

Penalty Rates and
Fair Pay Select Committee
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PENALTY RATES & FAIR PAY INQUIRY

VICTORIAN TRADES HALL COUNCIL SUBMISSION

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Introduction

The Victorian Trades Hall Council (VTHC) was founded in 1856 and is the peak body for unions in Victoria. VTHC represents 41 unions and over 430,000 workers in Victoria. These workers are members of unions that reach into every industry in the state, both in the public and private sectors.

Since gaining the Eight Hour Day in April 1856, VTHC has had a long history of fighting for and defending the rights of workers in Victoria. The importance of winning the Eight Hour Day is significant not just in Australia but worldwide.

Over the last 150 years, VTHC and its affiliated unions have campaigned for and successfully won a range of important rights and entitlements for Victorian (and Australian) workers, including:

- Minimum wage
- Penalty rates
- Collective bargaining rights and freedom of association and the right to representation
- Occupational Health and Safety (OHS) protections
- Annual, sick (and carer's) leave, maternity and parental leave, and long service leave
- Domestic violence leave
- Superannuation
- Protections from unfair dismissal and redundancy entitlements

VTHC will continue to campaign tirelessly for the rights, entitlements and protections of workers in Victoria, no matter their gender, sexuality, employment status, employer, or workplace.

VTHC welcomes the commitment of the Andrews Labor Government to workers in Victoria and fair pay for all, as demonstrated by this inquiry.

The decision of the Fair Work Commission (FWC) to cut penalty rates in the retail, fast food, hospitality and pharmacy sectors is a reflection of a broken system. It is the regulatory stamp of approval on the continued quest from business, with the assistance of the Liberal Party, for ever increasing profits most often at the expense of their workers. This is a decision that will harm all Victorians as hundreds of millions of dollars are ripped from the economy.

In our submission VTHC will discuss six key areas, specifically:

- Who earns penalty rates
- The cost to workers
- The impact on women workers
- The impact on regional Victoria
- Rising inequality
- The effect on insecure work

In forming this submission VTHC has consulted with relevant affiliated unions, many who are also making submissions. Nothing in our submission is intended to supersede the submissions of other unions; indeed they should be read concurrently as supporting documents. In addition the Young Workers Centre (YWC) based at Victorian Trades Hall have made a submission specifically detailing the impact of the decision on young people.

Who earns penalty rates?

VTHC conservatively estimates that 435,149 Victorians work in the retail, pharmacy, fast food and hospitality industries. Of these more than 135,000 work on weekends and are reliant on an award that has had penalty rates cut by the FWC decision (See Appendix 1 for methodology).

Women	In the accommodation and food services sector and the retail sector, women make up approximately 54% of the workforce. ¹ Professional Pharmacists Australia (the union for pharmacy staff) advises that more than 61% of Victoria's pharmacists are women. In these industries women are concentrated in the lower levels, where they are more likely to be award reliant.
Young Workers	Another key demographic affected by cuts to penalty rates are young people. Research by the Centre for Work and Life at the University of South Australia has found nearly 40% of young people rely on penalty rates to survive. ²
Regional Workers	Workers in regional Victoria will also be hit hard by cuts to penalty rates. The McKell Institute estimates that fractionally less than 50,000 workers in regional Victoria will suffer a pay cut as a result of the decision. ³

These figures include only those workers who are award reliant and will have their pay cut in the first instance. One thing that we know however, is that companies will use the reduced rates in Enterprise Bargaining Agreement (EBA) negotiations. For example, Sonic Health Plus is a private employer of nurses whose workers receive Sunday penalty rates. In EBA negotiations since the FWC decision, Sonic Health Plus have proposed a cut of at least a third to Sunday rates. VTHC is concerned that more and more employers will follow this lead and use the FWC decision as grounds to cut the rates of workers through EBA negotiations.

The costs to workers

Working on Sundays is not like working on other days of the week. There is substantial evidence that demonstrates that regularly working on weekends has negative impacts on workers' social lives, their ability to engage in family life and on their health.⁴ Penalty rates are compensation for these detrimental aspects of working weekends.

