

The Senate

Education and Employment References
Committee

Penalty Rates

October 2017

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Chapter 1

Introduction

- 1.1 On 19 June 2017, the Senate referred the following matter to the Education and Employment References Committee for inquiry and report by 16 October 2017:
- (a) claims that many employees working for large employers receive lower penalty rates under their enterprise agreements on weekends and public holidays than those set by the relevant modern award, giving those employers a competitive advantage over smaller businesses that pay award rates;
 - (b) the operation, application and effectiveness of the Better Off Overall Test (BOOT) for enterprise agreements made under the *Fair Work Act 2009*;
 - (c) the desirability of amending the *Fair Work Act 2009* to ensure that enterprise agreements do not contain terms that specify penalty rates which are lower than the respective modern award;
 - (d) the provisions of the Fair Work Amendment (Pay Protection) Bill 2017; and
 - (e) any other related matter related to penalty rates in the retail, hospitality and fast-food sectors.

Conduct of the inquiry

- 1.2 Notice of the inquiry was posted on the committee's website. The committee also wrote to key stakeholders to invite submission.
- 1.3 The committee received 26 submissions, as detailed in Appendix 1.
- 1.4 A public hearing was held in Melbourne on 24 August 2017. A list of witnesses who gave evidence at the public hearing is contained in Appendix 2.
- 1.5 The committee conducted its inquiry alongside a separate inquiry into the Fair Work Amendment (Pay Protection) Bill 2017 conducted by the Senate Education and Employment Legislation Committee. Given the closely related nature of the two inquiries, evidence arising from both was shared by the two committees. As a consequence, this report also cites evidence provided to the Senate Education and Employment Legislation Committee's inquiry.

Acknowledgement

- 1.6 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at the public hearing.

Note on references

- 1.7 References to the committee Hansard are to the proof Hansard. Page numbers may vary between the proof and official Hansard transcripts.

Chapter 2

The significance of penalty rates

- 2.1 Penalty rates are a long-standing and important part of Australia's workplace relations framework. They are rightly seen as an important mechanism to ensure that people are adequately compensated for missing out on family activities, on social and family gatherings, and participating in community events. They are relied on by many in our community and across many sectors of the economy.
- 2.2 Penalty rates are paid as a method to compensate people who work during hours considered unsociable or at times otherwise associated with leisure time, that is weekends and public holidays or late night and early morning shifts. Times which most working-age people spend with their children, wider families and/or participating in sport or other community activities are instead spent at work.
- 2.3 Workers who have days off during the week but work on, for example, Sundays or public holidays give up valuable time most of us take for granted. Because such work impacts on individuals, families and communities, it is quite widely accepted that penalty rates provide some measure of financial compensation for the valuable leisure time sacrificed.
- 2.4 This chapter looks at key evidence presented on penalty rates.

Penalty rates are not a luxury

- 2.5 In some cases people seek to work on weekends, nights or public holidays specifically because the rate of pay is higher than at other times. It can be a necessary financial calculation, because many employees working in the retail and hospitality industries for instance are low paid, often earning just enough to make ends meet. As a cohort, they are highly vulnerable to financial stress and may be reliant on penalty rates to cover basic living expenses. This fact was observed by the Fair Work Commission, in its recent decision to cut penalty rates:

Many of these employees earn just enough to cover weekly living expenses, saving money is difficult and unexpected expenses produce considerable financial distress. We are conscious of the adverse impact the award variations we propose to make upon these employees. The immediate implementation of all the variations we propose would inevitably cause some hardship to the employees affected, particularly those who work on Sundays.¹

- 2.6 The FWC set out evidence that retail workers in particular face hardship as a consequence of a reduction in penalty rates:

¹ Fair Work Commission, [2017] FWCFB 1001, 23 February 2017, p. 21, www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb1001.pdf (accessed 5 September 2017).

[T]he following evidence, which was accepted by the Commission, indicates that retail workers will face particular hardship when penalty rates are reduced:

- (i) The relative earnings of workers in the retail industry vis-à-vis all industries has declined;
- (ii) The exposure of retail households to difficult financial circumstances is worse than that of other households;
- (iii) Retail households face greater difficulties in raising emergency funds;
- (iv) The lower earnings of the retail workforce and their greater incidence of being low paid, translate into lower living standards at the household level; and
- (v) The fact that 31–35% of retail workers work on Sundays.²

2.7 In February 2017, the Fair Work Commission ruled that penalty rates for full-time and part-time workers in the hospitality, retail and fast food industries would be reduced. Subsequent FWC decisions set out transitional arrangements, including a commencement date of 1 July 2017 and phased reductions to be implemented on 1 July each year over three years.³

2.8 It is important to note, however, that economists do not believe that the transitional arrangements will protect workers on lower incomes. Dr James Stanford, Economist and Director of the Centre for Future Work, explained that even though the full phase-in of reductions may be deferred, real wages would still be decreasing due to the impacts of ongoing consumer price inflation:

In our simulation of the impact on real wages for retail workers on Sundays, for example, we saw a 25 per cent decline in real wages by the end of the phase-in period in 2021, which would be almost exactly equal to the immediate impact of reducing the penalty rates if it was done today. That would also reduce wages by 25 per cent, so the conclusion of our simulation is that slower transition for the phase in does not ultimately protect the workers.⁴

2.9 The decision may affect up to 700 000 workers.⁵ The exact number of workers affected is contested. Representatives from the Department of Employment believes that up to 450 000 workers would be affected however the department came to this figure based on “assumptions”.⁶ There has been little substantive work undertaken to ascertain the

² Fair Work Commission, [2017] FWCFB 3001, 5 June 2017, p. 30, www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb3001.pdf (accessed 5 September 2017).

³ For a full description of transitional arrangements see Fair Work Commission, [2017] FWCFB 3001, 5 June 2017, pp. 36–45.

⁴ Dr James Stanford, Economist and Director, Centre for Future Work, *Proof Committee Hansard*, 24 August 2017, p. 49.

⁵ <https://mckellinstitute.org.au/app/uploads/McKell-Institute-The-Impact-of-the-Fair-Work-Commission's-Penalty-Rates-.pdf> (accessed 27 September 2017).

⁶ Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, pp. 56 and 61–62.

real number of workers affected and the categories of workers affected by income level, gender and location. The workers affected are those employed under the following modern awards:

- Fast Food Industry Award 2010 (the Fast Food Award);
- General Retail Industry Award 2010 (the Retail Award);
- Hospitality Industry (General Award 2010 (the Hospitality Award);
- Pharmacy Industry Award 2010 (the Pharmacy Award);
- Registered and Licensed Clubs Award 2010 (the Clubs Award); and
- Restaurant Industry Award 2010 (the Restaurant Award).⁷

- 2.10 With the exception of fast food workers, the effect of the FWC decision was to reduce Sunday penalty rates to 150 per cent for full-time and part-time workers, and to 175 per cent for casual workers, as per the table below. For workers on the fast food industry award, the Sunday penalty rate will be reduced to 125 per cent for full-time and part-time workers, and to 150 per cent for casual workers. In some cases, such as full-time and part-time retail award employees, the reduction is a 50 percentage point cut.

Figure 2.1 Changes to Award Sunday penalty rates

Award	Sunday Penalty Rate	
	Current	Proposed
<i>Hospitality Award</i> Full-time and part-time employees: (no change for casuals)	175 per cent 175 per cent	150 per cent 175 per cent
<i>Fast Food Award</i> (Level 1 employees only) Full-time and part-time employees: Casual employees:	150 per cent 175 per cent	125 per cent 150 per cent
<i>Retail Award</i> full-time and part-time employees: Casual employees:	200 per cent 200 per cent	150 per cent 175 per cent
<i>Pharmacy Award</i> (7.00 am – 9.00 pm only) Full-time and part-time employees: Casual employees:	200 per cent 225 per cent	150 per cent 175 per cent

- 2.11 This inquiry is therefore set in the context where the basic entitlements of typically low paid and vulnerable workers are under significant threat. Penalty rates are not an optional extra for such workers; they make the difference to individuals' and families'

⁷ See www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb3001.pdf (accessed 18 September 2017).

ability to house and feed themselves to a basic standard considered acceptable in our society.

Reliance on penalty rates is not always temporary

- 2.12 The discourse around penalty rates frequently focuses on young workers in the hospitality and retail industries, or workers who are for one reason or another at the start of their career trajectory. This focus often forms the premise of the argument that such jobs are temporary in nature and filled by low-skilled workers getting their foot in the door of the job market. As put by Mr Aaron Lane, representing the Institute of Public Affairs (IPA):

[F]or these entry-level jobs in hospitality, in fast food and in retail, the statistics show that, on average, people only spend around 12 to 24 months in those positions.

What I'm saying is: what the data does show is that people rely on these positions as an entry-level job. They then build skills and go on to the next opportunity.⁸

- 2.13 It would logically follow from this argument that reliance on penalty rates is similarly transient. However, evidence presented to the committee by Coles, a large employer by any estimation, shows that a great many workers are employed in the sector for a very large portion of their working lives:

We're proud at Coles to have working for us at the moment 16 members who've been with us for over 50 years. There are more than 1,650 who have been with us for 30 years, 6,000 who've been with us for more than 20 years and over 21,000 who've been with us for more than 10 years.⁹

- 2.14 Although young workers are an important cohort vulnerable to exploitation, and many of them might well be working in the retail and hospitality industries while studying, focusing solely on them can skew the public conversation around penalty rates. In considering the evidence and forming its conclusions, the committee is cognisant of, and sensitive to, the fact that a great many workers rely on penalty rates as a means to get by for the duration, or large portions, of their working lives.

Who is affected by penalty rate cuts

- 2.15 JobWatch, an employment rights community legal centre, provided the committee with a statistical analysis of workers who contact the centre, extrapolating from that information about workers likely to be affected:

Based on the above statistical analysis of calls to JobWatch's TIS [telephone information service] in 2015/16, the [FWC] Decision will clearly have a substantial impact on the take home pay of award reliant employees that work on Sundays and Public holidays especially in relation to women

⁸ Mr Aaron Lane, Legal Fellow, IPA, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, p. 3.

⁹ Mr David Brewster, Legal Director, Coles, *Proof Committee Hansard*, 24 August 2017, p. 57.

(55% of calls), young workers (39% of calls) and workers in regional Victoria (17% of calls).¹⁰

- 2.16 The Department of Employment placed the figure for workers affected at approximately three to four per cent of the overall workforce:

The department estimated that the Fair Work Commission's changes to Sunday penalty rates affect about three to four per cent of Australia's workforce—that is, between 300,000 and 450,000 employees who at least sometimes work on a Sunday under the relevant award are affected by the Fair Work Commission's decision on Sunday penalty rates...¹¹

- 2.17 The effects, however, are likely to be disproportionately felt by women, as Dr James Stanford from the Centre for Future Work explained:

...we investigated the uneven gender impact of reductions in penalty rates given that women account for the majority of workers in both the retail sector and food and beverage services, which are in fact the largest employer of women in the entire private sector. Most of the women in both sectors are working part time, hence they are more likely to be scheduled to work on Sundays. ABS data indicates that around 60 per cent of Sunday workers in retail and around 55 per cent of Sunday workers in hospitality are women. Their wages are lower to start with, and they will experience a disproportionate impact from lower penalty rates.¹²

- 2.18 It is also worth noting a separate but related point made by JobWatch, which was of particular concern to the committee. As illegal underpayment is rife in the retail and hospitality sectors, many 'workers are already victims of wage theft and so will not notice or be affected by the decision.'¹³

Cutting penalty rates will not boost employment

- 2.19 Stakeholders such as the IPA argued that penalty rates result in a 'regulatory anomaly in which businesses are no longer restricted from trading on the weekend, but remain penalised if they employ staff during this time', and were a relic of outdated industrial relations laws:

The IPA report shows that penalty rates have been a fixture of Australian industrial relations regimes since the late 1800s. The history indicates that that penalty rates were imposed not as a compensatory measure for workers for performing weekend work in order to deter the 'social evil' of Sunday labour. This rationale obviously became less relevant throughout the post-war economic boom, as attendances at religious services declined while Australian work and consumption habits underwent significant

¹⁰ JobWatch, *Submission 7*, p. 9.

¹¹ Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, p. 56.

¹² Dr James Stanford, Economist and Director, Centre for Future Work, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 24 August 2017, p. 49.

¹³ JobWatch, *Submission 7*, p. 9.

change. The introduction of penalty rates in the late nineteenth century formed part of wider industrial relations laws which were anti-competitive in nature. For instance, the restrictions on weekend trading had similar motivations to penalty rates. Yet unlike penalty rates, trading hours have been either completely or substantially deregulated in all states and territories.¹⁴

- 2.20 The FWC's decision to reduce penalty rates, the IPA added, reflects today's wider trend towards changing work and consumption habits:

As preferences and circumstances have changed over time, the need for additional compensation for weekend and public holiday work has also changed. On this basis, the recent decision of the Fair Work Commission to reduce prohibitive penalty rates in some industries reflects this wider trend.¹⁵

- 2.21 Today, the IPA argued, only 'some people' will value their weekends.¹⁶ Some people, the IPA posited, may prefer to work on weekends and during public holidays, while others may not have a preference at all. Instead of protecting penalty rates, the IPA advocated deregulation, letting employers and workers 'decide' when the latter will work.¹⁷

- 2.22 The government has presented a zero-sum argument for its support of a reduction in penalty rates, advocating for cuts based on the assumption that lower weekend wages would enable business to remain open on weekends and employ more staff. Employment Minister Senator the Hon Michaelia Cash is on the record regarding penalty rate cuts:

This [FWC decision to reduce Sunday penalty rates] will have a positive impact on many of the employers who will now be able to open on a Sunday and offer more employment, in particular to those who are unemployed or underemployed.¹⁸

- 2.23 The committee received convincing evidence countering this position.

- 2.24 Professor John Quiggin, an economist with considerable research experience, challenged the assertion that reducing penalty rates would result in a marked increase in employment:

I also considered a variety of the claims that had been made to the effect that reducing penalty rates would yield a substantial increase in employment... One of the core findings was that, over time, the view of

¹⁴ Institute of Public Affairs, *Submission 20*, pp. 1–2.

¹⁵ IPA, *Submission 20*, p. 1.

¹⁶ Mr Aaron Lane, Legal Fellow, IPA, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, p. 3.

¹⁷ IPA, *Submission 20*, p. 2.

