



PARLIAMENT OF VICTORIA

Legislative Assembly

Penalty Rates and Fair Pay Select Committee

Inquiry into penalty rates and fair pay

Interim Report

June 2017

Penalty Rates and Fair Pay Select Committee Report No. 1
58th Parliament



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This report is available on the Committee's website.

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1.1 Terms of reference

On 9 March 2017, the Legislative Assembly agreed to the following resolution:

- (1) A select committee be appointed to:
 - (a) inquire into and report on the economic and social impact and cost of the Fair Work Commission's recent decision to cut penalty rates to thousands of Victorian workers, particularly in relation to:
 - (i) Victoria's lowest paid, award reliant workers;
 - (ii) women;
 - (iii) young workers;
 - (iv) workers in regional Victoria;
 - (v) single parents;
 - (vi) the detrimental effect on the Victorian economy;
 - (vii) workers who may be indirectly affected as they experience the flow on effects of this decision in their enterprise bargaining, across different industries, or who work in industries which may be targeted next;
 - (b) also investigate possible safeguards and federal legislative changes, that can be advocated for at the Commonwealth, State and Territory Ministers for Workplace Relations and Work Health and Safety meeting, to protect vulnerable Victorian workers and all other relevant matters;
- (2) The Committee be required to present an interim report no later than 21 June 2017 and a final report no later than 1 September 2017;
- (3) Such Committee to consist of:
 - (a) Government members Ms Williams, Ms Blandthorn, Ms Suleyman and Mr Bull (Sunbury);
 - (b) two opposition members, nominated by the Leader of the Opposition and one cross bench member nominated by the Leader of the House, and those members to be appointed by the lodgement of names to the Speaker by 5.00 pm on the day after the motion is passed;
- (4) Ms Williams be the Chair;
- (5) Four be the quorum; and
- (6) The provisions of this resolution, so far as they are inconsistent with standing orders, have effect despite anything in standing orders.

1.2 Committee membership

On 21 March 2017, the Speaker advised the Legislative Assembly that the Leader of the Opposition had nominated Mr Clark and Ms Ryall and the Leader of the House had nominated Mr Hibbins to be members of the Committee.

1.3 Inquiry process

The Committee advertised a call for written submissions in *The Age* newspaper on 5 April 2017 and 3 May 2017. The call for submissions was also promoted through the Parliament of Victoria's Facebook page and Twitter.

The Committee wrote to a number of key stakeholders inviting them to make a written submission. These stakeholders included:

- unions and employer organisations in the relevant industries;
- social services organisations, including housing support and volunteer groups;
- the federal minister, shadow minister and Australian Greens spokesperson for industrial relations issues; and
- economists that have publicly commented on penalty rates or previously given evidence to parliamentary committees about industrial relations issues.

The Committee has received 24 submissions to date. A list of the submissions is included in Appendix 1.

The Committee has been contacted by several organisations who requested an extension of time to make a submission. The Committee has agreed to accept late submissions.

Given the tight timeframe for this inquiry, the Committee decided to hold initial public hearings at the same time as calling for written submissions. The Committee held public hearings on 26 and 27 April 2017 (see Appendix 2).

2 Background

2.1 Fair Work Commission's review of penalty rates

In 2014, the Fair Work Commission commenced a 4 yearly review of modern awards, as required under the *Fair Work Act 2009* (Cth).¹ Under that Act, the Commission's task in a 4 yearly review is to decide whether a particular modern award achieves the modern awards objective.

Under section 134(1) of the *Fair Work Act 2009* (Cth) the modern awards objective is defined as:

The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

If a modern award does not meet this objective, the Fair Work Commission must vary the award such that it only includes terms that are 'necessary to achieve the modern awards objective'.

¹ Section 159

2.2 Relevant industries

As part of the 4 yearly review, employer bodies made application to vary the penalty rate provisions in a number of modern awards in the hospitality and retail sectors.

The six modern awards considered by the Fair Work Commission were:²

Hospitality awards

- Hospitality Industry (General) Award 2010
- Registered and Licensed Clubs Award 2010
- Restaurant Industry Award 2010

Retail awards

- Fast Food Industry Award 2010
- General Retail Industry Award 2010
- Pharmacy Industry Award 2010

2.3 Fair Work Commission's decision

The Fair Work Commission's decision was handed down on 23 February 2017. Its determinations in relation to Sunday and public holiday penalty rates are set out in the table below:

Award	Current Sunday penalty rate	Proposed Sunday penalty rate	Current public holiday penalty rate	Proposed public holiday penalty rate
Hospitality Award:				
Full-time and part-time employees	175 %	150 %	250 %	225 %
Casual employees			275 %	250 %
Restaurant Award:				
Full-time and part-time employees	No change	No change	250 %	225 %
Casual employees			250 %	250 %
Clubs Award:				
Full-time and part-time employees	No change	No change	No change	No change
Casual employees				
Fast Food Award:				
Full-time and part-time employees	150 %	125 %	250 %	225 %
Casual employees	175 %	150 %	275 %	250 %

² A claim to reduce Sunday penalty rates under the Hair and Beauty Award was not proceeded with. However, the FWC has identified a need to review these rates. The FWC is seeking expressions of interest from employer organisations to take on a proponent role in relation to this matter.

