

Federal Opposition

Submission to the

Fair Work Commission Annual

Wage Review 2017

29 March 2017

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Introduction

1. The Federal Labor Opposition (the Opposition) makes this submission noting the role of the National Minimum Wage (NMW) in providing a safety net in our industrial relations system, particularly in light of:
 - the fact that inequality is at a 75-year high;
 - the Government remains committed to significant cuts to income support and Family Tax Benefits that, if legislated, would reduce the income of many low paid Australians, and further entrench inequality;
 - the Fair Work Commission's (the Commission) decision to cut penalty rates for up to 700,000 workers in the hospitality, fast food and retail industries;
 - the Commission's further consideration of cuts to penalty rates for up to 323,000 workers in clubs, restaurants and cafes, and the hair and beauty industry;
 - the failure of the Government to make any argument to the Commission in support of penalty rates; and
 - the failure of the Government to support the Opposition's legislation to protect the take-home pay of workers.

Legislative parameters

2. We recognise that the task of the Minimum Wage Panel of the Fair Work Commission ('the Panel') involves carefully balancing economic and social conditions as required by the Fair Work Act 2009 ('the Act').
3. The Annual Wage Review, as per the Act, requires that the Panel make a National Minimum Wage Order ('the Order') which sets the NMW.
4. In determining the Order, we note that the Panel must take into account the legislative parameters known as the 'minimum wages objective'. Specifically, the Panel is required to 'establish and maintain a safety net of fair minimum wages' taking into account:
 - the relative living standards and the needs of the low paid as well as the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;

- promoting social inclusion through increased workforce participation;
 - relative living standards and the needs of the low paid;
 - the principle of equal remuneration for work of equal or comparable value;
 - providing a comprehensive range of fair minimum wages to junior employees to whom training arrangements apply and employees with a disability.¹
5. Further, in reviewing modern award minimum wages, the Panel must have regard to the 'modern awards objective'. The Commission must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
- relative living standards and the needs of the low paid;
 - the need to encourage collective bargaining;
 - the need to promote social inclusion through increased workforce participation;
 - the need to promote flexible modern work practices and the efficient productive performance of work;
 - the need to provide additional remuneration for employees working overtime, unsocial, irregular or unpredictable hours, weekends or public holidays;
 - the principle of equal remuneration for work of equal or comparable value;
 - the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;
 - the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.²
6. These legislative parameters provide a balanced set of criteria for the Panel's deliberations and underpin the importance of a strong minimum wage as a safety net and a cornerstone

¹ *Fair Work Act 2009*, s. 284

² *Fair Work Act 2009*, s. 134

of fairness, social inclusion and living standards. However, in light of the Commission's recent decision to cut penalty rates (the Penalty Rate Decision) the need arises to make clear that it was never contemplated that the modern awards objective would allow variations of modern awards to result in a reduction in the safety net. While the Opposition respects the independence of the Commission, any variation of a modern award which results in the reduction of take-home pay is unacceptable and inconsistent with the intention of the Parliament.

The Opposition's position

7. The Opposition submits that the NMW is and continues to be a fundamental part of a strong safety net for Australian workers, which enables low income workers to be able to share in the nation's economic prosperity.
8. We submit that the Panel's decision should be one that firmly supports a fair and economically responsible increase in the NMW and all modern award wage rates.
9. It is the Opposition's position that cuts to penalty rates cannot be offset by increases to the minimum wage, as the minimum wage increase will in part or entirely be absorbed, and this would result in a cut in real terms to a workers take-home pay. We, of course, take the additional position that the negative impact on low paid workers of cutting penalty rates is not justified.
10. Our submission also highlights the current threat to living standards from the growth in inequality that is occurring under the policy settings of the current Government and will be exacerbated as a result of policy changes proposed by the Government. This includes changes to Family Tax Benefits, cuts to the Energy Supplement and cuts to a number of other income support payments that will reduce the income of many low paid workers.
11. The Opposition accordingly supports an appropriate increase in the NMW in 2017, consistent with addressing the issues outlined in this submission. Any increase in the NMW in 2017 should take account of:
 - the impact of the cut to penalty rates on workers and the economy,
 - the changes in living costs, including the decline in the minimum wage bite over time, and
 - the economic environment since the 2016 AWR, including changes to the domestic policy and economic settings.