¹⁸ The Hon Michaelia Cash, Minister for Employment, quoted in 'Sunday and public holiday penalty rates will be reduced for hospitality, retail workers, Fair Work Commission rules, ABC News, www.abc.net.au/news/2017-02-23/weekend-penalty-rates-fair-work-commission-decision/8295758 (accessed 4 September 2017).

many economists in the late 20th century and earlier was that minimum wages represented a substantial disincentive to employment. I think that has been very substantially undermined by research in the US, which has shown much smaller effects. That controversy continues with the substantial increases that the US has seen in minimum wages recently, but certainly the view that creating minimum wages reduces employment has been weakened. It is partly because of this new evidence, but it is also because of an actual change that has risen from the decline in the labour share that has taken place over recent decades, and I will come back to that point. The main finding I got from working on the issue was that although reducing penalty rates will probably increase employment and demand on the weekends, most of that demand will simply be shifted from other times in the week, so that the net effect is likely to be quite small.¹⁹

- 2.25 Pressed by government senators on whether cutting penalty rates would increase employment, Professor Quiggin explained that 'the evidence is mixed on whether there is even an effect', but that any such effect was 'likely to be so small as to be negligible'.²⁰
- 2.26 Professor Quiggin also rejected the proposition that penalty rates deter businesses from opening on Sundays.²¹
- 2.27 Notably, JobWatch pointed out that the FWC itself did not appear to be of the view that cutting penalty rates would boost employment or result in longer weekend opening hours, citing the Commission:

Any potential positive employment effects from a reduction in penalty rates are likely to be reduced due to substitution and other effects.²²

- 2.28 Furthermore, rather than heralding increased employment, reducing penalty rates is likely to have wider, negative, effects on the national economy. This is because the net effect of cutting penalty rates is lowering workers' wages. On top of the hardship individual workers experience in these circumstances, stagnant or decreased wages have appreciable flow-on effects:

Looking at the macroeconomic issue, as well as creating hardships for individuals, obviously these changes are part of many, many policies which have effectively driven down the wage share and have led to very, very low rates of wage growth. That, in turn, implies low rates of inflation, which is the problem identified by the Reserve Bank. Because wage growth is so low, the rate of inflation is at a level which, in turn, creates problems for interest rate policy.

More generally, these low-wage shares have been accompanied by all sorts of negative effects in bodies like the International Monetary Fund and the OECD, which, until relatively recently, were leading the charge for the kinds of awards we're talking about here. They have recognised that the

¹⁹ Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 7.

²⁰ Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 8.

²¹ Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 8.

²² FWC, quoted in JobWatch, *Submission 7*, p. 6.

effects of these changes have been to make the economy more stagnant, less socially mobile and so forth, and this produces perverse outcomes. The general effect of any policy that drives down wages has to be regarded, in macro-economic terms, as negative.²³

2.29 The push for penalty rate reductions stems from the flawed assumption that business will be more likely to operate on weekends and public holidays if rates are cut. However, evidence suggests that penalty rates are not a primary factor in determining opening hours. This is shown by the fact that many businesses in the hospitality sector choose to remain shut on Mondays, when penalty rates do not apply.²⁴ Logically this suggests that weekend profit margins are considered more attractive.

2.30 All of the arguments for penalty rate cuts—whether claims about increased employment or shifting community attitudes—work to obfuscate the simple fact that penalty rate cuts are part of a broader push to drive down wages. As put by the Australian Council of Trade Unions:

For decades we have seen employer lobby groups the retail sector attempt to justify cuts to penalty rates through spurious claims about employment benefits and changing community attitudes. The reality is that some employers are simply looking to increase their profitability and are prepared to do so at the expense of their workforce.²⁵

2.31 This is about increasing profitability in the retail sector, which, the Australian Council of Trade Unions (ACTU) submitted, does not help workers or the broader economy:

What has changed between 2011 and 2017 is that we now have a conservative government that is prepared to indulge the idea of cutting penalty rates as a means of increasing the profitability of the retail sector. Their reliance on the failed trickle down economic theory of the 1980's has left them exposed as out of touch and ignorant to the low pay crisis that Australian workers now face.²⁶

2.32 It is also worth noting that many leading economists and academics, including former Reserve Bank Governor Bernie Fraser, are deeply concerned about the FWC's decision to reduce Sunday penalty rates. An open letter penned on behalf of 75 prominent economists and academics states:

While it is doubtful that lower penalty rates will result in any measurable increase in total employment in the retail and hospitality industries there is no doubt that this decision will reduce incomes for some of the most insecure and poorly paid workers in the economy.²⁷

²³ Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 9.

²⁴ See discussion with Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 9.

²⁵ Australian Council of Trade Unions, *Submission 4*, p. 3.

²⁶ Australian Council of Trade Unions, *Submission 4*, p. 3.

²⁷ See 'Former RBA governor Bernie Fraser says penalty rate cut will produce inequality, not jobs,' *The Sydney Morning Herald*, www.smh.com.au/federal-politics/political-news/former-rba-governor-bernie-fraser-says-penalty-rate-cut-will-produce-inequality-not-jobs-20170406-gvezd1.html (accessed 20 September 2017).

2.33 The signatories—economists and academics from universities, think tanks and consultancies—warn that the FWC's decision will ultimately undermine national economic growth.²⁸

2.34 Research also suggests that rather than boosting employment, demand for lower penalty rates will likely spread across to other sectors of the economy, beyond the four awards directly affected by the FWC decision. Dr Stanford explained that a considerable number of Australians work on weekends:

[W]e conducted some original research into the likelihood that employers' demand for lower penalty rates would spread to other sectors of the economy beyond the four awards affected by this decision. We commissioned some custom data from the ABS regarding the incidence of weekend work in different parts of the economy. We looked at 108 different sectors. We showed that, first of all, there is a large amount of weekend work; that would not be a surprise. On a typical weekend, about 2.7 million Australian workers work at least one day, and more than that will work some weekend days during the course of a year. We also estimated the aggregate value of the extra income that is produced because of weekend penalties across the 108 different sectors. We estimate there is about \$8.5 billion of additional income per year for working on Sundays and \$5.5 billion for working on Saturdays.²⁹

2.35 This, Dr Stanford explained, is important on a macro-economic level, considering the fact that wages have stagnated in recent times:

In my judgement, reductions in income as a result of lower penalty rates will ultimately be experienced not just by those working directly under the awards but also by those on enterprise agreements and individual contracts, both of which have to pass the Better Off Overall Test that you have been discussing. And because the benchmark for passing that test has been significantly shifted downward, I expect that eventually the countervailing benefits which should be offered in other sectors will also be reduced.³⁰

2.36 Further refuting arguments linking penalty rate reductions to job growth, Dr Stanford explained that employment trends are not driven by wage levels, but by macro-economic factors instead, such as the rate of growth, level of personal income and structural factors:

We've seen big structural change in the retail industry—for example, the rise of big-box stores and so on—that explains why retail has actually

²⁸ 'Former RBA governor Bernie Fraser says penalty rate cut will produce inequality, not jobs,' *The Sydney Morning Herald*.

²⁹ Dr James Stanford, Economist and Director, Centre for Future Work, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 24 August 2017, p. 49.

³⁰ Dr James Stanford, Economist and Director, Centre for Future Work, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 24 August 2017, p. 49.

created no new jobs in Australia in recent years. Trends like that will overwhelm any impact of changes in penalty rates.³¹

- 2.37 JobWatch echoed this view, similarly pointing out that the primary driver of employment is in fact demand, not low wages. Demand is, in turn, driven by wage growth, because the more people are paid, the more money they will spend. JobWatch summed this up:

Each individual employer may want cheaper labour, but they want their customers – who work for somebody else – to be well paid.³²

- 2.38 While the share of national income going towards private sector profits has risen dramatically in the past three decades, the committee notes, the share of national income going towards wages is at a 50-plus-year low – and falling.³³
- 2.39 It is clear that these cuts to penalty rates, and further future cuts as well as further deregulation would be ill-advised.

The direction of deregulation

- 2.40 Evidence was drawn from the example of New Zealand, where extensive deregulation appears to have hindered, rather than helped the labour market. The deregulated New Zealand market has performed markedly worse than that of Australia in almost every respect in recent decades, and the absence of penalty rates did not reverse this trend:

There was a brief period when those markets were out of sync when there was a lot of talk about the fact that some of the very large portion of the New Zealand workforce that had moved to Australia to seek better conditions was returning. We don't seem to have heard that much more. There has been, over the recent decades, a very big flow of New Zealanders to Australia, essentially because of poor labour market conditions in New Zealand. This is compared to the situation for most of the 20th century when the two economies were very comparable and when flows across the Tasman were cyclical rather than potentially always in the one direction.

I would also make the point that, when looking at the particular pattern of employment there, there was no evidence that the absence of penalty rates had much of a change.³⁴

³¹ Dr James Stanford, Economist and Director, Centre for Future Work, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 24 August 2017, p. 49.

³² JobWatch, *Submission 7*, p. 6.

³³ For details on wage stagnation see the Australia Institute, Labour Share of Australian GDP Hits All-Time Record Low, 13 June 2017, available at:

www.tai.org.au/sites/default/files/Labour_Share_Hits_Record_Low.pdf (accessed 13 September 2017).

See also Ms Sally McManus, ACTU Secretary, speech to the TJ Ryan Foundation, 1 September 2017, available at: www.actu.org.au/actu-media/speeches-and-opinion/sally-mcmanus-speech-to-tj-ryan-foundation-brisbane-1st-september-2017 (accessed 13 September 2017).

³⁴ Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 11.

- 2.41 Furthermore, the committee heard that markets which may be described as 'deregulated' nonetheless feature a great deal of state action—regulation—however usually directed at aiding employers, not employees:

We see this in the operation of the labour market at present. There are special bodies created specifically to constrain the actions of unions, so I think we're talking about different kinds of regulation—I suppose that is a point of clarification... The issue is really not so much regulation versus deregulation—that's one element—but the crucial element is regulation in the interests of workers and unionised workers versus regulation in the interests of employers. There is a balance to be made there. Arguably, it was too far in one direction in the 1970s, but, very clearly, the balance has shifted far too far in the direction of regulation against the interests of workers.³⁵

Penalty rates and enterprise agreement negotiations

- 2.42 Enterprise bargaining is the cornerstone of Australia's industrial relations system. It is the primary vehicle for both employers and employees to negotiate outcomes that serve both parties' interests. Negotiations are not always straightforward, and may at times be protracted, but an outcome agreed-to by both parties through compromise and mutual respect can simultaneously achieve productivity gains and decent working conditions.

- 2.43 However, submitters have reported a steep decline in retail enterprise agreements:

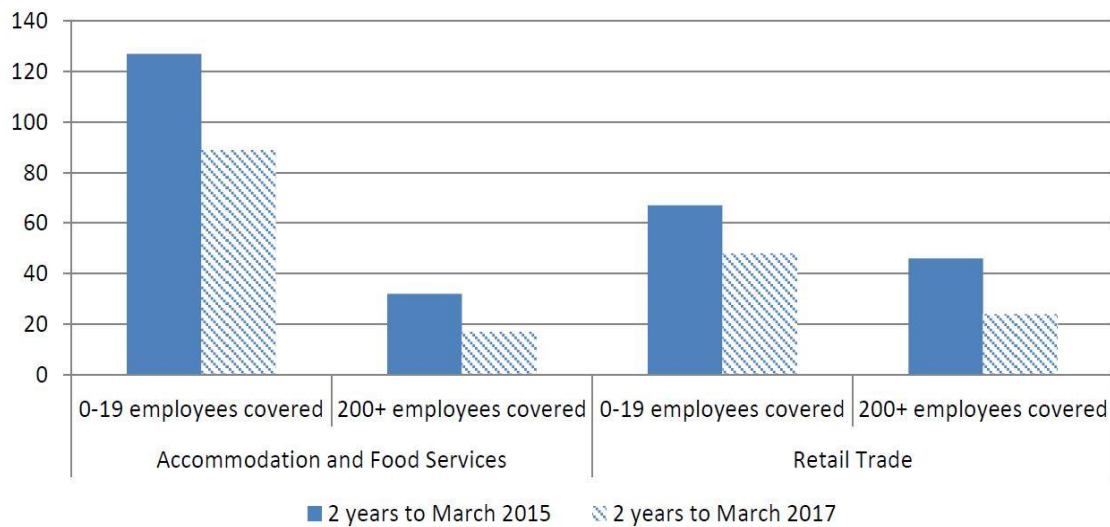
In the two years to 31 March 2017, the average number of small agreements approved across the private sector was 611 per quarter (see Chart 1). In the two years prior to that, the average was 747 per quarter. For large agreements (i.e. those covering 200+ employees), the average number of agreements approved across the private sector in the two years to 31 March 2017 was 90 per quarter. In the two years prior to that, the average was 111 per quarter.³⁶

- 2.44 The figure below illustrates this decline specifically in the hospitality and retail industries by the number of employees covered.

³⁵ Professor John Quiggin, private capacity, *Proof Committee Hansard*, 24 August 2017, p. 11.

³⁶ Department of Employment, *Submission 19*, p. 4.

Figure 2.2 Number of private sector agreements approved in the accommodation and food services industry and retail trade industry by employees covered



Source: Department of Employment, Submission 19, p. 6.

- 2.45 Although steeper in the small business sphere, the decline in agreement negotiation is nonetheless evident throughout the retail sector.³⁷ The committee notes that this could largely be attributed to employers not wanting to negotiate simply because negotiation and agreement-making ultimately results in above-award salary conditions. This was put to the Australian Retailers Association for response:

I think that probably reflects the view of some, and I think there's probably a bias towards small businesses with that way of thinking. And the small businesses generally in my experience have sought to go down enterprise agreement paths to attempt to control labour costs or minimise labour costs. I don't think that's been the case with larger businesses. I think what larger businesses want to do is to smooth out the way that people are paid so that they can shift labour and have right levels of labour at right times. Obviously penalty rate structures mean that the cost of labour is close to its highest at the times when most customers are utilising their services. So, the enterprise bargaining process was to smooth out those peaks and troughs to enable a more efficient and more structured system for those businesses.³⁸

- 2.46 Australian Retailers Association representatives also explained that the major retailers moved back to the Award it would result in an overall decrease in their labour costs:

³⁷ Mr Nick Tindley, Executive Manager, Human Resources, Consulting and Advisory Services, FCB Group, *Proof Committee Hansard*, 24 August 2017, p. 15. Mr Tindley appeared alongside the Australian Retailers Association and explained that FCB Group provide employment relations services to the Australian Retailers Association, *Proof Committee Hansard*, 24 August 2017, p. 13.

³⁸ Mr Nick Tindley, Executive Manager, Human Resources, Consulting and Advisory Services, FCB Group, *Proof Committee Hansard*, 24 August 2017, p. 15.