The cost in monetary terms to individual workers has been calculated by The Chifley Institute. A full or part time worker doing an eight hour shift on a Sunday will be \$38 a week worse off in fast food and hospitality and \$78 a week worse off in retail and pharmacy. This equates to a cut of between approximately \$2000 and \$4000 per annum depending on the industry (see Figures 1 and 2 for further details).⁵

A cut in penalty rates is a cut to the pay of some of Australia's lowest paid workers. The McKell Institute estimates that the average wage of a retail worker is between \$32,000 and \$34,000.⁶ Any pay cut no matter the amount is life changing. For people working on Sundays and public holidays, a cut in pay means restructuring their whole lives.

Absorbing a pay cut of such a magnitude is simply not feasible for workers who are currently earning and reliant on penalty rates. They will have to work extra hours to make up the difference. Workers across these industries will have to work two to four additional hours a week to catch up. When that is extrapolated over a year we estimate that is between 13 and 26 extra days a year (see Figure 3).

Workers will have to spend that extra time working to make ends meet, to put food on the table and to pay the bills. Those extra days are time away from their families, missed sporting matches, music recitals, birthday parties and celebrations.

Fig 1. Part/Full Time⁷ - Figures for a worker on each award working 8 hours every Sunday

Industry	Current Rate	Rate After Cut	Hourly Loss	Weekly Loss	Yearly Loss
Retail	\$38.88	\$29.16	\$9.72	\$77.76	\$4,043.52
Fast Food	\$29.16	\$24.30	\$4.86	\$38.88	\$2,021.76
Hospitality	\$33.09	\$28.37	\$4.72	\$37.76	\$1,963.52
Pharmacy	\$38.88	\$29.16	\$9.72	\$77.76	\$4,043.52

Fig 2. Casual⁸ – Figures for a worker on each award working 8 hours every Sunday

Industry	Current Rate	Rate After Cut	Hourly Loss	Weekly Loss	Yearly Loss
Retail	\$38.88	\$34.02	\$4.86	\$38.88	\$2,021.76
Fast Food	\$34.02	\$29.16	\$4.86	\$38.88	\$2,021.76
Hospitality	\$33.09	no cut			
Pharmacy	\$43.74	\$34.02	\$9.72	\$77.76	\$4,043.52

Fig 3. Extra Hours⁹ - Extra time working required to earn same amount for full or part time worker working 8 hours every Sunday

Industry	Retail	Fast Food	Hospitality	Pharmacy
Week (Hours)	4	2	2	4
Year (Days)	26	13	13	26

The impact on women

In Australia, women earn approximately 17.3% less than men.¹⁰ The gender pay gap will only be exacerbated as a result of the FWC decision. According to the Workforce Gender Equality Agency, in retail, 54.6% of workers are women. In accommodation and food services, 54.7% of workers are women.¹¹ For young women, retail is their largest employer.¹² When this is broken down further, women are concentrated in the lower rung jobs, often insecure, part time or casual work, where they rely on penalty rates. Men are concentrated at the upper levels, working full time in managerial and executive positions.

The majority of workers who work weekends are women. Women in Australia also carry the bulk of family caring responsibilities. Being away from family and children on weekends is a difficult choice. Many do it because weekend penalty rates are often the difference between paying the bills or not, between buying groceries or not and between paying the rent or the mortgage or not.

In order for women to make up for the lost income they will need to increase their hours significantly. Women in our society already face difficulties managing work and family responsibilities. Working additional hours will only further entrench the inequality they face.

Shamefully, the FWC indicated that it considered the work in these industries to be “non-career” work in its decision. However, a significant proportion of the women who will be affected, particularly in the retail industry, have told VTHC that they see this work as their career. They have devoted their lives to working in this area. Language that is demeaning or devaluing of their work, calling it “non-career”, not only has a negative impact on the work value in itself but also allows it to be considered of lesser value to the community.

VTHC believes that if the FWC can make this decision within the current parameters, then clearly the current parameters are inadequate for women workers and need to change. VTHC recommends the insertion of an explicit objective of the Fair Work Act to include a positive duty when making or varying awards that the impact on women and equal pay needs to be taken into account.

Kim, 34, works in retail

Working on weekends means that she misses valuable time with her children.

“My poor kids miss out on having myself or my husband there at sporting games and birthday parties all the time.”