Economic conditions

Performance of the national economy

12. The Panel is required to consider the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth.

13. Over the past year, GDP growth has slowed and remains well below trend, with the economy growing by 2.4 per cent over the year to December 2016. Over the same period the outlook for household consumption – which is strongly driven by income and wealth and household expectations about this – has become a key economic uncertainty.

14. There have also been growing signs of economic weakness and poorer outcomes for Australian workers over the past 12 months:

- the Government has downgraded its forecasts for employment growth and wages growth;³
- employment growth has halved and remains well below trend;⁴
- full-time jobs have declined by 23,000, with job creation dominated by part-time work;⁵
- underemployment remains at near-record highs at 1.1 million; and⁶
- wages growth has fallen to new record lows at 1.9 per cent.⁷

15. Household consumption growth has slowed in the past year, to be 2.6 per cent over the year to December 2016. Slower growth in wages and household income has meant that households have been drawing down on their savings in order to fund consumption. This is reflected in the sharp decline in the household savings ratio, which has fallen by 1 percentage point over the past 12 months, from 6.2 per cent to 5.2 per cent.⁸ This suggests that recent growth in consumption may not be sustainable without an improvement in wages growth.

³ Australian Government, Mid-Year Economic and Fiscal Outlook 2016-17; Australian Government, Budget Paper No. 1, 2016-17

⁴ Australian Bureau of Statistics, Labour Force, February 2017

⁵ Loc cit

⁶ *Loc cit*

⁷ Australian Bureau of Statistics, Wage Price Index, December 2016

⁸ Australian Bureau of Statistics, National Accounts, December 2016

16. Household consumption represents around 55 per cent of the Australian economy and is therefore a critical driver of growth. The RBA, the Government and many major forecasters have warned that sustained weakness in household incomes is a key risk to consumption growth and the overall economic outlook:

- according to the 2016-17 Mid-Year Economic and Fiscal Outlook (MYEFO), ‘...factors such as sustained subdued income growth may result in slower growth in consumer spending’;⁹
- the RBA has said ‘Domestic wage pressures remained subdued and household income growth had been low, which, if it were to persist, would have implications for consumption growth and the risks posed by the level of household debt’;¹⁰
- the IMF recently noted that ‘...there remain significant risks and uncertainties, notably weaker-than-expected domestic consumption’¹¹ and ‘growth could be slower, as consumption growth could remain lacklustre with continued low wage growth’;¹²
- according to ANZ, ‘...we see any significant acceleration in consumer spending as challenging given ongoing weakness in wage growth and high household debt’;¹³ and
- according to CBA, ‘consumer spending growth is constrained by weak wages growth and the predominance of part over full-time jobs growth’.¹⁴

Policy environment

Impact of the Government’s policies on the low paid and relative standards of living

17. The Government remains committed to a range of harsh and unfair policy proposals that will have a negative impact on low income Australians. This includes harsh cuts to Family Tax Benefits, cuts to the Energy Supplement and various other income

⁹ Australian Government, Mid-Year Economic and Fiscal Outlook, 2016-17

¹⁰ Reserve Bank of Australia, Minutes of the March 2017 Monetary Policy Meeting of the Reserve Bank Board.

¹¹ International Monetary Fund, 2016 Article IV report on Australia, February 2017

¹² *Loc cit*

¹³ ANZ Live, Australian retail sales - a solid start, 6 March 2017

¹⁴ CBA, Global Markets Research, Retail Trade – January 2017, 6 March 2017

support payments, a freeze on the Medicare Benefits Schedule and an increase to the PBS co-payment, both of which will drive up the cost of healthcare.