My experience has been that on an overall basis, if a Coles, a Woolworths or another one of these large brands moved to the general retail industry award completely for all their store based employees, they would be paying less in labour costs than they are paying now, and that is the result of strong negotiations between an employer and an employee group, and unions, and also the desire of those businesses to be employers for whom employees want to work.³⁹

- 2.47 Questions were also raised over the course of the inquiry about certain penalty rate loadings being given up or exchanged during enterprise agreement negotiations. Some submitters, such as the Council of Small Business Australia (COSBOA), believe that the debate around penalty rates 'ignores the fact that one union negotiated lower than award rates for most Sunday workers years ago.'⁴⁰ Specifically, this relates to allegations that the Shop, Distributive and Allied Industries Union agreed to reduce penalty rates in deals negotiated with a number of large employers:

One of the biggest unions in Australia, the Shop Distributive and Allied Industries Union known commonly as the SDA, has negotiated cynical Enterprise Agreements (EAs) with some of Australia's largest businesses. These EAs give some businesses a competitive advantage on weekends. One of the major outcomes of these negotiated EAs is to decrease the weekend take home pay for weekend workers to subsidise or increase the weekday workers' pay.⁴¹

- 2.48 However, the COSBOA submission does not consider the existence of higher loaded rates elsewhere in the week.
- 2.49 This point was echoed in a submission from the Retail and Fast Food Workers Union (RAFFWU), a relatively new union which sees itself as a rival to the SDA. In 2015, RAFFWU first voiced concerns that the *Coles Supermarkets Store Team Agreement 2014-17* may be paying most employees less than they would earn under the General Retail Industry Award 2010.⁴² RAFFWU offered the following by way of background:

In June 2015 the Fair Work Commission accepted undertakings from Coles relating to the rates of pay of casual workers, 17 year old workers and 18 year old workers, and approved the Coles 2014 Agreement. The Fair Work Commission then approved the Coles 2014 Agreement on 10 July 2015.

On 31 July 2015, Duncan Hart (and subsequently the Australasian Meat Industry Employees Union ("AMIEU")) appealed the decision to approve the Coles 2014 Agreement.

That appeal was not determined until 31 May 2016 when the appeal was upheld. Here the case is referred to as *Hart v Coles*.⁴³

³⁹ Mr Nick Tindley, Executive Manager, Human Resources, Consulting and Advisory Services, FCB Group, *Proof Committee Hansard*, 24 August 2017, p. 14.

⁴⁰ COSBOA, *Submission 12*, p. 1.

⁴¹ COSBOA, *Submission 12*, p. 1.

⁴² Retail and Fast Food Workers Union, *Submission 25*, p. 2.

⁴³ Retail and Fast Food Workers Union, *Submission 25*, p. 3.

- 2.50 Broadly, RAFFWU suggested that some workers employed by many of Australia's largest retailers and fast food companies are earning less under SDA-negotiated enterprise agreements than they would under relevant awards. Estimates were offered in relation to Coles, Hungry Jacks, Woolworths, McDonald's and Domino's Pizza.⁴⁴ Evidence showed that the actual rates being paid under expired Agreements were in fact significantly higher than the FWC published rates.⁴⁵
- 2.51 The pay benefits of reverting to the award, RAFFWU posited, can be substantial.⁴⁶
- 2.52 The committee explored this with RAFFWU, the SDA and employer groups, cognisant of the polarised nature of this debate.
- 2.53 The SDA rejected these claims, calling claims which look at specific days, like Sundays while ignoring higher rates paid on other days 'disingenuous'. Mr Gerard Dwyer, National Secretary of the SDA, stressed that pay and conditions have to be looked at in terms of a period of time, not just on one single day:

Wages are a significant and critical component of a business's costs, and, like any other cost, their product, electricity, tax et cetera must be measured over a trading cycle, financial quarter or season to be properly understood. The industries that we cover operate across seven days and are subject to seasonal variations, and any logical examination of wage costs must be made across appropriate timeframes. We'd submit that it's a disingenuous argument to advance that calls out a specific day, like Sunday, but completely disregards the higher wage rates paid at other times across the roster cycle. Businesses assess their wage costs across longer time periods and, likewise, employees assess their take-home pay similarly over longer time frames.⁴⁷

- 2.54 Furthermore, as penalty rates compensate for working during unsociable hours, the value of the compensation is for the workforce to determine in the bargaining context:

What we have is a test in the award. The test is that the Sunday should attract a penalty—and there are different aspects in terms of this idea of unsocial hours and whether a person can work or not. There is access or the right to say no. You will see in our agreements, particularly in retail, the right to time off on weekends or important days.

And the value of that is to be put into the award and then, in a bargaining context, if a workforce chooses to endorse movement of the value of those to other hours then that is a legitimate process.

The bargaining context is about moving the value of a penalty rate across into a loaded rate. As I said before, the [conversation] we have is always about take-home pay.⁴⁸

⁴⁴ RAFFWU, *Submission 25*, pp. 4–5.

⁴⁵ See for example Mr Robert Phipps, Chief People Officer, KFC, *Proof Committee Hansard*, 24 August 2017, p. 22.

⁴⁶ RAFFWU, *Submission 25*, p. 5.

⁴⁷ Mr Gerard Dwyer, National Secretary, SDA, *Proof Committee Hansard*, 24 August 2017, p. 39.

⁴⁸ Mr Gerard Dwyer, National Secretary, SDA, *Proof Committee Hansard*, 24 August 2017, p. 42.

2.55 The SDA also highlighted the complexity relating to BOOT assessments by virtue of various enterprise awards and modern awards being in transition up until 2014.⁴⁹

2.56 JobWatch was of the view that claims relating to employees working for large employers, and specifically the penalty rates they receive under their enterprise agreements, were 'unlikely to have any basis.'⁵⁰ This, JobWatch submitted, is because multiple entitlements such as overtime, penalties and allowances are normally bundled into a single, higher rate of pay per hour. This is done 'for the purposes of clarity and simplicity, and in exchange for other flexibilities of value to the employer.'⁵¹

This would normally result in a higher wages bill overall, despite any reduction in penalties, so no competitive advantage would be conferred in relation to wages.⁵²

2.57 The Department of Employment (the department) agreed that, for employers, one core outcome of enterprise bargaining is being able to allocate their wage bill flexibly over the course of a week. This must be done in a way that benefits employees overall, and can never lower the base rate of pay below the rate under the relevant award or national minimum wage order (for award-free employees).⁵³ It would follow from this that putting various conditions on the table as part of the EBA process is to be expected.

2.58 The department also noted that there was nothing unusual or indeed remarkable about employees bargaining away conditions, including penalty rates, in return for other valued benefits:

The enterprise bargaining framework in the *Fair Work Act 2009* (Fair Work Act) allows employers and employees to negotiate terms and conditions of employment that better suit their circumstances, subject to a Better Off Overall Test (BOOT). Employees and employers are able to trade off award conditions, such as weekend penalty rates, for other benefits, such as a higher base rate of pay, as long as the employees covered by the agreement are better off overall.⁵⁴

2.59 The Australian Nursing and Midwifery Foundation (ANMF) submitted that enterprise agreements negotiated with large employers have historically produced better outcomes for employees in the sector:

The bargaining history in health and aged care generally demonstrates that better outcomes are achieved in workplaces of large employers. The collective industrial strength of nurses in large workplaces, particularly in public and private hospitals assists in achieving enterprise agreements that provide more beneficial outcomes.⁵⁵

⁴⁹ SDA, *Submission 8*, p. 25.

⁵⁰ JobWatch, *Submission 7*, p. 10.

⁵¹ JobWatch, *Submission 7*, p. 10.

⁵² JobWatch, *Submission 7*, p. 10.

⁵³ Department of Employment, *Submission 19*, p. 4.

⁵⁴ Department of Employment, *Submission 19*, p. 4.

⁵⁵ Australian Nursing and Midwifery Foundation, *Submission 3*, p. 3.

- 2.60 Outcomes in smaller workplaces within the health sector are less favourable, and nurses 'often languish on the modern award.'⁵⁶

Conversely where nurses are small in number, enterprise bargaining outcomes are generally reduced both in terms of wages and employment conditions. The absence of arbitral powers under the Fair Work Act has allowed many smaller employers to "surface bargain" or alternatively simply present employees with an agreement on a take it or leave it basis.⁵⁷

- 2.61 Woolworths provided the committee with a breakdown of weekly wage comparisons, looking at the weekly rate under the General Retail Industry Award 2010 and the weekly rate payable under its enterprise agreement negotiated with the SDA. Examples are broken down by state and date of lodgement, and show that employees receive more under the union-negotiated enterprise agreement than they would under the award.⁵⁸

Are small businesses at a disadvantage?

- 2.62 Some submitters expressed concerns that small businesses were being disadvantaged by the competitive advantage large employers have gained, allegedly with help from the SDA, by locking in enterprise agreements which reduce penalty rates with the union's support.⁵⁹

- 2.63 Others however pointed out that there was nothing stopping small businesses from securing similar agreements if they wished to:

In any case, there is no reason why small businesses cannot use EAs. Union presence is not essential to the process of negotiating an agreement, as employees can choose their own representatives or represent themselves, and therefore can initiate bargaining.⁶⁰

- 2.64 JobWatch suggested that the Fair Work Ombudsman should be funded to provide basic collective bargaining assistance to small and medium size enterprises:

JobWatch recommends that small to medium enterprises that cannot afford or are reluctant to become a member of a peak employer group who can assist them with collective bargaining, should be able to obtain basic assistance from the Fair Work Ombudsman, who should be funded to provide this assistance. Likewise, agencies such as JobWatch can assist employees with the bargaining process, including the appointment of bargaining representatives.⁶¹

- 2.65 It may be reasonable to conclude that, if such agreements were disadvantageous overall, small businesses would opt for similar agreements as well, and there is nothing stopping small businesses from doing so—other than cost. To support this point the committee notes that in South Australia a small business enterprise

⁵⁶ Australian Nursing and Midwifery Foundation, *Submission 3*, p. 5.

⁵⁷ Australian Nursing and Midwifery Foundation, *Submission 3*, p. 5.

⁵⁸ Woolworths Group, *answers to questions on notice*, received 6 September 2017, p. 56.

⁵⁹ Council of Small Business Australia, *Submission 12*, pp. 1–2.

⁶⁰ JobWatch, *Submission 7*, p. 10.

⁶¹ JobWatch, *Submission 7*, p. 10.

agreement template was developed by Business SA and the SDA, whereby small businesses could sign up without any union involvement. This standardised model was rejected by around a dozen employers who rejected it on the basis that it decreased flexibility and increased labour costs.⁶²

- 2.66 The use of enterprise agreements by small business was also discussed by the Australian Council of Trade Unions:

Of course small business does not take up such agreement [with unions] because they recognize that despite lowering penalty rates the trade is that the workers must be better off overall and this is not the aim of the lobby seeking cuts to penalty rates.⁶³

- 2.67 These views support the conclusion that small businesses by and large prefer to avoid using enterprise agreements precisely because they result in better pay and conditions for workers.⁶⁴

Committee view

- 2.68 While the committee's overall conclusions are detailed at the end of this chapter, several important observations are made about the preceding sections. The committee acknowledges the contradictory views regarding negotiations around wages with large employers. The committee also recognises that these disputed matters are unfolding in a deeply contested context which can have a distortionary effect on factual evidence.
- 2.69 The committee is strongly supportive of the enterprise bargaining framework and the ability of workers, unions and employers to engage in good faith negotiations over wages, conditions and penalty rates. The committee emphasises that it is perfectly legitimate for workers and their unions to negotiate the transfer of value from one part of workers' remuneration to another, provided that workers support the changes and that they are better off overall as a result. This only serves to highlight the need for an improved, more robust BOOT to be developed in order to safeguard optimal outcomes for workers.
- 2.70 The committee also notes that a number of large employers were approached during this inquiry, with most cooperating with the process openly. The committee does however have concerns about the unwillingness of some employers, notably Coles, to provide answers to questions put on notice in a timely and satisfactory manner, and notes that many of the answers Coles did eventually provide were incomplete or did not address the question put.
- 2.71 The committee is also aware that some committee members were not satisfied by answers to questions on notice provided by the SDA, but does not share this view. The inquiry record shows that the SDA provided all information that could reasonably be expected comprehensively and within the expected timeframe.

⁶² Mr Gerard Dwyer, National Secretary, SDA, *Proof Committee Hansard*, 24 August 2017, pp. 39 and 48.

⁶³ Australian Council of Trade Unions, *Submission 4*, p. 3.

⁶⁴ See Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, Department of Employment, *answer to question on notice*, received 31 August 2017, p. 2.

The BOOT can be improved

2.72 Enterprise agreements must pass the better off overall test (BOOT) as a condition of approval by the Fair Work Commission (FWC).⁶⁵ An agreement passes the test if:

...the Commission is satisfied, as at the 'test time', that each award covered employee, and each prospective award covered employee, would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee.⁶⁶

2.73 Although the Act requires the FWC to consider each employee in assessing an enterprise agreement application,⁶⁷ subsection 193(7) allows the FWC to look at a class of employees more broadly instead of looking into each employee's particular circumstances.⁶⁸ This fact notwithstanding, an agreement will not be approved where even a small group of employees are found not to be better off overall. However, if a class of employees are judged to be better off under a particular agreement, the FWC is also entitled to assume that an individual worker from within that class would also be better off, 'in the absence of evidence to the contrary.'⁶⁹

2.74 Evidence suggests that there is considerable ambiguity around the application of the BOOT in practice, and that the test might benefit from fine-tuning. The ACTU's submission cited an example of inconsistency:

The application of the Better Off Overall Test (BOOT) must be consistent in order to ensure that workers and their employers can enter bargaining with the same understanding about what the parameters are for the negotiations. We are aware of cases, such as the Super Retail group EBA, where the Fair Work Commission determined a non-union agreement that reduced Sunday loadings and had a much lower base rate than the Coles agreement, that was latter deemed to not pass the BOOT, was found to be BOOT compliant.⁷⁰

2.75 The ANMF suggested that the BOOT is 'deficient both in terms of its concept and application.'⁷¹ This is because, by comparing a proposed agreement against the relevant award, employees are placed at a distinct bargaining disadvantage. Furthermore, where agreement is not reached and an existing agreement expires, there is a risk that the existing agreement will simply be terminated and workers' employment conditions will be reduced to those of the relevant award.

Fair Work Amendment (Pay Protection) Bill 2017

2.76 The Fair Work Amendment (Pay Protection) Bill 2017 was introduced as a private member's bill into the Senate by the Australian Greens on 29 March 2017. The objective of the bill is to amend the FWA so that employees cannot be paid less under

⁶⁵ Section 186, *Fair Work Act 2009*.

⁶⁶ Fair Work Commission, *Submission 14*, p. 6.

⁶⁷ Subsection 193(1), *Fair Work Act 2009*. See also Department of Employment, Senate Education and Employment References Committee inquiry into penalty rates, *Submission 19*, p. 9.

⁶⁸ Subsection 193(7), *Fair Work Act 2009*.

⁶⁹ Department of Employment, *Submission 19*, p. 9.

⁷⁰ Australian Council of Trade Unions, *Submission 4*, p. 2.

