

**SUBMISSION OF THE SDA**

1. Pursuant to the Statement issued on 24 August 2016, the Shop Distributive and Allied Employees' Association (**SDA**) makes the following submission in respect of the *Annual Wage Review 2016-17*.
2. The submissions made by the SDA arise from its concerns about the likely impact, which the Fair Work Commission's decision in *Four Yearly Review of Modern Awards - Penalty Rates* [2017] FWCFB 1001 (***Penalty Rates Decision***) will have on the living standards of many of the employees which it represents.
3. The SDA submits that if it is implemented of the Penalty Rates Decision will cause the *General Retail Industry Award 2010*, *Fast Food Industry Award 2010* and the *Pharmacy Industry Award 2010* (**the SDA Awards**) to no longer provide employees covered by these Awards (**the relevant employees**) with a safety net of fair minimum wages. This submission is motivated by the SDA's commitment to maintaining and protecting the safety net in the SDA Awards,

**The Penalty Rates Decision**

4. In the Penalty Rates Decision, the Fair Work Commission determined to drastically reduce Sunday penalty rates prescribed by the SDA Awards. The reductions to Sunday penalty rates in the SDA Awards are set out in Schedule A.
5. The Commission adopted this course even though, in respect of the mandated consideration in s 134(1)(a) ("the relative living standards and the needs of the low paid"), it found that the proposed reduction in penalty rates is:<sup>1</sup>

“...likely to reduce the earnings of those employees, who are already low paid, and to have a negative effect on their relative living standards and on their capacity to meet their needs.”

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<sup>1</sup> [1657], [1827], [1357]

6. The Commission then stated that:<sup>2</sup>

**“... The needs of the low paid are best addressed by the setting and adjustment of modern award minimum rates of pay (independent of penalty rates).”**

We are conscious of the adverse impact of a reduction in Sunday penalty rates on the earnings of retail workers who work on Sundays and this will be particularly relevant to our consideration of the transitional arrangements associated with any such reduction.” (emphasis added)

### **The transitional arrangements**

7. When the reductions to Sunday penalty rates will commence is yet to be determined by the Commission.
8. The Commission has invited interested parties to make submissions as to the appropriate transitional arrangements to implement the reductions to Sunday penalty rates. Interested parties filed written submissions on 24 March 2017 and have been directed to file reply submissions by 7 April 2017. The Commission has listed the matter for hearing on 9 May 2017.<sup>3</sup>
9. Relevantly, the Commission has expressed the following provisional view:
- (a) *“The 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”;*<sup>4</sup> and
- (b) *“It is likely that at least 2 instalments will be required (but less than 5 instalments)”*
10. In the Penalty Rates Case, in relation to the appropriate transitional arrangements, the SDA has submitted that the decision should be set aside and that the reductions to penalty rates should not be implemented. In the alternative the SDA has, inter alia, submitted:

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<sup>2</sup> [1660]-[1661], [1830]-[1831], [1360]-[1361]

<sup>3</sup> [2042]

<sup>4</sup> [2040(iii)]

- (a) *“A period of 5 years is necessary to give employees some opportunity to make whatever arrangements they can to mitigate the adverse effects of the reductions in penalty rates.”*
- (b) *“Given that the quantum of the penalty rates cuts under the Awards, it is also appropriate that the commencement of the phased reduction in respect of the Awards be deferred until 1 July 2019. This will also allow adequate opportunity for the SDA and any other interested parties to prepare an application for increases in modern award minimum rates of pay, given that the Commission has identified that that is the best means of addressing the needs of the low paid and which it has found will be adversely affected by the decision. In light of the Commissions’ findings about the adverse effects of the penalty rate cuts on the needs of the low paid, it would be unfair and unjust if those reductions were to commence before the SDA and other interested parties have had an opportunity to seek increases in modern award minimum wages.”*

#### **The SDA’s application and subsequent Annual Wage Reviews**

- 11. The SDA submits that if FWC proceeds to reduce the Sunday Penalty from 200% to 150% in the General Retail Industry Award and the Pharmacy Industry Award then the weekly rates in these awards should be increased by 10%.
- 12. Further the SDA submits that if FWC proceeds to reduce the Sunday Penalty from 150% to 125% in the Fast Food Industry Award then the weekly rates in this award should be increased by 10%.
- 13. These increases are in addition to increases sought by the ACTU on behalf of Unions.
- 14. As explained above the Commission has found that the reduction in Sunday penalty rates will have an adverse effect on the low paid and their relative living standards.
- 15. In light of this finding, the SDA foreshadows that in subsequent annual wage reviews conducted pursuant to section 285 of the *Fair Work Act 2009* (Cth) (**FW Act**), it will continue to seek the additional 10% increase in the minimum wages contained in the SDA Awards (that is increases which are in addition to the regular safety net increases to be sought by the ACTU on behalf of Unions) (**additional increases**).

16. The additional increase of 10% that the SDA is applying for is aimed at addressing the adverse impacts on the relevant employees due to the reductions of Sunday penalty rates. To this end the 10% increase would be phased in consistent with any phasing in timetable that the Commission may determine for the reduction in Sunday penalty rates should the Penalty Rates Decision be given effect. The additional increases that the SDA is applying for seek to ensure that the SDA Awards continue to meet the minimum wages objective in section 284 of the FW Act after the implementation of the reductions.
17. The SDA application for additional increases is adversely effected by the timing of the penalty rate decision and its proximity to the current annual wage review. This timing problem has created 3 issues:
18. *Firstly*, the transitional arrangements for the implementation of the reductions to Sunday penalty rates in the SDA Awards are not yet know, and will not be known until some time after the final hearing on 9 May 2017. Most significantly the commencement date of any reductions, the phase in period, and the quantum of each of the phased reductions has not yet been determined. As explained above should the Penalty Rates Decision be given effect, the SDA has sought that the reductions be deferred until 1 July 2019. If this proposal is accepted there will be no impact until after 1 July 2019. Until the transitional arrangements and the corresponding adverse impacts on employees are known it is not possible for the SDA to advance a full reasoned case for additional increases to the minimum wages contained in the SDA Awards.
19. *Secondly*, the determination in the 2016/17 annual wage review must be completed on or before 30 June 2017. Thus, there is no capacity for the Commission to delay the resolution of the current annual wage review to address the issue in the paragraph above.
20. *Thirdly*, the 2016/17 annual wage review commenced in September 2016. It is not possible for the SDA to prepare full submissions and supporting evidence in support of any application for additional increases in the current time available.

**29 March 2017**

## **Schedule A – the reductions to Sunday penalty rates in the SDA Awards**

### *General Retail Industry Award 2010*

Full-time and part-time employees: 200 per cent → 150 per cent

Casual employees: 200 per cent → 175 per cent

### *Fast Food Industry Award 2010*

(Level 1 employees only)

Full-time and part-time employees: 150 per cent → 125 per cent

Casual employees: 175 per cent → 150 per cent

### *Pharmacy Industry Award 2010*

(7.00 am – 9.00 pm only)

Full-time and part-time employees: 200 per cent → 150 per cent

Casual employees: 225 per cent → 175 per cent