18. At the same time, the Government continues to pursue a \$50 billion tax cut for big business. Inequality is already at a 75-year high.¹⁵ The OECD has made clear that in Australia:

...inclusiveness has been eroded. The Gini coefficient has been drifting up and households in upper income brackets have benefited disproportionately from Australia's long period of economic growth. Real incomes for the top quintile of households grew by more than 40% between 2004 and 2014 while those for the lowest quintile only grew by about 25% (Figure 3).¹⁶

19. Earnings data from the Australian Bureau of Statistics employee earnings and hours survey showed that for the bottom 10 per cent of income earners, the increase in real earnings from 1975 to 2014 was \$7,000 or 23 per cent. For the top 10 per cent, the increase in real earnings over the same period was \$47,000 or 72 per cent. Earnings have risen three times as fast for the highest paid workers than the lowest paid workers.¹⁷
20. Low paid workers tend to be some of the most financially vulnerable in our society, including those that are single parents, young, working on a casual basis, with low levels of education, older part-time workers, and migrants from non-English speaking backgrounds. According to the most recent Poverty in Australia report by the Australian Council of Social Services, a significant proportion (32 per cent) of those Australians living below the poverty line received wages as their main source of income.
21. Together with the National Employment Standards, minimum wages can provide vulnerable groups, and long-term low paid employees with a much needed safety net, where paid employment is consistent with community standards and where workers are less likely to be exploited.
22. The tax and transfer system has a significant role to play in alleviating the impact of earnings inequality and supporting the living standards of low paid workers. Accordingly, policy changes that are implemented and policy changes that are proposed need to be considered

¹⁵ Leigh, A. (2013) *Battlers and Billionaires The Story of Inequality in Australia*, Black Inc, Melbourne

¹⁶ OECD, *OECD Economic Surveys: Australia, 2017*, p. 5

¹⁷ Leigh, A. (2013) *Battlers and Billionaires The Story of Inequality in Australia*, Black Inc, Melbourne, updated with the latest data

as part of the AWR assessment especially in the context of addressing relative living standards and needs of the low paid.

23. Household living standards depend on their total disposable household income, including both wage earnings and transfer payments. The Australian tax-transfer system provides financial support to low wage workers through means tested income support, as well as Family Tax Benefits.
24. As such, the Government's plans to impose harsh cuts on many Australians reliant on government payments has the potential to adversely impact working Australians on low incomes.
25. The Opposition has been firm in its opposition to these measures due to the impact that they would have on low and middle income families. We have successfully defended living standards by successfully preventing several of these measures being implemented to date.
26. The Opposition understands that 'the prospect of legislative change'¹⁸ is something the Panel has previously not taken into account. However we would urge the Panel to scrutinise carefully any argument by the Government that the tax and transfer system can be solely relied upon to provide targeted support to the lowest-paid workers given their wholesale attempts to undermine that very system. If the Government's plans were legislated in full, low income Australians would be significantly and disproportionately worse off. The compounding effect of a reduction in the real value of the minimum wage - as proposed by some - would have significant negative impacts.

Impact on low paid workers of the Government's policy on penalty rates

27. The Opposition is opposed to the decision to cut penalty rates, and therefore the take-home pay of workers in the Retail, Hospitality, Pharmacy and Fast Food modern awards.
28. The Opposition has introduced a bill that will amend the Act to change the legal context in which the Commission operates. The Opposition's bill would make it abundantly clear that the Commission may not vary a modern award in a way that would, or would be likely to, result in a cut in real terms to the take-home pay of an employee or prospective employee covered by an award.
29. The Government has thus far refused to support the Opposition's bill. If the Commission proceeds to implement the Penalty Rate Decision and the Government fails to support the Opposition's Bill, the wages of up to 700,000 workers in retail, hospitality, pharmacy and

¹⁸ [2014] FWCFB 3500, [19]

fast food industries will be cut. Furthermore, the wages are at risk of up to 323,000 workers in clubs, restaurants and cafes, and the hair and beauty industry.