⁷¹ ANMF, *Submission 3*, p. 5.

the terms of an enterprise agreement than they would receive under the 'full rate of pay' in the relevant modern award.⁷²

- 2.77 The committee notes that modern awards were in principle intended to provide a safety net, not to replace enterprise agreements:

The safety net would not be intended to prescribe the actual conditions of work of most employees, but only to catch those unable to make workplace agreements with employers. Over time the safety net would inevitably become simpler. We would have fewer awards with fewer clauses.⁷³

- 2.78 The Senate Education and Employment Legislation Committee examined the bill during a parallel inquiry looking specifically at the proposed legislation. Whilst recognising that the bill is well intentioned, the committee found that the bill would carry the unintended consequence of undermining the collective bargaining system.⁷⁴ Almost two thirds of the National Retail Association members believe that their employees fare better under their enterprise agreement than they would under the relevant award.⁷⁵ This being the case, it was evident that fostering reliance on awards instead of enterprise agreements would have deleterious effects for many workers.
- 2.79 The bill could also foster uncertainty by requiring employers to continuously check relevant awards for changes to entitlements, including allowances, loadings and penalties. This was borne out in evidence presented to the Education and Employment Legislation Committee and covered in its report. Of particular concern was the fact that 'the bill lacks appropriate consideration of its potential impact in the long term' as it would require substantial further legislative amendments if passed.⁷⁶
- 2.80 Furthermore, the bill would create a large administrative burden through its intended retrospective application.⁷⁷ Stakeholders expressed serious concerns about the fact that, if enacted, the bill could render many existing enterprise agreements—which were negotiated and agreed to lawfully and fairly—unlawful. The Queensland Law Society had the following to say on the imprudence of introducing retrospective rights and/or liabilities:

[T]he Society generally opposes the introduction of provisions that impose retrospective rights or liabilities on a person on the basis that these may

⁷² Department of Employment, *Submission 19*, p. 13.

⁷³ Former Prime Minister the Hon Paul Keating MP, speech to the Institute of Directors, 21 April 1993, available at: <http://pmtranscripts.pmc.gov.au/release/transcript-8849> (accessed 12 September 2017).

⁷⁴ Senate Education and Employment Legislation Committee report on the Fair Work Amendment (Pay Protection) Bill 2017, p. 11.

⁷⁵ Senate Education and Employment Legislation Committee report on the Fair Work Amendment (Pay Protection) Bill 2017, p. 6.

⁷⁶ For discussion see Senate Education and Employment Legislation Committee report on the Fair Work Amendment (Pay Protection) Bill 2017, pp. 8–9.

⁷⁷ Senate Education and Employment Legislation Committee report on the Fair Work Amendment (Pay Protection) Bill 2017, p. 6.

create unjust and unforeseeable outcomes and may be contrary to section 12(2) of the *Legislation Act 2003*.⁷⁸

- 2.81 This was confirmed by the Department of Employment, whose evidence indicated that enacting the bill could take some workers' conditions backwards:

Yes, that is correct. That's because the bill specifies that the amendments proposed in the bill would apply to enterprise agreements made before, on or after the day that the legislation comes in. So, if the bill came in and it said it was going to start on 1 October, it would apply to enterprise agreements made before that day. When we analysed it, we thought that meant the amendments would apply to existing agreements, so people who have negotiated agreements lawfully under the framework that existed at the time would potentially lose conditions negotiated in their agreement.⁷⁹

- 2.82 While the intention of the bill is fundamentally to protect workers, there was insufficient evidence to suggest that the bill would be appropriate to achieve this aim, particularly as the bill does not address the issue of penalty rates.⁸⁰
- 2.83 The Senate Education and Employment Legislation Committee therefore concluded that the bill should not be passed, a conclusion shared by this committee.

Conclusion

- 2.84 The committee recognises the importance of penalty rates for many workers in the retail, fast food and hospitality industries. The committee also notes that no evidence has been presented to the committee that weekends and public holidays are less important in the mind of the Australian community.
- 2.85 The committee has not heard convincing arguments to justify what would amount to blanket pay cuts for these workers. Not a shred of evidence has been presented to the committee supporting the government's targeting of workers who rely on penalty rates, as a means of creating more jobs. Quite the opposite, the overly simplistic logic of driving down wages to enable businesses to employ more workers was irrefutably discredited by evidence to this inquiry.
- 2.86 The concept of unbridled pursuit of private sector profit as a social virtue is based on the erroneous premise that soaring profits always benefit the economy. This is simplistic and has been proven not to be the case. Excessive profits which are offset by low, stagnating wages, will lead to lower economic growth. It is noteworthy that

⁷⁸ Queensland Law Society, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Submission 4*, p. 2.

⁷⁹ Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, pp. 59–60.

⁸⁰ For a full discussion of the bill see Senate Education and Employment Legislation Committee report on the Fair Work Amendment (Pay Protection) Bill 2017, including Labor Senators' Additional Comments, p. 13.

senior economists, including the Governor of the Reserve Bank, have been calling for wage growth.⁸¹

- 2.87 The committee is aware that the *Fair Work Act 2009* (the Act) requires bolstering in order to keep pace with the realities of modern workplaces and ensure that employers do not continue to exploit loopholes identified in the Act. Abundant evidence of this came to light during the committee's recent inquiry into corporate avoidance of the Act.⁸² Significantly, that inquiry highlighted the power imbalance between the bargaining power of employees and employers.⁸³ In particular, the BOOT must be strengthened in order to ensure that the test provides clarity and certainty, is rigorous, robust and capable of delivering on its intended purpose.
- 2.88 The committee was disappointed by what can only be described as a frenzied attack on unions by Coalition and Greens Senators acting seemingly in unison in this inquiry. Coalition Senators' professed concern for the welfare of workers is ironic, considering the fact that every bit of industrial legislation the Coalition has pushed through Parliament in recent history has had the singular intention and effect of weakening the rights of working Australians and stifling the ability of unions to defend workers' interests. This was highlighted in the SDA submission which detailed its defence against numerous attacks on penalty rates by employer organisations and Coalition State and Federal governments over the past 25 years.⁸⁴ Coalition Senators' position during this inquiry reflects more of the same. It is an ideologically-driven push against unionism motivated by this fundamental fact: high-union-density workplaces provide higher rates of pay and better conditions for workers than comparable low-density workplaces. Destroying strong unions and weakening collective bargaining appears to be the bedrock of the government's industrial relations policy.
- 2.89 The committee proudly supports and defends workers' rights to penalty rates during anti-social working hours, and the right of employees and their union representatives to bargain for the best possible outcome for workers and determine what that might be in their individual circumstances. Workers deserve real wage increases, not stifled wage growth and sustained attacks on their right to form strong unions to defend and ensure decent pay and conditions at work.
- 2.90 To this end, the committee is strongly of the view that the FWC's decision to reduce penalty rates will have a disproportionate and pronounced impact on workers in retail, fast food and hospitality industries. In particular the impact will be most dramatic for those on lower incomes. The committee therefore urges the government to reconsider its position and overturn the FWC's decision to cut penalty rates.

⁸¹ 'Tough rules on unions have stifled Australian wages', *The Sydney Morning Herald*, 5 July 2017.

⁸² Senate Education and Employment References Committee, inquiry into corporate avoidance of the Fair Work Act, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Avoidance_of_FairWork (accessed 30 August 2017).

⁸³ See for example pages 10, 13 and 14.

⁸⁴ SDA, *Submission 8*, pp. 3–6.

Recommendation 1

2.91 The committee recommends that the government legislate to overturn the Fair Work Commission's decision to reduce Sunday penalty rates.

Senator Gavin Marshall
Chair

Coalition Dissenting Report

- 1.1 Coalition Senators reject the assertions and recommendation in the Chair's report.
- 1.2 The Australian Labor Party (ALP) and many unions have sought to undermine the independence of the Fair Work Commission by attempting to overturn the Commission's February 2017 decision which modified penalty rates in the retail and hospitality sectors.
- 1.3 This campaign has included:
 - Court action by the Shop, Distributive and Allied Employees Association (SDA) and United Voice;
 - Private Members' Bills in Parliament; and
 - A substantial public relations campaign by unions and the ALP.
- 1.4 Their campaign has been extraordinarily disingenuous and hypocritical.
- 1.5 As this inquiry has exposed, for many years, unions have signed enterprise agreements with large enterprises that include cuts to Sunday penalty rates.
- 1.6 Rather than allowing these agreements to be fully scrutinised, Labor Senators used their numbers on the Committee to prematurely cut this inquiry short and deny the Coalition Senators' request for additional hearings with additional witnesses.
- 1.7 Coalition Senators are disheartened by the conduct of this inquiry and in particular, the desire for the Labor Senators to prematurely table this report well before the due date and prior to all of the responses to the questions on notice being received.
- 1.8 The conduct of this inquiry has shown that the Labor Senators have no concern with penalty rate cuts that result from agreements made between unions and large corporations. Instead, the Labor Senators only feign objection to penalty rate modifications for workers on awards, predominately relied upon by small businesses.
- 1.9 This inquiry has shown Labor's exploitation of political opportunism and acquiescence to union leaders.

Fair Work Commission penalty rates decision

- 1.10 Coalition Senators respect the independence of the Fair Work Commission, which was established by the Rudd Labor Government in 2009.
- 1.11 Just as interest rate decisions are made independently by the Reserve Bank in a manner that removes any suggestion of political interference, decisions about employment awards and conditions are made independently by the Fair Work Commission.
- 1.12 There are 122 modern awards. In February, the Fair Work Commission made a decision to reduce Sunday penalty rates in four of these awards: retail, hospitality, fast food, and pharmacy.

- 1.13 This decision also reduced public holiday rates—from 250 to 225 per cent for permanent employees and from 275 to 250 per cent for casuals—in 5 industries: retail, hospitality, fast food, pharmacy and restaurants.
- 1.14 No other awards are affected by the Fair Work Commission’s decision. The changes also do not affect workers on enterprise agreements, many of which are already paid reduced penalty rates on Sunday.
- 1.15 In June 2017, the Fair Work Commission made a further decision to phase in these penalty rate modifications over a number of years, with the first reduction amounting to five percentage points for 2017-18, a reduction which is largely negated by the recent increase in award wages.
- 1.16 Two tables summarising these changes are included in **Attachment A**.
- 1.17 The Department of Employment estimates the changes in these awards will affect three to four percent of Australia’s total workforce.
- 1.18 The Fair Work Commission’s decision came after an extensive review over a number of years and which included around 5,900 submissions and 143 witnesses. The views of unions, employers and experts were carefully considered.

Previous award penalty rate modifications

- 1.19 The February decision by the Fair Work Commission was not the first time penalty rates under awards have been reduced by the Commission. For example:
- In 2010, penalty rates were cut in some awards—including some hotel, cafe and restaurant workers—under the award modernisation process of the previous Labor Government; and
 - In 2014, Sunday penalty rates for some casual restaurant workers were reduced under the 2 yearly review of modern awards established by the previous Labor Government.
- 1.20 Revealingly, there was no hysterical campaign launched by Labor or the unions’ in respect of these two previous penalty rate changes.

Labor's opposition to penalty rates decision is disingenuous

- 1.21 The ALP’s attack on the Commission’s latest decision is surprising, given that it was the previous Labor Government that established the Fair Work Commission. Further, as Workplace Relations Minister in the previous Government, it was Mr Shorten who appointed the President of the Commission, set this review in train and repeatedly said he would accept its findings.
- 1.22 The subsequent campaign by the ALP and a number of unions against the Government on penalty rates has been extraordinarily disingenuous and hypocritical.

A fair go for small business

- 1.23 Coalition Senators are of the view that the Fair Work Commission’s decision on penalty rates reflects modern shopping trends, where many more customers want to shop and more people want to work on Sundays—including many young Australians.

- 1.24 Coalition Senators are of the view and the evidence before the Committee indicates that the Fair Work Commission's decision also reflects the reality faced by many small business owners, who have found high Sunday penalty rates prohibitive and an obstacle to their ability to open their businesses, employ staff and serve their communities on Sundays.
- 1.25 In its decision, the Fair Work Commission cited many examples of small business owners who work on Sundays for free, but would rather hire staff, along with shop owners who would like to open or provide more services to their communities on Sundays, if penalty rates were modified.
- 1.26 Examples of evidence provided to the Fair Work Commission by small business owners are provided in **Attachment B**.
- 1.27 Examples of positive public reactions by small businesses and employer groups to the Commission's decision are included in **Attachment C**.

Penalty rate hypocrisy – cuts under union agreements

- 1.28 One of the organisations to provide evidence to the inquiry was the SDA.
- 1.29 The SDA has also made a joint application to the Federal Court to overturn the Fair Work Commission's decision. It has also waged a campaign under the banner "Save Our Weekend". For example, on its website, the SDA states:

The Australian weekend is iconic. It's when we take time out to relax, when families go to the beach, when we take to sporting fields across the country to either play or cheer on our favourite sports stars.

For many SDA members, however, the weekend also often means work. Spending time away from the activities that the majority of Australians get to enjoy on the weekend is only made bearable because of penalty rates. The compensation for missing out on valuable time with family and friends will never make up for that lost time, but it does help ease the pain and make it financially worthwhile.¹

- 1.30 The hypocrisy of this argument and their campaign is breathtaking.
- 1.31 In its submission to this inquiry, the Department of Employment has provided numerous examples of enterprise agreements struck between the SDA and many other unions and large enterprises, where penalty rates have been cut.
- 1.32 What these examples demonstrate is that small businesses have been on an uneven playing field relative to large businesses when it comes to employing staff on Sundays. For example:
- A bed and breakfast (under the hospitality award) has needed to pay around \$10 an hour more than a 5-star hotel;
 - A takeaway shop (under the fast food award) has needed to pay around \$8 an hour more than KFC, McDonald's or Pizza Hut; and
 - A specialty food shop (under the retail award) has needed to pay around \$5 an hour more than Woolworths or Coles.

¹www.sda.org.au/join-the-campaign-to-protect-penalty-rates/, (accessed 3 October 2017).

- 1.33 Many other examples of union agreements with large enterprises, where penalty rates have been cut, are included in **Attachment D**.
- 1.34 In the words of former ACTU President and Labor Minister, Martin Ferguson:

In my opinion, the campaign of the Labor Party, in association with the union movement, is based on hypocrisy and dishonesty when you look at the nature of the agreements which have existed for many, many years. But they now condemn the Fair Work Commission for having the decency to give small business the same benefits.²

Penalty rate cuts under Bill Shorten's union leadership

- 1.35 Penalty rate cuts under union negotiated enterprise agreements have been commonplace for many years. Indeed, as illustrated below, there are numerous examples of cuts to Sunday penalty rate by the Australian Workers' Union, when Bill Shorten was National Secretary of that union.
- 1.36 It is worth noting that in the agreements with Big W, Target and Just Jeans below, Sunday penalty rates were reduced for workers in Queensland from 200 per cent to 150 per cent. This is the exact same reduction the Fair Work Commission has now decided to make to Sunday penalty rates under the award, phased in over a number of years.

Enterprise agreements negotiated by the Australian Workers' Union					
Federally registered agreements	State(s) covered	Employees covered	Industry	Agreement Sunday penalty loading	Award Sunday penalty loading
Big W Stores (Nth Qld) Agreement 2006	QLD	780	Retail trade	50%	100%
Cleanevent Australia Pty Ltd AWU Agreement 2006	NSW, VIC, QLD and SA	480	Administrative and support services	0%	100%
Target Country North Queensland Agreement 2006	QLD	129	Retail trade	50%	100%

² "Labor 'hypocrisy' exposed on penalty rates, says Martin Ferguson", *The Australian*, 31 August 2017.

