

BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)

Title of matter: 4 yearly review of modern awards – Social, Community, Home Care and Disability Services Industry Award 2010 – Substantive Issues

Section: 156

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Introduction

1. These submissions are in response to the Decision issued by the Fair Work Commission (the Commission) on 2 September 2019 in the 4 yearly review of Modern Awards - Social, Community, Home Care and Disability Services Industry Award 2010.¹
2. At paragraph [202] of the Decision, the Commission directed interested parties to file any submissions on the provisional view of how the increases in the weekend and public holiday penalty rates for casuals should be phased in. The provisional view is as follows:
 - a. The increase to the casual overtime penalties take effect in full on 1 December 2019; and,
 - b. The increase in the Saturday, Sunday and public holiday penalty rates for casuals are phased in in two stages, the first stage commencing soon on 1 December 2019 and the second and final stage effective 7 months later on 1 July 2020.

Submissions

3. AFEI proposes that the commencement date for phasing in the increased penalties should be deferred and/or a longer implementation period provided, for the reasons set out below.
4. The proposed timetable is as follows:

	Saturday (% of ordinary rate, inclusive of casual loading)	Sunday (% of ordinary rate, inclusive of casual loading)	Public Holidays (% of ordinary rate, inclusive of casual loading)
1 July 2020	160	210	260
1 July 2021	175	225	275

5. Further AFEI proposes that the increase in the casual overtime penalty be deferred until the start of the next financial year, 1 July 2020.
6. Alternatively, if the Commission implements any part of the increases in the penalties during the current financial year, 1 July 2019 to 30 June 2020, the phasing in schedule should be more consistent with the approach of the Commission in increasing weekend penalties for casual employees in the retail sector.²

¹ [2019] FWCFB 6067.

² [2018] FWCFB 5897.

7. As an alternative timetable AFEI proposes the penalties increase by 5% initially, on 1 January 2020, with further increases of 10% on 1 July 2020 and 1 July 2022.
8. AFEI proposes the above timetables for the following reasons:
 - (i) The need to provide reasonable notice for employers to accommodate the unexpected and significant increase in labour costs;
 - (ii) Increases during the current 2019-2020 financial year are likely to be unbudgeted and potentially unfunded;
 - (iii) Longer lead time will provide service providers and funding agencies an opportunity to plan for the increases;
 - (iv) The sectors affected by the increases in the penalty rates often have a substantial reliance on casual employment in servicing some of the most vulnerable sections of the community. A longer timeframe will assist service providers in avoiding more adverse effects on their service delivery.
9. The Commission's recent Survey of the social and community services sectors, noted that about three-quarters of enterprises that responded to the survey employ casual employees.³ Of those enterprises that employ casual employees about 76.4 per cent responded that casual employees worked on a Saturday during this period, and around seven in ten enterprises responded that casual employees worked on a Sunday.⁴
10. Given the potentially significant impact on employers and given the industry's reliance on funding, the capacity to absorb additional and unbudgeted costs is limited.
11. The Full Bench in the *Penalty Rates – Transitional Arrangements* [2017] FWCFB 3001 at [148] also found that fairness was a relevant in implementing transitional arrangements for an Award change of this nature, and confirmed that '*[f]airness in this context is to be assessed from the perspective of both the employees and employers covered by the modern award in question.*'
12. In our submission, implementing significant increases to labour costs without appropriate time to adjust would cause undue unfairness to employers.

³ Survey analysis of the Social, Community, Home Care and Disability Services Industry Award 2010, page 7.

⁴ Survey analysis of the Social, Community, Home Care and Disability Services Industry Award 2010, page 8.

Employees by comparison are not disadvantaged by a delay in implementing these changes.