Kim uses the penalty rates she earns to pay bills and to buy the weekly groceries. When asked what the impact will be Kim said

“... [I’ll] just have less money to spend. It will make it hard. I will [still work on Sundays] but I would consider finding a job that doesn’t work these hours. It’s hard to find care on these days.”

Impacts on regional Victoria

A recent McKell Institute report investigating the impact of the FWC decision found that regional and rural Victorian workers will lose \$122 million in disposable income. The report also found that at least \$56.5 million would leave regional and rural Victoria as medium and large businesses with urban corporate headquarters shift money previously used to pay workers into other jurisdictions.¹³

Even before this decision was made regional workers were paid on average less than those who work in urban areas. The 2011 Census found that in the retail industry, workers in regional Australia earned 7% less per annum.¹⁴ This problem will only be exacerbated by the FWC decision. Retail and hospitality industries employ close to 20% of the working population in regional Victoria, compared to around 17% in non-rural areas, this means that a disproportionate number of workers in regional Victoria will have their take home pay cut.¹⁵

The combination of substantial pay cuts reducing disposable income and significant money leaving the local economy as large businesses shift money will have a substantial flow on effect in local rural economies. The decision of the FWC is likely to lead to a drop in spending, a subsequent reduction of demand and a resulting drop in living standards in rural and regional communities.

The McKell Institute report also found that the federal electorate of McEwen would be the most harshly affected by the decision. In McEwen more than 7600 workers will have their pay cut, with those workers alone suffering a combined loss of \$19,237,138 every year in disposable income.¹⁶

Wannon was found to be the “least” impacted of Victoria’s regional federal electorates, however even in that case 5,827 workers will combine to suffer a \$13,970,345 loss in disposable income each year.

Regional Victoria simply cannot afford to sustain the massive loss of income and demand that will flow from the cut to penalty rates.

Luke Martin, Secretary, Bendigo Trades Hall Council:

“Workers in regional areas are quite often earning lower wages than people doing the same work in Melbourne. We have seen a difference in wages of regional to metropolitan workers of up to 15%. In some areas of Bendigo many people are earning as little as \$35,000 per year. In a recent media release from the ACTU, data from the McKell Institute indicates that 45 regional communities will lose \$667 million per year from a penalty rate cut. This kind of cut will only further increase the hardship of workers in regional areas.

“There is the belief that cutting the penalty rates will encourage employers to employ more people but we do not agree. Local businesses only employ the people they need no more and no less, cutting penalty rates is only giving them a pay rise and their workers a pay cut. Employers will of course advocate for this cut because they see their employees as an expense rather than an investment. Employers also don’t understand that by reducing the wages of their workers they are reducing the buying power of their own customers, they only see numbers on paper.

“Another point that is often overlooked is that many weekend fast-food and retail workers are students giving up, not only free time, but valuable study time to help pay for education and living expenses. Some young students have told us that a cut to their weekend penalty rates is the difference between eating and not eating.

“The Liberal Government argues that the cut will only effect hospitality, fast food and retail because Saturday and Sunday are just like any other day, but as a Bendigo chef has expressed, why is his time with his family and friends worth less than a Paramedic for example.

“We believe that once this cut is made other industries will start follow. All workers are equal, yes some perform tasks that carry a higher hourly rate but, all free time and time with family and friends is valuable. People giving up their weekend to serve us coffee deserve to be compensated.”

Colin Vernon, Secretary, Geelong Trades and Labour Council:

“The Geelong Trades Hall Council being the representative of working people across the region would like to express deep concern regarding the proposed cuts to wages to some of the lowest paid employees in our area, the result of the Fair Work Commission ruling to reduce penalty rates for Sundays and public holidays.

“The community has expressed firm opposition to the cuts and have expressed their anger and frustration to us about the impacts this decision will have on their personal living standards and on the wider community. Some of the impacts we believe will take place once the cuts are introduced include:

- A reduction in the take home pay of the lowest paid in our community
- The inability to continue to pay the household basics such as food, power, gas, clothing, school fees and books are already issues concerning the community.
- The final straw that will push many workers to the financial wall resulting in wide spread social dysfunction.

“Geelong is already an area that is under growing pressure with an increase in casual employment combined with the impacts of unemployment and underemployment. Workers in our region need good full time employment and increased wages, however recent wage increases have not kept up with inflation and in fact many workers’ wages are going backwards.”