Australian Workers Union of Employees, Queensland and the Just Jeans Group Ltd Retail Agreement 2006	QLD	119	Retail trade	50%	100%
Rydges Tradewinds Cairns Certified Agreement 2007-2008	QLD	101	Accommodation and food services	0%	50%

- 1.37 Coalition Senators sought an additional hearing in this inquiry, to which we intended to invite the Australian Workers' Union, in order to scrutinise current and former enterprise agreements to which this union was a party.
- 1.38 Labor Senators decided to use their numbers on the Committee to prematurely cut this inquiry short and deny our request for additional hearings and to gather additional evidence.

The feeble "rolled up" rate difference

- 1.39 Unions and ALP MPs and Senators argue that lower penalty rates in enterprise agreements are different to the modifications under awards, because they are offset by a higher base rate of pay.
- 1.40 This argument is completely inconsistent with the campaign by unions and Labor against penalty rate modifications under awards, which is based on the notion that weekends are sacrosanct—expressed for example, through the SDA's "Save Our Weekend" campaign.
- 1.41 Furthermore, their argument does not stack up to analysis.
- 1.42 For example, **Attachment E** compares the higher base rate to the lower Sunday rate in four enterprise agreements negotiated by the SDA and/or the AWU, for workers at Big W, David Jones, Pizza Hut and McDonald's.
- 1.43 The Committee heard evidence from a number of people who work for large retailers, including a number of young workers, who worked under enterprise agreements negotiated by a union.
- 1.44 These workers reported that they were worse off as a result of these agreements. Further, it was widely observed by these workers that they were not informed—either by the company or the union—that their agreement included penalty rates that were lower than the award.

The real motivation behind the union-Labor campaign

- 1.45 This inquiry showed that unions appear happy to trade away penalty rates in Enterprise Agreements, clearly because these arrangements suit union leaders, as opposed to workers.
- 1.46 Unlike awards, which are disproportionately relied upon by small businesses, enterprise agreements help to entrench the wealth and power of unions, through union membership, union dues and superannuation contributions paid by default into union aligned Industry Superannuation Funds.
- 1.47 The following clauses from a KFC Enterprise Agreement, provide an illustrative example of how these arrangements help shepherd members and money to unions:

All Employees shall be given an application form to join the appropriate Union at the point of recruitment. The Union video will be shown to new Employees as part of orientation training. (15.1.1)

The respective employer undertakes to promote union membership at the point of recruitment by encouraging all Employees to join the Shop Distributive and Allied Employees' Association or the Australian Workers Union. (15.4.1)

The Employer undertakes, upon authorisation by the Employee, to deduct Union membership dues, as levied by the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union in accordance with its rules, from the pay of Employees who are members of the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union. Such monies collected will be forwarded to the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union. Such monies collected will be forwarded to the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union at the beginning of each calendar month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts. (15.5.1)

Contributions will be made into one of the following funds:

- (a) Retail Employees Superannuation Trust (REST) (Default Fund – South/Eastern Division); or
- (b) Sunsuper; or
- (c) Australian Super (Default Fund – Northern Division) (9.3.2)³

- 1.48 In an extraordinary revelation, the Committee also learned that the SDA has been paying 10 per cent of its members' dues in commissions to Coles and Woolworths. These payments are yet another indicative example of the cosy relationships between big unions and big businesses.
- 1.49 It is worth noting that the SDA is the ALP's largest union affiliate. In 2015-16 alone, the SDA made donations and payments to the ALP totalling \$2.1 million.⁴

³ KFC Members' Enterprise Agreement – Queensland & Tweed Heads NSW 2014-2017.

⁴ Australian Electoral Commission, Annual Disclosure Returns, 2015-16.

Conclusion

- 1.50 It simply defies credibility, how unions and the ALP can wage a political campaign decrying modifications to penalty rates for small businesses who rely on the awards system, yet wholeheartedly support cuts to penalty rates in enterprise agreements, negotiated between unions and big businesses.
- 1.51 On the subject of penalty rates, the credibility of unions and the ALP is laid bare.
- 1.52 Coalition Senators reject the Chair's report and the recommendation proposed.

Senator Linda Reynolds CSC

Deputy Chair

Attachment A

Transitional arrangements for penalty rate changes – FWC Decision 5 June 2017

AWARD		CURRENT SUNDAY RATE	RATE AT 1 JULY 2017	RATE AT 1 JULY 2018	RATE AT 1 JULY 2019	RATE AT 1 JULY 2020
Fast Food	PT/FT	150%	145%	135%	125%	No change
	Casual	175%	170%	160%	150%	No change
Hospitality	PT/FT	175%	170%	160%	150%	No change
	Casual	175%	No change	No change	No change	No change
Retail	PT/FT	200%	195%	180%	165%	150%
	Casual	200%	195%	185%	175%	No change
Pharmacy	PT/FT	200%	195%	180%	165%	150%
	Casual	225%	220%	205%	190%	175%
Public holidays*	PT/FT	250%	225%	No change	No change	No change
	Casual	275%**	250%	No change	No change	No change

*For each affected award.

** Public holiday penalty rates are already 250% for the Restaurant Award and in some circumstances under the Retail Award.

Attachment B

Small Business examples provided by the Fair Work Commission in its decision.

Pharmacy Industry

Positive benefits to pharmacies if Sunday penalty rates are reduced:

- Mr Paul Keane (Barmera Pharmacy, Barmera, SA) said he would open his pharmacy earlier, close later on Saturdays and also open on Sundays and Public Holidays: **'it would also be possible to hire new staff to work on Sundays and Public Holidays'**.
- Mr Gregory Da Rui (Pharmacy 777, Bayswater, WA) said that patients would have better access to improved healthcare: **'it would allow me to roster on additional Pharmacists meaning that they could spend more time with patients to answer their questions. I would also look at hiring new staff'**.
- Ms Samantha Kourtis (Capital Chemist Charnwood, Charnwood, ACT) could roster more staff on and hire additional staff members: **'this would have the flow on effect of allowing pharmacists time to spend valuable one on one time with patients at all times and provide a high level healthcare service to patients at all times'**.
- Mr David Heffernan (Culburra Pharmacy, Culburra Beach, NSW) said that it would mean that his pharmacy could open every day of the year except for Christmas Day: **'this would provide an invaluable service to the local Culburra Beach community. It would also be of great assistance to the Culburra Retirement Village'**.
- Mr Michael Farrell (Mega Save Chemist Caneland, Mackay, Qld) said it would be possible to offer customers **additional services**: **'for example, it would be possible to offer MedsChecks and dose administration aid services on Sundays. It would also be possible to provide discharge services for rehabilitation hospitals on weekends. This would be of great benefit to the community'**.
- Mr Timothy Logan (Tim Logan's Nambour Pharmacy, Nambour, Qld): **'...it would mean that our customers will have greater access to medication checks, urgent home deliveries, influenza vaccinations and CPAP sleep apnoea checks. This is because these services would be available on weekends and Public Holidays as I would be in a position to employ an additional Pharmacist and other staff to assist with the provision of these services'**.

Negative impact of Sunday penalty rates on pharmacies if not reduced:

- Ms Samantha Kourtis (Capital Chemist Charnwood, Charnwood, ACT) runs the pharmacy on skeleton staff at times when penalty rates are incurred: **'given staffing is kept to a minimum at times when penalty rates are incurred, it is difficult for pharmacists to spend time with patients and provide them with the best healthcare service possible'**.
- Mr Dean Pollock (Atherton Discount Drug Store, Atherton, Qld) said that he was considering ceasing Sunday trading altogether as the amount they are required to

pay on that day ‘...is simply too expensive. Our pharmacy does not make enough profit on a Sunday to make up for the amount we spend in wages’.

- Mr Paul Keane (Barmera Pharmacy, Barmera, SA) said that due to the current penalty rates, rosters are mostly equalised across employed staff to avoid any overtime hours and that ‘staff hours have been cut to save costs’.
- Mr Gregory Da Rui (Pharmacy 777, Bayswater, WA) said that current penalty rates have forced him to reduce staff and that it is impossible to make a profit after 7.00 pm and on Sundays and Public Holidays due to the penalty rates. He said that he opens at these times as a service to the public, but waiting times have increased.
- Mr Michael Farrell (Mega Save Chemist Caneland, Mackay, Qld) said that due to Sunday penalty rates he has reduced the hours the pharmacy is open on Sundays to 10.00 am to 2.00 pm (he used to trade until 4.00 pm on Sundays).

Retail Industry

Examples referred to in FWC decision:

- Mr d’Oreli is the General Manager of **Jeanswest** which operates 197 stores across all States and the ACT and employs about 1,300 employees of which about 1,154 are employed in retail store positions under the Retail Award. Mr d’Oreli set out some of the measures used to control labour costs on Sundays, including reducing trading hours. Mr d’Oreli’s evidence was that if Sunday penalty rates were reduced:

‘Of the 13 stores that are currently closed on Sundays, I expect to **re-open 3 stores** (1 in Western Australia, 1 in Queensland and 1 in Victoria) on Sundays if the Sunday penalty rates was reduced from its current additional 100% to an additional 50%. Naturally this would result in additional shifts for employees working at those stores, or new opportunities for employment within the business...

With a reduction in the Sunday penalty rate Jeanswest would **extend the trading hours for 28 stores** that currently trade on Sundays. Specifically, there are 8 stores in Western Australia, 3 in New South Wales, 2 in Victoria, 11 in Queensland, 2 in South Australia, and 2 in Tasmania whose trading hours would extend.’

- Mr Antonieff who owns **FoodWorks Oxley**, currently has seven employees under the Retail Award. The business trades 7 days a week, from 6.00 am to 7.30 pm. The business is experiencing a number of competitive challenges, including the opening of a Woolworths supermarket next door. Mr Antonieff set out some of the measures used to control labour costs on Sundays, including rostering himself and his wife to work unpaid over the weekend. Mr Antonieff’s evidence was that if Sunday penalty rates were reduced then he and his wife would work less hours **‘which would mean there would be more hours of work available to other employees’**.
- Mr Goddard, the Managing Director and owner of **Pillow Talk Pty Ltd** (Pillow Talk), a homewares retailer specialising in home linen that operates 56 stores throughout Queensland, NSW, the ACT and Victoria, and employs about 557 employees in its stores under the Retail Award, has responded to the level of

labour costs on Sundays by generally capping hours worked by any given employee on a Sunday at 5 hours, 'to avoid having to provide staff with an unpaid meal break and necessitating rostering an additional team member to work on that day to cover rest periods'. Pillow Talk gave evidence to the Commission that if Sunday penalty rates were reduced:

'... Pillow Talk would almost certainly provide more hours of work to existing employees and/or engage new employees. In the 21 stores that were part of the Sample Data Set alone 2072.5 hours were worked on Sundays. For those stores, a reduction to a 50% Sunday penalty would mean that 936.25 additional ordinary hours of work could be put into those stores without any impact on labour cost percentages.

- Mr Gough is a director and part owner of a **specialty deli in QuayWest Shopping Centre** in Ballina NSW. The business employs 20 employees (3 full-time, 1 part-time and 16 casuals). The store trades every Sunday and trading across all days of the week is reasonably even. Rostered hours on Sundays are limited to keep costs down. Mr Gough set out the measures used to limit labour costs on Sundays, including limiting work to services only – rather than re-stocking for example – and that himself and another Manager work unpaid on Sundays. In the event that the Sunday penalty rate was reduced, Mr Gough said that he would **roster more senior staff, operate the bakery department** of the store, and he would work less "unpaid hours".

Hospitality Industry

Positive benefits to hospitality businesses if Sunday penalty rates are reduced:

- Mr Williams (Owner and Manager of the San Remo Hotel in San Remo, Victoria– 24 employees) said that by reducing the number of hours that he works, there would be **more hours available for staff**.
- Ms Sergi (Owner of the Steam Packet Hotel in Nelligen, NSW– 11 employees) said that she could **provide existing casual staff with between 3–8 hours' work on public holidays** and this would allow her and her husband to have time off.
- Mr Cordwell (Owner of the Ascot Hotel Rockhampton Queensland – 5 employees) would **keep the Hotel open later on Sundays and public holidays if penalty rates were reduced and would roster staff to work an extra 2 shifts of 5 hours**. If employees worked on Sundays then more people could be employed to work during the week.
- Ms Usher (Owner and Manager of the Fitzroy Beer Garden in Fitzroy, Victoria– 12 employees) said that she expects that the **6 hour shifts currently worked by either herself or her husband would be taken by one of the existing casuals**.
- Mr Waller (Owner of the Heads Hotel in Shoalhaven Heads, NSW- 28 employees) said that he estimates work for **two additional casuals at 3 to 4 hours each**, possibly up to 5 hours and he would rather engage casuals to work weekends so that he does not have to.
- Mr Ovenden (Glen Hotel in Eight Mile Plains, Queensland – 120 employees) said that there would be opportunity to offer **additional hours to casual employees on Sundays** and to **engage a receptionist on Sundays**.

Negative impact of Sunday penalty rates on hospitality businesses if not reduced:

- Ms Mitchell, Owner of the Victoria Tavern, Rockhampton, Queensland (18 employees) said that as a result of penalty rates fewer award staff are hired on Sundays and public holidays 'even though the Hotel receives business that would justify the contrary' and that 'in lieu of rostering more staff' she will 'typically work on Sundays and public holidays to ensure adequate staff numbers'.
- Mr Trengove, Owner and Manager of the Mulga Hill Tavern, Broken Hill, NSW (33 employees) said that the hotel is run with 'skeleton staff on Sundays and public holidays' and he will personally 'cover certain shifts on those days as a measure to cut costs'.
- Mr McCallum, Owner of the Lonsdale Hotel, South Australia (42 employees), works public holidays alongside his wife, son and daughter, so that not as many staff members are required.
- Mr Ryan, Owner of the Gippsland Hotel, Sale, Victoria (23 employees) works on public holidays with his wife and managers and does not roster any casual staff.
- Ms Cameron, Owner of the Lord Roberts Hotel, Sydney, NSW (19 employees) has reduced trading hours on Sundays so that the Hotel opens at 12.00 midday instead of 10.00 am and closes at 10.00 pm rather than midnight.
- Mr Bilston, General Manager of the Amora Hotel Riverwalk in Melbourne, Victoria (89 employees) said that 'skeleton staff are utilised in the restaurant on Sundays to reduce the cost of wages due to penalty rates'.

