates that 33.4% of the retail workforce is aged 24 years or under.

⁵ Exhibit SDA-32, Exhibit KPK-1, pp 11 and 15 (Figure ES6). See also pp 37-38 (Figure 18). See also Exhibit SDA-36, p 16.

⁶ Exhibit SDA-36, p 10.

⁷ Exhibit SDA-36, p 7.

⁸ Exhibit SDA-43, [40]. Compare ARA Final Submissions at [32].

⁹ Exhibit SDA-36, p 7. The estimate is between 31-35% of retail workers work on Sundays.

¹⁰ Exhibit SDA-36, p 9-10.

Annexure: Referenced Extracts from SDA's Submissions dated 21 March 2016

36. It is also important to clarify the proportion of retail employees who are students. The evidence establishes that only 20-22% of retail employees are full-time students under 25 years of age.¹¹ Between 2004 and 2013, there was no statistically significant change in the proportion of “dependent students” in the weekend employee retail workforce.¹²

Dr Ian Watson & Professor David Peetz

324. The uncontested¹³ evidence of Professor Ian Watson and Professor David Peetz in their co-authored report, *Characteristics of the Workforce in the National Retail Industry*¹⁴ (**Watson and Peetz Report**) is relied on by the SDA to support the making of the findings referred to below. In bringing the latest available unpublished data¹⁵ from HILDA and ABS sources to bear on a number of questions regarding the characteristics of the retail workforce in Australia, the Watson and Peetz Report provides reliable information on the issues relevant to the Review in the retail industry. Their evidence regarding the composition and working patterns of the retail workforce is not inconsistent with *Section 5 Labour Market Structure and Trends* of the IPR.

325. On the basis of uncontested evidence in the Watson and Peetz Report, the Commission should make the following findings:¹⁶

- (a) The proportion of retail workers:
 - (i) aged 25 years or over is 61%;¹⁷
 - (ii) aged 24 years or under is 38-39%;¹⁸
 - (iii) aged 19 years or under is 19-21%;¹⁹
 - (iv) who usually work on either one or both of the weekend days is approximately 62%;²⁰ and
 - (v) who usually work on Sundays is 31-35%.²¹

¹¹ Exhibit SDA-36, p 19-20.

¹² Exhibit SDA-36, p 12-13. “Dependent students are defined as persons aged 15 to 24, studying full-time, not working full-time and living in a household with their parent(s).”

¹³ PN-22173-PN-22174.

¹⁴ Exhibit SDA-36.

¹⁵ Exhibit SDA-36, p 1, line 2.

¹⁶ Exhibit SDA-36, p 4, lines 17-19.

¹⁷ Exhibit SDA-36, p 2 and p 15, lines 2-4, Table 20.

¹⁸ Exhibit SDA-36, p 2 and p 15, lines 2-4, Table 20.

¹⁹ Exhibit SDA-36, p 2 and p 5, lines 5-6, Table 3. See also p 16, lines 16-18.

²⁰ Exhibit SDA-36, p 2 and p 7, lines 1-4, Table 8.

²¹ Exhibit SDA-36, p 2 and p 7, lines 17-20. See also p 18, lines 10-12.

Annexure: Referenced Extracts from SDA's Submissions dated 21 March 2016

- (b) Between 2004 and 2012:
- (i) the average age of the weekend workforce and the weekend retail workforce steadily increased;²²
 - (ii) there was no statistically significant change in the proportion of 15 to 18 year olds in the weekend workforce and in the weekend retail workforce;²³ and
 - (iii) there was no statistically significant increase in the proportion of dependent students in the weekend workforce and in the weekend retail workforce.²⁴
- (c) The proportion of retail employees who are under 25 years, but who are not full-time students is 18%.²⁵

The proportion of retail employees who are under 25 years and who are full-time students is 20-22%, comprised approximately of equal proportions of secondary school students and tertiary students

Paragraph 12

Dr Ian Watson

322. The SDA relies on the uncontested²⁶ evidence of Dr Ian Watson in his report entitled *Employee Earnings in the National Retail Industry*²⁷ (**Watson Report**) to support the making by the Commission of the findings set out below. The Watson Report is based on HILDA and ABS data and engages a careful scientific method to avoid arbitrary outcomes and to provide confidence in its results.²⁸ The findings of Professor Watson concerning the low paid nature of the retail industry are consistent with those in *Section 6.1 Earnings* of the IPR.

323. On the basis of the uncontested evidence in the Watson Report, the Commission should make the following findings:

- (a) Between 29% and 42% of employees in the retail industry, being a substantially greater proportion than the all industries average, have their pay and conditions set by reference to award minima.²⁹

²² Exhibit SDA-36, p 2 and pp 9-10, lines 15-20, Tables 12 and 13.

²³ Exhibit SDA-36, pp 10-11, lines 4-10, Tables 14 and 15.

²⁴ Exhibit SDA-36, p 12, lines 15, 21-22.

²⁵ Exhibit SDA-36, p 19, Table 24.

²⁶ PN-22173-PN-22174.

²⁷ Exhibit SDA-35.

²⁸ Exhibit SDA-35, p 3, lines 7-21.

²⁹ Exhibit SDA-35, p 17, lines 9-13.

Annexure: Referenced Extracts from SDA's Submissions dated 21 March 2016

- (b) Employees in the retail industry are amongst the lowest paid workers in the nation.³⁰
- (c) Together with the hospitality and food services industries, the retail industry has the largest proportion of low paid workers in the nation.³¹
- (d) Between 2010 and 2014, the earnings situation of retail workers has deteriorated relative to workers in other industries.³²
- (e) Households in which there is at least one adult retail employee (**retail households**) have lower living standards than households in which there are no adult retail employees.³³
- (f) The burden of cost of living is broadly equivalent for retail households and households including employees from other industries, but the financial resources for meeting those needs are substantially less for retail households.³⁴
- (g) Employees in the retail industry experience lower living standards at the household level compared to employees in households including employees from other industries.³⁵

Paragraph 21

Dr Martin O'Brien

697. Significant proportions of employees in the fast food industry are low paid, or very low paid. The percentage of workers who are low paid is nearly 80%, and the proportion who are very low paid is at least 60%.³⁶

698. These high proportions are not wholly explained by the incidence of part-time work in the fast food industry. The proportion of full time workers who are low paid is in the vicinity of 50-60%. The proportion who are very low paid is in vicinity of 25-30%.³⁷

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³⁰ Exhibit SDA-35, p 29, lines 22-28.

³¹ Exhibit SDA-35, p 45, lines 7-9.

³² Exhibit SDA-35, p 38, lines 2-5.

³³ Exhibit SDA-35, p 52, lines 1-12.

³⁴ Exhibit SDA-35, p 58, lines 16-18.

³⁵ Exhibit SDA-35, p 59, lines 8-12.

³⁶ O'Brien Report, ACTU3, paragraph [40]

³⁷ O'Brien Report, ACTU3, paragraph [41].

Annexure: Referenced Extracts from SDA's Submissions dated 21 March 2016

701. The data concerning relative living standards and hardship show that employees in the food and beverage services sector (of which fast food is part) experienced hardship at least 150% and sometimes more than 200% as frequently as employees across all industries, for many of the relevant indicators: incidence of renting, inability to pay rent on time, dissatisfaction with financial circumstances, going without meals, and inability to raise emergency funds.³⁸

³⁸ O'Brien Report, ACTU3, Table 3.5 at page 31.