



Australian Council of Social Service

24 March 2017

President
Fair Work Australia

Dear Justice Ross,

Re: Transitional arrangements for Sunday penalty rate changes: 4 yearly review of modern awards — Penalty Rates (AM2014/305)

This short submission provides general input for the Commission's consideration of transitional arrangements in regard to your recent decision on Sunday penalty rates.

We do not claim expertise in regard to the specific industries and Awards affected, or the appropriate mix of penalty rates for evening, weekend and public holiday work. For this reason ACOSS did not submit to this penalty rates review.

Nevertheless, we are deeply concerned about the impact of the decision on people who are financially vulnerable; and the potential longer-term impacts on how we balance paid work, care, and other aspects of our lives. We therefore take this opportunity to provide information, raise concerns and suggest ways to alleviate the impact of the decision on people with low incomes. These are social policy questions as much as economic or workplace-relations ones.

In brief, we propose that the Commission must ensure that the decision does not result in existing or future low-paid employees being worse off in terms of the income they receive for the hours that they work. One option for achieving this outcome is to ensure that any existing or future employees subject to reductions in penalty rates in the affected Awards are paid 'loaded hourly rates' to compensate for potential losses of pay. Further, any future review of penalty rates should be based on the principle of consistent, appropriately-graduated compensation for the disutility of working unhealthy or unsocial hours.

The above recommendations spring from two concerns: the decision's impact on households with low incomes, and the inconsistent treatment of people in different industries who are required to work unhealthy or unsociable hours, with employees in low-paid industries apparently being treated unfavourably.



Impact on people with low incomes

As our latest 'Poverty in Australia' report details, in 2014 over a million people - or 35% of people living below the 50% of median income poverty line - lived in households whose main income-earner was employed (623, 000 where the primary earner was fulltime and 413,000 where they were employed part time) ¹.

It is clear that any reduction in penalty rates in these particular industries will fall disproportionately on people with low incomes. The Commission acknowledges in its decision that:

'Many of these employees earn just enough to cover weekly living expenses, saving money is difficult and unexpected expenses produce considerable financial distress.'

We would add that it can not be assumed that students are financially 'better off' than other workers in these industries. Further, over 60% of people working on Sundays in the retail industry and 54% of those in hospitality are women so the decision is likely to increase pay inequality between men and women. In addition, many of these jobs are casual or temporary and the workers cycle in and out of unemployment, so it is very important for them to maximise their income during periods of paid employment.

We are therefore surprised and concerned that prima facie, the decision cuts hourly wages substantially for many people working on Sundays without offsetting increases in regular hourly rates of pay. As we have strongly argued in successive minimum wage submissions, we do not consider that reductions in hourly rates of pay for low-paid workers can be justified to boost employment. We also question whether the decision would increase overall employment, as distinct from shifting working hours to different parts of the week or requiring people to work longer hours for the same overall rates of pay.

In the context of the current historically low growth in wages, lifting the incomes of people on low incomes is one of the most effective mechanisms by which to support stronger economic growth. Research undertaken by the International Monetary Fund indicates that increasing the income share of the bottom 20 per cent of the population has a greater impact on economic growth than an increase to the income share of the top 20 per cent of the population².

¹ ACOSS (2016), 'Poverty in Australia 2016.'

² Dabla-Norris, E., et al., Causes and Consequences of Income Inequality: A Global Perspective in SDN 15/13. 2015, International Monetary Fund.



Exemptions from minimum wage increases on grounds of 'incapacity to pay' are rare and we believe the same principle should apply to penalty rates: minimum standards should be consistently applied.

Equity and consistency in awarding penalty rates

ACOSS strongly agrees with the Commission's statement that: 'Compensating employees for the disutility associated with working on weekends and public holidays is a primary consideration in the setting of weekend and public holiday penalty rates.'

However the decision also takes account of 'the extent to which working at such times or on such days is a feature of the industry regulated by the particular modern award'. It cites the Productivity Commission's argument that in 'discretionary, and therefore demand responsive', services such as hospitality, entertainment, retail, restaurants and cafes, 'the costs of penalty rates affect consumer amenity in ways they did not when penalty rates were first introduced'.

It is not clear to us - and we suspect the general public - why these 'special features' of the industries affected should over-ride consistent compensation for the disutility of working unsociable hours. It could be argued with equal force that if the (generally higher-earning) consumers of these services expect them to be available on weekends, it is reasonable to expect them to pay extra to compensate the (generally lower income-earning) employees who work unsociable hours in order to serve them.

We do not have a specific view on how this disutility should be valued for work undertaken at different times. Nevertheless, we are concerned that the first major review of weekend penalty rates applies to industries whose employees are overwhelmingly low-paid, and resulted in a set of penalty rates that seem to lack a consistent basis and logic.

Unfortunately, under these conditions there is a risk that the public legitimacy of the review, and the authority and independence of the Commission, will be questioned.



The ideal outcome would be for the Commission to make judgements on these matters, after hearing the evidence and the views of stakeholders, based on a clear and consistent set of principles regarding the disutility of working unsociable hours and the need to prevent low-paid employees being made financially worse off.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C Goldie'.

Dr Cassandra Goldie
Chief Executive Officer, ACOSS