Award	Current Sunday penalty rate	Proposed Sunday penalty rate	Current public holiday penalty rate	Proposed public holiday penalty rate
<i>Retail Award:</i>				
Full-time and part-time employees	200 %	150 %	250 %	225 %
Casual employees	200 %	175 %	250/275 %	250 %
<i>Pharmacy Award:</i>				
Full-time and part-time employees	200 %	150 %	250 %	225 %
Casual employees	225 %	175 %	275 %	250 %

2.4 Implementation of the Fair Work Commission's decision

The changes to public holiday penalty rates will take effect from 1 July 2017.

In its decision, the Fair Work Commission noted that a reduction in penalty rates is likely to reduce the earnings of those employees who currently work on Sundays, and that it is improbable that, as a group, those workers' hours would rise sufficiently to offset the income effects of penalty rate reductions.³ The Commission therefore concluded that appropriate transitional arrangements are necessary to mitigate the hardship caused to these workers.⁴

The Commission handed down its decision on transitional arrangements on 5 June 2017.⁵ It decided to phase in the changes to Sunday penalty rates over three or four years depending on the industry as set out below:

Award	Sunday penalty rate				
	Current	1 July 2017	1 July 2018	1 July 2019	1 July 2020
<i>Hospitality Award:</i>					
Full-time and part-time employees	175 %	170 %	160%	150 %	
<i>Fast Food Award:</i>					
Full-time and part-time employees	150 %	145 %	135 %	125 %	
Casual employees	175 %	170 %	160 %	150 %	
<i>Retail Award:</i>					
Full-time and part-time employees	200 %	195 %	180 %	165 %	150 %
Casual employees	200 %	195 %	185 %	175 %	
<i>Pharmacy Award:</i>					
Full-time and part-time employees	200 %	195 %	180 %	165 %	150 %
Casual employees	225 %	220 %	205 %	190 %	175 %

³ [2017] FWCFB 1001 at [84].

⁴ [2017] FWCFB 1001 at [86].

⁵ [2017] FWCFB 3001.

3

Future work

3.1 Developments during the inquiry

The Fair Work Commission handed down its decision on transitional arrangements on 5 June 2017. This was after the Committee had completed its initial call for written submissions and held its initial public hearings.

The decision to phase in the changes to penalty rates over three or four years may alter the views of stakeholders expressed in the evidence already received by the Committee. The Committee will need to seek further input from stakeholders on the impact of the penalty rates decision taking into consideration the transitional arrangements.

The Committee has also become aware that the Shop, Distributive and Allied Employees' Association and United Voice intend to appeal the Fair Work Commission's decision in the Federal Court.⁶ It is likely that employer groups and unions will have limited capacity to participate in the inquiry once the Federal Court's review of the Fair Work Commission's decision is underway.

3.2 Effect on Committee's future work

Employer groups and employee representatives are key stakeholders in this inquiry. The Committee believes the inquiry will be negatively impacted if it cannot receive evidence from these groups due to the pending Federal Court case.

The Committee also notes that if the challenge to the Fair Work Commission's decision is successful and the cut to penalty rates is not implemented, the Committee's inquiry could become redundant.

Given the challenges obtaining evidence from these key stakeholders, the Committee believes it cannot satisfactorily complete this inquiry by the due date of 1 September 2017.

The Committee will continue to progress its inquiry by reopening submissions and taking evidence from stakeholders who are not directly involved in the Federal Court case, including housing support, social services and other community groups.

The Committee will need to wait for the outcome of the Federal Court case before it can pursue further evidence from employer and employee groups. As a Federal Court decision is unlikely to be delivered until the end of 2017 at the earliest, the Committee recommends that its reporting date be extended until mid-2018.

⁶ Shop, Distributive and Allied Employees' Association, SDA appealing the Fair Work decision to cut penalty rates (Media release, 10 May 2017), <www.sda.org.au/sda-appealing-penalty-rates-for-retail-fast-food-pharmacy-workers-in-court>, accessed 9 June 2017; United Voice, Steps taken to appeal penalty rate decision in Federal Court (Media release, 21 April 2017), <www.unitedvoice.org.au/press-releases/steps-taken-appeal-penalty-rate-decision-federal-court>, accessed 9 June 2017.

Appendix 1

List of submissions

Submission no.	Name of individuals/organisations
1	Sharon Murphy
2	Daniel McLean
3	Angelos Kenos
4	Timothy Mason
5	United Voice
6	Youth Affairs Council Victoria
7	Ian McSparran
8	Ballarat Regional Trades and Labour Council Incorporated
9	Name withheld
10	Adam Bandt MP
11	Young Workers Centre
12	JobWatch
13	Victorian Chamber of Commerce and Industry
14	Ai Group
15	Professional Pharmacists Australia
16	Malaysian Progressives in Australia
17	Victorian Trades Hall Council
18	Restaurant and Catering Industry Association
19	Retail and Fast Food Workers Union
20	Victorian Women Lawyers
21	McKell Institute
22	Launch Housing
23	Brendon O'Connor MP
24	Council to Homeless Persons

Appendix 2

List of witnesses

Public Hearing — 26 April 2017

Name	Position	Organisation
Luke Hilakari	Secretary	
Professor Lisa Heap	Lead Organiser of Women's Team	Victorian Trades Hall Council
Keelia Fitzpatrick	Coordinator of Young Workers Centre	
John Hart	Chief Executive Officer	Restaurant and Catering Industry Association
Emma King	Chief Executive Officer	Victorian Council of Social Service
Llewellyn Reynders	Policy Manager	
Ged Kearney	President	Australian Council of Trade Unions

Public Hearing — 27 April 2017

Name	Position	Organisation
Michael Robson	National Industrial Officer	
Carl D'Souza	Hotel worker	United Voice
Mohammed Abu Sayem	Hotel worker	

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