The effect on insecure work

Workers who are impacted by the cuts to penalty rates have few options in order to make up the lost pay. For most workers they will have to work more hours. Unfortunately these additional hours are unlikely to exist. In Victoria approximately 135,000 workers will have their pay slashed by up to \$4,000 a year (Appendix 1).¹⁷ This will have a dramatic effect on demand, fewer workers will be able to afford goods and services. Employers are unlikely to create new jobs or extend hours of operation when demand has been cut to such a level that there is not enough customers to purchase additional goods or use additional services.

One of the less discussed impacts of the FWC decision is the likely increase of casualisation. If due to a reduction in demand more jobs or hours aren't created, this will leave a shift to casual employment as one of the few options available to workers. The FWC decision will result in a significantly expanded gap between casual rates and full time or part time rates. It is highly likely that those workers who are struggling financially already and are now facing an additional pay cut may find the idea of transitioning from secure employment to the higher rate casual employment offers their only option to make ends meet.

In Australia the level of insecure work has been rising for nearly thirty years.¹⁸ This rise is not simply some unexpected result of the "evolving" nature of work in today's modern world. Rather, it is the desired outcome from a systematic and targeted attempt by big business, corporations and their lobby groups to deregulate the labour market. VTHC is dismayed that the FWC has followed in the footsteps of these groups and staggeringly advanced their interests at the cost of working Australians.

Casual and insecure employment leads to financial insecurity, poorer occupational health and safety outcomes, inability to plan lives or take out a loan, reduced career options, less training opportunities and the loss of sick and annual leave and other entitlements needed to survive. Any action that continues or enhances the pervasive creep of insecure work must be condemned.

Rising inequality

One of Australia's leading social research group, McCrindle, has reported that in Australia today the lowest 20% of Australian households own less than 1% of the national private wealth while the highest 20% own 62% of the national private wealth.¹⁹ McCrindle's research also found that the top 20% of earners earn almost as much as the other 80% of households combined. Put another way, the highest 20% of households earn on average 12 times more the bottom 20%.²⁰

The latest data shows that the spread of income and wealth in Australia is at its most unequal in history. Since the mid 1990's inequality has grown more than 7%.²¹ Over the twenty-five years to 2010, real wages increased on average 50% across Australia, but this growth has been grossly unequal. For those on lower incomes the average growth was 14% compared to 72% for those on higher incomes.²²

As has been previously discussed workers in the affected industries are amongst the lowest paid in Australia. The FWC has found in several Annual Wage Reviews that workers in the hospitality industry are "low paid".²³

By reducing penalty rates the FWC have made a decision that will only serve to increase inequality in Australia. A rise in inequality has a detrimental effect on social cohesion, leads to poorer health outcomes and reduces community safety. The decision overwhelmingly hurts workers who are often amongst the lowest paid.

Rosanna, 31, works in retail.

Rosanna uses the penalty rates she receives to pay for essentials and support her family

"I supplement my mums pension, which is very meagre, and I pay her rent. I also spend it on petrol, food, internet and phone bills, and am saving the rest so I can hopefully move out of home. I'm in my thirties but rent is expensive."

A cut to penalty rates is devastating to Rosanna

"At the moment, I work to support my mum, family and myself; any spare time I have is spent caring for my family and friends who have mental illnesses, at uni or studying. If I lose penalty rates I'll have to quit uni and investing in my future education. There would be no reason to (continue working on Sundays)... I will work whenever I can get the best pay, and if my boss doesn't value my time or tells me to leave because I refuse to work weekends, there's not much I can do."

"I'm very afraid that we'll soon have a sizeable class of working poor, just like in America and other aggressively capitalist economies. Human rights violations are just the next step when workers rights are abandoned, as we can see in so many examples."

