

Submission to the Fair Work Commission

4 yearly review of modern awards – Penalty Rates

Background

- 1 This submission responds to the invitation at [2041] and [2042] of the Full Bench decision [2017] FWCFB 1001 of 23 February 2017 about the transitional arrangements to apply to the reduction in Sunday penalty rates.
- 2 It recognises that the changes to public holiday penalty rates will take effect on 1 July 2017 and the variation of the early/late night work loadings in the *Restaurant and Fast Foods Awards* will take effect in late March 2017.
- 3 The changes are a reduction of 25% in the loading, with the exception of a reduction of 50% for full-time and part-time employees covered by the *Retail Award*.
- 4 The Commission expresses a *provisional* view [2040] that there should be transitional arrangements and “that at least 2 instalments will be required (but less than 5 instalments)”.

Ratio of the Commission’s decision

- 5 The Commission notes [68] and [66] that:
 - a. “for many workers Sunday work has a higher disutility than Saturday work, though the extent of the disutility is much less than in times past”;
 - b. “there are likely to be some positive employment effects from a reduction in penalty rates, though it is difficult to quantify the precise effect”; and
 - c. “the approach we have adopted ... may also result in a shift from casual to part-time employment in respect of those employed in the modern awards which we propose to vary”.
- 6 The transitional arrangements should recognise these points, and also provide the opportunity for research into the actual effects as the transition proceeds.

Recommended transitional arrangements

- 7 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 *Fair Work Act 2009* set out in Section 3.
- 8 This is especially important as ABS Statistics issued since the Commission’s decision noted “Compensation of employees decreased 0.5 per cent for the quarter to be 1.5 per cent higher through the year. This is in line with the subdued wage price index (1.9 per cent through the year) and employment growth (0.7 per cent through the year) previously

published by the ABS". (5206.0 - Australian National Accounts: National Income, Expenditure and Product, Dec 2016, issued 1 March 2017)

- 9 As the changes are for either 25% or 50%, a variation once annually of one-fifth of the change, commencing on 1 July 2017, would result in the full implementation of the transition in 4 years. Thus, each variation would be 5% or 10% downwards, as applicable.
- 10 Each downward change would correspond with the increase arising from the Commission's Annual Wage Review each year from 2017 to 2021.
- 11 There would be no "take home pay orders" or "red circling", consistent with the Commission's *provisional view* [2040].
- 12 Accordingly, such an arrangement would meet all the criteria identified in paragraph 7 above.
- 13 I recognise that, although these transitional arrangements achieve the full transition within 4 years, they do involve 5 instalments, which is inconsistent with the Commission's *provisional view* on the maximum number of instalments.
- 14 However, given the recent economic data, the adoption of a 4 year transition period appears to be in Australia's best interests.
- 15 Nevertheless, should the Commission persist with the view that there should be "less than 5 instalments", I suggest an alternative to meet that criteria.
- 16 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. The effect would be a 3 year transition of 4 instalments.
- 17 This would still meet the criteria identified in paragraph 7 above, with only a slight departure from the consistency criteria in 2020.

Appearance

- 18 I request that the Commission grant me the opportunity to address the Commission in person at the hearings on this issue to be held in early May 2017 [2042].

Disclaimer

- 19 The views expressed in this submission are my own, and do not purport to represent the views of any of my employers, past, present or future.

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14 March 2017

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