

**FAIR WORK COMMISSION
AM 2017/43**

**4 YEARLY REVIEW OF MODERN AWARDS – GENERAL RETAIL INDUSTRY
AWARD 2010**

CASUAL PENALTY RATES

**Shop Distributive and Allied Employees’ Association
PROPOSED FINDINGS ON EXPERT EVIDENCE**

In accordance with the directions of the Fair Work Commission, on 30 July 2018, the following is an outline of the proposed findings that the Shop, Distributive and Allied Employees’ Association (SDA) seeks. The proposed findings are based on the expert report of Professor Jeff Borland dated 1 June 2018 and filed with the Commission on 4 June 2018.

Report of Professor Jeff Borland

Economic impact of the proposed variations to the Retail Award

1. The maximum potential impact of the proposed SDA variations to the *General Retail Industry Award 2010 (Retail Award)* on the weekly total cost of labour would be relatively small.¹ If total employment and the share of total weekly hours worked by casual employees did not change, the impact on total cost of labour would be as follows:
 - a. For strip shopping type retail establishments that are not open on weekday evenings, the maximum impact would be 0.9% to 1.6%.
 - b. For large supermarkets and convenience stores that are open on weekday evenings and all day Saturday, the maximum impact would be between 2.3% and 3.9%.²
2. For retail stores with opening hours as listed below, the percentage share of total weekly hours worked accounted for by hours to which penalty rates apply are as follows:³

	Shares of total weekly hours	
Opening hours	Weekday evenings	Saturday
Weekday evenings, 6pm to 11pm Saturdays, 7am to 11pm	20%	20%

¹ Paragraph [1.5] of the ‘Report by Professor Jeff Borland’, dated 1 June 2018 and filed with the Fair Work Commission on 4 June 2018. All subsequent references are references to this Report.

² [1.5]; [2.29].

³ Paragraph [2.20]

Weekday evenings, 6pm to 9pm Saturdays, 8am to 6pm	20%	20%
Weekday evenings, one night, 6pm to 9pm Saturdays, 9am to 5pm	10%	20%
Weekday evenings: nil Saturdays, 9am to 5pm	0%	25%

3. The proportion of casual employees in total employment in the retail industry is between 36% and 60%.⁴
4. The proposed variations to the Retail Award will increase the cost of hiring an hour of labour from a casual employee by the following amounts in the following relevant periods:
 - a. 20% on weekday evenings.⁵
 - b. 11.1% on Saturday from 7am to 6pm.⁶
 - c. 13.3% on average on Saturdays.⁷
5. By calculating the combined effect of paragraphs 2, 3 and 4 above, the total percentage impact of the proposed variations to the Retail Award on the weekly total cost of labour would be as follows:⁸

Opening hours	Lower estimate	Upper estimate
Weekday evenings, 6pm to 11pm Saturdays, 7am to 11pm	2.3%	3.9%
Weekday evenings, 6pm to 9pm Saturdays, 8am to 6pm	2.2%	3.7%
Weekday evenings, one night, 6pm to 9pm Saturdays, 9am to 5pm	1.5%	2.5%
Weekday evenings: nil Saturdays, 9am to 5pm	0.9%	1.6%

⁴ [2.23]; [2.24].

⁵ [2.27].

⁶ [2.28].

⁷ [2.28].

⁸ [2.29].