Recommendations

In light of the evidence presented in this submission, VTHC recommends the following:

1. That the state government continue to lobby the federal government to legislate to protect penalty rates for all workers in Victoria and interstate;
2. That the state government continue to lobby employers in Victoria to protect penalty rates and not implement a wage reduction as a result of the FWC ruling;
3. That the state government publically support the campaigning efforts of workers and their unions in the affected industries as they fight to protect their weekend pay rates;
4. That the state government lobby the federal government to legislate to introduce requirements in the FWA that the FWC must consider the impact of their decisions as they relate specifically to women, to address issues of equal pay and gender remuneration equality;
5. That the state government considers excluding from tendering or government contracts any companies or parent companies that pass on the FWC ruling and cut their workers' wages;
6. That the state government considers introducing a publically available information source that tracks which Victorian-base companies are passing on the FWC ruling and are cutting their workers' wages so that the Victorian public can be informed when making purchases; and
7. That the state government considers introducing a dedicated enforcement unit to tackle rampant wage fraud and ensure employer compliance of pay and conditions, including penalty rates.

Conclusion

The FWC decision to cut Sunday and public holiday penalty rates in the hospitality, retail, fast food and pharmacy sectors is a hammer blow to Victorian workers and to all Victorian's more broadly. The decision cuts the take home pay of some of our lowest paid workers, it exacerbates the gender pay gap, increases inequality and will lead to an increase in insecure work. The decision will also decimate regional communities by significantly reducing demand. VTHC believes the Victorian Government must do everything in its power to mitigate the impacts of this disastrous decision.

Appendix 1. Methodology and Sources for impacted workers estimate

1. Use Victorian 2011 Census data of workers in the retail, accommodation, and food services industries to calculate total workers in the industries.
2. Use ABS figures on percentage of workers who are award reliant – approximately 62%.
3. Use The Australia Institute report - Tip of the Iceberg: Weekend Work and Penalty Pay in 108 Australian Industries, to calculate the % of workers in each industry who work weekends

Endnotes

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- ¹ WGEA. (November 2016). Australia's gender equality scorecard, viewed at https://www.wgea.gov.au/sites/default/files/80653_2015-16-gender-equality-scorecard.pdf
 - ² Tony Daly. (October 2014). Evenings, nights and weekends: working unsocial hours and penalty rates, Centre for Work and Life University of South Australia, viewed at https://www.unisa.edu.au/PageFiles/34117/PenaltyRatesReport_Oct2014%20Final_R1.pdf
 - ³ The McKell Institute. (May 2017). Unfair Burden: The impact of Sunday penalty rate reductions on regional and rural Australia, viewed at <https://mckellinstitute.org.au/app/uploads/The-McKell-Institute-Unfair-Burden.pdf>
 - ⁴ Natalie Skinner and Barbara Pocock. (September 2014). The Australian Work and Life Index 2014, Centre for Work and Life University of South Australia, viewed at http://www.unisa.edu.au/Documents/EASS/CWL/Publications/AWALI_2014_national_report_final.pdf
 - ⁵ Chifley Research Centre. (March 2017). Cutting Penalty Rates: Measuring the Impact, viewed at <https://www.slideshare.net/ChifleyResearch/cutting-penalty-rates-measuring-the-impact>
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 - ⁷ Chifley Research Centre, op. cit.
 - ⁸ ibid
 - ⁹ ibid
 - ¹⁰ WGEA. (March 2016). Gender Pay Gap Statistics, https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf
 - ¹¹ WGEA. (November 2016). Australia's gender equality scorecard, https://www.wgea.gov.au/sites/default/files/80653_2015-16-gender-equality-scorecard.pdf
 - ¹² ibid
 - ¹³ McKell Institute, op. cit.
 - ¹⁴ ibid
 - ¹⁵ ibid
 - ¹⁶ ibid
 - ¹⁷ Chifley Research Centre, op. cit.
 - ¹⁸ Independent Inquiry into Insecure Work in Australia. (2012). Lives on Hold: Unlocking the Potential of Australia's Workforce, viewed at https://www.actu.org.au/media/349417/lives_on_hold.pdf
 - ¹⁹ McCrindle. (2016). Australia's Household Income and Wealth Distribution, viewed at <http://mccrindle.com.au/the-mccrindle-blog/australias-household-income-and-wealth-distribution>
 - ²⁰ Ibid.
 - ²¹ Ibid.
 - ²² Australian Council of Social Service. (2016). Poverty in Australia 2016, viewed at <http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>
 - ²³ Annual Wage Review 2015–16 [2016] FWCFB 3500 at para. 372; Annual Wage Review 2014–2015 [2015] FWCFB 3500, [315]-[316], See Table 5.1.



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