Attachment C

Small business reaction to penalty rates decision

"As a business owner it means we can hire more staff and have more working on Sundays which works best for customers." – [George Kanellos, Rose Hotel, Sydney](#)

"It will certainly increase our ability to put on more people. In the current situation the consumer gets less amenity, staff get less work, the government gets less tax and businesses get less turnover. I fail to see a winner." – [Will Nevile, Wharf One, Cairns](#)

"Staff might find they get more hours or get hours on Sunday all together." – [John Lynch, Jack Hotel, Cairns](#)

"This means more choice for consumers and more flexibility for restaurants, plus with many people unemployed across the country we need to make it easier to for employers take on new staff." – [Steven Premutico, Dimmi](#)

"I don't want to be there on a Sunday, I work six days a week at the moment, and that's my family day with the kids. So if I can staff it at a reasonable price, I absolutely would do it." – [Carla Burns, Vanilla Pod Cake and Deli Café, Brisbane](#)

"Retailers have been operating smaller staff on Sunday due to higher costs. ... It'll bring better service and more hours for staff." – [Michael Newtown-Brown, Leisures, Sydney](#)

"I know a lot of local businesses who are running lean on staff or don't open the hours they want to open because of the pay rates on Sundays. It will give them incentive to put on more people and open longer. It's a job creation move." – [Martin Brady, Gold Coast Combined Chamber of Commerce](#)

"The decision shows that the Fair Work Commission recognises that we live in a modern society, one that is very different to how it was 50 years ago. It will help build employment amongst those that need it most" - [Michael Bailey, Tasmanian Chamber of Commerce](#)

Examples of employer group reaction to penalty rates decision

Australian Retailers Association: "This reduction in Sunday Penalty Rates will provide more employment opportunities for young workers seeking both additional hours and new employment over the weekend." ([Media Release, 23/2/2017](#))

Australian Industry Group: "In the fast food industry, weekends and evenings are peak times. Regular business hours have little relevance to businesses in the fast food industry and, therefore, penalty rates that were designed many decades ago around regular business hours need to be re-set. ([Media Release, 23/2/2017](#))

NSW Business Chamber: "The adjustment in penalty rates for Sundays means your favourite local businesses are able to remain open and be fully staffed. Remember when these venues are closed, casual staff not only don't receive a penalty loading, they don't receive any wage." ([Media Release, 23/2/2017](#))

Australian Hotels Association / Tourism Accommodation Australia: "Today people expect to be able to shop, buy a meal or a drink at all hours of the day, while large numbers of workers actually prefer to work outside a '9 to 5' weekday regime because it suits their lifestyle, studies or family circumstances. Over recent years too many businesses have closed or reduced employment on Sundays or Public Holidays because of the cost of penalty rates. That is bad for workers, bad for business and bad for the general public." ([Media Statement, 23/2/2017](#))

Australian Chamber of Commerce and Industry: "We know that retail and hospitality are the sectors where many young people get their first job, so this decision will be a boon for youth employment...With 725,000 people out of work, including 259,000 young people, we need to make it easier for employers to take on employees. Last week's penalty rates decision does just that." ([Media Release, 28/2/2017](#))

Accommodation Association of Australia: "Small country motels may now consider re-opening their restaurants and other on-site services on Sundays and public holidays after previously being forced to close them due to the high cost of labour. At a time when the economy is in transitioning away from the resources boom, creating more jobs in regional and rural Australia is of the utmost importance." ([Media Release, 23/2/2017](#))

Council of Small Business Australia: "This is a good for community, good for small business, and good for those seeking work on Sundays... 80% of Sunday workers will not see a change, as the majority of Sunday workers are employed by big business and franchises, who have implemented enterprise agreements with the unions..." ([Media Statement, 23/2/2017](#))

Restaurant and Catering Industry Association: "The Fair Work Commission's decision to reduce Sunday and public holiday penalties in the Hospitality and Fast Food Industry Award will lead to positive employment outcomes in the largest employment sector in the tourism industry." ([Media Statement, 23/2/2017](#))

Pharmacy Guild of Australia: "It has never been in anyone's interest for pharmacies to be unable to open on Sundays or public holidays. This decision will help pharmacies to meet community expectations that they will be able to access vital health services seven days a week." ([Media Statement 23/2/2017](#))

Business Council of Australia: "The common-sense changes announced by Commission President Iain Ross, who was appointed by Bill Shorten as Minister for Employment in 2012, have the potential to create new jobs and boost economic growth while indicating there will be transitional arrangements for workers." ([Media Statement, 23/2/2017](#))

Attachment D

Agreements that include Sunday rates below the award

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
McDonald's Australia Enterprise Agreement 2013	99706	Fast Food Industry Award 2010	SDAEA	24/06/2017	2017	0%	50%	\$21.08	\$29.16	-\$8.08
Woolworths National Supermarket Agreement 2012	95571	General Retail Industry Award 2010	AWU, SDAEA, AMIEU	30/06/2015	2015	50%	100%	\$31.79	\$37.05	-\$5.26
Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011	79754	General Retail Industry Award 2011	AWU, SDAEA, AMIEU	31/05/2014	2014	50%	100%	\$30.54	\$35.97	-\$5.42
Bunnings Warehouse/Small Format Stores Agreement 2013	26226	General Retail Industry Award 2010	AWU, SDAEA	30/06/2016	2016	50%	100%	\$32.59	\$37.97	-\$5.38
BIG W Stores Certified Agreement 2012	19703	General Retail Industry Award 2010	AWU, SDAEA	1/08/2015	2015	50%	100%	\$30.23	\$37.97	-\$7.74
Pizza Hut Queensland - SDA Employee Relations Agreement 2014	14790	Fast Food Industry Award 2010	SDAEA	14/01/2016	2016	0%	50%	\$20.35	\$28.48	-\$8.13
Super Retail Group Enterprise Agreement 2015	8991	General Retail Industry Award 2010	-	15/07/2018	2017	55%	100%	\$32.48	\$38.88	-\$6.40

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
David Jones Enterprise Agreement 2012	7042	General Retail Industry Award 2010	SDAEA	3/06/2015	2015	50%	100%	\$29.53	\$37.05	-\$7.52
The Reject Shop Agreement 2014.	5906	General Retail Industry Award 2010	SDAEA	1/03/2018	2017	50%	100%	\$32.82	\$38.88	-\$6.06
Masters Agreement 2014	5029	General Retail Industry Award 2010	AWU, SDAEA	1/02/2017	2017	50%	100%	\$33.27	\$38.88	-\$5.61
Drakes Supermarkets Retail Agreement 2012	4777	General Retail Industry Award 2010	SDAEA, AMIEU	1/09/2016	2016	50%	100%	\$31.69	\$38.88	-\$7.20
Coles Liquor Group Retail Agreement 2014	4750	General Retail Industry Award 2010	AWU, SDAEA	31/12/2017	2017	50%	100%	\$31.79	\$38.88	-\$7.09
SFG National Retail Enterprise Agreement 2011	4450	General Retail Industry Award 2010	SDAEA	30/06/2014	2014	50%	100%	\$28.38	\$35.97	-\$7.59
KFC Team Members' Enterprise Agreement - Queensland and Tweed Heads (NSW) 2014 - 2017	4229	Fast Food Industry Award 2010	AWU, SDAEA	30/06/2017	2017	0%	50%	\$21.19	\$29.16	-\$7.97
BWS Enterprise Agreement 2013	3964	General Retail Industry Award 2010	SDAEA	30/06/2016	2016	50%	100%	\$32.65	\$37.97	-\$5.32

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Prouds Retail Employees Enterprise Agreement 2011	3674	General Retail Industry Award 2010	SDAEA	28/07/2015	2015	50%	100%	\$29.63	\$37.97	-\$8.35
Best & Less Enterprise Agreement 2013	3499	General Retail Industry Award 2010	SDAEA	30/06/2016	2016	50%	100%	\$29.94	\$37.97	-\$8.03
Master Grocers Australia Limited and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	2530	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
Sodexo Remote Sites Onshore Enterprise Agreement 2013	2212	Hospitality Industry (General) Award 2010	LHMU, AWU	3/11/2017	2017	0%	75%	\$23.76	\$31.87	-\$8.11
Dan Murphy's Agreement 2012	2049	General Retail Industry Award 2010	SDAEA	1/07/2015	2015	50%	100%	\$30.59	\$37.97	-\$7.38
Grill'd Enterprise Agreement 2015	2014	Fast Food Industry Award 2010	-	22/12/2019	2015	0%	50%	\$21.75	\$28.48	-\$6.73

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Hotels Agreement 2014	1888	Hospitality Industry Award (General) Award 2010	LHMU	30/06/2017	2017	50%	75%	\$30.19	\$31.87	-\$1.67
PRICELINE RETAIL EMPLOYEES ENTERPRISE AGREEMENT 2013	1496	General Retail Industry Award 2010	SDAEA	1/12/2016	2016	88%	100%	\$38.26	\$38.88	-\$0.62
Vodafone Powered	1476	General Retail Industry Award 2010	-	1/10/2016	2013	0%	100%	\$21.28	\$35.97	-\$14.69
Harris Scarfe Agreement 2011	1470	General Retail Industry Award 2010	SDAEA	12/09/2014	2014	50%	100%	\$28.49	\$37.05	-\$8.56
Billabong Group Enterprise Agreement	1386	General Retail Industry Award 2010	-	30/06/2015	2015	50%	100%	\$28.59	\$37.05	-\$8.46
Betts Group Agreement-2013	1298	General Retail Industry Award 2010	SDAEA	30/06/2015	2015	50%	100%	\$29.94	\$37.05	-\$7.11
IKEA Enterprise Agreement 2013	1298	General Retail Industry Award 2010	SDAEA	31/08/2017	2017	50%	100%	\$35.14	\$38.88	-\$3.73

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Sanity Entertainment Enterprise Agreement 2010	1266	General Retail Industry Award 2010	SDAEA	30/06/2013	2013	50%	100%	\$27.30	\$35.06	-\$7.76
BWS Agreement 2010	1115	General Retail Industry Award 2010	SDAEA	20/06/2013	2013	50%	100%	\$29.65	\$35.06	-\$5.41
Lovisa Enterprise Agreement 2014	1050	General Retail Industry Award 2010	SDAEA	31/03/2018	2017	50%	100%	\$31.44	\$38.88	-\$7.44
Suzanne Grae Enterprise Agreement 2012	1003	General Retail Industry Award 2010	SDAEA	30/09/2014	2014	50%	100%	\$30.42	\$37.05	-\$6.63
Romeo's Retail Group Enterprise Agreement 2012	1000	General Retail Industry Award 2010	SDAEA	1/06/2016	2016	50%	100%	\$30.45	\$37.97	-\$7.52
Noni B Enterprise Agreement 2014	991	General Retail Industry Award 2010	SDAEA	31/03/2018	2017	50%	100%	\$32.30	\$38.88	-\$6.58
Bras N Things Enterprise Agreement 2014	969	General Retail Industry Award 2010	SDAEA	31/03/2018	2017	50%	100%	\$30.53	\$38.88	-\$8.36
RACV Club and Resorts Collective Agreement 2015	826	Hospitality Industry (General) Award 2010	-	23/07/2016	2016	50%	75%	\$32.23	\$33.09	-\$0.86

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Freedom Retail Enterprise Agreement 2013 - 2016	818	General Retail Industry Award 2010	SDAEA	1/07/2016	2016	60%	100%	\$33.30	\$38.88	-\$5.58
ALDI Brendale Agreement 2015	627	General Retail Industry Award 2010	SDAEA	29/06/2019	2015	\$12 per hour loading	100%	\$35.40	\$37.97	-\$2.57
<u>Supabarn</u> Supermarkets (NSW & ACT) Collective Agreement 2011	533	General Retail Industry Award 2010	SDAEA	30/06/2014	2014	50%	100%	\$29.84	\$35.97	-\$6.13
Cheap as Chips (Retail SA / Broken Hill Staff) Enterprise Agreement 2013	503	General Retail Industry Award 2010	SDAEA	30/09/2017	2017	80%	100%	\$37.46	\$38.88	-\$1.43
Estee Lauder National Retail Services Enterprise Agreement 2012	468	General Retail Industry Award 2010	-	19/09/2016	2016	\$80 loading per shift of 5+ hours	100%	\$31.63	\$40.43	-\$8.80
<u>Wittner</u> Enterprise Agreement 2013	443	General Retail Industry Award 2010	-	30/08/2017	2017	50%	100%	\$30.97	\$38.88	-\$7.92
Langham Hotel Melbourne - United Voice Agreement 2015	431	Hospitality Industry (General) Award 2010	LHMU	1/10/2018	2017	0%	75%	\$21.63	\$31.87	-\$10.24

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Spotlight Pty Ltd Store Leadership Enterprise Agreement 2010	428	General Retail Industry Award 2010	SDAEA	30/06/2014	2010	0%	100%	\$23.53	\$32.95	-\$9.41
InterContinental Sydney Enterprise Agreement 2011-2012	421	Hospitality Industry Award (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$21.22	\$28.74	-\$7.51
Bunnings SDA Retail Trade Agreement 2013	420	General Retail Industry Award 2010	AWU, SDAEA	30/06/2016	2016	50%	100%	\$36.42	\$37.97	-\$1.55
Australian Geographic Retail Enterprise Agreement 2014-2017	408	General Retail Industry Award 2010	SDAEA	30/06/2017	2017	50%	100%	\$30.95	\$38.88	-\$7.94
Henley Square Foodland Enterprise Agreement 2011	399	General Retail Industry Award 2010	SDAEA	25/07/2012	2012	50%	100%	\$27.83	\$35.06	-\$7.23
AMT Group Retail Agreement 2013	370	General Retail Industry Award 2010	-	10/12/2016	2016	50%	100%	\$29.89	\$38.88	-\$8.99
VICTORIA STATION CORPORATION PTY LTD ENTERPRISE AGREEMENT 2015	349	General Retail Industry Award 2010	-	7/09/2019	2017	50%	100%	\$30.71	\$38.88	-\$8.17

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Master Grocers Australia Limited (Michael's IGA Supermarkets) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	347	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
Ed Harry Enterprise Agreement 2011	338	General Retail Industry Award 2010	-	5/10/2015	2015	50%	100%	\$30.26	\$37.97	-\$7.71
Intercontinental Adelaide Enterprise Agreement 2011-2012	329	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$20.55	\$28.74	-\$8.18
Emirates Leisure Retail (Australia) Pty Ltd Enterprise Agreement 2010	328	Hospitality Industry (General) Award 2010	-	17/12/2013	2010	0%	75%	\$18.36	\$29.49	-\$11.13

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Master Grocers Australia Limited (Ryan's IGA) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	318	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
IHG Canberra Enterprise Agreement 2011-2012	305	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$21.22	\$28.74	-\$7.52
Sheraton Perth & LHMU Collective Agreement 2010	297	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	65%	75%	\$27.64	\$28.74	-\$1.10
Parkroyal Hotels' Agreement 2012	280	Hospitality Industry (General) Award 2010	LHMU	1/05/2014	2014	0%	75%	\$21.48	\$29.49	-\$8.00
YHA Ltd Enterprise Agreement 2015	273	Hospitality Industry (General) Award 2010	-	8/03/2019	2017	0%	75%	\$21.90	\$31.87	-\$9.97