30. Cuts to penalty rates will represent significant reductions in the total earnings and income of workers in these industries, and accordingly impact on fairness across our society and the performance of the Australian economy.
31. Cuts to penalty rates will hurt low-income earners who are the least able to absorb a cut to take-home pay. As the Commission has concluded, the proposed cuts to penalty rates are likely to reduce the earnings of those employees and have a negative effect on their relative living standards and on their capacity to meet their needs.¹⁹
32. As the Commission has acknowledged cutting penalty rates will negatively impact on the living standards of low paid workers across the retail and hospitality sectors. It should never be forgotten that, for the people who will bear the brunt of these cuts and who 'earn just enough to cover weekly living expenses, saving money is difficult and unexpected expenses produce considerable financial distress'.²⁰

Impact of the Government's policies on women and equal remuneration

33. The Opposition is committed to addressing pay equity in Australia, and notes that complex industry specific factors contribute to pay inequities.
34. According to the Workplace Gender Equality Agency the national gender pay gap is currently 16 per cent and has hovered between 15 per cent and 19 per cent for the past two decades.²¹
35. We note that the Act provides a range of mechanisms to address unequal remuneration in circumstances of work of equal or comparable value, such as equal remuneration orders and bargaining provisions.
36. Given that women are overwhelmingly represented in low paid jobs, the Opposition considers that the AWR helps maintain and improve the real incomes of many low paid women.

¹⁹ *Four yearly review of modern awards – Penalty Rates* (Matter AM2014/305) [2017] FWCFB 1001, at [1998]. Hereafter referred to as FWC Decision.

²⁰ FWC Decision at [1999]

²¹ Workplace Gender Equality Agency, 2015, "The Gender Pay Gap", Available at: <https://www.wgea.gov.au/learn/about-pay-equity>

37. Further the Opposition notes the particular impact on women as a result of the Government's failure to intervene in respect of the Penalty Rates Decision, or to prevent further cuts to penalty rates:

- employees in the hospitality, retail, fast food, and pharmacy industries are more likely to be women;²²
- hairdressers, beauty therapists, and people who work in clubs are more likely to be women;²³
- women affected by the Penalty Rates Decision are more likely to be on awards, and work part-time or as a casual, and they already earn less than men do;²⁴
- almost 40 per cent of women report relying on penalty rates for household expenses, compared to only just over 30 per cent of men;²⁵ and
- women will be hit harder by the cuts to penalty rates because they comprise 57 per cent of the Sunday retail work force and 52 per cent of the Sunday accommodation and food services workforce.²⁶

38. Cutting wages in these highly feminised industries, where a large proportion of women work part time, will increase the gender pay gap in Australia.

Social inclusion and workforce participation

39. Promoting social inclusion is one of the key parameters that the Commission is required to consider when undertaking the AWR.

40. We submit that workforce participation has an important role in social inclusion as it provides not only the necessities of life but also the opportunity for social interaction through productive employment.

41. We note that while low paid jobs are an important entry point to the workforce and can present a stepping stone to higher paid and more stable forms of work, a substantial

²² FWC Decision at [743], [1464]; FWC Decision Table 34, p. 169; FWC Decision Table 44, p. 280; FWC Decision Table 67, p. 339; FWC Decision Table 70, p. 391.

²³ Federal Opposition, 2017, "Submission to the Fair Work Commission Four Yearly Review of Modern Awards – Penalty Rates: Registered and Licensed Clubs Award; and Hair and Beauty Award", 24 March 2017, p.11

²⁴ Wright, S. and Buchanan, J., *Research Report 6/2013 Award Reliance*, December 2013, p. 54

²⁵ 39.3 per cent to 31.5 per cent. Centre for Work + Life, Australian Work and Life Index (AWALI)

²⁶ Australian Bureau of Statistics, *Characteristics of Employment, Labour Force Supplementary Survey*, 2015

proportion of employees remain low paid for extended periods and a the NMW has a significant impact of these workers living standards.²⁷

42. The Opposition submits that the minimum wage is more than an essential strand in the social safety net – and that it can have a role in improving social mobility.