6. There are substantive reasons why the actual impact on the weekly cost of labour is likely to be less (and perhaps substantially less) than the estimates of maximum possible impact above.⁹ These reasons are:
 - a. The maximum impact estimates rely on the assumption that businesses do not reduce the total weekly hours worked by casual employees at hours for which penalty rates apply.¹⁰
 - b. The estimates do not take into account the possibility that some employers are already paying penalty rates for casual workers that are above the award level. ABS data shows that only 34.5% of workers in the retail industry had 'Award only' as their method of pay setting.¹¹
 - c. The estimates assume all casual employees in the retail industry are adults and are not being paid junior rates.¹²
 - d. The estimates do not take into account that there may be offsetting effects on the cost of labour when penalty rates increase (for example, due to lower rates of employee turnover).¹³

Impact of the proposed variations to the Retail Award on total employment

7. Any impact of the proposed variations to the Retail Award on total employment (total hours of work) will be small.¹⁴ This is because:
 - a. Casual employees are unlikely to be substituted by other inputs such as unpaid labour or capital expenditure.¹⁵
 - b. If substituted, casual employees are likely to be substituted by permanent employees, leaving total employment unchanged.¹⁶
 - c. Substitution of casual employees by permanent employees will not change total employment.¹⁷
 - d. The effect on total employment due to decreased output (through a decrease in demand arising from an increase in prices, or other factors) will be minimal.¹⁸

⁹ [3.22](c). Borland states that it is important to bear in mind the reasons why the *actual* impact on the weekly total cost of labour is likely to be less than the estimates of the *maximum* impact. It is apparent that he is referring here to the matters raised in paragraphs [2.10] – [2.15].

¹⁰ [2.10].

¹¹ [2.11].

¹² [2.13].

¹³ [2.15].

¹⁴ [1.5](b); [3.22](c).

¹⁵ [3.19]; [3.22](a).

¹⁶ [3.19].

¹⁷ [3.18]; [3.19].

¹⁸ [3.21]; [3.22](b).

8. The impact of the proposed variations to the Retail Award will have a very small impact on prices.¹⁹ At its highest, the effect of the proposed variations will increase total costs on average by 0.25% to 0.43%.²⁰

Remarks by the Productivity Commission on changing casual penalty rates

9. The Productivity Commission is incorrect in observing that changing casual penalty rates may disadvantage casuals and may have ‘unfortunate’ consequences for young and disadvantaged workers seeking to enter the labour market.²¹ This is because:
 - a. The likely impact of such changes on casual employment will be small;²² and
 - b. In addition to 9(a), the changes will not have a major impact on the capacity for young and disadvantaged individuals to enter the labour market, because:
 - i. The retail industry only accounts for 15.5% of casual jobs, hence any small change in the share of casual jobs in the retail industry will not have a significant impact.²⁴
 - ii. Other paths into employment in the retail industry and in other industries exist for young and disadvantaged workers.²⁵
 - iii. A 2017 study by Inga Lass and Mark Wooden showed that on average, less than half of people who moved into employment from unemployment moved into casual employment.²⁶
 - iv. Junior rates in the Retail Award still provide an incentive for hiring young employees.²⁷
 - c. There is no evidence of a direct causal link between the availability of casual jobs and young and disadvantaged workers obtaining employment.²⁸
 - d. Any judgment about the consequences of a decrease in the share of casual employment should take into account other outcomes associated with casual employment:²⁹
 - i. Casual employees experience lower levels of job satisfaction than other employees.³⁰

¹⁹ [3.22](b).

²⁰ [3.21].

²¹ [1.5](c); [4.6].

²² [4.7].

²³ [4.8].

²⁴ [4.8](a).

²⁵ [4.8](b).

²⁶ [4.8](b).

²⁷ [4.8](c).

²⁸ [4.9].

²⁹ [4.10].

³⁰ [4.10](a).

- ii. Casual employees are more likely to be underemployed than other employees.³¹
 - iii. The likelihood of moving out of employment to being unemployed or out of the labour force is higher in casual jobs than other types of employment.³²
10. The Productivity Commission is not correct to state that proposed changes to penalty rates could have unfortunate consequences for workers needing flexible arrangements. This is for the reasons stated in paragraph 9, and because there is not strong evidence that casual employment is disproportionately important for providing jobs with flexible arrangements.³³

8 August 2018

³¹ [4.10](b).

³² [4.10](c).

³³ [1.5](c); [4.11].