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Sheraton Mirage Resort & Spa Gold Coast Enterprise Agreement 2010	259	Hospitality Industry (General) Award 2010	LHMU	30/06/2013	2013	0%	75%	\$18.76	\$28.74	-\$9.98
Barbeques Galore Enterprise Agreement 2010	251	General Retail Industry Award 2010	SDAEA	31/07/2013	2013	50%	100%	\$28.21	\$35.97	-\$7.76
Haigh's Retail Enterprise Agreement 2014	250	General Retail Industry Award 2010	SDAEA	30/11/2017	2017	70%	100%	\$35.12	\$38.88	-\$3.76
Independent Supermarkets ACT Certified Agreement 2010	241	General Retail Industry Award 2010	SDAEA	28/02/2013	2013	50%	100%	\$27.27	\$35.06	-\$7.79
Rolld Enterprise Agreement 2014	240	Fast Food Industry Award 2010	-	1/10/2018	2017	0%	50%	\$21.19	\$29.16	-\$7.97
Queens Supermarket (WA) and SDA Agreement 2013	233	General Retail Industry Award 2010	SDAEA	15/04/2017	2017	50%	100%	\$31.11	\$38.88	-\$7.78
Crowne Plaza Terrigal Enterprise Agreement 2011-2012	232	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$21.22	\$28.74	-\$7.52

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Hilton Brisbane Enterprise Agreement 2010	231	Hospitality Industry (General) Award 2010	LHMU	1/07/2013	2013	75%	75%	\$29.13	\$29.49	-\$0.36
Piccones Supa IGA Enterprise Agreement 2015	225	General Retail Industry Award 2010	-	1/12/2017	2017	50%	100%	\$31.83	\$38.88	-\$7.05
Master Grocers Australia Limited (Reddrop's FoodWorks) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	224	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
Palazzo Versace Enterprise Agreement 2012	220	Hospitality Industry (General) Award 2010	-	19/08/2016	2016	0%	75%	\$21.85	\$31.87	-\$10.02

Attachment E

Agreement title	Relevant Award	Union(s) covered	Number employees covered	Nominal Expiry Month/Year	Base hourly rate (e.g. during the week)	Sunday hourly rate	Hours during the week needed to make up the lower rate for each hour of Sunday work under the agreement compared to award *	Weekday hours required to offset Sunday loss resulting from lower Sunday penalty rates on agreement (7.6 X Column H)	Annual loss (7.6 hours on Sunday, 30.4 hours during the week x 52 weeks) Award vs agreement. (See below)
McDonald's Australia Enterprise Agreement 2013	Fast Food Industry Award 2010	SDAEA	99706	June/2017	\$19.44 (Award) \$21.08 (Agreement) \$1.64 more in the Agreement	\$29.16 (Award) \$21.08 (Agreement) \$8.08 lower in the Agreement	4.93 hours	37.47 hours	\$601.12 (\$1,110.20 with SDA) [membership current national SDA membership is 509.6 which means \$1110.72 on 601.12]
BIG W Stores Certified Agreement 2012	General Retail Industry Award 2010	AWU, SDAEA	19703	August/2015	\$18.99 (award) \$20.15 (Agreement) \$1.16 more in Agreement	\$37.97 (Award) \$30.23 (Agreement) \$7.74 lower in Agreement	6.67 hours	50.69 hours	\$1,225.12 (\$1,734.72 with SDA membership)
Pizza Hut Queensland - SDA Employee Relations Agreement 2014	Fast Food Industry Award 2010	SDAEA	14790	January/2016	\$18.99 (Award) \$20.35 (Agreement) \$1.36 more in agreement	\$28.48 (Award) \$20.35 (Agreement) \$8.13 lower in agreement	5.98 hours	45.45 hours	\$1,063.40 (\$1,573 with SDA membership)
David Jones Enterprise Agreement 2012	General Retail Industry Award 2010	SDAEA	7042	June/2015	\$18.53 (Award) \$19.69 (Agreement) \$1.16 more in Agreement	\$37.05 (Award) \$29.53 (Agreement) \$7.52 lower in Award	6.48 hours	49.25 hours	\$1,137.76 (\$1,647.36 with SDA membership)

* The reduction in agreement Sunday rate divided by the increase in agreement base rate

Source: The Department of Employment Workplace Agreement Database.

Australian Greens Additional Comments

- 1.1 The Fair Work Commission's devastating decision to cut penalty rates will, in fact, have little to no impact on hundreds of thousands of Australian workers.⁵ Due to loopholes in the *Fair Work Act 2009*, some of Australia's major employers have avoided paying penalty rates in the first place, resulting in hundreds of thousands of low paid employees being underpaid.
- 1.2 The underpayment arises when collective agreements stipulate rates of pay that are below the award rate of pay for people working nights, weekends, public holidays or any other time where penalty rates would ordinarily apply. As a result, these workers get paid less than if they were simply on the bare award minimum.
- 1.3 This underpayment has reached an astonishing scale, the Committee heard. In the fast food and retail sector alone, estimates place the loss to over 250 000 employees at more than \$300 million per year⁶, with some employees missing out on as much as \$10 000 per year.⁷
- 1.4 The Committee heard largely undisputed evidence about the extent of the underpayments across many of Australia's biggest businesses:
 - Rosters provided by Coles are the basis for calculations which conservatively estimate wage loss across Coles to be over \$80 million per annum.⁸
 - The loss of wages across Woolworths stores alone is estimated at over \$65 million per annum.⁹
 - Similar calculations using McDonald's rosters, timesheets and payslips found wage loss across McDonald's stores is estimated to be over \$60 million per annum.¹⁰
 - KFC confirmed they had not paid employees Sunday penalty rates in nearly 8 years¹¹ or paid employees according to wages under the award for over 20 years.¹²
- 1.5 These companies and the Shop Distributive and Allied Employees' Association (SDA) went to great lengths to avoid revealing how much the workers were underpaid compared to the award, but it is notable that none of the companies directly disputed the claims from the Retail and Fast Food Workers Union (RAFFWU) about the amount of underpayment. (In answers to questions on notice, KFC claimed that their agreement was slightly more generous than the award, but did not detail whether this was the case for all workers working on weekends, nights or public holidays.)
- 1.6 Indeed, notwithstanding the clear evidence of below-award payments, the corporations maintained nothing was wrong. McDonald's witness, Mr Cawood, said

⁵ Mr Cawood, General Counsel, McDonald's Australia Limited, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, p. 17.

⁶ Ben Schniders and Royce Miller, '[McDonald's defends not paying weekend penalty rates and shoppies union wage deal](#)', *The Sydney Morning Herald*, 26 August 2017

⁷ Retail and Fast Food Workers Union, *Submission 25*, p. 40.

⁸ Retail and Fast Food Workers Union, *Submission 25*, p. 4.

⁹ Retail and Fast Food Workers Union, *Submission 25*, p. 4.

¹⁰ Retail and Fast Food Workers Union, *Submission 25*, p. 5.

¹¹ Mr Robert Phipps, Chief People Officer, KFC, *Proof Committee Hansard*, 24 August 2017, p. 24.

¹² Mr Robert Phipps, Chief People Officer, KFC, *Proof Committee Hansard*, 24 August 2017, p. 28.

"I just don't accept that there are workers that are worse off".¹³ Appearing for Coles, Mr Brewster stated "We think our EBAs have been very generous".¹⁴

- 1.7 It must also be stressed that the calculations and evidence of underpayment presented to the Committee are considered conservative.¹⁵ When it is understood that these companies have not provided the necessary data to allow the full extent of the underpayment to be known, it appears the scale of the underpayment may well exceed the initial estimate of \$300 million per annum.
- 1.8 This is a scandal. Some of Australia's biggest companies are paying their employees less than the award minimum. Clearly the current provisions in the *Fair Work Act 2009* cannot be relied upon to protect employees from significant underpayment at the hand of their employers.
- 1.9 This cannot be allowed to continue. It is necessary to put a 'hard floor' under the (already low) award rates of pay, so that bargaining can only be done above the award rates. The same protections in the *Fair Work Act 2009* that prohibit ordinary rates of pay in agreements from falling below the award rates must now be extended to include penalty rates. Passing the Greens' Pay Protection Bill 2017 will prevent further underpayments by protecting penalty rates for employees covered by an enterprise agreement.
- 1.10 In response to the fevered claims Labor makes at paragraph 2.88 of its report, the only collusion we can discern is between Labor, SDA and big corporations. Working in unison to deny young workers their penalty rates and then shooting the messenger who dares challenge this cosy arrangement. Labor should at least show some contrition and accept that these shocking deals have screwed over young workers, but even that seems a bridge too far for them.
- 1.11 As to the Liberals, their attacks on penalty rates are plain for all to see and the Greens have been the only party to consistently oppose them. It is worth recalling that Labor joined the Liberals in an attack on penalty rates in the last election campaign. The Greens were the first and only party promising to reverse the Fair Work Commission's shocking decision to cut penalty rates. A position which Labor and Liberal savaged us for, the old parties taking to the election a unity ticket to support penalty rate cuts. The Greens were part of the push to drag Labor kicking and screaming to change their position, something of which we are very proud. Having been held to account, Labor may well now have come around to our view, but it would do them well to ponder their own glass houses before they start throwing stones.
- 1.12 The Committee uncovered an even more worrying activity taking place. In addition to boosting their profits by millions by paying their employees below award rates, Coles and Woolworths also profit significantly by taking a slice of employees' union membership fees.

¹³ Mr Craig Cawood, General Counsel, McDonald's Australia Limited, Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Pay Protection) Bill 2017, *Proof Committee Hansard*, 25 August 2017, p. 19.

¹⁴ Mr David Brewster, Legal Director, Coles, *Proof Committee Hansard*, 24 August 2017, p. 58.

¹⁵ Retail and Fast Food Workers Union, *Submission 25*, p. 4.

- 1.13 The Committee has been provided with details of the arrangements between the SDA and Coles, Woolworths, KFC and McDonald's for the deduction of union membership fees directly from employees pay. Whilst this arrangement is not unusual or inappropriate, it was revealed that these agreements generously compensate Coles, Woolworths and KFC for the membership fee deduction by the charging of 'administration fees'.
- 1.14 The arrangements allow Coles and Woolworths to retain 10 per cent of their employees' union fees as an administration fee. In a similar arrangement with KFC, a 2.5 per cent administration fee is retained. The response to questions on notice indicate these arrangements have been in place at Coles and Woolworths for at least the last six years,¹⁶ and 10 years at KFC.¹⁷
- 1.15 Despite repeated questions on notice to the SDA, Coles, Woolworths and KFC, they have refused to advise the Committee of the exact amount of money pocketed by each company from their workers as 'administration fees'. Some basic calculations give an indication as to why. Using information provided during the public hearings and subsequent questions on notice, it can be revealed that tens of millions of dollars have been transferred out of the pockets of workers and into the coffers of some of Australia's biggest companies.
- 1.16 Using Woolworths union membership levels,¹⁸ the SDA membership fee structure¹⁹ and data from the ABS Characteristics of Employment survey²⁰, it is calculated that Woolworths retained up to \$2 million by way of administration fees in the 2016 financial year. Extrapolated over 6 years, Woolworths has collected up to \$12 million of their employees' union fees.
- 1.17 Coles has similar union numbers²¹ and using the same information above, it can be calculated that Coles retained up to \$1.7 million in administration fees in the 2016 financial year. Extrapolated over 6 years, Coles has collected up to \$10.2 million of their employees' union fees.
- 1.18 In answers to questions on notice, KFC advised company owned stores retained \$70 961 in administration fees over the last six financial years. However, considering company owned stores only account for 150 out of KFC's 641 restaurants in Australia²², extrapolating across all KFC restaurants in Australia shows KFC retained an estimate of up to \$303 240 in administration fees in the 2016 financial year. Extrapolated over 10 years, KFC has collected up to \$3.03 million of their employees' union fees or up to \$1.8 million over the last 6 years.

¹⁶ Shop Distributive and Allied Employees' Association, *answers to questions on notice*, 15 September 2017, p. 4.

¹⁷ KFC, *answers to questions on notice*, p. 3.

¹⁸ Woolworths, *answers to questions on notice*, 30 August 2017, p. 2.

¹⁹ Shop Distributive and Allied Employees' Association, *answers to questions on notice*, 4 September 2017, p. 3.

²⁰ ABS Characteristics of Employment survey (cat. No 6333.0) August 2016.

²¹ Ewin Hannan, '[SDA's shock deal with retailers to secure fee deductions](#)', *The Australian*, 11 September 2017.

²² Mr Robert Phipps, Chief People Officer, KFC, *Proof Committee Hansard*, 24 August 2017, p. 22.

- 1.19 Over the last 6 years, at Coles, Woolworths and KFC alone, at least \$24 million appears to have gone straight from the pockets of union members to large corporations that were often paying less than the award minimum. None of the corporations or the SDA gave any evidence that union members were even aware that part of their union dues were lining the pockets of these big companies. And the real amounts of money taken by these large companies may in fact be higher, as the companies all refused to advise whether the administration fee was ever charged at a higher rate.
- 1.20 In effect, these large corporations aren't just profiting by paying their workers less than the award to the tune of \$300 million per annum, they are then rubbing salt into the wounds by secretly pocketing at least an extra \$4 million a year by taking a slice of their workers' union dues, apparently without the workers' knowledge.
- 1.21 When one considers that arrangements at other large employers in the retail and fast-food sectors remain unknown, the total amounts unknowingly paid by low-paid workers to big employers may be even higher still.
- 1.22 The origins of such arrangements go back to the early 1970s,²³ however, taking into account the advancements in technology and payroll processes, the level of fees uncovered during this inquiry appear remarkably excessive. This is evident from a recent announcement by Woolworths, advising they will be reducing their administration fee for the 2017 financial year to approximately \$20 000. This is just 0.97 per cent of the estimated administration fee retained by Woolworths in the 2016 financial year. Coles have advised they are undertaking a similar review of their payroll system with the view of reducing the administration fee.
- 1.23 Whilst the Australian Greens welcome these reviews, it only comes after the details of these arrangements were made public, and after these companies had already profited enormously at the expense of their employees.
- 1.24 Due to the efforts of investigative journalists, RAFFWU and this Committee, wage theft of an enormous scale has already been uncovered. Low paid employees are missing out on hundreds of millions of dollars a year whilst the companies responsible for this extensive underpayment continue to make huge profits.
- 1.25 Despite the work of this Committee, the full extent of the underpayment remains unknown. Many of those affected do not have the financial means or time to take on these companies and are looking to their federal representatives to investigate. And those who have been party to the underpayment have been less than fulsome in their answers to the Committee about exactly how much workers have suffered and companies have profited. The answers provided to the Committee suggest that there is a much deeper problem than has been admitted to date and give reasonable grounds to believe similar practices are happening at large employers across the country.
- 1.26 It is the responsibility of this Parliament to ensure Australia's workplace protections are sufficient to prevent underpayment such as this Committee has seen. It is therefore appropriate that an extensive and independent investigation into the extent

²³ Shop Distributive and Allied Employees' Association, *answers to questions on notice*, 15 September 2017, p. 1.

of the underpayment of hundreds of thousands of Australian workers be initiated immediately by a body with the power, time and resources necessary to undertake such an investigation.

