

**FOUR YEARLY REVIEW OF  
MODERN AWARDS: PENALTY RATES**

**SUBMISSIONS OF THE SDA ON STATISTICAL REPORTS**

1. These submissions are provided in response to the Statement issued by the Full Bench dated 28 September 2016 inviting submissions in respect of the following updated reports published by the Commission:
  - (a) “Changing Work Patterns” dated October 2016;
  - (b) “Industry Profile – Accommodation and Food Services” dated September 2016;  
and
  - (c) “Industry Profile – Retail Trade” dated September 2016.
2. The SDA makes submissions about the Changing Work Patterns report and the Industry Profile – Accommodation and Food Services report below.

**Changing Work Patterns**

**Days of the week and number of days worked – August 2015**

3. The updated Changing Work Patterns report includes a new Table 3.3 detailing days of the week and number of days worked as at August 2015. The table is drawn from the ABS Catalogue *Characteristics of Employment* released 31 August 2016. The data presented in the table is discussed at pp 8-9 of the report.
4. Table 3.3 presents data on the days of the week when work is performed by employees, owner managers of incorporated enterprises (OMIEs) and owner managers of unincorporated enterprises (OMUEs). Given the nature of this proceeding, it is the data in respect of employees which is of principal relevance.



5. The commentary in the report compares the days of the week worked by employees in August 2015 (Table 3.3) against November 2008 and November 2013 (Tables 3.1 and 3.2).<sup>1</sup> The most significant conclusions which emerge from this data concern the changes in the proportion of employees who worked on weekdays only, weekends and Sundays. The following table extracts the data in Tables 3.1-3.3 in respect of the proportion of employees who worked weekdays only, weekends<sup>2</sup> and Sundays.

	November 2008	November 2013	August 2015
Weekdays only	69.6%	68.2%	73.7%.
Weekends	30.4%	31.8%	26.2%
Sundays	8.8%	9.8%	9.8%

6. The data demonstrates that:
- (a) since 2013, there has been an *increase* in the proportion of employees who usually only work *weekdays only*, with that proportion being greater than the proportion who worked weekdays only in 2008;
  - (b) consistent with the increase in weekday only work, the proportion of employees who work on *weekends* has *decreased* notably since 2013, with that proportion being less than the proportion who worked weekends in 2008; and
  - (c) the proportion of employees who work on *Sundays* has remained *unchanged* since November 2013. That proportion is only 1% more than the proportion who worked Sundays in 2008. Over the period, Sunday remained the day on which the lowest proportion of employees worked.

<sup>1</sup> Being data drawn from ABS, *Forms of Employment, Australia* catalogues.

<sup>2</sup> Comprising work on weekends only and work on both weekdays and weekends.

Employees that usually worked weekends – all industries

7. Paragraph 3.4, table 3.23 and chart 3.1 detail the proportion of employees that usually worked weekends by industry between 2006 and 2014. The data is drawn from HILDA and did not form part of the previous report.
8. In 2014 the proportion of employees in the retail industry who usually worked weekends was 62% (table 3.23). This is consistent with the evidence given by Professor Peetz and Dr Watson.<sup>3</sup> Significantly however, the further data contained in the report demonstrates that this proportion has remained largely unchanged since 2006; the proportion of employees who usually worked weekends in the retail industry increased only marginally over that time from 61.4% to 62%. There has been no material change in this characteristic of the labour force in the retail industry.

**Industry Profile – Accommodation and Food Services**

9. The updated version of this report contains a new section 5.9 entitled “Takeaway Food Services” which was not contained in the previous version of the report.
10. The data presented in this section of the report is drawn from the 2011 Census data. The same data source formed the basis of Dr O’Brien’s evidence about the national fast food workforce.<sup>4</sup> A difference between the information contained in the Industry profile report and Dr O’Brien’s evidence is the estimate of the number of employees in the takeaway food services industry class in 2011. Whereas the Industry profile report states that there were “around” 175,000 employees in that class,<sup>5</sup> Dr O’Brien states that there were 203,333.<sup>6</sup>
11. The data presented in the Industry profile report concerns certain demographic characteristics of the workforce in the takeaway food services industry. It is to be noted that Dr O’Brien used the same data source to conclude that:

---

<sup>3</sup> Exhibit SDA-36, pg 7, line 2.

<sup>4</sup> Exhibit ACTU-3.

<sup>5</sup> Section 5.9, pg 33.

<sup>6</sup> Exhibit ACTU-3, para 3. Dr O’Brien used the “ABS Tablebuilder” software to identify this number.



- (a) about 80% of workers in the takeaway food services industry are low paid, with at least 60% being very low paid;<sup>7</sup>
  - (b) it is likely that 50%-60% of full-time workers in the takeaway food services industry are low paid, with about 25%-30% being very low paid;<sup>8</sup> and
  - (c) workers in the takeaway food services industry class were a relatively low paid group within the broader accommodation food services classification.<sup>9</sup>
12. The Industry profile report states that in 2011 most employees in the takeaway food services industry class were, inter alia, more likely to be full-time students.<sup>10</sup> This is supported by the data in Table 5.10 which records that, in 2011, 51.1% of employees in that industry class were full-time students.
13. This data should however be considered in light of Dr O'Brien's evidence about the proportion of dependent students in the takeaway food services industry class (again, drawn from the same Census data, but which is not referred to in the Industry profile report). His evidence is that in 2011, 35.8% of takeaway food services employees were dependent students.<sup>11</sup> It follows that a considerable proportion of the full-time students in the takeaway food services industry class were not dependent students.

14 October 2016

STEVEN MOORE QC

ANNA FORSYTH

---

<sup>7</sup> Exhibit ACTU-3, para 41.

<sup>8</sup> Exhibit ACTU-3, para 42.

<sup>9</sup> Exhibit ACTU-3, para 51.

<sup>10</sup> Section 5.9, pg 33.

<sup>11</sup> Exhibit ACTU-3, Table 3.2. Dr O'Brien cites the definition of a "dependent student" in the ABS (2011c) *Census Dictionary* which states: "**Dependent student:** This refers to a natural, adopted, step, or foster child who is 15-24 years of age and who attends a secondary or tertiary educational institution as a full-time student and for whom there is no identified partner or child of his/her own usually resident in the same household."