The case for a decent minimum wage

43. The Opposition supports a strong and appropriate minimum wage. The NMW is an important component of the industrial relations framework in Australia.
44. Since the 1907 Harvester judgment²⁸ there have been arguments put that the minimum wage is too high – and that it has a negative impact on jobs and growth. These positions often extend this proposition to question the NMW in its entirety. The Opposition rejects this view; a position that is supported by an increasing share of those engaged in the debate.
45. However, while the minimum wage has been increasing in real terms, it has been decreasing relative to median and average wages. Twenty years ago the minimum wage was 63 per cent of the median wage. Now it is 54 per cent. The decline is even starker relative to AWOTE: 52 per cent to 44 per cent over twenty years.²⁹ While the bite has closed somewhat in the past 2 NMW decisions, it is only because wages growth is at record low levels.
46. The decline in the minimum wage, relative to the wages of a typical worker, reflects the increase in earnings inequality that has occurred in Australia over the past generation. From 1975 to 2014, real wages increased by 72 per cent for the top tenth of earners, but by 23 per cent for the bottom tenth of earners. If cleaners and retail staff had enjoyed the same wage gains as financial dealers and surgeons, they would be earning an extra \$16,000 a year.³⁰
47. Annual wage growth has slowed to 1.9 per cent – the weakest since the ABS began collecting this data in 1997. Internationally, it has been suggested that wage stagnation

²⁷ Australian Government, 2013, “Submission to the Fair Work Commission Annual Wage Review 2013”, 28 march 2013, p.11

²⁸ Ex parte H.V. McKay (1907) 2 CAR 1

²⁹ OECD Statistics March 2017: <https://stats.oecd.org/Index.aspx?DataSetCode=RMW>

³⁰ Leigh, A., 2015, “Fair gone? How governments can guard against growing inequality”, ANZSOG/VPSC Victoria Lecture Series, Melbourne, 19 February 2015, available at: http://www.andrewleigh.com/fair_gone_how_governments_can_guard_against_growing_inequality

cannot be explained 'solely by weak economic growth [but also by] a widening gap between growth in wages and labour productivity'.³¹

48. Further, the ILO, OECD and World Bank have noted that 'while the financial crisis and weak recovery have been a large factor in the slump in consumer demand in many countries, a long-term decline in the labour share has also served to put a limit on consumption, as labour earnings are typically the main source of income for most households.'³²
49. A decent NMW is fundamental to the Australian safety net. It can also provide a foundation for the determination of award wages, and may, in amongst a range of broad factors, provide support for low and middle income families and their consumption, with the flow-on benefits to economic growth more generally.
50. At the same time we have seen declines in the minimum wage bite, a growing gap between wages and productivity and a declining labour share of income, household income inequality in Australia is growing. According to the Australian Treasury, an increase in the Gini coefficient shows that 'income distribution in Australia has become more unequal over the last 30 years.'³³ The ILO, OECD, and the World Bank found that 'on average, an increase in income inequality by 1 Gini point lowers yearly GDP per capita growth by around 0.2 percentage points.'³⁴
51. A decent minimum wage is not the only way to address inequality, but it is an important part of the solution.
52. Recent research from the OECD, the World Bank and the IMF has focused on the connection between economic growth and equality and concluded that inequality is the price of economic growth. Growth spells are shorter in unequal economies and income redistribution can assist in stabilising sustainable growth.
53. An eroding minimum wage is contrary to the objectives outlined in the Act, community standards and the national economic interest.

³¹ International Labour Organization, Organisation for Economic Co-operation and Development, World Bank Group, 2014, "G20 labour markets: outlook, key challenges and policy responses", p.5

³² Op. cit., p. 12 (Labour share is the ration of labour compensation to total domestic output. It includes wages, salaries and benefits and thereby reflects both the level of employment (quantity) and the wages and benefits paid (price).

³³ Fletcher, M. and Guttman, B., 2013, "Income inequality in Australia", Australian Treasury Economic Roundup, Issue 2.