Recommendation 1

- 1.27 The Fair Work Amendment (Pay Protection) Bill 2017 should pass in order to protect minimum employee standards such as penalty rates and overtime, and close loopholes that have allowed hundreds of thousands of employees to be paid less than the award.**

Recommendation 2

- 1.28 Establish a Royal Commission into Underpayment of Penalty Rates and Other Wage Theft to fully investigate the extent of wage theft and below-award payment in Australia and recommend appropriate recourse to compensate those affected.**

Recommendation 3

- 1.29 Support the Committee's recommendation that the government legislate to overturn the Fair Work Commission's decision to reduce Sunday penalty rates.**

Senator Lee Rhiannon

NXT Additional Comments

To pay or not to pay – that is the (penalty rates) question

- 1.1 It is regrettable that the committee resolved to report earlier than the reporting date agreed to by the Senate. It would have given a better opportunity to obtain answers on a number of important issues. We thank the committee for its work and also thank those witnesses who fully co-operated with the inquiry.
- 1.2 It is also highly regrettable that the committee did not resolve to send correspondence to the Shop Distributive and Allied Employees' Association (SDA) in order to obtain further clarification about money retained as an 'administrative fee' by large employers. As a result, the committee was unable to determine the total amount of administrative fees received by large employers. This is of significant concern and there ought to be greater transparency in relation to such transactions.
- 1.3 We would also like to thank Fairfax investigative journalist Mr Ben Schneiders, and his colleagues Mr Royce Millar and Mr Nick Toscano, who have reported extensively on what has been as described as a "cosy decades-long" relationship between large retailers and the SDA.
- 1.4 The Fair Work Commission (FWC), through the persistence of Ms Penny Vickers, heard evidence of the practice of trading away penalty rates engaged in by major retailers and the SDA, which leave many workers worse-off than if they were employed under the relevant Modern Award.
- 1.5 Trading away a penalty rate for another benefit such as a higher base rate of pay may not be an objectionable practice as a general principle, so long as the individual worker is in fact better off. It becomes an objectionable practice when a worker who benefits and relies on penalty rates when predominantly working evenings, weekends and public holidays lose out because a higher base rate has been secured for traditional 'Monday to Friday 9 to 5' workers.
- 1.6 This practice has become all too common in the fast-food, hospitality and retail sectors and has negatively affected hundreds of thousands of workers. It has been estimated that each year these deals cost approximately 250 000 employees more than \$300 million collectively.¹
- 1.7 KFC, for instance, does not pay weekend penalty rates; instead it pays a nine per cent loading to the base hourly rate across the week. In enterprise agreements where penalty rates are traded for higher hourly base rates, the employees who lose out (compared to the relevant Modern Award) are those who mostly, or solely, work weekend shifts and after hours. This category of worker should be specifically considered and provided for when weighing whether an agreement passes the Better

¹ Ben Schneiders and Royce Millar, '[McDonald's defends not paying weekend penalty rates and shoppies union pay deal](#)', *The Sydney Morning Herald*, 26 August 2017 (accessed 27 September 2017).

Off Overall Test (BOOT). The proceedings commenced by Mr Duncan Hart and by Ms Vickers have exposed a fundamental problem with the enterprise bargaining framework. It is not sufficient for employers to argue that workers are better off overall by simply referring to the FWC's approval of the agreement.

- 1.8 In order to determine if a proposed enterprise agreement passes the BOOT the FWC requires the employer, and in some instances the relevant union, to provide a statutory declaration that they believe the proposed enterprise agreement passes the BOOT. This implies that the employer, and sometimes the union, have a critical role to play in ensuring workers are in fact better off overall. The committee heard disappointing evidence from Woolworths that no calculations had been done prior to lodging the statutory declaration as part of the enterprise agreement approval process. Instead, Woolworths relied on the FWC to assess the information provided and determine if the agreement passes the BOOT.
- 1.9 Coles, while engaging the services of Ernst & Young to undertake an analysis, relied on fanciful assumptions in order to satisfy themselves that the agreement passed the BOOT. The analysis ascribed a monetary benefit to contingent and non-contingent benefits such as Defence Reserves leave or blood donor leave. As a general principle this practice is not problematic. However it is utterly whimsical to assume that every employee would use an entitlement to Defence Reserves leave.
- 1.10 While we acknowledge that the FWC ultimately decides on whether an agreement passes the BOOT, the role of the statutory declaration should not be downplayed. The statutory declaration is not a 'tick and flick' form and the apparent disregard shown by large companies is of great concern. The employees also rely heavily on their union to ensure they are going to be better off. There is a high degree of trust placed in the union by employees who do not participate actively in the enterprise bargaining process. The fact that more than half of Coles employees were found to be worse off in the proceedings brought by Ms Vickers² demonstrates that the SDA was, at best, asleep at the wheel or, at worst, knew that a substantial number of workers were not going to be better off overall.
- 1.11 The committee heard evidence about the BOOT, in particular how the application of the BOOT has changed since it came into operation in 2009. The SDA argued that the FWC has been inconsistent in applying the BOOT:

We would submit that the BOOT was applied after 2009 in a very similar fashion to the no-disadvantage test. We note that the Coles decision of May 2016 was a significant departure from that. This union accepts that and we are bargaining with companies now in accordance with the principles enunciated by the Full Bench in that decision. We do note, though, that the Fair Work Commission has been less than consistent in how it has applied the BOOT, and we have set out a number of examples on pages 21 to 23 which call out enterprise agreements that have a very small loaded rate—some as low as 2½ per cent—and a complete buy-out of penalties. We

² Transcript of proceedings, Application by Vickers (AG2016/3797) Sydney, 8 June 2017, PN 298-302.

would call on Fair Work to be more consistent in its approach to vetting and applying the BOOT in future.³

- 1.12 The view that the BOOT was being applied differently was supported by FCB Group:

Mr Tindley: I think it's about whether it's identifiable that workers are worse off. If it's identifiable that individual employees will be worse off then (sic) the better-off-overall test says that that agreement can't pass. For me it's a pretty simple proposition.

Senator XENOPHON: But you would concede that, as a result of the Hart decision, in the Vickers matter before the Fair Work Commission the BOOT, as it was being interpreted and implemented in the past, is basically gone?

Mr Tindley: Correct.⁴

- 1.13 While the text of the BOOT has not changed, there are apparent issues with how it is being interpreted. We consider that some of the witnesses were less than forthcoming in their evidence, and at times evaded providing full and frank details. We note, for instance, that in a supplementary letter dated 22 September, Coles stated that some questions were predicated on a misunderstanding or misrepresented information:

For example, neither the 2011 or 2014 Coles Agreements reduced, cut or traded away penalty rates. The penalty rates in those agreements were the same as the 2005 and 2008 Coles Agreements, except for the alignment of penalties for new meat department team members in the 2014 Agreement, bringing them in line with the rest of the store.⁵

- 1.14 However, we consider that the answer above dodges the question, as the information sought by the committee—indeed the point of the inquiry—was not about penalty rates in relation to previous agreements but in comparison to the modern award rates.
- 1.15 It is ironic that the SDA is challenging the FWC's decision to cut penalty rates on weekends when they have been a party to agreements that pay penalty rates that are below the relevant Modern Award or even no penalty rates at all. The SDA's argument that such agreements deliver a higher weekly rate of pay and other benefits for employees is a red herring. It sounds fair, until you look more closely. Workers like Ms Vickers are financially worse off under their enterprise agreement than they would be if they were paid at the award rate, and this is unfair and unacceptable. Defence Reserves leave and blood donor leave may be valuable benefits to some employees, but they don't help pay the bills.
- 1.16 A complex negotiating framework coupled with a lack of transparency allows these sorts of deals to be struck and undermines the intent of collective bargaining. Negotiations that result in a reduced penalty rate for employees should be clearly explained to all employees. The rationale for reducing a penalty rate on a Sunday, for

³ Mr Gerard Dwyer, National Secretary-Treasurer, Shop Distributive and Allied Employees' Association, *Committee Hansard*, 24 August 2017, p. 40.

⁴ Mr Nick Tindley, Executive Manager, Human Resources, Consulting and Advisory Services, FCB Group, *Committee Hansard*, 24 August 2017, p. 21.

⁵ Supplementary letter to questions on notice, Coles, 22 September 2017.

example, should be sufficiently explained to employees before they are asked to vote on a proposed enterprise agreement. This rationale should also form part of the formal documentation that is submitted as part of the approval process with the FWC.

- 1.17 We note the committee's sole recommendation, to overturn the FWC's decision to reduce Sunday penalty rates. The NXT support this recommendation. However, given thousands of retail, hospitality and fast-food workers currently do not get paid these penalty rates under their existing enterprise agreements, this recommendation will do nothing for them. This recommendation on its own is the equivalent of rearranging deckchairs on the Titanic. We need to ensure all workers are paid at least the award rate, and that this is not traded away by deals between large employers and unions that result in workers being worse off.

Recommendation 1

- 1.18 That the *Fair Work Act 2009* be amended to ensure that enterprise agreements do not contain clauses that result in employees receiving penalty rates that are lower than the rates specified in the relevant Modern Award.

Recommendation 2

- 1.19 That pending the changes in Recommendation 1, the party who is seeking to deviate from the terms of a relevant Modern Award provide an additional statement to the Fair Work Commission, in the form of a statutory declaration, outlining the specific clauses in an enterprise agreement that deviate from the relevant Modern Award, and the reasons for this. Furthermore, employees should be provided with a copy of this additional statement prior to a vote occurring on a proposed enterprise agreement.

Recommendation 3

- 1.20 There should be greater transparency of payments made between unions and employers, and that employees should be provided full details of any such arrangements or proposed arrangements prior to a vote occurring on a proposed enterprise agreement.

Senator Nick Xenophon

Senator Stirling Griff

Appendix 1

Submissions and additional information

Submissions

- 1** Mr Aaron Beardsell
- 2** Mr Antonio Lumley
- 3** Australian Nursing and Midwifery Federation
- 4** Australian Council of Trade Unions
- 5** Mr Chris Hamill
- 6** Federation of Ethnic Communities' Councils of Australia (FECCA)
- 7** Job Watch Inc
- 8** Shop Distributive and Allied Employees' Association
- 9** The Australian Industry Group
- 10** National Retail Association
- 11** Australian Retailers Association
- 12** Council of Small Business Australia (COSBOA)
- 13** The Council of Australian Postgraduate Associations
- 14** Fair Work Commission
- 15** Woolworths Group
- 16** Western Australian Government
- 17** Australian Chamber of Commerce and Industry
- 18** Australian Small Business and Family Enterprise Ombudsman
- 19** Australian Government Department of Employment
- 20** Institute of Public Affairs
- 21** Northern Territory Government
- 22** Department of Economic Development, Jobs, Transport and Resources
- 23** MGA Independent Retailers
- 24** Business Council of Australia

25 Retail and Fast Food Workers Union

26 Mr Robert Vertigan

Additional information

- 1 Revised attachment D to public submission from the Retail and Fast Food Workers Union, received 31 August 2017.

Answer to Question on Notice

- 1 Answers to written questions on notice by the Australian Council of Trade Unions, asked by Senator Reynolds on 28 August 2017; received on 30 August 2017
- 2 Answers to written questions on notice by the Department of Employment, asked by Senator Reynolds on 28 August 2017; received on 30 August 2017
- 3 Answers to verbal questions on notice by the Federation of Ethnic Communities' Councils of Australia, asked by Senator Reynolds on 24 August 2017; received on 30 August 2017
- 4 Answers to verbal questions on notice by JobWatch, asked by Senator Marshall, Senator Reynolds, Senator Xenophon and Senator Ketter on 24 August 2017; received on 30 August 2017
- 5 Answers to written and verbal questions on notice by Woolworths Group, asked by Senator Xenophon and Senator Reynolds on 24, 25 and 28 August 2017; received on 30 August 2017
- 6 Additional answers to written and verbal questions on notice by Woolworths Group, asked by Senator Xenophon and Senator Reynolds on 24, 25 and 28 August 2017; received on 6 September 2017.
- 7 Additional answers to written and verbal questions on notice by Woolworths Group, asked by Senator Xenophon and Senator Reynolds on 24, 25 and 28 August 2017; received on 11 September 2017.
- 8 Additional answers to written questions on notice by Woolworths Group, asked by Senator Rhiannon on 18 September 2017; received on 25 September 2017.
- 9 Answers to written questions on notice by KFC, asked by Senator Reynolds and Senator Rhiannon on 28 August 2017; received on 31 August 2017.
- 10 Additional answers to questions on notice by KFC, asked by Senator Rhiannon on 18 September 2017; received on 27 September 2017.
- 11 Answers to written questions on notice by the Shop Distributive and Allied Employees' Association, asked by Senator Reynolds and Senator Rhiannon on 28 August 2017; received on 4 September 2017.

- 12 Additional answers to written questions on notice by the Shop Distributive and Allied Employees' Association, asked by Senator Rhiannon on 28 August 2017; received on 12 September 2017.
- 13 Additional answers to written questions on notice by the Shop Distributive and Allied Employees' Association, asked by Senator Rhiannon on 28 August 2017; received on 15 September 2017.
- 14 Answers to questions on notice by Coles, asked at a public hearing on 24 August 2017; received on 6 September 2017.
- 15 Additional answers to questions on notice by Coles, asked on 24, 25 and 28 August by Senator Reynolds, Senator Rhiannon and Senator Xenophon; received on 22 September 2017.
- 16 Answer by McDonald's Australia to questions on notice from Senator Rhiannon, asked on 18 September 2017; received 19 September 2017

Appendix 2

Public hearings

Thursday, 24 August 2017

Hotel Grand Chancellor

131 Lonsdale Street, Melbourne

Federation of Ethnic Communities' Councils of Australia (FECCA)

- Dr Emma Campbell, Director
- Dr Alia Imtoul, Senior Policy and Project Officer

Professor John Quiggin, Private capacity

Australian Retailers Association

- Mr Nick Tindley, Head of Employment Law
- Mr Heath Michael, Director of Policy and Government Affairs

KFC Australia

- Mr Robert Phipps, Chief People Officer
- Ms Sally Glover, Chief Legal and Corporate Affairs Officer
- Mr Jonathan D'Souza, People Capability Director

Australian Council of Trade Unions

- Ms Sally McManus, Secretary
- Mr Trevor Clarke, Director, Legal and Industrial

Shop Distributive and Allied Employees' Association

- Mr Gerard Dwyer, National Secretary

Centre for Future Work

- Dr Jim Stanford, Director

Job Watch Inc

- Mr Ian Scott, Principal Lawyer
- Mr John O'Hagan, Lawyer

Coles

- Mr David Brewster, Legal Director
- Ms Vicki Bon, Government and Industry Relations Manager

Woolworths Group

- Mrs Caryn Katsikogianis, Chief People Officer
- Ms Alison Penfold, A/g Head of Government Relations