³⁴ ILO et al, 2014, op.cit., p. 18

Intersection between the Penalty Rates Decision and the National Minimum Wage

54. In the Penalty Rates Decision, the Commission proposed that '(t)he reductions in Sunday penalty rates should take place in a series of annual adjustments on 1 July each year (commencing 1 July 2017) to coincide with any increases in modern award minimum wages arising from Annual Wage Review decisions'.³⁵ We do not understand the Commission to have been suggesting that penalty rate cuts can be offset by increases to minimum award wages.
55. Coinciding the cut to penalty rates with any changes in the minimum wage serves only to disguise the cut to real incomes.
56. The Opposition notes that the Government's submission in response to the Penalty Rates Decision did not argue that workers should receive an increase to the minimum wage.
57. We further note the Commission's assertion that:
- (t)he needs of the low paid are best addressed by the setting and adjustment of modern award minimum rates of pay (independent of penalty rates).³⁶
58. It is the Opposition's position that cuts to penalty rates cannot be offset by increases to the minimum wage, as the minimum wage increase will in part or entirely be absorbed, and this would result in a cut in real terms to a workers take-home pay. We, of course, take the additional position that the negative impact on low paid workers of cutting penalty rates is not justified.
59. Any such approach would inevitably cause a reduction in the take-home pay of people who receive penalty rates, as these workers would in part or in whole, be forgoing the annual minimum wage increase. That is, part or all of the minimum wage increase would be absorbed by the cuts to penalty rates. Furthermore, the real wages of workers would be cut, as a result of CPI increases.
60. The Centre for Future Work (CFW) has modelled a range of transition scenarios, using the current General Retail Award. These transition scenarios consider options for implementing the cuts to penalty rates and offsetting any cuts to penalty rates. They do not consider any other allowances, entitlements or rostering arrangements, which are routinely the subject of negotiation in enterprise agreements.

³⁵ FWC Decision at [2021]

³⁶ FWC Decision at [823]

61. The CFW found that the base wage would have to increase by one-third in order to maintain Sunday pay rates at the current nominal level. Assuming wages continue to grow at the current rate, it would take 17 years – 2034 – until the base rate increases enough to bring Sunday rates back to their current level. Even if it were reasonable to wait 17 years to fully implement the penalty rates cut, this proposal, suggested by the Prime Minister Turnbull, would impose a 17-year wage freeze on Sunday retail workers... [and] the real purchasing power of retail wages on Sundays would be steadily eroded.³⁷
62. The second transition proposal considered by the CFW is ‘accelerating increases in minimum base wages in affected industries’.³⁸ An immediate cut to penalty rates of the scale proposed by the Commission ‘would require an immediate 33 per cent increase in the underlying base rate’.³⁹ For a person on the General Retail Award, this would mean an increase in their base rate from \$19.44 to \$25.92 an hour (for a worker at the lowest rate in the Award), and an increase from \$23.79 to \$31.72 an hour (for a worker at the highest rate in the Award).⁴⁰ It is obvious that such an increase would deliver a significant pay rise to all workers under the award on other days of the week (whilst still cutting real pay for Sunday workers), but it would increase weighted-average retail labour costs over the whole week by over 25 per cent.⁴¹ This does not seem to be a realistic or sensible means of preventing workers from being hurt by the cuts to penalty rates.
63. The Opposition notes that even under the reported minimum wage increases proposed by the ACTU (6.69 per cent) and United Voice (12.93 per cent), the increase to the minimum wage would not be sufficient to offset the cut to penalty rates.
64. The proposals by various employer organisations would see workers standing still, or going backward in real terms, in addition to the cut to penalty rates.
65. This analysis reveals the falsity of any suggestion that the annual increase in the minimum wage could somehow compensate or offset the reduction in take-home pay caused by cuts to penalty rates.

³⁷ Stanford, J., Centre for Future Work Briefing Note: A “Transition” to Nowhere: On the Impossibility of Avoiding the Social Costs of Reduced Penalty Rates, 23 March 2017, p. 2-4

³⁸ Stanford, J., *op cit*, p. 4

³⁹ Stanford, J., *op cit*, p. 5

⁴⁰ *Loc cit*

⁴¹ *Loc cit*